



**आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAJKOT BENCH, RAJKOT**

**BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
AND
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.466/RJT/2024

निर्धारण वर्ष /Assessment Year: (2011-12)

Jitendrabhai Bhagvanbhai Dalvadi Saiyadvas Gori Darvajo Halvad, Surendranagar -363 330	बनाम Vs.	Income Tax Officer, Ward-2, Morbi
स्थायीलेखासं/.जीआइआरसं/.PAN/GIR No.AUTPD 6890 L		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी/Respondent)

निर्धारित की ओर से/Assessee by : Shri Kalpesh Doshi, AR

राजस्व की ओर से/Revenue by : Shri Abhimanyu Singh Yadav, Sr-DR

सुनवाई की तारीख/Date of Hearing : 22/07/2025

घोषणा की तारीख/Date of Pronouncement : 30/09/2025

आदेश/Order

Per Dr. Arjun Lal Saini, A.M

Captioned appeal filed by the assessee, pertaining to assessment year (AY) 2011-12, is directed against the order passed by the National Faceless Appeal Centre (NAC) Delhi/Commissioner of Income-tax (Appeals)[in short 'NFAC/Ld.CIT(A)'], under section 250 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), dated 07.05.2024, which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3) r.w.s. 147 of the Act, dated 11.12.2018.

2. The grounds of appeal raised by the assessee, are as follows:

"1.That, the Ld.CIT(A) has wrongly confirmed reopening of assessment/s 148 of the I.T. Act, 1961.

2. That, the ld. CIT(A) has wrongly confirmed the addition amounting to Rs.13,76,329/- on account of unexplained cash credits u/s 68 of the I.T. Act, 1961.

3. That, the Ld. CIT(A) has wrongly confirmed initiation of penalty proceedings u/s 271(1)(c) and 271(1)(b) of the I.T. Act, 1961



4. That, the Ld. CIT(A) has wrongly confirmed levy of interest u/s 234A, 234B & 234C of the Income Tax Act, 1961.

5. That, the findings of the Ld. assessing officer and Ld. CIT(A) are not justified and are bad-in-law.

3. The assessee has also raised additional grounds of appeal under Rule 27 of the Income Tax Appellate Tribunal Rules, 1963, which reads as follows:

Ground No.6: That, the notice u/s 147 of the Income Tax Act, 1961 is issued by a non-jurisdictional assessing officer located in Surendranagar even though the jurisdiction of assessee is with assessing office located in Morbi, therefore notices 147 issued by non-jurisdictional officer and non-territorial officer, therefore provision of section 124 is also not applicable.

Ground No.7: The order u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 is passed without order u/s 127 of the Income Tax Act, 1961.

Ground No. 8: That, the reasons recorded are undated and unsigned and therefore, the assessment reopened on the basis of such reasons is bad-in-law.

4. Shri Kalpesh Doshi, Learned Counsel for the assessee, pleads that above additional ground may be admitted in the interest of natural justice and equity and fair play, as its omission in the main ground of appeal attached with Form 36 is purely unintentional. The ld Counsel further pointed out that such additional ground pertains to legal issue and facts are already on record therefore, the said additional grounds may be admitted.

5. On the other hand, Learned Senior DR for the Revenue, submits that assessee did not raise such grounds, during the appellate stage before ld CIT(A), therefore, at later stage, the additional ground raised by the assessee should not be admitted.

6. We have heard both the parties on this preliminary issue and gone through the additional grounds raised by the assessee. We note that the issue raised by the assessee, in the additional grounds are purely legal issues which are going to the root of the jurisdiction of the matter. Therefore, in view of the Hon'ble Apex Court judgment in the case of NTPC Vs. CIT(1998) 229 ITR 383 (SC), wherein it was held that legal ground can be raised by the assessee, for



the first time, before the Tribunal. The Hon'ble Supreme Court while dealing with ground raised before the ITAT for the first time relating to legal issue has held that Tribunal should not be prevented from considering questions of law arising in assessment proceedings, although not raised earlier. It was also held that under section 254 of the Act, the Tribunal has jurisdiction to examine a question of law which though not arose before lower authorities but arose before it from facts as found by the lower authorities and having a bearing on tax liability of assessee. Therefore, we do not agree with contention of Id DR for the Revenue to the effect that assessee cannot raise these legal issue first time before the Tribunal. Since the additional grounds raised by the assessee challenging the validity of reassessment proceedings is a legal issue which goes to the root of the matter and no further inquiry is needed for deciding the said legal issue, as all facts were already on record, of the assessing officer, hence we admit the said additional grounds of appeal of the assessee for adjudication.

7. First, we shall adjudicate ground No.8 of additional grounds, raised by the assessee, on legal issue, which is reproduced below for ready reference:

“Ground No. 8: That, the reasons recorded are undated and unsigned and therefore, the assessment reopened on the basis of such reasons is bad-in-law.”

8. Brief facts *qua* the above legal ground are that case of assessee was reopened u/s 147 of the Act in respect of ITS/NMS details that the assessee has made cash deposit Rs.15,01,000/- in Bank of Baroda, Halvad. Accordingly, notice u/s 148 was issued to the assessee, on 27.03.2018, after recording the reasons for reopening of the case for assessment year (AY) 2011-12, which was duly served upon the assessee. As such, with a view to bring the escapement of income, if any, to the tax net, the case of the assessee was re-opened resorting the provisions of section 147 of the Act. Thereafter, in compliance to Section 129 of the Act, a fresh notice u/s 142(1) r.w.s. 129 of the Act, dated 04.06.2018, was issued to the assessee, as there was change of incumbent. In response to the



notice issued u/s 148 of the Act, the assessee was obliged to file his return of income. Since, the matter is barred by limitation, the notices u/s 142(1)/Questionnaire notice u/s 143(2) of the Act were issued to the assessee. vide e-filing, Ask No.947320620280718, dated 28.07.2028, the assessee has filed before assessing officer, return of income declaring Nil income and agriculture income of Rs.5,76,280/-.In compliance to questionnaire and notice dated 24.08.2018, the assessee has submitted before the assessing officer, that assessee is carried agricultural activities and have agriculture income and submitted the details of copy of cash receipt on sale of agriculture produce and land holding evidences etc. The assessee has also furnished copy of Form No.7/12, 8A and copy of sale bills in respect of sale of agriculture product as per details below:

Name of purchaser	Date	amount
M/s R.K. Enterprise	19.10.2010	Rs. 76,699/-
M/s R.K. Enterprise	21.10.2010	Rs. 47,972/-
M/s R.K. Enterprise	11.01.2011	Rs. 91,400/-
M/s R.K. Enterprise	12.01.2011	Rs. 99,198/-
M/s R.K. Enterprise	13.01.2011	Rs.1,04,786/-
M/s R.K. Enterprise	11.02.2011	Rs. 27,546/-
	Total	Rs.4,47,601/-

9. However, the assessing officer rejected the above documents of the assessee and observed that as per the details available with the Department, the assessee has deposited cash of Rs.15,01,000/-, on 26.11.2010, into his bank account maintained with Bank of Baroda. On analyzing, the details of sale bills of agriculture product, it was observed that prior to 26.11.2010, the assessee had available cash-in-aggregate of Rs.1,24,671/- only. Therefore, the rest of cash deposits amounting to Rs.13,76,329/- (15,01,000 – 1,24,671) remains unexplained and accordingly cash deposit to the tune of Rs.13,76,329/- was



treated, by the assessing officer, as income from undisclosed source and added to the taxable income of the assessee.

10. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before the Ld.CIT(A) who has confirmed the action of Assessing Officer. The ld.CIT(A) in respect of re-opening of case u/s 147/148 of the Act, noted that the assessing officer had specific information that the assessee had made cash deposit of Rs.15,00,000/- and based on that the assessee's case was re-opened after recording reasons and the reasons were in accordance with law, therefore, learned CIT(A) dismissed the technical ground of the assessee. On merit, the learned CIT(A) observed that addition of Rs.13,76,329/-, u/s 68 of the Act was rightly made by the assessing officer, as the assessee submitted only Sales bill of agricultural produce and Form No.7/12, 8A of land holding proof, which are not sufficient documents to explain the source of the cash deposit, hence, learned CIT(A), confirmed the addition made by the assessing officer.


11. Aggrieved by the order of Ld.CIT(A), assessee is in further appeal before us.

12. Shri Kalpesh Doshi, Ld.Counsel for the assessee, at the outset submitted that during assessment proceedings, the reopening of assessment was carried out without obtaining prior approval from higher authority. That is reassessment proceedings were initiated under section 148/147 of the Act, without taking permission from the prescribed authority, hence reopening of assessment should be quashed on this score only.

13. On the other hand, learned DR for the revenue, submitted that proper procedure was adopted by the assessing officer, so far reopening of the assessment is concerned.



14. We have heard the rival parties and have gone through the material placed on record. For the sake of clarity and also being pertinent, we reproduce, the notice under section 148 of the Act and we note that no approval was given by the higher authority in respect of the reasons recorded by the assessing officer.



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE INCOME TAX OFFICER
WARD 1, SURENDRANAGAR

To,
JITENDRABHAI BHAGVANBHAI DALVADI
SAIYADVAS GORI DARVAJO HALVAD, HALVAD
SURENDRANAGAR 363330, Gujarat
India

PAN: AUTPD6890L	AY: 2011-12	Dated: 27/03/2018	Notice No : ITBA/AST/S/148/2017-18/1009474812(1)
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Notice Under Section 148 Of The Income Tax Act, 1961

Sir/ Madam/ M/s,

Whereas I have reasons to believe that your Income chargeable to Tax for the Assessment Year 2011-12 has escaped Assessment within the meaning of section 147 of the Income Tax Act, 1961.

I, therefore, propose to assess/ re-assess the income/ loss for the said Assessment Year and I hereby require you to deliver to me within **30** days from the service of this notice, a return in the prescribed form for the said Assessment Year.

This notice is being issued after obtaining the necessary satisfaction of the PCIT 7, AHMEDABAD



Chandreshbhai Mohanlal Vasani
CHANDRESHBHAI MOHANLAL VASANI
WARD 1, SURENDRANAGAR



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Name of the Assessee : JITENDRABHAI BHAGVANBHAI
DALVADI
Address of the assessee : SAIYAD VAS GORI DARVAJO
HALVAD
PAN of the Assessee : AUTPD6890L
Assessment year : 2011-12

Details of AO having jurisdiction : ITO, WD-1, Surendranagar

**REASONS FOR REOPENING OF THE ASSESSMENT IN THE
CASE OF JITENDRABHAI BHAGVANBHAI DALVADI FOR
A.Y. 2011-12 U/S 147 OF THE INCOME TAX ACT**

1. Information regarding deposit of cash by the assessee has been received through AIMS/NMS of i-taxnet portal. It has been reported that the assessee has deposited cash amounting to Rs. 1501000/- during the F.Y. 2010-11 relevant to A.Y. 2011-12 in the savings account.
2. Since, the assessee has not filed his Return of Income, it is evident that the assessee has not disclosed the source of income against the huge deposit of amount in the bank as mentioned above.
3. In order to examine and verify the sources of income and taxability, letter generated by the system (i-taxnet) was issued to the assessee on 30.10.2014. However, the assessee did not comply with the above letter.
4. Non compliance of the enquiry/verification letters referred here in above, suggest that the amount deposited by the assessee in the bank account is not from disclosed sources.



5. Since, the assessee has deposited substantial amount of cash amounting to Rs. 1501000/- which exceeds the maximum amount chargeable to income tax and the assessee has not filed his return of income of the relevant assessment year, the case clearly falls under explanation 2(a) to section 147 which provides that **"where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this act during the previous year exceeded the maximum amount which is not chargeable to income tax shall be deemed to be case where income chargeable to tax as escaped assessment"**. Further, since, there is substantial amount of cash deposit which is over and above the maximum amount chargeable to tax and the assessee has not filed his return of income, there is escapement of assessment for the assessment year 2011-12 purely by the reason of the failure on the part of the assessee to make a return of income and to disclose fully and truly all material facts necessary for his assessment for A.Y 2011-12.

From the above notice, under section 148 of the Act and the reasons recorded by the assessing officer, it is vivid that above reasons recorded by the assessing officer, are not approved by the higher Authority, therefore, reassessment proceedings initiated against the assessee, without approval of the higher authority should be quashed.

15. Therefore, we note that the reopening of assessment is carried out without obtaining approval of higher authority. We note that as per the provisions of section 151 of the Act, at the time of reopening of the case, the assessing officer is required to obtain approval of Higher Authority. The assessing officer



should obtain such approval from Principal Commissioner of Income-tax, however, the assessing officer failed to obtain the approval. In this regard, we would like to refer the provision of section 151 of the Act, which is reproduced as under:

“Sanction for issue of notice.

151.(1) No notice shall be issued under section 148 by an Assessing Officer, after the expiry of a period of four years from the end of the relevant assessment year, unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied, on the reasons record by the Assessing Officer that it is a fit case for the issue of such notice.

(2). In a case other than case falling under sub-section (1), no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of Joint Commissioner, unless the Joint Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.”

16. It is also stated before us that assessee has not been provided the copy of approval along with the reasons recorded for reopening. The assessing officer is required to obtain prior approval of Ld. PCIT for issuing notice u/s 148 of the Act. However, there is no reference of approval obtained from Ld. PCIT, when the reasons are issued to the assessee. Hence, assessing officer has failed to obtain the approval from Ld. PCIT. The provisions of section 151(1) with the proviso stated that ***“no such notice shall be issued unless the Commissioner is satisfied on the reason recorded by the Assessing Officer that it is a fit case for the issue of notice”*** which means that the satisfaction of the Commissioner is paramount for which the least that is expected from the Commissioner is application of mind and due diligence before according sanction to the reasons recorded by the Assessing Officer. Since the pre-requisite condition for issuance of notice u/s 148 of the Act is not fulfilled in the assessee`s case under consideration, and therefore, the notice may be treated as invalid and cannot be cured by resorting to provisions of section 292BB of the Act, therefore, we quash the reassessment proceedings and allow the appeal of the assessee.



17. Since we have quashed the re-assessment proceedings, on the issue that re-assessment was carried out without prior approval of higher authority u/s 151(1) of the Act. Therefore, other technical grounds raised by the assessee, and grounds raised by the assessee, on merit, have become infructuous, therefore, do not require adjudication.

18. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 30/09/2025

Sd/-
(DINESH MOHAN SINHA)
न्यायिक सदस्य/**JUDICIAL MEMBER**
राजकोट /Rajkot

Sd/-
(DR.ARJUNLAL SAINI)
लेखा सदस्य/**ACCOUNTANT MEMBER**

दिनांक/ Date: 30/09/2025
DKP Outsourcing Sr.P.S

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त(अपील)/ The CIT(A)
- विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, राजकोट/ DR, ITAT, RAJKOT
- गार्ड फाईल/ Guard File

By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण ,राजकोट