



**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'C' BENCH, KOLKATA**

**BEFORE S/SHRIAND RAJESH KUMAR, ACCOUNTANT MEMBER AND
SONJOY SARMA, JUDICIAL MEMBER**

ITA No.689/KoI/2025
Assessment Year: 2011-12

Navnirman Infracon Pvt Ltd., 1A, 1 st floor, 121, Kalighat Road, Kolkata	Vs.	ITO, Ward 10(2), Kolkata
PAN/GIR No. AACCN 8248 C		
(Appellant)	..	(Respondent)

Assessee by : Shri Manish Tiwari, FCA
Revenue by : Shri Sandeep Kumar Mehta, Addl. Sr. DR

Date of Hearing : 04/09/2025
Date of Pronouncement : 28/10/2025

ORDER

PER:RAJESH KUMAR, AM

This is an appeal filed by the assessee against the order of Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NAFC), New Delhi (NFAC), Delhi dated 26.02.2024 in Appeal No. CIT(A), Kolkata-4/10586/2017-18 passed for Assessment Year 2011-12.

2. The assessee has raised the following grounds of appeal:

"1. That the impugned appellate order dated 26th February, 2024 passed by Learned National Faceless Appeal Centre, Delhi under section 250 of the Act 1961 in the case of Appellant Assessee company for the assessment year 2011-12 in without jurisdiction, illegal, invalid, bad in law and liable to be set aside.

2 That on the facts and circumstances of the case, the Leamed National Faceless Appeal Centre Delhi erred on dismissing the Appeal of the Appellant assessee in limine without property dealing with the merits of the case which were discussed in detail in the Statement of Facts filed along with the appeal.

3. That on the facts and circumstances of the case the Leamed National Faceless Appeal Centre. Delhi erred in confirming the validity of the impugned reassessment proceedings initiated vide Notice dated 28th March, 2017 issued by the Assessing Officer under section 148 of the Act without appreciating that the reasons recorded under section 148 of the Act were vague scanty and ambiguous and does not show any live link with the alleged escapement of income and that the reasons to belief were borrowed satisfaction of the other officers of the Income Tax Department.

4.That on the facts and circumstances of the case, the Id. National Faceless Appeal Centre Delhi erred in confirming the validity of the impugned reassessment proceedings although the purported sanction accorded by the Id. Commissioner of Income Tax, Kolkata for the initiation of the impugned reassessment proceedings was clearly a case of mechanical sanction without application of mind.

5. That on the facts and circumstances of the case, the Id. National Faceless Appeal Centre Delhi erred in confirming the action of the AO in arbitrarily treating the unsecured loans of Rs.2,18,00,000 received by the assessee company from its sister concern viz; Crescent Dealer Pvt Ltd., as its undisclosed income on the alleged ground that the assessee company failed to prove source of its source and furthermore on the alleged ground that the creditworthiness of the loan creditor was not substantiated although no inquiry was made from the AO of the loan creditor.

6. That on the facts and circumstances of the case, the Id. National Faceless Appeal Centre Delhi failed to appreciate that the AO exceeded its jurisdiction by making fishing and roving enquiries in respect of unconnected issue of purchase of shares of M/s Crescent D Private Limited and Ms Crystal Commotrade Private

Limited by the Assessee at lower than its book value which was not the part of the reasons recorded, and thereby aggregate addition of Rs 2.70.55,620 under section 56(2)(via) of the Act is without jurisdiction, illegal, invalid and void ab-nitio.

7. That without prejudice to Ground No 6 above the Learned National Appeal Centre Delhi erred in confirming the aggregate addition of Rs.2,70,55,520/- under section 56(2)(vii) of the Act in complete disregard that the provisions of said 56(2)(vii) of the Act which was introduced with effect from 1st June, 2010 were not applicable in the instant case as the purchase of shares made by the assessee company was before 1st June, 2010."

3. The appeal is time barred by 337 days. The assessee has filed condonation petition supported by an affidavit, stating that the first appellate order was passed on 26th February, 2024 and the appeal was required to be filed within 60 days from the date of passing of the order. It is stated that the entire tax and account affairs of the company was looked into by the Senior Accountant Shri Biplab Biswas. However, due to his father's illness on account of Prostate Cancer, he was mentally disturbed and could not intimate regarding passing of the order. Only when a call was received from the Income Tax Department in the last of week of March, 2025 regarding payment of outstanding tax dues, the assessee made enquiries from the Senior Accountant and he admitted that he failed to make compliance. Thereafter, immediately the assessee contacted the Tax Advocate to file the appeal. It was in this backdrop that there was delay of 337 days in filing the appeal before the Tribunal. Before us, Id. AR prayed to condone the delay. Ld. Sr DR opposed the condonation petition.

4. After considering the condonation petition and hearing the parties, we are satisfied that the assessee has shown reasonable cause in filing the appeal by 337 days delay. We, accordingly, condone the delay of 337 days and admit the appeal for adjudication.

5. Brief facts of the case are that the Assessee Company had filed its return of total income for the assessment year declaring loss of Rs.35,435/-. The return of income was processed under section 143(1) of the Act. Subsequently, it was found that the assessee company had received funds worth Rs.2,18,00,000/- from M/s. Crescent Dealers Pvt Ltd., during the financial year 2010-2011, which was not explained. Accordingly, notice u/s.148 of the Act dated 20th march, 2017 was issued to assessee to furnish a fresh return of income since the AO had reason to believe that the income of the assessee escaped assessment within the meaning of section 147 of the Act. The reasons recorded for reopening of the assessment is as under:

“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 Act, 1961.

I, therefore, propose to assessee/reassess the income/loss for the said assessment year and, I hereby require you to deliver to me within 30 days from the service of notice, a return in the prescribed form for the said assessment year.

This notice is being issued after obtaining the necessary satisfaction of the Addl. Commissioner of Income Tax/Chief Commissioner of Income Tax.”

“There is an information in the possession of the department in which it has been informed that M/s Nav Nirman Infracon Pvt. Ltd. received loan of Rs 2,18,00,000/- from Cresnet Dealers Pvt Ltd during the F.Y. 2010-11. Both Nav Nirman Infracon Pvt. Ltd and Cresnet Dealers Pvt. Ltd. have a common director. It is seen from the financial statement of Cresnet dealer Pvt. Ltd. that in the FY 2010-11 it has zero income and has booked loss of Rs. 16,051/- before tax. In the F.Y. 2009-10, it has booked loss of Rs. 1,486/- So the financial position of Cresnet Dealers Pvt. Ltd during the FY 2010-

Considering the fact above, I have a reason to believe that income has escaped assessment within the meaning of section 147 of the I.T. Act, 1961 for the A.Y. 2011-12 to the tune of Rs.2,18,00,000/-.”

6. In response to notice u/s.148 of the Act, the assessee filed a fresh return on 22nd April, 2017 declaring the same income as was filed u/s.139(1) of the Act. Before the AO, the assessee objected to the re-opening of assessment and reasons recorded under section 148 of the Act. It was submitted that the notice issued u/s.148 of the Act is defective as the said notice failed to point out the relevant authority from whom the requisite sanction under section 151 of the Act was obtained and, therefore, issue of notice is without application of mind. The Assessing Officer considered the submission of the assessee and opined that the alleged loan of Rs.2,18,00,000/- was nothing but assessee company's own fund ploughed back in the garb of loan from a company purchased by the assessee as through away price without any cogent reason. Accordingly, he treated the amount as undisclosed income of the assessee company credited in the books of account in the garb of loan and added back the

same to the total income of the assessee. Being aggrieved by the assessment order, the assessee carried the matter in appeal but without any success. Hence, the assessee is in appeal before us.

7. At the time of hearing, Id. AR objected to the initiation of reassessment proceedings stating that the reasons recorded by the Assessing Officer for reopening the assessment suffers from various infirmities within the meaning of section 147 to 151 of the Act. He also submitted that in the said notice there is no mention of authorization of a higher authority to initiate the reassessment proceedings, therefore, the entire initiation has been vitiated and become bad in law. For this proposition, Id. AR referred to the decision of Hon'ble Bombay High court in the case of DSJ Communications vs DCIT, 222 Taxman 129(Mum), wherein, it is held that the approval of CIT is mandatory. Id. AR also placed reliance on the decision of Hon'ble Chhattisgarh High Court in the case of Maruti Clean Coal & Power Ltd vs ACIT in Writ Petition (T) No.367 of 2027, wherein, similar view has been expressed. Further, Id. AR submitted that the Assessing Officer while reopening the assessment held that the assessee company had taken unsecured loans of Rs.2,18,00,000/- from his sister concern M/s. Crescent Dealer Pvt Ltd., and that the said amount escaped assessment. The Assessing Officer has recorded the financial position of the said loan creditor and, accordingly raised the question about

its creditworthiness. Therefore, the reasons recorded by the AO shows clearly the reasons to suspect and not reasons to belief as contemplated u/s.148 of the Act. He submitted that the reopening of assessment is clearly a change of opinion and should be quashed.

8. On the other hand, Id. D.R. supported the orders of lower authorities.

9. We have considered the rival submissions and perused the record of the case. In this case, the Assessing Officer has noticed that the assessee **had not disclosed the loan of Rs.2,18,00,000/-** taken from its sister concern M/s. Crescent Dealer Pvt Ltd., at the time filing the return of income.

Therefore, the AO believed that the said income has escaped assessment. Accordingly, he initiated the reassessment proceedings by recording the reasons and the reasons were also provided to the assessee. The main grievance of the assessee is that due approval from the higher authority has not been taken while reopening the assessment u/s.148 to 151 of the Act.

We note that the notice issued u/s.148 of the Act did not mention the relevant authority from whom the requisite sanction under section 151 of the Act was obtained and, therefore, issue of notice is without application of mind. For this proposition, the case of the assessee is squarely covered by the decision of Hon'ble Bombay High court in the case of DSJ Communications vs DCIT, 222 Taxman 129(Mum), wherein, it is held that the approval of CIT is mandatorily to be mentioned in the notice. Ld. AR

also placed reliance on the decision of Hon'ble Chhattisgarh High Court in the case of Maruti Clean Coal & Power Ltd vs ACIT in Writ Petition (T) No.367 of 2027, wherein, similar view has been expressed. Accordingly, we quash the notice issued u/s 148 as invalid and so is the consequent assessment order.

10. We have examined the copy of notices issued u/s 148 of the Act dated 28.03.2017, as well as the reasons recorded by the Id. AO and observed that nowhere the fact of approval having been obtained u/s 151 of the Act, was mentioned from the reasons recorded u/s 148 of the Act. In our opinion, the provisions of the Act requires that where any action to be taken with the approval/ action/ action of the higher authority, the same needs to be mentioned in the notice and relevant documents/ order. However, the reasons recorded u/s 148 of the Act does not mention of any such order being obtained prior to the issue of notice u/s 148 of the Act. The case of the assessee also find support from the decision of Bombay High Court in case of DSJ Communication Ltd. vs. Deputy Commissioner of Income-tax, Circle -2(1) [2014] 41 taxmann.com 151 (Bombay)/[2014] 222 Taxman 129 (Bombay)[13-09-2012] and in case of Maruti Clean Coal & Power Ltd. vs. Assistant Commissioner of Income-tax, Circle 1(1), Chhattisgarh WP(T) No. 346 of 2017 dated 03.01.2018, wherein similar ratio has been laid down. Consequently, we held that the reopening of

assessment has been made in a mechanical manner without application of mind as the reasons recorded by the Id. AO does not mention about the mandatory sanction/ approval having been obtained u/s 151 of the Act. The case of the assessee also find support from the co-ordinate Bench in the case of M/s GTL Limited VS. ACIT in ITA No. 6416/MUM/2010 vide order dated 02.11.2015 which has followed the Hon'ble Bombay High Court decision in the case of DSJ Communications vs DCIT, reported in 222 Taxman 129 (Bom) as referred to above, wherein the co-ordinate Bench in para no.24 has held as under: -

"24. Another major discrepancy noticed during the course of arguments is that there is no mention of authorization of a higher authority to initiate the current reassessment proceedings. Hon'ble Bombay High Court in the case of DSJ Communications vs DCIT, reported in 222 Taxman 129 (Bom), held that approval of CIT is mandatory. Since there is no mention of the approval sought from the CIT on the reasons, as recorded by the AO to initiate reassessment proceedings, the entire initiation has been vitiated and become bad in law."

11. Accordingly, we quash the reassessment proceedings as well as the consequent order passed.

12. Even we find merit in the second plea of the assessee that the reasons recorded by the Id. AO are not reason to belief but reason to suspect and are very vague, sanctity and ambiguous and does not show any live link with the escapement of income. The reasons recorded by the Id. AO were only reason to suspect as such reasons recorded by him

specifically showed that the Id. AO had doubted suspicion about creditworthiness of the loan creditors M/s Crescent Dealer Pvt Ltd., and therefore it is clear that the reopening was made by the Id. AO on the basis of suspicion and in order to make robbing and fishing inquiry which is not permissible under the Act. The case of the assessee find support from the decision of the co-ordinate bench in case of Deputy Director of Income-tax (International Taxation)-21, Mumbai vs. Societe International De Telecommunication [2012] 139 ITD 328 (Mumbai dated 26-09-2012, wherein it has been held that unless the reason to belief qua the escapement of income exists, no recourse to be taken to the provisions of Section 147 of the Act. The said decision of the bench of Kolkata in the case of Dr. Papiya Dutta Vs. Income Tax Officer in ITA No. 671/KOL/2015 vide order dated 18.09.2015, wherein it has been held that where the Id. AO initiated the reassessment proceedings with the object of finding the same material about escapement of income, such reassessment cannot be legally stand as the law does not permit the Id. AO to conduct enquiries after initiation of reassessment to find if there is an escapement of income. We also note that the reasons are vague, sanctity and ambiguous and therefore, reopening of assessment based thereupon is invalid and cannot be sustained. The case of the assessee find support from the decisions of CIT Vs. Insecticides (India) Ltd. (2013) 38 taxmann.com 403 (Delhi), Girishbhai Dahyabhai Patel vs. DCIT (2025) 474 ITR 299, CIT Vs. Atul Jain

(2008) 299 ITR 383 (Delhi) and Hindustan Lever Ltd. Vs. R.B. Wadekar (2004) 137 taxman 479 (Bom). We also note that there is no independent application of mind by the Id. AO to the information received and therefore, this is at best a case of borrowed satisfaction by the Id. Assessing Officer. Considering these facts and circumstances and in the light of aforesaid decisions, the reopening is bad in law and so is the consequent assessment framed. Therefore the re-opening as well as the assessment framed are quashed.

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

Order dictated and pronounced in the open court on 28/10/2025.

Sd/-
(SONJOY SARMA)
Judicial Member

Sd/-
(RAJESH KUMAR)
Accountant Member

Kolkata: Dated 28/10/2025
B.K.Parida, Sr. PS(OS)

Copy of the Order forwarded to:

1. The Appellant: Navnirman Infracon Pvt Ltd., 1A, 1st floor, 121, Kalighat Road, Kolkata
2. The Respondent: ITO, Ward 10(2), Kolkata
3. The CIT(A)-,NFAC, Delhi
4. Pr.CIT,Kolkata
5. DR, ITAT, Kolkata
6. Guard file.
//True Copy//

By order

Asst. Registrar,

ITAT, Kolkata

