

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.133/RJT/2025

निर्धारणवर्ष /Assessment Year: 2012-13

Atul Vrajlal Karia C/o. D.S. Karia & Co. CA, 203, Cosmo Complex, Mahila College Chowk, Kalawad Road, Rajkot PAN : ADWPK6568J	बनाम Vs.	AC/DC (INT. TXN), Rajkot
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से/Assessee by : Shri Kalpesh Doshi, Id.AR

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

सुनवाई की तारीख/Date of Hearing : 13/10/2025

घोषणा की तारीख/Date of Pronouncement : 29/10/2025

ORDER

Per, Dr. Arjun Lal Saini, Accountant Member:

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2012-13 is directed against the order passed by the Learned Commissioner of Income Tax (Appeals), Ahmedabad-13 under section 250 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), dated 30.12.2024, which in turn arises out of an assessment order passed by the Assessing Officer u/s 147 r.w.s. 144 of the Act.



2. The Grounds of appeal raised by the assessee are as under:

- “1. That, the Id. CIT(A) has wrongly dismissed the appeal on technical grounds without appreciating the merit of the case.*
- 2. That, the Ld. CIT(A) has wrongly confirmed the reopening of assessing u/s 147 of the Income Tax Act, 1961 on account of following counts: (a) The notice u/s 148 is issued beyond the time limit prescribed under the Act. (b) The reasons recorded for reopening the assessment is based on incorrect facts. (c) The reopening is made without "reason to believe", there is no live link between reasons recorded for reopening and formation of belief. (d) The reopening of assessment is bad-in-law since relevant approval from the higher authority as per section 151 is not obtained. (e) The re-opening of assessment u/s 147 instead of 153C of the Act is bad-in-law.*
- 3. That, the Ld. CIT(A) has wrongly confirmed the addition of Rs. 86,49,550/-, on account of unexplained investment u/s 69 of the I.T. Act, 1961.*
- 4. That, the Ld. CIT(A) has wrongly confirmed the addition of Rs. 77,756/-, on account of interest income.*
- 5. That, the findings of the Ld. CIT(A) are not justified and are bad-in-law.*
- 6. That, the appellant carves to add, amend, alter and delete any of the above grounds of appeal.*

3. The assessee has also raised additional grounds on various legal issues, which are reproduced below:

“Prayer for admitting specific grounds of appeal:

- (1). The appellant vide Appeal Form in Form no. 36 has raised main legal ground challenging the reopening of assessment u/s 147 of the Act. Under the main legal ground there are various grounds which can be argued and it goes to the root of the matter.*
- (2). The appellant most respectfully prays before the Hon'ble Income Tax Appellate Tribunal, Rajkot to **consider specific grounds of appeal with respect to main ground of appeal being reopening of assessment u/s 147 of the Act as under:***
 - (i) The notice u/s 148 of the Act has been issued by a non-jurisdictional AO.*
 - (ii) The payment to purchase the said property has been made through NRE A/c.*
 - (iii) The notice u/s 148 is issued beyond the time limit prescribed under the Act.*
 - i. The notice u/s 148 of the Act is not served upon the appellant as per the procedure prescribed u/s 282 of the Act read with Rule 127.*
 - ii. The procedure prescribed under the Code of Civil Procedure, 1908 is not followed by the department while serving the notice through affixture.*



(iv) *The Ld. AO has passed the impugned order without a valid Document Identification Number (DIN):*

(v) *The reasons recorded for reopening the assessment is based on incorrect facts.*

(vi) *The reopening is made without "reason to believe", there is no live link between reasons recorded for reopening and formation of belief*

(vii) *The approval accorded u/s 151 of the Act is invalid, without application of mind and mechanical in nature.*

(viii) *The provisions of section 147 has been wrongly applied as against the provisions of section 153C of the I.T. Act, 1961.*

4. We note that most of the above additional legal grounds were already raised in Form no. 36 along with appeal memo. We note that the remaining legal grounds, stated above, goes to the root of the matter and these are legal ground as to the validity of reopening of assessment u/s 147 the I.T. Act, 1961 and pertaining to notice under section 148 of the Act, pertaining to transfer of cases, under section 127, approval u/s 151 of the Act etc. These legal grounds can be taken up at any stage, in this regards reliance is placed on decision of Supreme Court in case of National Thermal Power Co. Ltd. vs. CIT (1998) 229 ITR 383 (SC).

5. We have heard about the parties. We note that these additional grounds are purely a legal issue and all facts are already on record which goes to the root of the matter and no further inquiry is required for deciding the same as all facts are already on record. Therefore, in the light of ratio laid down by the Hon'ble Supreme Court in the case of *National Thermal Power Company Ltd.(supra)*, we admit these additional grounds raised by the assessee.

6. The facts of the case which can be stated quite shortly, qua legal issue of not making the order under section 127 of the Act,(power to transfer cases) by the assessing officer, are as follows: The assessee did not file any return of income u/s 139(1) of the Act. The notice u/s 148 of the Act was issued in the assessee`s



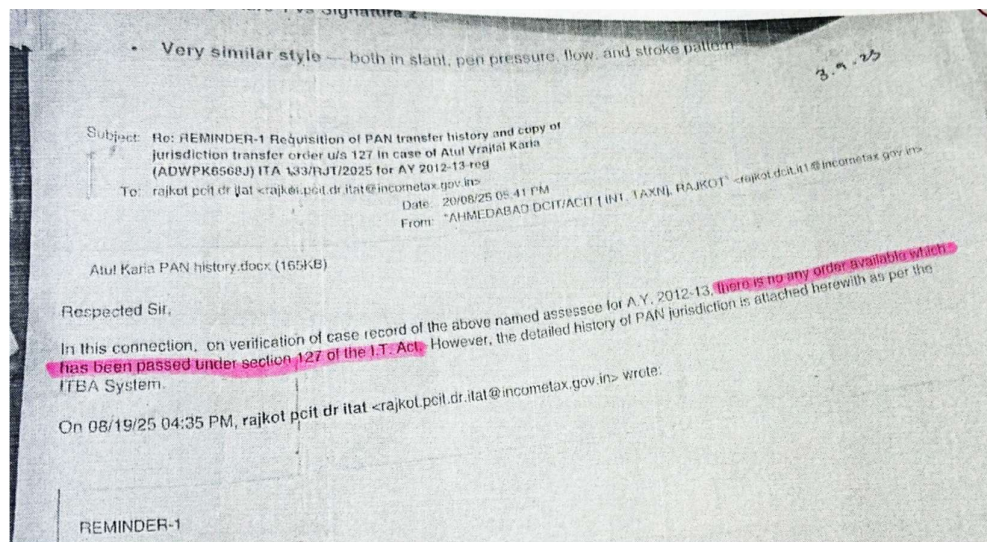
case on 30.03.2019 by the Income Tax Officer, Ward-2(1)(4), Rajkot, after recording reasons and after obtaining necessary sanction of the Pr. CIT-2, Rajkot. The said notice was duly served upon the assessee electronically as also by way of affixture. The assessee did not comply with the notice. The assessment proceedings were conducted in the case through the 'E-proceedings' facility. **The assessee`s case was transferred to another assessing officer on 27.09.2019.** The notices u/s 142(1)/ 142(1) r.w.s 129 of the Act were issued on 27.08.2019 and 11.10.2019, which were duly served upon the assessee electronically. The assessee filed online replies in response to these notices. The authorised representative of the assessee, vide letter dated. 02.11.2019, stated that the notice u/s 148 of the Act, has not been received by the assessee and the reasons recorded for initiating action u/s 147 of the Act were sought therein. Vide letter dated. 05.11.2019, it was conveyed to the assessee by the assessing officer that the notice u/s 148 of the Act, had been served by way of affixture and copy of panchnama of affixture was supplied to assessee. In respect of the request for reasons for initiation of action u/s 147 of the Act, the assessee was denied the same on the ground that the same can be supplied only after filing of return of income in response to notice u/s 148 of the Act. Show-cause notice was issued in the case on 30.10.2019, in response to which, the assessee sought copy of evidences on the basis of which addition was proposed in the show cause notice. The same were supplied to the assessee along with the letter issued on 05.11.2019. Final show-cause notice was issued on 16.11.2019, in response to which, the assessee filed online response on 16.11.2019. After considering the submissions of the assessee, the assessing officer noticed that from No. 26AS details of the assessee, which are featuring in his ITS (Individual Transaction Statement) that the assessee had, during the year under consideration, earned an interest income of Rs. 69,824/- from Bank of India and that he had also earned an interest income of Rs. 7,932/- on Income Tax Refund, issued by the CPC,



Bangalore. This interest income is liable to be taxed in the hands of the assessee. As such, this interest income of Rs. 77,756/-(69824 +7932) was brought to tax in the hands of the assessee.

7. Aggrieved by the order of the assessing officer, the assessee carried the matter in appeal before the Id.CIT(A) who has confirmed the action of the assessing officer. Further, aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us.

8. Shri Kalpesh Doshi, Learned Counsel for the assessee, at the outset, stated that in the assessee's case, under consideration, order under section 127 of the Act (power to transfer cases) was not passed by the Income Tax Authorities. **The assessee's case was transferred to another assessing officer on 27.09.2019, therefore, order under section 127 of the Act is mandatory.** Therefore, the assessment order framed by the assessing officer on such erroneous footing should be quashed. The Ld. Counsel for the assessee took us through the relevant letter issued by the assessing officer to the effect that in the assessee's case no order u/s. 127 of the Act was passed, the same is reproduced below:





9. On the other hand, Ld. D.R. for the Revenue, has fairly agreed with the submissions of the Ld. Counsel for the assessee to the effect that order u/s. 127 in the assessee's case was not framed, therefore assessee appeal may be allowed on this technical issue.

10. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position. We find merit, in the arguments of learned Counsel for the assessee, on legal ground, to the effect that order under section 127 of the Act (power to transfer cases) was not passed by the Income Tax Authorities, to which, learned DR for the revenue also agreed. We note that assessee's case has been transferred without passing an order u/s 127 of the Act. The notice u/s 148 of the Act, dated 30/03/2019 has been issued by the other Income Tax Officer (ITO) - 1 (although the jurisdiction has been wrongly assumed), the summary of issuance of notice has been narrated below:

Sr.	Notice u/s	Date	Authority
1	148	30/03/2019	ITO WD 2(1)(4), RKT
2	142(1)	27/08/2019	ITO WD 2(1)(3), RKT
3	142(1)	11/10/2019	AC/DC (INT.TXN) RAJKOT
4	147 SCN	30/10/2019	AC/DC (INT.TXN) RAJKOT
5	147 SCN	05/11/2019	AC/DC (INT.TXN) RAJKOT
6	Issue Letter	05/11/2019	AC/DC (INT.TXN) RAJKOT
7	147 SCN	16/11/2019	AC/DC (INT.TXN) RAJKOT

A notice u/s 142(1) of the Act dated 27/08/2019 issued by the other Income Tax Officer (ITO) – 2 which has been filed by the assessee, before the Bench, which is placed on page no. 18 of the assessee's paper book. On perusal of the aforesaid table, we noticed that, the notice u/s 148 of the Act has been issued



by the other Income Tax Officer (ITO- 1, the assessee`s case has been subsequently transferred to the other Income Tax Officer (ITO)-2 and the notice u/s 142(1) of the Act has been issued by him.

11. We also note that during the course of hearing learned DR for the revenue, requested the Bench to grant him time to write a letter to the assessing officer to confirm the fact whether order under section 127 of the Act was passed by the Income Tax Authority or not. Accordingly, the case was adjourned. Later on, the learned DR for the revenue got the written communication from the assessing officer, which is reproduced in para No. 7 of this letter. As per the written communication from the assessing officer, to ld DR dated 20/08/2025, the assessing officer has also affirmed that no order u/s 127 of the Act is available with the Department. Further, the PAN migration history (although the PAN is wrongly migrated to the other ITO - 1 and the other ITO-2) also reflects that the case was being handled by the other Income Tax Officer (ITO). The screenshots of the correspondence of the Ld. DR with the assessing officer and PAN migration were placed by the ld.Counsel before the Bench.A copy of the correspondence of Ld. DR with assessing officer and the PAN migration history were submitted by the assessee, in the paper book no.19.**Therefore, the assessee`s case has been transferred twice and the Department has failed to pass an order u/s 127 of the Act.**

12. It is settled position of law, that when the case is transferred from one ITO to another ITO, that is, when the case has been transferred from one assessing officer to another assessing officer, then, the assessing officer is required to pass an order u/s 127 of the Act. In order to substantiate this fact, the relevant extract of Section 127(2) of the Act is reproduced below for reference:

“Power to transfer cases.



127. (2) Where the Assessing Officer or Assessing Officers from whom the case is to be transferred and the Assessing Officer or Assessing Officers to whom the case is to be transferred are not subordinate to the same Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner,

(a) where the Principal Directors General or Directors General or Principal Chief Commissioners or Chief Commissioners or Principal Commissioners or Commissioners to whom such Assessing Officers are subordinate are in agreement, then the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner from whose jurisdiction the case is to be transferred may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, pass the order,

(b) where the Principal Directors General or Directors General or Principal Chief Commissioners or Chief Commissioners or Principal Commissioners or Commissioners aforesaid are not in agreement, the order transferring the case may, similarly, be passed by the Board or any such Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner as the Board may, by notification in the Official Gazette, authorise in this behalf.”

13. A plain reading of Section 127 of the Act, we note that when the case is being transferred from the assessing officer of one designated authority to that of another designated authority, the authority from whose assessing officer the case is proposed to be transferred is required to:

- (a) Record its reasons in writing for transferring the case;
- (b) After giving the assessee a reasonable opportunity of being heard, wherever it is possible to do so (if the assessing officers are in different locality, city or place); and
- (c) After passing an order to this effect shall transfer the case

In the assessee's case under consideration, the case has been transferred from the CIT(A), Rajkot to CIT(A), International Taxation without recording the reasons in writing for transferring the case and without passing an order to this effect. Therefore, the transfer of case without passing an order u/s 127 of the Act is against the provisions of the Act and the subsequent assessment order



framed by the assessing officer is also illegal and bad-in-law, for that reliance is placed on the decision of the Hon'ble Apex Court in the case of Noorul Islam Educational Trust vs. Commissioner of Income-tax-1 [2016] 76 taxmann.com 144 (SC), wherein, it was held that

“Section 127 of the Income-tax Act, 1961 - Income-tax authorities - Power to transfer cases (Conditions precedent) - Assessee's income-tax/assessment file was transferred from Assessing Officer, Tamil Nadu to Assessing Officer, Kerala Assessee challenged transfer - No agreement between two Jurisdictional Commissioners as required for transfer of case was shown by revenue - It was only stated by revenue that there was no disagreement between two Commissioners. Whether transfer of file could not be said to be authorized under section 127(2)(a) even though there was no disagreement between two jurisdictional Commissioners - Held, yes - Whether, therefore, impugned order of transfer could not be upheld -Held, yes [Para 5] [In favour of assessee]”

14. We note that on the similar facts, Hon'ble Delhi ITAT in the case of Gunna v. ACIT [2025] 176 taxmann.com 959 (Delhi - Trib.) held that where jurisdiction had been transferred from one Assessing Officer to another Assessing Officer without there being any order passed under section 127 of the Act, the jurisdiction assumed by another Assessing Officer i.e. ACIT, Circle International taxation 1(1)(1), Delhi was without any authority and therefore, order passed by him was without jurisdiction and same was quashed. Therefore, we note that in the assessee's case, under consideration, since there is no order u/s 127 of the Act, transferring the case from one Income Tax Officer to another Income Tax Officer, in our considered view, on this count, the assumption of jurisdiction by another Income Tax Officer, is without any authority and consequently, assessment order passed by the assessing officer is without any jurisdiction and thus, void ab-initio and nullity. As we have noted that there was no order of transfer under section 127 of the Act, in the assessee's case, from competent authority, which was mandatory, in absence of any such order of transfer, assessment order is void ab initio and liable to be quashed, and accordingly, we, quash the reassessment proceedings. As the reassessment order itself is quashed, therefore, all other issues on merits and legal grounds of the



additions, in the impugned assessment proceedings, are rendered academic and infructuous.

15. In the result, appeal filed by the assessee is allowed in above terms.

Order is pronounced in the open court on 29/10/2025

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

राजकोट /Rajkot

दिनांक/ Date: 29/10/2025

Sd/-
(DR. ARJUN LAL SAINI)
ACCOUNTANT MEMBER

(True Copy)

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

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त(अपील)/ The CIT(A)/(NFAC), Delhi.
- विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, राजकोट/ DR, ITAT, RAJKOT
- गार्डफाईल/ Guard File

By order/आदेशसे,

Assistant Registrar/Sr. PS/PS

ITAT, Rajkot