



आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट।

**IN THE INCOME TAX APPELLATE TRIBUNAL, "SMC"
RAJKOT BENCH, RAJKOT**

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

आयकरअपीलसं./ITA No.459/RJT/2025

**निर्धारणवर्ष / Assessment Year: (2012-13)
(Hybrid Hearing)**

Rajendrasinh Ranjitsinh Jadeja Khakhadabela, Paddhari, Rajkot - 360110	Vs.	ITO Ward 2 (1) (4), Aayakar Bhawan, Race course Ring Road, Rajkot - 360001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AGVPJ2529E		
(Appellant)		(Respondent)

Appellant by : Shri Gaurang Khakhar, Ld. AR
Respondent by : Shri Abhimanyu Singh Yadav, Ld. Sr. DR
Date of Hearing : 01/09/2025
Date of Pronouncement : 17/11/2025

आदेश / ORDER

Per, Dr. Arjun Lal Saini, AM ;

Captioned appeal filed by the assessee, pertaining to Assessment Year 2012-13, is directed against the order passed under section 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") by National Faceless Appeal Centre (NFAC), Delhi/Commissioner of Income-tax (Appeals), dated 26/07/2024, which in turn arises out of an order passed by the Assessing Officer dated 25/11/2009 u/s 144 r.w.s 147 of the Income Tax Act, 1961.

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

"1. That the reasons recorded u/s 147 of the I.T. Act, 1961 by the Ld. A.O. were merely based on the suspicion and without any tangible material so as to suggest any escapement of income. Hence the reassessment proceedings are liable to be quashed



2. *The ld. AO erred in reopening the assessment itself by issue of Notice u/s 148 of IT Act, since only material available before the Id.AO was the information of assessee having Cash deposited in his saving bank account which is not sufficient reasons to believe escapement of income.*
3. *The Ld. CIT(A) has erred in confirming the addition of Rs. 12,10,000/- on the ground of non-compliance of Hearing Notices issued without appreciating the fact the Appellant was not aware of such Notices.*
4. *The Honorable Commissioner of Income tax (A) has erred in law as well as on facts in upholding addition on account of cash deposit of Rs. 12,10,000/- being business receipt treated as Income.*
5. *That the order of the assessment having addition of Rs. 12,10,000/- to the income of the assessee, is invalid and illegal as the Ld. A.O. has failed to mention any charge under the Income Tax Act, 1961.*
6. *That the order passed by the Ld. CIT u/s.250 of the I.T. Act, 1961 was arbitrary, bad in law and unjust.*
7. *That the assessee craves leave to urge such other ground OR grounds before OR at the time of hearing of appeal.”*

3. The appeal filed by the assessee is barred by limitation by 290 days. The assessee has moved a petition for condonation of delay requesting the Bench to condone of delay. Learned Counsel for the assessee, explained the reasons for delay, stating that assessee had given as “E-mail id info@sumitmehta.com” in Sr. No. 17 of the Form No. 35, while filing the appeal before learned CIT(A). However, all the notices were sent by ld.CIT(A) on Email id “rrjadeja@yahoo.com”. Due to non-information of appeal notices, no compliances have been made by the assessee, during the appellate proceedings, and as a result, the order of the ld. CIT(A) was received late by the assessee. Therefore, there is a delay in filing the appeal before this Tribunal, which may be condoned in the interest of justice.

4. However, learned DR for the revenue argued that while deciding the prayer for condonation of delay, the court/appellate authority cannot ignore or give a go-by to the basic principle that the burden to prove the existence of sufficient cause is always on the assessee, and there is no presumption that the delay occasioned



in the filing of the appeal is always bona fide and the condonation of delay is not the matter of right. In the instant case, the assessee failed to prove the sufficient cause, therefore, delay should not be condoned.

5. I note that the reasons given in the affidavit for condonation of delay were convincing and these reasons would constitute reasonable and sufficient cause for the delay in filing this appeal. Having heard both the parties and after having gone through the affidavit as well the delay condonation, application, I am of the considered opinion that in the interest of justice, the delay deserves to be condoned. I, accordingly, condone the delay.

6. Brief facts qua the issue, on merit, are that assessee has filed return of income on 03.07.2013, declaring total income of Rs. 1,56,860/- for the year under consideration. As per the information available with the department and on enquiry, it was noticed by the assessing officer that the assessee has made cash deposit amounting to Rs. 12,10,000/- in his bank account maintain with State Bank of India during the year under consideration. It was also noticed that he has filed his return of income on 03.07.2013 declaring total income of Rs.1,56,860/- for AY 2012-13, which is not justifiable as against the huge cash amount deposited in his bank account during the year under consideration. Therefore, the assessment was re-opened by issuing a notice/u/s 148 of the Act through ITBA system on 18.03.2019 (after recording reasons) after obtaining approval of the Chief Commissioner of Income Tax (OSD), X(OSD), Rajkot and duly served upon the assessee. In reply neither the return of income was filed nor any submission made by the assessee, therefore, assessing officer made addition, of Rs.12,10,000/-, by framing the assessment order under section 144 of the Act.



7. Aggrieved by the order of the assessing officer, the assessee carried the matter in appeal before the Ld.CIT(A), who has dismissed the appeal of the assessee. Therefore, the assessee is in further appeal before this Tribunal.

8. Learned Counsel for the assessee argued that the issue raised by the assessee in his appeal, on reopening of the assessment, is equally covered by the order of the jurisdictional ITAT Rajkot in the case of Prabhaven Nandlal Ratpiya, in ITA No. 16/Rjt/2024, vide order dated 17.03.2025, wherein it was held as follows:

“10. We have gone through the facts of the case, the reasons recorded for reopening u/s 147 of the Act, the submission and the various decisions of the Courts including those relied upon by the assessee. Since, the assessee has challenged the reopening of assessment and also challenged the reasons for reopening of the assessment, therefore, it is appropriate to go through the reasons recorded by the assessing officer, which are reproduced below:

*"Reasons for reopening of the assessment in case of above names assessee For AY.2011-12 u/s 147 of the Act: -
As per information/details available, the assessee did not file his return of income for AY.2011-12.*

Credible information/source information has been received to the effect that the assessee has deposited aggregate cash of Rs.27,91,500/- in his savings bank account(s) maintained with Junagadh Comm. Co-Operative Bank Ltd during the year under consideration. Since the assessee did not file his return of income, the source of cash deposited in his bank account remains unexplained and required to be taxed. In view of the above, I have reason to believe that the income chargeable to tax has escaped to the extent of Rs.27,91,500/- for the A.Y.2011-12 within the meaning of section 147 of the I.T., Act, 1961. The above income has escaped assessment by reason of failure on the part of the above-named assessee who failed to disclose fully and truly all material facts necessary for the assessment year 2011-12 within the meaning of section 147 of the I.T. Act.

In this case no return of income was filed for the year under consideration, accordingly, in this case, no assessment was made and the only requirement to initiate proceeding u/s. 147 is reason to believe which has been recorded above.

It is pertinent to mention here that in this case the assessee has chosen not to file return of income for the year under consideration although the total income of the assessee had exceeded the maximum amount which is not chargeable to tax as discussed above and the assessee was assessable under the Act. In view of the above, the provisions of clause (a) of Explanation 2 to Section 147 are applicable to facts of this case and the assessment year under consideration is deemed to be a case where income chargeable to tax has escaped assessment.



In this case more than four years have lapsed from the end of the assessment year under consideration. Hence, necessary sanction to issue the notice u/s. 148 has been obtained separately from the Principal Commissioner of Income-tax-3. Rajkot as per the provisions of Section 151 of the Act."

11. Having gone through the above reasons recorded, by the assessing officer, we find the following, inconsistency and irregularities in the reasons recorded by the assessing officer:

(i) The above reasons recorded by the assessing officer does not mention the bank account number, which was escaped assessment.

(ii) The nature of transactions have not been mentioned, in the reasons recorded.

(iii) There is non-application of mind of the assessing officer. The assessing officer has not verified the bank account number before issuing notice u/s 148 of the Act.

(iv) Mere deposit in the bank account does not constitute that income escaped assessment, the money in the bank account may be deposited out of the past savings / by sale of investment etc, which was not verified by assessing officer and hence there is complete non-application of mind.

12. The Ld. AO had not applied his mind and acted on mere information basis. The Ld. AO even failed to prove direct nexus with the information and reason recorded for reopening. The above reasons recorded by the assessing officer does not mention the bank account number, which was escaped assessment. The nature of transactions have not been mentioned, in the reasons record. There is non-application of mind of the assessing officer. The assessing officer has not verified the bank account number before issuing notice u/s 148 of the Act. Mere deposit in the bank account does not constitute that income escaped assessment, the money in the bank account may be deposited out of the past savings / by sale of investment etc, which was not verified by assessing officer and hence there is complete non-application of mind. Hence, the Ld. AO reopened assessee's case on mere borrowed satisfaction and without verifying details.

13. The reasons must show due application of mind to the information. Assessing officer also cannot reopen assessment merely because he has been directed to do so by a superior officer. Hon'ble Delhi High Court held that the AO cannot reopen the assessment merely on the basis of information received without applying his mind to the information and forming an opinion, CIT vs. Sfil Stock Broking Ltd, 325 ITR 285 (Del) Therefore, the reasons of the AO for reopening assessment should be based on direct and circumstantial evidence; such reasons could not be based on simply suspicion, rumor or gossip.

14. An error discovered on a reconsideration of the same material (and no more) does not give AO power to assume jurisdiction to make reassessment. The aforesaid view on the above proportion has been reiterated by the Apex Court in A.L.A.Firm vs. CIT 183 ITR 285. Reasons must have a live link with the formation of the belief. This is supported by Circular No.549 dated 31.10.1989 which clarified that the words "reason to believe" did not mean a change of opinion. The Hon'ble Supreme Court in ITO vs Lakhmani Mewal Das [1976 1103 ITR 437 has lucidly explained the power of assessing officer to bring to tax income escaping assessment u/s 147 of the Act. The Hon'ble Court first held that the section provides that there must exist "reasons to believe" and not "reasons to suspect". The following were the relevant observations:



"The fact that the words "definite information" which were there in section 34 of the Act of 1922, at one time before its amendment in 1948, are not there in section 147 of the Act of 1961, would not lead to the conclusion that action can now be taken for reopening assessment even if the information is wholly vague, indefinite, far-fetched and remote. The reason for the formation of the belief must be held in good faith and should not be a mere presence. The powers of the Income-tax Officer to reopen assessment, though wide, are not plenary. The words of the statute are "reason to believe" and not "reason to suspect" The reopening of the assessment after the lapse of many years is a serious matter. The Act, no doubt, contemplates the reopening of the assessment if grounds exist for believing that income of the assessee has escaped assessment. The underlying reason for that is that instances of concealed income or other income escaping assessment in a large number of cases come to the notice of the income-tax authorities after the assessment has been completed."

15. The purpose behind the relevant provisions imposing condition precedent for initiating reassessment proceedings is to ensure finality of proceedings. The Act also provides that such reason must be recorded in writing before issue of notice of reassessment so as to judge the existence of such belief before initiating reassessment proceedings by issue of notice u/s 148 of the Act. The above requirements are meant to ensure that powers to initiate reassessment proceedings are not exercised in an arbitrary manner. The Courts have analysed and explained in several cases as to what could be the valid reason to believe escapement of income, which would enable the Assessing Officer to successfully reopen the assessment. It has been held that the words 'reason to believe' are stronger than the words 'reason to suspect' or 'reason to doubt'. It requires more than merely 'satisfaction' of the Assessing Officer. The belief entertained by the Assessing Officer must not be arbitrary or irrational. The expression 'reason to believe' does not mean purely subjective satisfaction of the Assessing Officer. The belief must be held in good faith. It cannot be merely pretence. Again, the belief must be of an honest and reasonable person based upon reasonable grounds. The Assessing Officer may act upon direct or circumstantial evidence, but his belief must not be based on mere suspicion, gossip or rumours. The Assessing Officer would be acting without jurisdiction, if the reasons for his belief are not material or relevant. There should be nexus between the information coming into possession of the AO and his belief on the basis of such information that income of the Assessee chargeable to tax has escaped assessment. In view of the aforesaid discussion, in our view, the reasons recorded by the Assessing Officer suffer from an infirmity of being misconceived in law and, therefore, initiation of proceeding thereupon is bad in law. Consequently, the assessment finalized by the Assessing Officer u/s 147 of the Act dated 10.10.2018 is held to be invalid and bad in law, and is hereby quashed.

16. As the reassessment itself is quashed, all other issues on merits of the additions, in the impugned assessment proceedings, are rendered academic and infructuous."

9. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.



10. I have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. So far, reopening of assessment under section 147/148 of the Act, is concerned, I find that facts of the reopening in assessee`s case is similar and identical to the case, already decided by the ITAT Rajkot-Bench, in the case of Prabhaben Nandlal Ratpiya, in ITA No. 16/Rjt/2024, vide order dated 17.03.2025. Therefore, respectfully following the judgement of ITAT Rajkot-Bench, in the case of Prabhaben Nandlal Ratpiya(supra), I allow the appeal of the assessee.

11. I, therefore, quash the reassessment proceedings. As the reassessment itself is quashed, all other issues on merits of the additions, in the impugned assessment proceedings, are rendered academic and infructuous.

12. In the result, appeal filed by the assessee, is allowed, to the extent indicated above.

Order pronounced in the open court on 17/11/ 2025.

**Sd/-
(Dr. Arjun Lal Saini)
Accountant Member**

Rajkot

दिनांक/ Date: 17/11/2025

True Copy

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot