

IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUETH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.19/SRT/2025

Assessment Year: 2013-14

(Hybrid hearing)

Prime Co-Operative Bank Ltd., Khatodra, Ring Road, Surat – 395002	Vs.	ACIT, Circle-1(1)(1), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AABCP7117M		
(Appellant)		(Respondent)

Appellant by	Shri Hiren Vepari, CA
Respondent by	Shri Aashish Pophare, CIT-DR
Date of Hearing	12/08/2025
Date of Pronouncement	10/11/2025

आदेश / ORDER

PER BIJAYANANDA PRUETH, AM:

This appeal by the assessee emanates from the order passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), dated 29.05.2023 by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [in short, 'CIT(A)'] for the assessment year (AY) 2013-14.

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

“(1) Validity of the assessment:

- (1) Rather than setting aside, the learned CIT(A) ought to have cancelled the assessment order, when the assessment was framed on admittedly the surrendered old PAN.*
- (2) The reassessment order being passed by JAO instead of FAO, the order is required to be cancelled.*
- (3) The SFT filers having made error in reporting the transactions under the wrong surrendered PAN should have not led to the addition in the hands of the appellant.*

(II) Reopening

- (1) *The reopening is required to be quashed as it is done on the incorrect and surrendered PAN.*
- (2) *The reopening is bad in law since it is done without satisfying valid conditions of law.*

(III) Addition of Rs.129,94,00,000:

- (1) *Addition of Rs.129,94,00,000 in respect of cash deposits is required to be deleted since the appellant being bank, these deposits were made by the customers across the branches of the bank in the State of Gujarat.*
- (2) *With Rs.129,94,00,000 having clear source with the appellant, the addition is required to be deleted.*
- (3) *On the facts and circumstances of the case, the addition so made is unwarranted and is required to be deleted.*

(IV) Miscellaneous:

- (1) *All of the above grounds are prejudice to one another.*
- (2) *The appellant craves leave to add, alter or vary any of the grounds of appeal."*

3. The facts of the case in brief are that the assessee is a non-filer and did not file any return of income for AY 2013-14. After recording the reasons, notice u/s 148 of the Act was issued on 19.04.2021 after obtaining necessary sanction as per provisions of section 151 of the Act. The Assessing Officer (in short, 'AO') observed that as per NMS data, the assessee had entered into the following bank transactions: (i) cash transactions of Rs.6,00,000/-, (ii) cash deposits of Rs.62,92,50,000/- in savings bank account and (iii) cash deposits of Rs.61,01,50,000/- with banking companies. Though there was a total cash deposits of Rs.129,94,00,000/-, the assessee did not file any return of income for the subject assessment year. Subsequently, the AO passed order u/s 148A(d) and issued notice u/s 148 of the Act. Again, the assessee failed to file

its return of income. Various statutory and show cause notices were subsequently issued to the assessee; but, the assessee has failed to explain the source of cash transaction with supporting documentary evidence. Again, a show cause notice was issued to the assessee on 22.05.2023, which is at para 9 of the assessee order. After considering the reply of the assessee, the AO added the entire cash deposit of Rs.129,94,00,000/- as unexplained cash. Penalty proceedings u/s 271(1)(c) of the Act was also separately initiated for concealment of income.

4. Aggrieved by the order of AO, the assessee filed appeal before the CIT(A). The CIT(A) observed that during the assessment proceedings, the assessee participated and submitted only part details. During the appellate proceedings, the assessee submitted complete details. However, no request was made for admission of the additional evidence under Rule 46A of the Income-tax Rules. He exercised his power vested to him u/s 251(1)(a) of the Act and set aside the order of AO passed u/s 144 of the Act to the file of AO for fresh assessment after hearing the assessee. Hence, the appeal was allowed for statistical purposes.

5. Aggrieved by the order of the CIT(A), the assessee filed appeal before the Tribunal. The learned Authorized Representative (Id. AR) of the assessee submitted two paper books and argued that the re-opening is required to be quashed because it was done on the incorrect and surrendered PAN. However, the CIT(A) simply set aside the order of AO and remanded the matter back to

the file of AO without deciding the jurisdictional and legal grounds raised by the appellant. The Ld. AR relied on the decision in case of Tours5 Com vs. ITO, 176 taxmann.com 496 (Hyd – Trib.) wherein it was held that though the CIT(A) is empowered to set aside order passed u/s 144 of the Act and refer for fresh assessment, however, this power does not absolve him from adjudicating legal issues, particularly those challenging validity of jurisdiction assumed by AO for making assessment or re-assessment.

6. On the other hand, learned Senior Departmental Representative (Id. Sr. DR) for the revenue supported the order of lower authorities.

7. We have heard both the parties and perused the materials available on record. We have also deliberated on the decision relied upon by Id. AR of the appellant. It is an undisputed fact that the appellant had raised four grounds of appeal (13 sub-grounds) before the CIT(A), which include jurisdictional and legal issues on validity of reopening and issue of notice u/s 148 of the Act. Such grounds are at serial Nos.1 and 2 of the grounds of appeal (8 sub-grounds) before CIT(A). The CIT(A) has not decided the jurisdictional and legal grounds and has simply set aside the order of AO and referred the case back to AO for making a fresh assessment. The Co-ordinate Benches of Hyderabad in case of Eyegear Optics India Pvt. Ltd. vs. DCIT, in ITA No.1347 & 1291/Hyd/2024, dated 14.05.2025, held that where assessment was reopened in case of assessee u/s 147 of the Act and was completed u/s 144 of the Act disallowing some expenditures, the CIT(A) instead of summarily setting aside matter to the file

of AO for making fresh assessment, ought to have taken a call as regards specific ground based on which validity of jurisdiction that was assumed by AO or framing re-assessment was assailed by assessee before him. The Tribunal set aside the order of CIT(A) and restored the matter to his file with a direction to adjudicate the specific jurisdictional ground. Further, under similar facts and circumstances, the Pune Tribunal in the case of Shamrao Gopal Benake vs. ITO, in ITA No.1036/Pun/2025, dated 12.08.2025 has also set aside the order of CIT(A) and remanded the matter back to his file with a direction to decide the appeal afresh adjudicating all the grounds including legal grounds raised by the assessee. In case of Tours5 Com (supra), the ITAT, Hyderabad has also held that the power to set aside order u/s 144 of the Act does not absolve the CIT(A) from adjudicating legal issues, particularly validity of jurisdiction assumed by AO for making assessment or reassessment. The facts of the instant appeal are similar to the facts of the cases cited supra. We do not find any reason to deviate from the findings of the co-ordinate Benches (supra). Therefore, we set aside the order of CIT(A) and remand the matter back to his file with a direction to decide the appeal afresh by adjudicating of the grounds including the jurisdictional and legal grounds raised by the appellant after providing reasonable opportunity of being heard to assessee. Accordingly, appeal of assessee is allowed for statistical purposes.

8. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in accordance with Rule 34 of ITAT Rules, 1963 on
10/11/2025 in the open court.

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

Surat

दिनांक/ Date: 10/11/2025

SAMANTA

Copy of the Order forwarded to:

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

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat