

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.104/SRT/2025

Assessment Year: (2012-13)

(Hybrid hearing)

Gaurav Mishra, <u>Present address: -</u> 80, Bayshore Road, Unit No.28, (Costa Del Sol), Singapore – 46992 <u>Permanent Address:</u> 605, Spathik Shilla, Sundar Nagar Purani Basti, SO Raipur – 492001, C.G., India	Vs.	ITO, Ward -3 (2)(8), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AMKPM6042J		
(Appellant)		(Respondent)

Appellant by	Shri Veekass Sharma, AR
Respondent by	Shri Ajay Uke, Sr. DR
Date of Hearing	04/09/2025
Date of Pronouncement	17/11/2025

आदेश / ORDER

PER BIJAYANANDA PRUSETH, 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 28.11.2024 by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [in short, 'CIT(A)'] for the assessment year (AY) 2012-13.

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

"1. On the facts and in the circumstances of the case the assessment order passed u/s 144 r.w.s. 147 of the Income Tax Act, 1961 is illegal, bad-in-law & void-ab-initio inasmuch as the residential status of the assessee in the year under consideration was "non-resident", thus, the jurisdiction over the case of the assessee was vested with Learned ITO (IT & TP) and certainly neither with

ITO-3(1)(3), Surat nor with ITO-3(2)(8), Surat, therefore, proceedings initiated vide notice u/s 148 issued by ITO-3(1)(3), Surat and Assessment order passed by ITO-3(2)(8), Surat is illegal, bad-in-law and void-ab-initio on account of invalid jurisdiction and is liable to be quashed.

2. On the facts and in the circumstances of the case, the Learned ITO-3(2)(8), Surat has erred on facts and in law in pressing the assessment order u/s 144 r.w.s. 147 and the Learned ITO-3(1)(3), Surat erred in issuing the notice u/s 148 without having jurisdiction over the case of the assessee inasmuch as the jurisdiction over the permanent address of the assessee was vested with the Learned ITO-1(1), Raipur, more particularly, when the assessee had made a specific request for transferring the jurisdiction of his case to the Learned ITO-1(1), Raipur, who is having jurisdiction over the assessee based on permanent territorial address and also that the Learned ITO-3(1)(3), Surat himself mentioned the address of the assessee as "605 Sundar Nagar, Sphatik Nagar, Raipur" in the Notice u/s 133(6) dated 01.03.2019 issued to the assessee and the Learned ITO-3(2)(8), Surat has also mentioned the said address in the assessment order passed by him over which the jurisdiction vests with Learned ITO-1(1), Raipur, thus, the assessment order passed by Learned ITO-3(2)(8), Surat based on the Notice u/s 148 issued by the Learned ITO-3(1)(3), Surat is bad-in-law and void-ab-initio on account of invalid jurisdiction and, thus, is liable to be quashed.

3. Without prejudice to the above, on the facts and in the circumstances of the case the assessment order passed u/s 144 r.w.s. 147 of the Income Tax Act, 1961 is illegal, bad-in-law & void-ab-initio inasmuch as the case of the assessee was transferred from Learned ITO 3(1)(3), Surat to Learned ITO-3(2)(8), Surat who subsequently passed the assessment order, whereas the assessment order is silent about the order u/s 127 for the transfer of case to ITO-3(2)(8), Surat which implies that there is no such order u/s 127 for transfer of the case to Learned ITO 3(2)(8), Surat which renders the entire assessment proceeding bad-in-law, illegal and void-ab-initio. It is prayed that the assessment order passed u/s 144 r.w.s. 147 may kindly be declared as illegal, bad-in-law and void-ab-initio and consequential enhancement of Rs.34,46,019/- made to the total income may kindly be directed to be deleted as the jurisdiction was not vested with the Learned ITO-3(2)(8), Surat in the absence of order u/s 127.

4. The Appellant craves to leave to add, amend, alter, vary and/or withdraw any or all the above grounds of Appeal."

3. The additional grounds raised by the assessee, are as under:

"On the facts and in the circumstances of the case, the Assessment Order passed u/s 144 r.w.s. 1448 dated 21.12.2019 is illegal, bad-in-law and invalid inasmuch the said order is based on the Notice u/s 143(2) dated 18.12.2019 which has been issued in gross violation of the CBDT Circular No. F.No.225/157/2017/ITA-II dated 23.06.2017 as the same has not been issued

in the format prescribed by the said circular which renders the said Notice bad-in-law and invalid.

Relief Sought: The assessment order passed on the basis of invalid notice issued u/s 143(2) may kindly be quashed.

On the facts and in the circumstances of the case the assessment order passed u/s 144 r.w.s. 147 of the Income Tax Act, 1961 is illegal, bad-in-law & void-ab-initio inasmuch as the assessment proceedings has been initiated without obtaining the mandatory sanction u/s 151, which is a condition precedent for assumption of valid jurisdiction before issuance of Notice u/s 148, thus, the proceedings initiated without there being approval u/s 151 is liable to be quashed.”

4. The facts of the case in brief are that the assessee had not filed his return of income for AY 2012-13. As per AIR information, the assessee had purchased immovable property at Rs.34,46,019/- and received salary of Rs.2,18,194/-. After recording the reasons, the case was reopened u/s 147 of the Act by issuing notice u/s 148 of the Act on 29.03.2019 with prior approval of the competent authority. In response, the assessee filed his return of income on 06.09.2019, declaring total income of Rs.2,18,194/-. Various statutory and show notices were issued and served upon the assessee. The assessee has taken loans for purchase of the property, i.e., (i) Rs.9,34,833/- from IDBI Bank, (ii) Rs.5,00,000/- from father, (iii) Rs.2,50,000/- from self-funding and (iv) Rs.34,46,019/- from DBS Singapore account to ICICI Bank. The assessee failed to furnish documentary evidences to establish the source of fund and comply with the show cause notice issued to him on 04.12.2019. The Assessing Officer (in short, 'AO') held that the onus was upon the assessee to furnish the requisite details before AO. Despite ample opportunities given to the assessee, he could not produce any details or evidences regarding the

source of fund utilized for purchase of immovable property. Therefore, the AO made addition of Rs.34,46,019/- as unexplained income. Penalty proceedings u/s 271(1)(c) of the Act was also separately initiated for concealment of income.

5. Aggrieved by the order of AO, the assessee filed appeal before the CIT(A). The appeal was delayed by 30 days before the CIT(A). The CIT(A) condoned the delay and adjudicate of the issue. The appellant raised various grounds of appeal before the CIT(A), which are at pages 5 to 7 of the appellate order. The CIT(A) issued two notices for fixing the date of hearing on 16.08.2023 and 30.09.2024, but the assessee sought adjournment on both occasions. He referred to section 251(1) of the Act wherein it is stipulated that in cases where an order was passed as a 'best judgment' assessment u/s 144 of the Act, the CIT(A) is vested with the authority to set aside such assessment and remand the matter to AO for fresh evaluation. Accordingly, he exercised the powers conferred upon him u/s 251(1) of the Act and the matter remanded to AO for do novo adjudication and set aside the appeal.

6. 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 paper books containing 204 pages, which include various details and documents. He submitted that the same was submitted before the lower authorities. and argued that the re-opening is required to be quashed because the AO completed re-assessment u/s 147 r.w.s. 144 of the Act without issuing

notice u/s 148 of the Act. The AO who issued notice u/s 148 was different from the AO who passed the order. The assessee raised legal ground before the CIT(A) and contended that the assessment was void ab initio due to absence of notice u/s 148 of the Act. 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 Id. AR relied on the decisions in cases of Rahul Tyagi vs. ITO, ITA No.113/RPR/2024 and ITO vs. M/s Bhagyaarna Gems & Jewellery Pvt. Ltd., ITA No.12/RPR/2021.

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

8. 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 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 4 of the grounds of appeal 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 was assumed by AO for framing re-assessment. 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 ITAT, Surat in case of Prime Co-operative Bank Ltd. vs. ITO, in ITA No.19/SRT/2025, dated 10.11.2025 has set aside the order of CIT(A) and remand back to the file of CIT(A). Similarly, ITAT, Pune 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. The ITAT, Hyderabad in case of Tours5 Com vs. ITO, 176 taxmann.com 496 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 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.

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

Order pronounced in accordance with Rule 34 of ITAT Rules, 1963 on
17/11/2025 in the open court.

Sd/-
(DINSH MOHAN SINHA)
JUDICIAL MEMBER

Surat

दिनांक/ Date: 17/11/2025

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 PRUETH)
ACCOUNTANT MEMBER

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat