



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.449&469/RJT/2025

निर्धारणवर्ष / Assessment Year: (2011-12 & 2012-13)

(Hybrid Hearing)

Sapna Nainesh Jatania, Gayatri Krupa Royal Park, Nana Maya Road, Rajkot 361345(Guj)	Vs.	Income Tax Officer, Ward 1(1), Jamnagar 361001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AJBPJ5189M		
(Appellant)		(Respondent)

Appellant by : Shri Chetan Agarwal, Ld. AR
Respondent by : Shri Abhimanyu Singh Yadav, Ld. Sr. DR

Date of Hearing : 03/09/2025
Date of Pronouncement : 24/11/2025

आदेश / ORDER

Per, Dr. Arjun Lal Saini AM:

Captioned two appeals filed by the assessee, pertaining to Assessment Year, 2011-12 and 2012-13, are directed against the separate orders 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 10/03/2025, which in turn arise out of separate assessment orders passed by the Assessing Officer, u/s 144 r.w.s. 147 of the Income Tax Act, 1961.



2. Both these appeals, filed by the assessee, are barred by limitation by 55 days. The assessee has moved a petition requesting the Bench to condone the delay. The contents of the petition for condonation of delay of both the appeals, are same and identical, that is, reasons for the delay are same. Learned DR for the revenue, opposed the prayer of the assessee, for condonation of delay. 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 these two appeals. 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 in both appeals.

3. Since, the issues involved in all the appeals are common and identical; therefore, these appeals have been heard together and are being disposed of by this consolidated order. For the sake of convenience, the grounds as well as the facts narrated in ITA No.449/RJT/2025, for assessment Year 2012-13, have been taken into consideration for deciding the above appeals *en masse*.

4. Grounds of appeal raised by the assessee, in lead case in ITA No.449/RJT/2025, for assessment Year 2012-13, are as follows:

1. The ld.CIT(A) erred in law as well as on fact in upholding reopening of assessment u/s 147 on insufficient, invalid, incorrect and vague reasons recorded for reopening.

2. The ld.CIT(A) erred in law as well as on fact in setting aside assessment order to the file of Id.assessing officer for fresh assessment without deciding jurisdictional ground on validity of reopening of assessment u/s 147.

3. The ld. CIT(A) erred in law as well as on fact in upholding addition of Rs. 8,60,444 made by Id.assessing officer u/s 69 of the act being sales consideration received on sales of shares.



5. Succinctly, the factual panorama of the case is that assessee before us is an Individual and had filed her return of income for assessment year 2012-13, on 14/08/2012, declaring total income at Rs 1,39,820/- In assessee`s case, as per information, the assessee has involved in penny stock transaction during the previous year in script of M/s Gemstone Investment Limited (GIL) amounting to Rs.8,60,444/-. Therefore, assessee`s case has been reopened after recording reasons and taking necessary approval from the Pr. Commissioner of Income-tax, Jamnagar, The notice u/s 148 of the Act, was issued on 25/03/19, through ITBA as also sent through RPAD. Thereafter, a letter was issued on 22/08/19 and sent through RPAD requesting the assessee for filing of return of income for the assessment year (AY) 2012-13 in response to notice u/s 148 of the Act. Thereafter, the Pr. Commissioner of Income-tax, Jamnagar, (vide his order dated 07/08/2019, passed u/s 120(5) of the Income-tax Act 1961), has directed the ITO, Wd-1(1)-Jamnagar, to exercise and perform, concurrently, the power and function assigned to the ITO, Ward-1(5), Jamnagar in respect of the case of the assessee for the AY 2012-13. Thereafter, a notice u/s. 142(1) rws 129 of the I.T. Act, 1961 along with questionnaire was issued through ITBA on 16/10/19 and also sent through RPAD. However, no compliance has been received from the assessee. Therefore, finally, a show- cause notice was issued to the assessee through ITBA on 01/12/2019 and also sent by RPAD at three various addresses as well as on four mail IDs of the assessee as available on record and requested to make compliance by 06/12/2019. Moreover, the same are also available to the assessee in her registered mail account as well as in the account of e-filing portal of the Income-tax Department's website <https://www.incometaxindiaefiling.gov.in>. The assessee had furnished the replies of the above notices online through his account in e-filing website. However, the assessing officer rejected the above contention of the assessee and held that assessee has failed to prove the genuineness of the transaction, therefore, assessing officer made the addition to the tune of Rs.8,60,444/-.



6. Aggrieved by the order of the assessing officer, the assessee carried the matter in appeal before the learned CIT(A), who had remitted the issue back to the file of the assessing officer for fresh adjudication. The learned Counsel for the assessee submitted that learned CIT(A) should not have been remitted the issue back to the file of the assessing officer, as order passed by the assessing officer is not an ex-parte order. During the assessment proceedings, the assessee submitted reply before the assessing officer and made the compliance, therefore, issue should be adjudicated on merit by the ld.CIT(A). Therefore, aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

7. Shri Chetan Agarwal, Learned Counsel for the assessee argued that reasons recorded by the assessing officer are defective, as the reasons were mainly recorded by the assessing officer to conduct further enquiry. In the assessee`s case, under consideration, the reopening of the assessment is based on the outside information and such information were not examined by the assessing officer before issuance of notice under section 147 of the Act. The assessee is engaged in trading activity of shares on regular basis. Therefore, the reasons recorded by the assessing officer, is based on borrowed satisfaction. In addition to this, in the reasons recorded, it is mentioned that assessee has claimed exemption under section 10 (38) of the Act, however, the fact is that assessee has never claimed the exemption under section10(38) of the Act. Besides, no primary enquiry was conducted by the assessing officer before issuance of notice under section 148 of the Act. Hence, the re-assessment proceedings initiated by the assessing officer is bad in law, therefore, reassessment order may be quashed.

8. 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.



9. 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. For the sake of clarity and also being pertinent, I reproduce, the reasons recorded by the assessing officer for assessment year 2011–12. The reasons recorded by the assessing officer for assessment year 2012–13, are similar and identical, as recorded by the assessing officer for assessment year 2011–12. Therefore, I take a sample copy of reasons recorded by the assessing officer for assessment year 2011–12, to examine the fact that whether these reasons recorded by the assessing officer are in accordance with Law. Therefore, the reasons recorded by the assessing officer for assessment year 2011–12, is reproduced below for ready reference.



Sapna Nainesh Jatnia A Y 2011-12	
Name and address of the Assessee:	Smt. Sapna Naimesh Jatnia, GAYATRI KRUPA, MERCHANT COLONY, MITHAPUR, DWARKA - 361345.
PAN of the Assessee:	AJBPJ5189M
Assessment Year:	2011-12
Details of the Assessing Officer having jurisdiction over the Assessee:	Income-Tax Officer, Ward-1(4), Dwarka.

Reasons for reopening of the assessment in case of **Smt Sapna Naimesh Jatnia** for A.Y. 2011-12 U/s. 147 of the Act.

1. Brief details of the Assessee:- Assessee has filed the Return of income vide ack no. 144002066 for A y 2011-12 declaring total income at Rs 165180 /- on 14/08/2012.
2. Brief details of information collected/ received by the AO:- The information in respect of the penny stock transaction made in FY 2010-11 was made by the assessee as per information received from ADIT(Inv.), Unit 5(2), Mumbai as on dtd. 22/03/2018.
3. Analysis of information collected/ received :- As per the penny stock transaction data available, assessee has made sell transaction of shares of M/s. Gemstone Investment Limited (GIL) (scrip code -531137)share of Rs 714957/-.
4. Enquiries made by the AO as sequel to information collected/ received :- as per information received from ADIT(Inv.), Unit 5(2), Mumbai as on dtd. 22/03/2018.
5. Findings of the AO:- As per information received from ADIT(Inv.), Unit 5(2), Mumbai as on dtd. 22/03/2018 that, the shares sell are of penny stock and therefore it requires investigation.
6. Basis of forming reason to believe and details of escapement of income :- As the transaction is of penny stock of Rs 714957/-. Hence, I have reason to believe that income chargeable to tax of Rs 714957/- has escaped assessment within the meaning of section 147 of the I. T. Act. Hence it is fit case for re-opening the assessment under section 147 of the Income tax Act, 1961 for the A. Y. 2011-12.
7. Escapement of income chargeable to tax :- income chargeable to tax of Rs 714957/- has escaped.
8. Applicability of the provisions of section 147/151 of the facts of the case:- In this case a return of income was filed for the year under consideration but no scrutiny assessment u/s. 143(3) of the Act was made. Accordingly, in this case, the only requirement to initiate proceeding u/s. 147 is reason to believe which has been recorded above (refer paragraphs - 5).

It is pertinent to mention here that in this case the assessee has filed return of income for year under consideration but no assessment as stipulated/s. 2(40) of the Act was made and the return of income was only processed u/s. 143(1) of 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

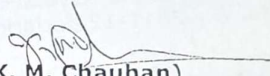


Sapna Nainesh Jatnia A Y 2011-12

assessment year under consideration is deemed to be case where income chargeable to tax has escaped assessment.

This case is more than four years from the end of the assessment year under consideration. Hence necessary sanction to issue notice u/s. 148 has been obtained separately from Principal Commissioner of Income Tax as per the provisions of section 151 of the Act.

Yours faithfully,


(K. M. Chauhan)
Income tax Officer,
Ward -1(4), Dwarka.

Encl :- As required.

Date: 22/03/2018

10. I have gone through the above reasons recorded by the assessing officer and noted that there is no whisper in the reasons recorded, of any tangible material which came to the possession of the assessing officer, therefore, it reflects an arbitrary exercise of the power conferred under section 147 of the Act. Since the reasons are recorded in the assessee's case, as per the old provisions of section 147/148 of the Act, therefore old provisions of section 147/148 would be applicable to the assessee under consideration. In the reasons supplied to the petitioner, there is no whisper, what to speak of any allegation, that the petitioner had failed to disclose fully and truly all material facts necessary for assessment. The assessee has raised the contention that the assessing officer was not having any material information to form "a reason to believe" that there was an escapement of income. However, Ld. DR stated that this contention is not acceptable because the assessing officer was having sufficient material to form the "reason to believe" at the time of re-opening of the assessment. I find merit in the submission of learned Counsel for the assessee to the effect that the reasons were mainly recorded by the assessing officer to conduct further enquiry. In the



assessee's case, under consideration, the reopening of the assessment is based on the outside information and such information were not examined by the assessing officer before issuance of notice under section 147 of the Act. The assessee is engaged in trading activity of shares on regular basis. Therefore, the reasons recorded by the assessing officer, is based on borrowed satisfaction. In addition to this, in the reasons recorded, it is mentioned that assessee has claimed exemption under section 10 (38) of the Act, however, the fact is that assessee has never claimed the exemption under section 10(38) of the Act. Besides, no primary enquiry was conducted by the assessing officer before issuance of notice under section 148 of the Act. Hence, the re-assessment proceedings initiated by the assessing officer is bad in law, therefore, reassessment order may be quashed.

11. I note that re-assessment proceeding cannot be initiated for making enquiry or verification. However, in assessee's case it is clear from the reasons recorded that case was reopened just to verify the details. We note that Hon'ble jurisdictional High Court in the case of PCIT v/s Manzil Dinesh Kumar Shah [2018] 95 taxmann.com 46 (Guj) vide order dated 07.05.2018, held that case of an assessee cannot be reopened just to verify the details. The Findings of the Hon'ble Court is reproduced below:

“8. With this background, we may revert to the reasons recorded by the Assessing Officer. Information from the Value Added Tax Department of Mumbai was placed for his consideration. This information contained list of allegedly bogus purchases made by various beneficiaries from Hawala dealers. Assessee was one of them. As per this information, he had made purchases worth Rs.3.21 crores (rounded off) from such Hawala dealers during the financial year 2010-11. According to the Assessing Officer, this information 'needed deep verification'.

9. If on the basis of information made available to him and upon applying his mind to such information, the Assessing Officer had formed a belief that income chargeable to tax has escaped assessment, the Court would have readily allow him to reassess the income. In the present case however, he recorded that the information required deep



verification. In plain terms therefore, the notice was being issued for such verification. His later recitation of the mandatory words that he believed that income chargeable to tax has escaped assessment, would not cure this fundamental defect.

10. Learned counsel for the Revenue however urged us to read the reasons as a whole and come to the conclusion that the Assessing Officer had independently formed a belief on the basis of information available on record that income in case of the assessee had escaped assessment. Accepting such a request would in plain terms require us to ignore an important sentence from the reasons recorded viz. 'if needs deep verification'.

11. Before closing, we can only lament at the possible revenue loss. The law and the principles noted above are far too well settled to have escaped the notice of the Assessing Officer despite which if the reasons recorded fail the test of validity on account of sentence contained, it would be for the Revenue to examine reasons behind it."

The above decision of Gujarat High Court in the case of PCIT vs Manzil Dinesh Kumar Shah [2018] 95 taxmann.com 46 (Guj) (supra) were challenged by department before the Supreme Court. The Hon'ble Supreme Court in PCIT v/s Manzil Dinesh Kuamr Shah [2019] 101 taxmann.com 259 (SC) vide order dated vide order 04.01.2019 has dismissed SLP, and confirmed the finding of Gujarat High Court.

12. I note that in assessee`s case, under the guise of reopening of the assessment, the Assessing Officer wants to have a roving inquiry; as observed hereinabove. Even as per the Assessing Officer in the reasons recorded, has specially mentioned that for the purpose of verification of the claim, it is necessary to reopen the assessment. Under the circumstances, it cannot be said that the Assessing Officer had any tangible material to form an opinion that the income chargeable to tax has escaped the assessment. Under the circumstances, the impugned action of reopening of the assessment in exercise of power under section 148 of the I.T. Act for the reasons recorded hereinabove cannot be sustained. To buttress my this contention, I also relied on the judgment of the



Hon`ble Gujarat High Court in the case of Krupesh Ghanshyam Bhai Thakkar Vs. DCIT, Special Civil application No.14612 of 2016 (Guj. HC).In view of the above discussion, I hold that the issue of notice u/s.148 and assumption of jurisdiction for reassessment by the assessing officer was not in accordance with law, therefore, I quash the reassessment proceedings and allow the appeal of the assessee.

13. In the result, appeal filed by the assessee, in ITA No.449/RJT/2025, is allowed.

14. Since I have adjudicated the issue on technical ground, by taking the lead case in ITA No.449/RJT/2025, for assessment year 2012–13, and the issue on technical ground, is similar and identical in the assessment year 2011–12 also, in assessee`s ITA No.469/RJT/2025, hence, my observation, in ITA No.449/RJT/2025, for assessment year 2012–13, shall apply *mutatis mutandis* to the assessee`s case in ITA No.469/RJT/2025, for assessment year 2011–12, For the parity of reasons, I allow the appeal of the assessee, in ITA No.469/RJT/2025, for assessment year 2011–12, in terms of directions noted in in ITA No.449/RJT/2025, for assessment year 2012–13.

15. In the result, appeal filed by the assessee, in ITA No.469/RJT/2025, for assessment year 2011–12, is allowed.

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



17. In the combined result, both appeals, find by the assessee, are allowed, in above terms.

Order pronounced in the open court on 24 / 11/ 2025.

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

// True Copy //

Rajkot

दिनांक/ Date: 24/11/2025

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