



आयकर अपीलीय अधिकरण "एस एम सी" न्यायपीठ पुणेमें।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCHES "SMC" :: PUNE

BEFORE MS.ASTHA CHANDRA, JUDICIAL MEMBER  
AND  
DR.DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.832/PUN/2025

निर्धारण वर्ष / Assessment Year: 2014-15

Swaminath Baburao Patil, C37, Siddheshwar Market Yard, Hyderabad Road, Solapur – 431005. Maharashtra.	V s	The Income Tax Officer, Ward-2(3), Solapur.
PAN: AKWPP4321P		
Appellant/ Assessee		Respondent / Revenue

Assessee by	Shri Girish Ladda
Revenue by	Shri Ambarnath Khule (through virtual hearing) – JCIT(DR)
Date of hearing	24/11/2025
Date of pronouncement	25/11/2025

**आदेश/ ORDER**

**PER DR. DIPAK P. RIPOTE, AM:**

This is an appeal filed by the Assessee against the order of Id.Commissioner of Income Tax(Appeal)[NFAC] passed under section 250 of the Income Tax Act, 1961 for the A.Y.2014-15 dated 27.01.2025 emanating from the Assessment Order passed under section 147 r.w.s 144B of the Act, dated 19.05.2023. The Assessee has raised the following grounds of appeal :



*“1) Legal Ground that reopening is time barred as held by Supreme Court in Rajeev Bansal*

*It may please be held that notice issued u/s 148 dated 26/07/2022 is barred by the limitation as held by Hon Supreme Court in case of Rajeev Bansal 340 CTR 865 in para 111 and 112.*

*The notice u/s 148 under old regime was issued on 25/06/2021, so the surviving period with the AO was 6 days (days between 25/06/2021 to 30/06/2021), the assessee has submitted the response to notice u/s 148A(b) on 10/06/2022, so the AO was having 6 days from this date to issue notice u/s 148 under new regime which expired on 16/06/2022*

*2) Non issuance of Notice u/s 143(2)*

*On the facts of the case and in law, the reassessment order passed u/s 147 may please be quashed being passed without issue of statutory Notice u/s 143(2) of Income Tax Act even when the appellant filed a Return of Income on 03/02/2023 vide Acknowledgment Number 947198020030223. Non-issuance of the Statutory Notice u/s 143(2) is a jurisdictional defect not curable u/s 292BB.*

*3) Proceedings u/s 148 invalid as right course was section 153C*

*It may please be held that notice issued u/s 148 is bad in law since the Assessing Officer in the instant case has reopened the assessment on the basis of information that emerged at the time of search at the premises of third party M/s. Shri Renuka Mata Multistate Credit Society Ltd., therefore, the proper course of action by the Assessing Officer should have been under the provisions of section 153C and not under the provisions of section 147 of the Act.*



*Reliance is placed on PUNE ITAT Judgement dt 19/09/2024 in case of Vijaykumar Chordiya ITA 1075/PUN/2024.*

*4) Notice U/s 148 invalid being issued without DIN*

*It may please be held that the Notice u/s 148 dated 26/07/2022 is void ab initio being issued without quoting complete DIN (Document Identification Number) as mandated by CBDT Circular No 19/2019 dated 14/08/2019. Hence, it is prayed that Notice U/s 148 and consequent assessment order both may please be quashed.*

*5) It may please be held that the Notice u/s 148 dated 26/07/2022 is void ab initio being issued by Jurisdictional Assessing Officer (JAO) ITO Ward 2(3) Solapur whereas Section 151A read with Notification no. 18/2022 dated 29th March 2022 mandates all such notices to be issued by the FAO under the National Faceless Assessment Scheme. Hence, it is prayed that Notice U/s 148 and consequent assessment order both may please be quashed.*

*6) Without prejudice to above grounds, the Id. CIT(A) erred in dismissing the appeal invoking the section 249(4)(a) even when the assessee has filed Return of Income u/s 139(1) on 12/12/2014 vide Acknowledgment number 442757460121214 and again in response to Notice u/s 148 on 03/02/2023 vide Ack number 947198020030223 and duly paid the Self-Assessment tax due on such Return of Income. The CIT(A) grossly erred in holding that assessee has to pay complete assessed tax and not tax due on return before filing the appeal.*

*7) On the facts of the case and in law, the AO erred in making addition Rs 16,49,877 by estimating business income at 9 percent of deposits*



*made in bank account with Renuka Mata Multi State Urban Co Op Society without appreciating the explanation of the appellant that the deposits are from dealing in foodgrains business on commission basis and Gross commission from the said business Rs 3,90,780 already credited to Profit and Loss Account. Hence the entire addition Rs 16,49,877 may please be deleted.*

*8) The Appellant seeks leave to add, alter, amend or drop any of the grounds taken above.”*

**Submission of ld.AR :**

2. Ld.AR for the Assessee filed a paper book containing 51 pages. Ld.AR submitted that in the case of the assessee, Assessment was reopened and assessment order has been passed under section 147 r.w.s144B of the Act, for A.Y.2014-15 on 19.05.2023. Ld.AR submitted that no notice u/s.143(2) has been issued before completing the Assessment. Hence, Assessment Order is bad-in-law. Ld.AR relied on the decision of ACIT Vs. Hotel Bluemoon 321 ITR 32 (SC) and ITAT Pune Bench decision in the case of Bababhai Sardarbhai Shaikh Vs. ITO in ITA No.144/PUN/2025 for A.Y.2015-16 vide order dated 23.10.2025.

3. Ld.AR also explained that ld.CIT(A) has not adjudicated any grounds of appeal. Ld.CIT(A) has dismissed the appeal as unadmitted. Ld.AR submitted that ld.CIT(A) has erroneously



invoked Section 249(4)(b) of the Act, whereas Section 249(4)(a) of the Act is applicable in the case of the Assessee as Assessee had filed Return of Income.

**Submission of ld.DR :**

4. Ld.DR for the Revenue submitted that under the new provisions of reopening, a notice u/s.148A(b) is issued, then an order u/s.148A(d) is passed. This provided sufficient opportunity to assessee to explain the issue. After passing the order u/s.148A(d), the notice u/s.148 of the Act, is issued. Therefore, ld.DR pleaded that there is no requirement of issuing notice u/s.143(2) of the Act, in the new procedure.

**Findings & Analysis :**

5. We have heard both the parties and perused the records. In this case, ld.CIT(A) had dismissed the appeal as unadmitted. Ld.CIT(A) has stated in the order that Assessee has not paid any advance tax. The relevant paragraphs 6 and 7 of the ld.CIT(A)'s order are reproduced here as under :

*“6. Since the appellant has not filed return in response of notice u/s 148 of income as well as not paid an amount equal to the amount of advance tax which was payable by it, present appeal is not liable to be admitted. The appeal is in fructuous and is, therefore, dismissed.*

*7. The appeal is dismissed.”*



5.1 Thus, Id.CIT(A) has stated that no return of income was filed. However, on perusal of the assessment order, it is observed that assessee had filed return of income. The relevant part of the assessment order is scanned and reproduced here as under :

1.	PAN	AKWPP4321P
2.	Name of the assessee	SWAMINATH BABURAO PATIL
3.	Address of the assessee	C37 SIDDHESHWAR MARKET YARD, HYDERABAD ROAD SOLAPUR, SOLAPUR 413005, Maharashtra, India
4.	Assessment Year	2014-15
5.	Status	INDIVIDUAL
6.	Residential Status	Resident
7.	Date of service of Notice under section 143(2) of the Income-tax Act	As per Order Sheet
8.	Date(s) of issue of Notice(s) under section 142(1) of the Income-tax Act	13/01/2023
9.	Order passed under section	147 read with section 144B of the Income-tax Act
10.	Date of Order	19/05/2023
11.	DIN	ITBA/AST/S/147/2023-24/1053009291(1)

**ASSESSMENT ORDER**

**Complete description of issues involved: -**

On verification of the e-filing portal it is seen that the assessee has filed the return of income for the A.Y. 2014-15, declaring total income of Rs.2,72,127/- on total turnover of Rs. 32,00,749/-.

High Risk

6. Therefore, it is crystal clear that assessee had filed return of income for A.Y.2014-15. However, Id.CIT(A) has erroneously mentioned that assessee had not filed Return of Income. Therefore, Id.CIT(A) has erroneously applied Section 249(4)(b) of the Act. The Section 249(4)(b) is reproduced as under :

***“Form of appeal and limitation.***

**249.** (1) Every appeal under this Chapter shall be in the prescribed form<sup>6</sup> and shall be verified in the prescribed manner<sup>7</sup> [and shall, in case of an appeal made to the Commissioner (Appeals) on or after the 1st day of October, 1998, irrespective of the date of initiation of the assessment proceedings relating thereto be accompanied by a fee of,—

.....



*[(4) No appeal<sup>15</sup> under this Chapter shall be admitted unless at the time of filing of the appeal,—*

*(a) where a return has been filed by the assessee, the assessee has paid the tax due on the income returned by him; or*

*(b) where no return has been filed by the assessee, the assessee has paid an amount equal to the amount of advance tax which was payable by him:*

***Provided** that, <sup>16</sup>[in a case falling under clause (b) and] on an application made by the appellant in this behalf, the <sup>17</sup>[\* \* \*] <sup>18</sup>[Commissioner (Appeals)] may, for any good and sufficient reason to be recorded in writing, exempt him from the operation of the provisions of <sup>19</sup>[that clause].”*

7. In these facts and circumstances of the case, we direct the ld.CIT(A) to admit the appeal of the Assessee and decide it on merits. Ld.CIT(A) shall provide opportunity of hearing to the Assessee. Assessee shall be at liberty to raise legal ground if so advised. Assessee shall file all necessary details before the ld.CIT(A). Accordingly, grounds of appeal raised by the Assessee are allowed for statistical purpose.

8. In the result, appeal of the Assessee is allowed for statistical purpose.

Order pronounced in the open Court on 25 November, 2025.

Sd/-

**MS.ASTHA CHANDRA**  
**JUDICIAL MEMBER**

Sd/-

**Dr.DIPAK P. RIPOTE**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 25 Nov, 2025/ SGR



**आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "एस एम सी" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

/ / TRUE COPY / /

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.