

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE DINESH MOHAN SINHA, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUETH, ACCOUNTANT MEMBER
ITA No.720/SRT/2024 (AY 2015-16)**

(Hybrid Hearing)

ITO, Ward – 1(3)(1), Surat	Vs.	Chandubhai Jadavbhai Korat, 5, Raghuvir Bungalow, City Light Road, Bharthana, B.O. Umra, Surat – 395007
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ABQPK7796L		
(Appellant)		(Respondent)

**CO No.36/SRT/2024 (AY 2015-16)
(Arising out of ITA No.720/SRT/2024)**

Chandubhai Jadavbhai Korat, 5, Raghuvir Bungalow, City Light Road, Bharthana, B.O. Umra, Surat - 395007	Vs.	ITO, Ward – 1(3)(1), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ABQPK7796L		
(Appellant)		(Respondent)

Appellant by	Shri Mukesh Jain, CIT-DR
Respondent by	Shri Rasesh Shah, CA
Date of Hearing	02/09/2025
Date of Pronouncement	21/11/2025

आदेश / ORDER

PER BIJAYANANDA PRUETH, AM:

These two cross appeals by revenue and assessee emanate from the order dated 01.05.2024 passed by the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [in short, 'the CIT(A)'] for assessment year (AY) 2015-16.

2. The grounds of appeal raised by the revenue are as follows:

"i. On the facts and circumstances of the case and in law the Lat CIT has erred in deleting the addition made of Rs 5,53,36,885/- by the AO on account of cash credit u/s 68 of the Act in the disguise of exempted long term capital gains un account of

sale of the share of JRI Industries and Infrastructure Limited, a penny stock and without appreciating the findings of the Assessing Officer that the price movement of the company were not supported by financial fundamentals of the company?

ii. On the facts and circumstances of the case and in law the Ld CIT has erred in ignoring the facts brought on record establishing manipulation of share prices of JRI Industries and Infrastructure Limited as the upward movement of share price was not at all justified by the economic fundamental of company during the period of transactions by the assessee?

iii. On the facts and circumstances of the case and in law, the Id. CIT(A) has erred in deleting the addition made by the Assessing Officer of Rs.5,53,36,885/- ignoring the fact that the stock prices of the companies are manipulated to provide the bogus LTCG.

iv. On the facts and circumstances of the case and law, the Id.CIT(A) has erred in allowing the claim ignoring the judicial pronouncement by the Hon'ble Supreme Court in the case of McDowell Vs CTO wherein it was held that "Colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by resorting to dubious method. It is the obligation of every citizen to pay the taxes honestly without resorting to subterfuges".

v. On the basis of the facts and circumstances of the case and in law, the Id. CIT(A) ought to have upheld the order of the Assessing Officer.

vi. It is therefore prayed that the order of Id. CIT(A) may kindly be set aside that of the Assessing Officer be restored.

vii. The appellant craves leave to add, alter, amend and/or withdraw any ground of appeal either before or during the course of hearing of the appeal."

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

"1. On the facts and in the circumstances of the case as well as law on the subject, the learned assessing officer has erred in issuing notice u/s. 148 on 28.07.2022 after expiry of 6 years from the end of relevant assessment year as per the first proviso to S. 149.

2. On the facts and circumstances of the case as well as law on the subject, the learned assessing officer has erred in re-opening the case in contravention of S. 149(1)(b) as the income chargeable to tax is not represented in form of an assets

3. On the facts and circumstances of the case as well as law on the subject, the learned assessing officer has erred in passing order u/s. 148A(d) by taking mechanical approval from Pr. CCIT

4. On the facts and circumstances of the case as well as law on the subject, the learned Pr. CCIT has erred in granting the approval u/s. 151 without generating DIN.

5. It is therefore prayed that the assessment framed u/s 147 r.w.s 144B may kindly be quashed.

6. The appellant craves leave to add, amend, alter, delete or modify all or any of the grounds before or during the course of final hearing of appeal.”

4. The cross-objection filed by the assessee is late by 138 days. The appellant has filed an affidavit stating that the cross-objection was delayed by 138 days due to the pronouncement of the judgment of Hon'ble Supreme Court in case of UOI vs. Rajeev Bansal, 167 taxmann.com 70 (SC) on 03.10.2014 after the due date for filing cross-objection. As per the judgment of the Hon'ble Supreme Court, re-assessment u/s 147 of the Act becomes invalid for AY 2015-16. Hence, on the advice of the counsel of the assessee, the cross-objection was filed belatedly. The delay was not intentional and assessee was prevented by sufficient and reasonable for not filing the appeal in time. The Commissioner of Income-tax – Departmental Representative (Id. CIT-DR) did not raise any objection and submitted that the Bench may decide the matter as it thinks fit. After considering the submission of both sides, the delay is condoned.

5. The appellant has filed an application under Rule 27 of ITAT, Rules to allow the applicant to support the order of CIT(A). He submitted that the ground is purely legal in nature affecting jurisdiction of Assessing Officer (in short, 'AO') and does not require any further facts other than the ones, which are on record, for its adjudication. The grounds are as under:

“On the facts and in the circumstances of the case as well as law on the subject, the learned assessing officer has erred in issuing notice u/s. 148 on 28.07.2022 after expiry of 6 years from the end of relevant assessment year as per the first proviso to S. 149

On the facts and circumstances of the case as well as law on the subject, the learned assessing officer has erred in re-opening the case in contravention of S. 149(1)(b) as the income chargeable to tax is not represented in form of an assets.”

5.1 The learned Commissioner of Income-tax – Departmental Representative (ld. CIT-DR) submitted that the Bench may decide the matter as it thinks fit.

5.2 We have heard both sides. Rule 27 empowers the respondent to defend the order appeal against on any of the grounds decided against him. It is seen from the ground that it is purely legal in nature and does not require additional fact to decide it. It is an enabling provision which the respondent can avail himself of, in order to retain the benefit, which has accrued to him from the order appealed against. Accordingly, the ground is admitted.

6. Brief facts of the case are that the assessee filed his return of income for the AY 2015-16 on 30.03.2016, declaring total income at Rs.4,77,280/-. Information was received from the Investigation Wing that the assessee had made transaction of Rs.5,53,36,885/- in the penny scrip stock, namely, JRI Industries and Infrastructure Ltd. (JIIIL). However, the assessee had not offered the sale transaction of Rs.5,53,36,885/- in the penny scrip stock, JIIIL, in his return of income. On the basis of this information, case of the assessee was reopened u/s 147 of the Act and notice u/s 148 of the Act was issued to the assessee on 22.04.2021. Subsequently, following the directions of Hon’ble Supreme Court in Civil Appeal No.3005/2022, dated 04.05.2022, the AO informed the assessee that

the above notice u/s 148 shall be treated as show cause notice u/s 148A(b) of the Act. Thereafter, he issued notice u/s 148 under the new provisions of the Act on 28.07.2022. In response, assessee filed return on 02.08.2022, declaring the same income of Rs.4,77,280/-. The AO provided various opportunities as detailed in para 3.2 of the assessment order and after hearing the assessee, he completed the assessment u/s 147 r.w.s. 144B of the Act by making addition of Rs.5,53,36,885/-.

7. Aggrieved by the aforesaid assessment order, assessee preferred appeal before CIT(A). The CIT(A) deleted the addition treating the sale transactions of Rs.5,53,36,885/- in the impugned penny scrip stock as genuine transactions. He allowed the appeal of the assessee.

8. Aggrieved by the order of CIT(A), revenue filed present appeal before the Tribunal. The Id. CIT-DR for the revenue submitted that the CIT(A) erred in deleting the addition made of Rs.5,53,36,885/- on account of cash credit u/s.68 of the Act. The Id. CIT-DR further submitted that prices of penny scrip stock JIIL were manipulated as the upward movement of share price was not at all justified by the economic fundamental of the company during the period of transactions. In support of the grounds of appeal, Id. CIT-DR requested to sustain the addition made by the AO and allow the revenue's appeal.

9. The Id. AR of the assessee submitted that on the very same scrip, viz., JIIL, Co-ordinate Bench of this Tribunal, in the case of ITO vs. Ilesh B. Ponkia, in ITA No. 901/SRT/2024 for AY 2015-16 held that the notice issued u/s 148 of the Act dated 29.07.2022 was beyond the limitation period prescribed u/s 149 of the Act and the

assessment was held to be barred by limitation. The Id. AR further submitted that the Coordinate Bench considered the Hon'ble Supreme Court judgements in the case of Rajeev Bansal and Deepak Steel and Power Ltd. and held that the reopening of assessment made u/s 148 of the Act on 29.07.2022 relating to the AY 2015-16 was void ab initio and bad in law, therefore requested to dismiss the appeal filed by the Revenue.

10. We have heard both sides and perused the materials available on record. The major issue for adjudication in the present appeal is whether the notice u/s 148 of the Act issued on 28.07.2022 was beyond the limitation period prescribed u/s 149 of the act and, therefore, re-assessment u/s 147 of the Act was time barred. The entire assessment proceedings are void and deserves to be quashed. The Id. AR submitted that the date of original notice u/s 148 of the Act was 22.04.2021. Since the notice was issued under the old provisions of section 148 of the Act after 01.04.2021, the said notice was deemed to be notice u/s 148A(b) of the amended provisions in view of the decision of Hon'ble Supreme Court in case of UOI vs. Ashish Agarwal, 444 ITR 1 (SC). He submitted that the Hon'ble Supreme Court in case of UOI vs. Rajeev Bansal, 469 ITR 46 (SC) has recorded the concession of the learned counsel for revenue in respect of notices u/s 148 for AY 2015-16 in para 19(f) of its judgement that for AY 2015-16 that all notices issued u/s 148 of the Act on or after 01.04.2021 will have to be dropped. Considering the above concession, the Hon'ble Supreme Court in the subsequent decision in case of Deepak Steel and Power Limited vs. CBDT, (2025) 174 taxmann.com 144 (SC) held

that all notices issued for AY 2015-16 on or after 01.04.2021 are to be quashed and set aside and nothing further is to be adjudicated in case of these notices. Following the above decisions of the Hon'ble Supreme Court, the Hon'ble jurisdictional High Court of Gujarat in case of Mayurkumar Babubhai Patel vs. ACIT, R/SCA No.3154 of 2022, dated 17.06.2025 has quashed notices u/s 148 for AY 2015-16 issued on or after 01.04.2021. Subsequently, the Hon'ble High Court has again quashed notices issued u/s 148 for AY 2015-16 on or after 01.04.2021 in a common order for 115 petitions in Narendra Maganlal Purohit vs. DCIT, R/SCA Nos.17443 of 2022 and Ors., dated 14.07.2025. In view of the settled position by the above judicial precedents, the Id. AR requested that the notice issued u/s 148 dated 28.07.2022 for AY 2015-16 may be quashed.

11. On the other hand, Id. CIT-DR for the revenue supported the order of AO and submitted that the Bench may decide the matter as it thinks fit.

12. We have heard both parties and perused the materials available on record. We have also deliberated on the decisions relied upon by the Id. AR. The undisputed fact in the present appeal is that the original notice u/s 148 of the Act was issued on 22.04.2021. The same was deemed to be notice u/s 148A(b) of the Act as per the decision of the Hon'ble Supreme Court in case of Ashish Agarwal (supra). In the subsequent decision before the Hon'ble Supreme Court in case of Rajeev Bansal (supra), the revenue had given concession with regard to he notices issued u/s 148 of the Act for AY 2015-16, i.e., on or after 01.04.2021. The relevant para of the decision is reproduced below for ready reference and clarity:

“19(f) The Revenue concedes that for the assessment year 2015-16, all notices issued on or after April 1, 2021 will have to be dropped as they will not fall for completion during the period prescribed under the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020.”

12.1 In the subsequent decision in Deepak Steel and Power Ltd. (supra), the Hon'ble Supreme Court reiterated the above position and held as under:

“5. As the revenue made a concession in the aforesaid decision that is for the assessment year 2015-16, all notices issued on or after 1st April, 2021, will have to be dropped as they would not fall for completion during the period prescribed under the taxation and other laws (Relaxation and Amendment of Certain Provisions) Act, 2020. Nothing further is required to be adjudicated in this matter as the notices so far as the present litigation is concerned is dated 25.06.2021.”

12.2 Following the above decisions, the Hon'ble jurisdictional High Court in case of Mayurkumar Babubhai Patel (supra) and Narendra Maganlal Purohit (supra) has quashed the notices u/s 148 of the Act for AY 2015-16 issued on or after 01.04.2021. In the instant case, the AO had issued the notice u/s 148 of the Act on 28.07.2022, i.e., which was after 01.04.2021. Hence, the notice itself is time barred and invalid. Once the notice itself is time barred, the entire reassessment proceedings are rendered invalid and without jurisdiction. Consequently, the assessment framed is also liable to be quashed. Accordingly, we dismiss the appeal of the revenue on jurisdictional ground and quashed the re-assessment order. As the appeal of revenue has been dismissed on legal issue, there is no need to adjudicate the other grounds raised on merit.

13. In the result, the appeal of the revenue is dismissed.

CO No.36/SRT/2024 (AY 2015-16):

14. We have dismissed the appeal of revenue in ITA No.720/SRT/2024 (supra) and held that the notice issued u/s 148 of the Act on 28.07.2022 was not valid and

consequently, the re-assessment order framed u/s 147 r.w.s. 144B of the Act was quashed. Hence, there is no need to adjudicate the grounds of the cross-objection.

15. In the result, the cross-objection of the assessee is disposed off in terms of the above observation.

Orders are pronounced under provision of Rule 34 of ITAT Rules, 1963 on 21/11/2025.

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Surat

दिनांक/ Date: 21/11/2025

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

By Order

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Assistant Registrar/Sr. PS/PS
ITAT, Surat