

**IN THE INCOME TAX APPELLATE TRIBUNAL, SMC BENCH, RAJKOT**  
**BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER**

**आयकर अपील सं./ITA No. 220/RJT/2025**  
**(निर्धारण वर्ष / Assessment Year: 2011-12)**

Dream Infrastructure, Mavdi Survey No. 358, B/h. Mavdi Village, Kankot Road, Mavdi, Rajkot-360004(Guj)	<b>Vs.</b>	Income Tax Officer, Ward-1(1)(1), Rajkot
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAHFD2565L</b>		
<b>(Assessee)</b>		<b>(Respondent)</b>

Assessee by : Shri D.M. Rindani, AR  
Respondent by : Shri Abhimanyu Singh Yadav, Sr. DR  
**Date of Hearing : 22/09/2025**  
**Date of Pronouncement : 04/12/2025**

**आदेश / O R D E R**

**Per, Dr. Arjun Lal Saini, AM:**

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2011-12, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals), [in short “the ld. CIT(A)”], ADDL/JCIT(A), dated 25.02.2025, which in turn arises out of an assessment order passed by Assessing Officer u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 27.12.2018.

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

*“1. The Learned ADDL/Joint Commissioner of Income Tax (Appeals), Panchkula has erred in confirming the action of the Assessing Officer in respect of pass the order U/S.147 RWS 143(3) of the I.T. ACT whereby assessed the total income of Rs. 8,00,000/- as against the returned income of Rs.1/- it is totally wrong, unwarranted, unjustified and bad in law.*

2. *The Learned ADDL/Joint Commissioner of Income Tax (Appeals), Panchkula has erred in confirming the action of the Assessing Officer in respect of making the addition of Rs. 8,00,000/- on the alleged ground of cash payment made to Shri Jawahar Mori Treated as income from undisclosed source it is totally wrong, unwarranted, unjustified and bad in law.*

3. *The Learned ADDL/Joint Commissioner of Income Tax (Appeals), Panchkula has erred in confirming the action of the Assessing Officer in respect of initiated the penalty proceedings u/s. 271(1)(c) of the IT Act is totally wrong, unwarranted, unjustified and bad in law.*

4. *The Learned ADDL/Joint Commissioner of Income Tax (Appeals), Panchkula has erred in confirming the action of the Assessing Officer in respect of charging the interest u/s. 234A, B C of the I T Act is totally wrong, unwarranted, unjustified and bad in law.*

5. *Your applicant reserves the right in addition or alteration in the grounds of appeal at the time of hearing.”*

3.The facts of the case which can be stated quite shortly are as follows:

On the basis of information available on records, the assessee`s case was reopened u/s. 147 of the Act after recording the reasons for reopening and obtaining prior approval from the competent authority. Accordingly, notice u/s 148 of the Act was issued on 26.03.2018 and the same was duly served upon the assessee on 29.03.2018. In response to the above notice, the assessee filed return of income, on 23.04.2018, declaring total income of Rs.1/-. The assessee further asked for reasons recorded for reopening the case. Accordingly, copy of reasons recorded was provided to the assessee. Further, notice u/s. 143(2) of the Act was issued on 19.11.2018 and notice/s u/s. 142(1)r.w.s 129 of the I T Act was issued on 19.11.2018 for further required details.

4.In response, of the above notices, the assessee submitted its reply, before the assessing officer. The assessee has objected to the reopening the case. Order disposing off objections passed on 07.12.2018. In response to the above notices issued, the assessee attended the hearing from time to time and filed submission/details as called for during the course of assessment proceedings, which were examined by assessing

officer. To substantiate his claim the assessee submitted copy TDS returns filed, Proof of TDS deduction. Furthermore, the assessee submitted copy of books of Design Workshop -Jawahar Mori for contra confirmation.

5. However, the assessing officer rejected the above contention of the assessee, and noted that documents submitted by the assessee are not genuine, as the same were unsigned. As per the information available on record, it was observed by the assessing officer that the assessee has made cash payment of Rs. 8,00,000/- to Shri Jawahar Mori during the Financial Year 2012-13 and the explanations offered by the assessee in this regard appears only a make-shift arrangement. Therefore, as shown in the loose paper found and impounded during the course of survey at the premises of Shri Jawahar Mori, as part of operation "Encore" carried out on 16.10.2014, the assessee has made cash payment of Rs. 8,00,000/- to Shri Jawahar Mori during the year under consideration. Once, the department has a clear and unmistakable evidence of cash payment, the onus was on the assessee to prove with satisfactory evidence that the said cash payment was not done. The assessee has failed to discharge this onus, and therefore the amount of cash payment Rs.8,00,000/- made to Shri Jawahar Mod was treated as income from undisclosed sources and added to the total income of assessee.

6. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the CIT(A), who has confirmed the action of the Assessing Officer. The ld. CIT(A) observed that the reopening of the assessment is valid under section 147 of the Act, if the Assessing Officer has a reasonable belief that income has escaped assessment. In assessee's case, the Assessing Officer acted upon specific information received from the DCIT Central Circle-1, Rajkot. which led to the reopening of the

assessment. The fact that there were discrepancies in the accounting records and some unsubstantiated entries in the loose papers warranted further investigation.

7. On merit, the learned CIT(A) noticed that assessee's claim that payments were made entirely through banking channels, supported by TDS deductions, has been duly examined, however, the Assessing Officer has raised valid concerns regarding the timing of the journal entries and the documentary evidence provided. The assessee's explanations were found to be inconsistent and lacking in corroborative evidence, such as the TDS certificate. It is well settled that the onus is on the assessee to prove the genuineness of the transactions and the non-existence of cash payments. The assessee failed to discharge this onus by providing sufficient documentary evidence to support its claim that no cash payments were made. The assessee could not substantiate its claim with the necessary documents such as the TDS return, challan of TDS payment, or contra accounts from Shri Jawahar Mori's books. In view of the above facts and findings, the reopening of the assessment was justified, and the addition made by the Assessing Officer is based on valid reasons. Therefore, the addition of Rs. 8,00,000/- to the total income of the assessee for the assessment year 2013-14 was upheld by ld. CIT(A).

8. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before this Tribunal.

9. Learned Counsel for the assessee, at the outset, argued on the technical ground of reopening under section 147/148 of the Act stating that the assessee's case under consideration pertains to assessment year (A.Y.\_ 2011-12, however, the reasons were recorded by the Assessing Officer for assessment year (A.Y.) 2013-14, hence reasons recorded by

the assessing officer are invalid, therefore, reassessment proceedings initiated against the assessee, may be quashed.

10. 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.

11. I have heard the rival parties and have gone through the material placed on record. For the sake of clarity and also being pertinent, I reproduce, reasons recorded by the assessing officer for reopening the assessment, under section 147 of the Act, as follows:

ANNEXURE  
WHERE NO REGULAR ASSESSMENT WAS MADE U/S 143(3)/147

Name of the Assessee:	M/s Dream Infrastructure
Address of the Assessee:	Mavdi survey No. 358, B/H Mavdi Village, Kankot Road, Mavdi, E-Mail: dhiren.lotia@yahoo.co.in
PAN of the Assessee:	AAHFD2565L
Assessment Year:	2013-14
Details of the Assessing officer having jurisdiction over the Assessee:	DCIT, Cir-3(1), Rajkot

Reasons for reopening of the assessment in case of M/s Dream Infrastructure for A.Y. 2013-14 u/s 147 of the Act.

- The assessee company is engaged in the business of civil construction. The assessee has filed return of income for the A.Y. 2013-14 on 05/09/2013 and same has been processed u/s 143(1) of the I.T. Act. on 13/03/2014. The case was not selected for scrutiny assessment.
- The DCIT central Circle-1 Rajkot vide his letter dated 15/01/2018 passed on information regarding cash transaction between Shri Jawahar Mori (Architect) & M/s. Dream Infrastructure for A.Y. 2013-14 i.e. F.Y. 2012-13 as per loose papers found & impounded during the course of survey carried out at the premises of Shri Jawahar Mori as part of search operation "Encore" carried out on 16/10/2014.
- Page No. 5 of Annexure A-1 shows various noting regarding cash/cheque payments made. The noting belonging to M/s. Dream Infrastructure where Shri Jawahar Mori was associated as consultant architect is given below:

Sr. No.	Narration of page 5	Amount
1	Total	18 lakhs
2	Less	5 lakhs
3	Bill	5 lakhs
4	Cash	8 lakhs

- Perusal of the noting found in on Annexure-1 page-5 and the fact narrated above in the above para, give reasons to believe that M/s. Dream Infrastructure has paid total 18lakhs which includes Rs. 8 lakhs to Shri Jawahar Mori for rendering services. Hence the case needs to be reopened u/s. 147 to examine whether these transactions have been reflected or not in the books of the assessee and if recorded the cash transaction of Rs. 8lakhs needs to be examined from the point of disallowances u/s. 40A(3) of the IT Act and u/s. 40a(ia) of the IT Act,1961.
- The case needs to be reopened u/s. 147 of the I.T. Act for A.Y. 2013-14 and there has been escapement of income to the extent of Rs. 8 lakhs as mentioned in para 3 above. The receipt of Rs. 8 Lacs has been added as income of Shri Jawahar Mori during the course of assessment by the DCIT, Central Circle-1, Rajkot

6. 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 in para 2. (Refer paragraphs 2)
7. It is pertinent to mention here that in this case the assessee has filed return of income for the year under consideration but no assessment as stipulated u/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, provisions of clause (b) of explanation 2 to section 147 are applicable to facts of this case and the assessment for the year under consideration is deemed to be a case where income chargeable to tax has escaped assessment.
8. This case is within four years from the end of the assessment year under consideration i.e. 2013-14. Hence necessary sanction to issue the notice u/s 148 needs to be obtained from Joint / Addl. Commissioner of Income tax as per the provision of the section 151 of the I.T. Act.  
Or  
~~In this case more than four years have lapsed from the end of assessment year under consideration. Hence necessary sanction 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.~~
9. It is therefore requested to kindly grant permission to reopen the case u/s 147 of the I.T. Act and necessary permission to issue notice u/s 148 of the I.T. Act may also be granted.

(Nayana Krishna Kumar)  
Deputy Commissioner of Income Tax,  
Circle-3(1), Rajkot

Encl:  
1. Copy of return of income for the A.Y. 2013-14  
2. Copy of letter received from Central Circle.

(Nayana Krishna Kumar)  
Deputy Commissioner of Income Tax,  
Circle-3(1), Rajkot

12. I have gone through the above reasons recorded by the assessing officer and observed that these reasons were recorded in the assessee's case for assessment year 2013-14, and the instant assessee's appeal before this Tribunal, is pertaining to assessment year 2011-12. Therefore, the reasons recorded by the Assessing Officer for assessment year (A.Y.) 2011-12, which basically pertains to A.Y. 2013-14, cannot be used for reopen the assessment for assessment year 2011-12. Hence, reasons recorded for the year under consideration, that is, for A.Y. 2011-12 are bad in law and therefore, assessment order should be quashed.

13. Therefore, I note that the Assessing Officer recorded the reasons for the A.Y. 2013-14 which is mentioned in the reasons recorded by the Assessing Officer, reproduced above. Hence, these reasons recorded by the Assessing Officer does not pertain to A.Y. 2011-12. It is a settled principle of law that only a right person as per the Act, is liable to pay tax on his income in the right assessment year. Hence, there is no escapement of income in the assessee's case under consideration for assessment year

2011–12. Since the reasons record by the Assessing Officer does not pertain to the A.Y. 2011-12, therefore, I quash the reassessment proceedings for A.Y. 2011-12.

14. In view of the reasons set out above, as also bearing in mind entirety of the case, I am of the considered view that the reasons recorded by the Assessing Officer, as set out earlier, were not sufficient reasons for reopening the assessment proceedings, for assessment year 2011–12. I, therefore, quash the reassessment proceedings. As the reassessment itself is quashed, all other issues on merits of the additions, in the impugned assessment proceedings, are rendered academic and infructuous.

15. In the result, the appeal filed by the assessee is allowed.

Order is pronounced in the open court on 04/12/2025

Sd/-  
(Dr. A.L. SAINI)  
ACCOUNTANT MEMBER

Rajkot

दिनांक/ Date: 04/12/2025

**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