



आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट।
IN THE INCOME TAX APPELLATE TRIBUNAL, "SMC"
RAJKOT BENCH, RAJKOT

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

आयकर अपील सं. /ITA No.843/RJT/2024
निर्धारण वर्ष/Assessment Year : 2018-19

Shri Ikabalbhai Jumabhai Khirani Kalpesh S. Doshi and Co. Chartered Accountants 1006-09, The Spire 2, Sheetal Park BRTS Stand, 150ft Ring Road, Rajkot, Gujarat - 360005	बनाम/ Vs	Income Tax Officer Ward – 1(2)(1), IT office, New Aaykar Bhavan, Vatiaka, Rajkot (Guj) - 360001
स्थायी लेखासं./जीआइआरसं./PAN/GIR No.: DXCPK9698N		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से/Assessee by : Shri Kalpesh Doshi, Ld. AR
राजस्वकी ओर से / Revenue by : Shri Dheeraj Kumar Gupta, Ld. Sr. DR

सुनवाई की तारीख/**Date of Hearing** : **11/09/2025**
घोषणा की तारीख/**Date of Pronouncement** : **04/12/2025**

आदेश/Order

Per, Dr. Arjun Lal Saini, A.M

Captioned appeal filed by the assessee, pertaining to Assessment Year 2018-19, is directed against the order 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 30.08.2024, which



in turn arises out of an order passed by Assessing Officer u/s. 147 r.w.s. 144B of the Act, on 14.03.2023.

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

- “1. That, the notice u/s 148 of the I.T. Act issued by the Jurisdictional Officer is invalid and without jurisdiction under the faceless scheme and therefore the reopening is bad-in-law.
2. The Ld. CIT(A) has wrongly confirmed reopening of assessment u/s 147 of the I.T. Act, 1961.
3. That, the Ld. CIT(A) has wrongly passed the order without providing proper opportunity of being heard.
4. The Ld. CIT(A) has wrongly confirmed addition of Rs. 31,99,980/- on account sale of shops without granting cost of construction and also wrongly taxed under the head capital gain instead of business income u/s 44AD of the I.T. Act
5. The Ld. CIT(A) has wrongly confirmed addition of Rs. 1,75,000/- regarding Income from Other Sources.
6. The Ld. CIT(A) has confirmed levy of interest u/s 234A, 234B, 234C and 234D of the I.T. Act, 1961.
7. The Ld. CIT(A) has wrongly confirmed initiation of penalty u/s 270A of the I.T. Act, 1961.”

3. The facts of the case which can be stated quite shortly are as follows: The assessee has filed return of income for assessment year (AY) 2018-19. In assessee's case, information received from Insight Portal that the assessee has sold immovable property for a consideration of Rs. 96,00,000/- during the financial year 2017-18 relevant to the assessment year 2018-19. On going through the return of income filed by the assessee for assessment year (AY) 2018-19, it was noticed that sale of above immovable property does not corroborate with the figures disclosed in the return of income. In view of the above transactions in immovable property, the Jurisdictional



Assessing Officer (JAO) has reopened the case for the AY 2018-19 and notice u/s 148 of the Act dated 31.03.2022, was served on the assessee's registered e-mail after obtaining the approval of the competent authority. Subsequently, the assessee's case has been transferred to the assessing officer for completion of assessment proceedings u/s 144B of the Act by the NFAC. Subsequent to the notice u/s.148 of the Act, assessee's case was assigned to the Faceless assessment proceedings u/s 147 r.w.s 144B of the Act. Accordingly, assessee has been issued notice u/s. 142(1) of the Act dated 06.10.2022 by the assessing officer calling for details such as financial statements annexures thereto statutory audit report, ledger copies, capital account, computation of total income, Form 26AS, ledger copies, all bank account statements held in assessee's name etc.

4. In response to the notice of the assessing officer, the assessee furnished the information on 01.11.2022. The assessee filed return of income in response to the notice u/s 148 of the Act. In response to the notice u/s 142(1), the assessee has furnished bank account statement, computation of total income, copy of sale deed copy 1A and 1B which is written in regional language and copy of ITR in response to the notice u/s 148 of the Act was also furnished. The assessee in his submissions explained that his main business is purchase of land to do constructions on it and sale the constructed property and further stated that his source of income is construction of building, hence income derived by selling constructed property is business income only and copies sale deed of construction of shop (in Gujarathi Language) of one shop and gross revenue from sale of shops are 33,75,000/- for one shop only which is taken as turnover. With regard to sale of immovable property for a consideration of Rs. 96,00,000/- the assessee stated those details are not found in his record and requested the undersigned to provide such sale consideration. As the



assessee has not responded to the assessing officer, therefore, as a principle of natural justice, the sale deed copy provided by the SRO and by the buyer of the property have been verified and found that the assessee sold the property for a consideration of Rs. 32,00,000/-. On further verification of the copy of purchase deed of the property, it was noticed that the assessee has originally purchased the property on 03.05.2014 and registered with the SRO vide sale deed No. 2247. During the course of assessment proceedings, the assessee has not explained the source of income for the purchase of original property. Hence, the assessing officer as a principle of natural justice, considered the cost of purchase of original property at Rs. 10/- in FY 2014-15 and calculated the indexed cost of acquisition of the property at Rs. 12/- and arrived at net capital gain income of Rs. 31,99,988/- (Rs. 32,00,000/- Rs 12). Accordingly, an amount of Rs. 31,99,988/- was added to the total income under the head Capital Gain income instead of business income rejecting the assessee's contention of the business income. During the course of assessment proceedings, the assessee filed computation of total income wherein the assessee has admitted under the business head u/s 44AD of the Act, Gross Receipts (banking channel) is Rs. 32,00,000/- and an amount of Rs. 1,75,000/- (other mode) aggregating to Rs 33,75,000/- but not explained about the nature of the receipt of income by other mode during the course of hearing. Therefore, amount of Rs. 1,75,000/- (Rs 33,75,000- Rs. 32,00,000) was considered under income from other Sources and added to the total income.

5. Aggrieved by the order of the assessing officer, the assessee carried the matter in appeal before the Ld. CIT(A) who has dismissed the appeal of the assessee, on merit, and Id.CIT(A) also dismissed the technical ground raised by the assessee, challenging the reopening of assessment under section 147/148 of the Act. During



the appellate proceedings, the assessee submitted that the assessing officer was wrong on two counts in issuance of notice u/s 148 of the Act, as in his order passed u/s 148A(d) of the Act, the AO, had mentioned that assessee had purchased the alleged immovable property based on the Return of Income filled by the assessee. However, neither did the assessee file his return u/s 139 of the Act, nor was the alleged transaction a purchase transaction. The assessee had filed return in response to the notice issued by the assessing officer u/s 148 of the Act and the alleged transaction was sale of immovable property and not of purchase thereof. The Id.CIT(A) examined the contentions of the assessee, and it was found that if the assessee had not filled his ITR for the concerned Assessment Year as per the provisions of Section 139 of the Act then, all the more, the alleged transactions entered into by the assessee with respect to sale of immovable property become income escaping assessment in his hands. Further, the Id.CIT(A) noticed that the transaction was of purchase of immovable property or sale of immovable property would not make any difference when the assessee was a non-filer, and in both cases the income escaping assessment to the tune of Rs.32,00,000/- exists and therefore re-opening made by the assessing officer u/s 147 of the Act, by way of issuance of notice u/s 148 of the Act, was correct.

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

7. 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.Learned Counsel for the assessee submitted that



the reasons recorded by the assessing officer are defective and for that Ld. Counsel for the assessee took me through the reasons recorded by the assessing officer, which are placed at paper book page no.22 and stated that in the reasons recorded it is mentioned the terminology (sale by any person) which is a general observation which is not applicable to the assessee under consideration. Further, Ld. Counsel for the assessee took me through para no.5 of the reasons recorded which are reproduced below:

“5. As per information available with this office, you had sold immovable property(ies) during the year, details of which are as under:

<i>Information Description</i>	<i>Source</i>	<i>Amount Description</i>	<i>Amount</i>
<i>Sale by any person immovable of property</i>	<i>Sub Registrars Gondal</i>	<i>Transaction amount related to the person</i>	<i>96,00,000/-</i>
	<i>Total</i>		<i>96,00,000/-</i>

Thus there is an escapement of Rs. 96,00,000/-/- as per provisions of section 50C of the IT Act and is required to be taxed as unexplained receipt in the hands of the assessee. In view of this I have reason to believe that there is failure on the part of the assessee to disclose above referred transaction which has resulted into escapement of income to the extent of Rs. 96,00,000/-/- within the meaning of section 147 of the I.T. Act, 1961. Therefore this is a fit case for issue of notice u/s, 148 of the I.T. Act.”

Therefore, Ld. Counsel for the assessee submitted that reasons recorded by the assessing officer, did not mention assessee’s name.

8. The Ld. Counsel also submitted that the amount mentioned in the reasons recorded was Rs.96,00,000/- but, the assessing officer made addition to the tune of Rs.32,00,000/-, after allowing indexed cost of accusation. That is, reasons were recorded for Rs. Rs.96,00,000/-, whereas true, and actual amount was to the tune of Rs.32,00,000/-. Therefore, the amount mentioned in the reasons recorded have not been added in the hands of the assessee. Therefore, initial action of the assessing officer in the reason recorded, is itself bad in law.



9. The Ld. Counsel also submitted that in the reasons recorded, it is specially mentioned that the assessee's case pertains to Section 50C of the Act. However, in the assessee's case Section 50C of the Act is not applicable. In the reasons recorded, the assessing officer mentioned that assessee has purchased the property, whereas, the true facts are that assessee had sold the property. In the reasons recorded, it is mentioned that assessee has filed the return of income, however, the true fact is that assessee has never filed the return of income under section 139(1) of the Act. Therefore, Ld. Counsel contended that the reasons recorded are vague and, therefore, assessment order passed by the assessing officer may be quashed. For that Ld. Counsel for the assessee relied on the judgment of the Co-ordinate Bench of ITAT Kolkata in the case of Aviral Marketing Pvt. Ltd. vs. DCIT in ITA No.1423/Kol/2025, wherein it was held as follows:

“7. After hearing the rival contentions and perusing the materials available on record, we find that in this case, the Assessing Officer recorded reasons u/s 148 for reopening of the assessment observing that the assessee has advanced money to M/s Startrack Vinimay Pvt. Ltd. of Rs.1,00,00,000/- and therefore, he noted that the said amount has escaped assessment. Whereas the fact of the matter is that the assessee has received the unsecured loan from the said party during the year which was also repaid during the year itself. The copy of the reasons recorded is available at page no.14 of the paper-book. The assessee has also filed the copy of bank statement which is available at page no.24 of the paper-book which clearly reveals that the assessee has taken unsecured loan of Rs.50 lacs on 21.05.2022 by way of two entries of Rs.25,00,000/- each and on 25.05.2011 Rs.50 lacs by way of two entries of Rs.25,00,000/- each. Meaning thereby that the assessee has borrowed Rs.1,00,00,000/- on 09.06.2011 which was repaid by the assessee on 13.06.2011 by making repayments of Rs.75,00,000/- and Rs.25,00,000/- respectively. Therefore, we find merit in the contention of the assessee that the reopening has been made up on the basis of wrong reasons which are totally vague, wrong and scanty. In our view, the assessment cannot be reopened on the basis of such reasons as has been held by the Hon'ble Delhi High Court in the case of CIT vs. Insecticides (India) Ltd. (supra), the relevant part of the decision of the Hon'ble Delhi High Court is extracted as under:

“7. We may point out at this juncture itself that the Tribunal did not go into the question of merits. It only examined the question of the validity of the proceedings under Section 147 of the said Act. The Tribunal, in essence, held that the purported reasons for reopening the assessments were entirely vague and devoid of any



material. As such, on the available material, no reasonable person could have any reason to believe that income had escaped assessment. Consequently, the Tribunal held that the proceedings under Section 147 of the said Act were invalid.

8. The Tribunal gave detailed reasons for concluding that the proceedings under Section 147 were invalid. Instead of adding anything to the said reasons, we think it would be appropriate if the same are reproduced:-

"In the case at hand, as is seen from the reasons recorded by the assessing officer, we find that the assessing officer has merely stated that it has been informed by the Director of Income-tax (Inv.), New Delhi, vide letter dated 16.06.2006 that the above named company was involved in giving and taking bogus entries/transactions during the relevant year, which is actually unexplained income of the assessee company. The assessing officer has further stated that the assessee company has failed to disclose fully and truly all material facts and source of these funds routed through bank account of the assessee company. In the reasons recorded, it is nowhere mentioned as to who had given bogus entries/transactions to the assessee or to whom the assessee had given bogus entries or transactions. It is also nowhere mentioned as to on which dates and through which mode the bogus entries and transactions were made by the assessee. What was the information given by the Director of Income-tax (Inv.), New Delhi, vide letter dated 16.06.2006 has also not been mentioned. In other words, the contents of the letter dated 16.06.2006 of the Director of Income-tax (Inv.), New Delhi have not been given. The assessing officer has vaguely referred to certain communications that he had received from the DIT(Inv.), New Delhi; the assessing officer did not mention the facts mentioned in the said communication except that from the informations gathered by the DIT (Inv.), New Delhi that the assessee was involved in giving and taking accommodation entries only and represented unsecured money of the assessee company is actually unexplained income of the assessee company or that it has been informed by the Director of Income-tax (Inv.), New Delhi vide letter dated 16.06.2006 that the assessee company was involved in giving and taking bogus entries/transactions during the relevant financial year. The assessing officer did not mention the details of transactions that represented unexplained income of the assessee company. The information on the basis of which the assessing officer has initiated proceedings u/s 147 of the Act are undoubtedly vague and uncertain and cannot be construed to be sufficient and relevant material on the basis of which a reasonable person could have formed a belief that income had escaped assessment. In other words, the reasons recorded by the assessing officer are totally vague, scanty and ambiguous. They are not clear and unambiguous but suffer from vagueness. The reasons recorded by the assessing officer do not disclose the assessing officer's mind as to what was the nature and amount of transaction or entries, which had been given or taken by the assessee in the relevant year. The reasons recorded by the



assessing officer also do not disclose his mind as to when and in what mode or way the bogus entries or transactions were given or taken by the assessee. From the reasons recorded, nobody can know what was the amount and nature of bogus entries or transactions given and taken by the assessee in the relevant year and with whom the transaction had taken place. As already noted above, it is well settled that only the reasons recorded by the assessing officer for initiating proceedings u/s 147 of the Act are to be looked at or examined for sustaining or setting aside a notice issued u/s 148 of the Act. The reasons are required to be read as they were recorded by the assessing officer. No substitution or deletion is permissible. No addition can be made to those reasons. Therefore, the details of entries or amount mentioned in the assessment order and in respect of which ultimate addition has been made by the assessing officer, cannot be made a basis to say that the reasons recorded by the assessing officer were with reference to those amounts mentioned in the assessment order. The reasons recorded by the assessing officer are totally silent with regard to the amount and nature of bogus entries and transactions and the persons with whom the transactions had taken place. In this respect, we may rely upon the decision of Hon'ble jurisdictional Delhi High Court in the case of CIT vs. Atul Jain (2000) 299 ITR 383, in which case the information relied upon by the assessing officer for initiating proceedings u/s 147 of the Act did indicate the source of the capital gain and nobody knew which shares were transacted and with whom the transaction has taken place and in that case there were absolutely no details available and the information supplied was extremely scanty and vague and in that light of those facts, the Hon'ble Jurisdictional Delhi High Court held that initiation of proceedings u/s 147 of the Act by the assessing officer was not valid and justified in the eyes of law. The recent decision of Hon'ble jurisdictional High Court of Delhi in the case of Signature Hotels (P) Ltd. (supra) also supports the view we have taken above."

9. We do not see any reason to differ with the view expressed by the Tribunal. No substantial question of law arises for our consideration. The appeals are dismissed. There shall be no order as to costs."

7.1 Similarly, in the case of PCIT vs. Meenakshi Overseas (P) Ltd. (supra), the Hon'ble Delhi High Court held that there is no independent application of mind by the Assessing Officer to the tangible material which form the basis of reasons to believe that income has escaped assessment and further held that the conclusions of the Assessing Officer are at best a reproduction of the conclusion in the investigation report and indeed it is a borrowed satisfaction as the reasons fail to demonstrate the link between the tangible material and the formation of the reasons to believe that income has escaped assessment.

7.2 Similarly, in the case of PCIT vs. G & G Pharma India Ltd. (supra), the Hon'ble Delhi High Court has held as under:



“13. Mr. Sawhney took the Court through the order of the CIT(A) to show how the CIT (A) discussed the materials produced during the hearing of the appeal. The Court would like to observe that this is in the nature of a post mortem exercise after the event of reopening of the assessment has taken place. While the CIT may have proceeded on the basis that the reopening of the assessment was valid, this does not satisfy the requirement of law that prior to the reopening of the assessment, the assessing officer has to, applying his mind to the materials, conclude that he has reason to believe that income of the Assessee has escaped assessment. Unless that basic jurisdictional requirement is satisfied a post mortem exercise of analysing materials produced subsequent to the reopening will not rescue an inherently defective reopening order from invalidity .”

7.3 Accordingly, by following the above ratio laid down by the Hon'ble High Court, we are inclined to quash the reopening of the assessment made by the Assessing Officer. The legal issue raised in the Ground Nos.1 & 2 is allowed.”

10. On the other hand, Ld. DR for the Revenue, argued that reasons were recorded by the assessing officer, as per new Scheme of Section 147/148A of the Act. The Ld. DR, further submitted that the assessing officer has followed procedure given in the Act, therefore, reasons recorded by the assessing officer are in accordance with the provisions of the Act.

11. I have considered the submissions of both the parties. The assessment of the assessee is reopened by way of issuing notice u/s 148 of the Act. The Assessment has been merely reopened on the basis of information received from the sub registrar, Gondal, regarding a transaction amounting to Rs 96,00,000/-. The sub -registrar office maintains the records of property transactions including the sale of immovable properties. The re-opening is based on the basis of the information received from sub- registrar, Gondal. The notice u/s 148 of the Act has been issued on 31/03/2022 proposing to assess/reassess the income stating that there is reason to believe that income chargeable to tax for assessment year (AY) 2018-19, has escaped assessment within the meaning of section 147 of the I.T. Act, 1961. In the reasons for the



reopening of the assessment, the Ld. assessing officer has observed the following transactions during the F.Y.2017-18 related to A.Y. 2018-19.

<i>Information Description</i>	<i>Source</i>	<i>Amount Description</i>	<i>Amount (Rs.)</i>
<i>Sale by any person of immovable property</i>	<i>Sub Registrar Gondal</i>	<i>Transaction amount related to the person</i>	<i>96,00,000/-</i>

As per the above table, the "Information Description" column has stated "Sale by any person of immovable property". In this regards, I note that the clause "**Sale by any person of immovable property**" has not been specified whether sale pertain to the assessee or a third person. Further, the notice issued u/s 148A(b) only mentioned the word "**any person**", which is general and has not clarified who is involved in the transaction, whether the assessee is the party involved in the sale or whether it refers to any another person. The failure to specify whether the assessee is involved in the sale, makes the grounds for reopening of the assessment, incorrect and bad in law.

12. Further, the "**Amount Description**" column in the above table has mentioned "**Transaction amount related to the person**" but not specified whose transaction it is. Whether transaction amount is related to the assessee or any third person, therefore, failure to specify the name of the assessee makes the reasons recorded, incorrect.

13. Further, I note that in the reasons recorded, the description has not clarified what is the nature of transaction, and has also not clarified whether the transaction is related to purchase or sale of immovable property.



14. Further, the Ld. assessing officer has stated in the last column of the above table, that the amount of Rs. 96,00,000/-, as escaped assessment, which is also incorrect.

15. It is settled principle that the reason for reopening is the basis of assessment, the reason is the foundation of the entire reopening proceedings. The assessing officer has to demonstrate by way of reason that there is escapement of income and it has to be based, on his own belief, and the assessing officer cannot take action merely on the basis of borrowed satisfaction. Therefore, the notice has not provided sufficient information to ascertain whether the assessee is involved in a sale or a purchase of the transaction. Therefore, all this information on the basis of which the reopening has been made is totally incorrect information. Therefore, the reasons recorded by the Ld. assessing officer are erroneous and fictitious. The reasons are recorded on completely wrong factual premises as there was no live link with the formation of belief for reopening of assessment u/s 148 of the I.T. Act. The Hon'ble Supreme Court in the case of CIT v. Kelvinator of India Ltd. (187 Taxman 312) held that Assessing Officer has power to reopen, provided there is 'tangible material' to come to conclusion that there is escapement of income from assessment; reasons must have a live link with formation of belief. Thus, it is clearly evident from the above that Ld. assessing officer in reasons recorded, proceeded on erroneous footing and the very foundation of the reopening is vague. On identical facts, reliance can be placed on judgement of jurisdictional High Court of Gujarat in the case of Amar Jewellers Ltd. vs. DCIT [2018] 92 taxmann.com 4 (Guj.), where in it was held that a plain reading of the reasons recorded for reopening the assessment reveals that the basis for formation of belief that the transaction made by the assessee with MSTC is bogus in nature is that AJ and PJ admitted to carrying on the business of giving accommodation entries in the names of various entities and upon verification it was



found that one such entity handled by them was MSTC. As noted hereinabove the information which was received by the Assessing Officer nowhere disclosed that MSTC was an entity handled by AJ and PJ. All that was disclosed was that MSTC was linked with JC and that PJ had accepted that he had financial transactions with JC which was a concern operated by a cheque discounter and he used to give him cash and in return, he used to get cheques/RTGS through JC. Thus, no nexus has established between AJ and PJ who had made the statements under section 131 and MSTC. Thus, the reasons are based upon a factually incorrect premise that MSTC was being handled by AJ and PJ, thus, the absence of any material on record to indicate any nexus between MSTC and AJ and PJ, erodes the very substratum for formation of belief that income had escaped assessment. Consequently, once there is no foundation for such belief, the reasons based thereupon have no legs to stand hence; on the reasons recorded, the Assessing Officer could not have formed the belief that any income chargeable to tax has escaped assessment. Therefore, the assumption of jurisdiction on the part of the Assessing Officer under section 147 to reopen the assessment by issuing the impugned notice under section 148 was without authority of law, which renders the impugned notice unsustainable.

16. It is clear that Assessing Officer had no material to suggest that assessee had purchased property at Rs. 96,00,000/-, therefore notice for reopening assessment was based on completely wrong reasons. 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. 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.

17. In the result, the assessee's appeal is allowed in the terms indicated above.

18. In view of the aforesaid reasons, the impugned reassessment proceedings deserved to be quashed, and accordingly, I quash the same.

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

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

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

राजकोट /Rajkot
दिनांक/ Date: 04/12/2025

By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण, राजकोट