

IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.345/SRT/2025

Assessment Year: (2011-12)

(Hybrid hearing)

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| Vanmalibhai Muljibhai Patel, L/H of Ranjanben Deepakbhai Patel 16, Shrinikunj Society, Ashabaug, Navsari - 396445 | Vs. | ITO, Ward - 5, Navsari |
| स्थायीलेखासं./जीआइआरसं./PAN/GIR No: ABJPP3114G | | |
| (अपीलार्थी/Appellant) | | (प्रत्यर्थी/Respondent) |

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| Appellant by | Shri Suresh K. Kabra, CA |
| Respondent by | Ms. Jayshree Thakur, Sr. DR |
| Date of Hearing | 23/09/2025 |
| Date of Pronouncement | 04/12/2025 |

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

This appeal by the assessee emanates from the order passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), dated 15.01.2025 by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'CIT(A)'] for the Assessment Year (AY) 2011-12.

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

"1. The Ld CIT(A), NFAC has erred and was not just and proper on the facts of the case and in law in not adjudicating on the issue of Notice (29/03/2018) u/s 148 in the name of DECEASED (Expiry on 10/04/2015).

2. The Ld CIT(A), NFAC has erred and was not just and proper on the facts of case and in law in the case "SETTING ASIDE" the matter without adjudicating the Legal issue of Notice to Deceases.

3. *The Ld. Assessing Officer was not having proper jurisdiction as the case was transferred from SURAT to NAVSARI without following the procedure u/s 127 of the Act.*

4. *The Ld Assessing Officer has erred and was not proper on the facts of the case and in law in directing to charge Interest u/s 234B/C, insofar as the assessee is a Senior Citizen not liable for Advance Tax under the Act.*

5. PRAYER:

5.1 *The notice u/s 148 may be kindly quashed.*

5.2 *The issue may adjudicated.*

5.3 *The transfer of case to Navsari bel and passing of Assessment Order without jurisdiction may kindly quashed.*

5.4 *The direction to charge Interest u/s 234B/C may cancelled.*

5.5 *Personal hearing may be granted.*

5.6 *Any other relief that honours may deem fit may granted.*

6. *The assessee craves leave to add, amend, modify alter or delete any of the grounds at the time of hearing.”*

3. The facts of the case in brief are that the assessee did not file return of income for AY 2011-12. As per the AIR information, the assessee had made cash deposits in his savings bank accounts during the year under consideration. After recording the reasons, the case was reopened u/s 147 of the Act by issuing notice u/s 148 of the Act on 29.03.2018 with prior approval of the competent authority. In response, the assessee did not file his return of income. Various statutory and show notices were issued and served upon the assessee, but the assessee failed to respond the notices. Due to repeated non-compliance to the notices, a final show cause notice was issued to the assessee. In reply, the legal heir of the assessee submitted that his son expired on 10.04.2015. The legal heir of the assessee did not respond to the

notices issued by the Assessing Officer (in short, 'AO'). The AO, thereafter, found that the assessee had deposited cash of Rs.25,50,000/- in his savings bank a/c maintained with Axis Bank and there were also credit entries of Rs.11,553/-. Despite ample opportunities given to the assessee, he could not explain about the huge cash deposit. Therefore, the AO was treated cash of Rs.25,50,000/- as unexplained cash credits and Rs.11,553/- as unexplained credit entries. The AO passed order u/s 144 r.w.s. 147 of the Act by computing total income of Rs.25,61,553/-. Penalty proceedings u/s 271(1)(c) r.w.s. 274 of the Act was also separately initiated.

4. Aggrieved by the order of AO, the assessee filed appeal before the CIT(A). The appellant raised various grounds of appeal before the CIT(A), which are at pages 2 of the appellate order. The CIT(A) reproduced the submission of the appellant, which is at pages 3 to 7 of the appellate order. The CIT(A) condoned the delay of 119 days and admitted the appeal for hearing on merit. The appellant challenged to re-opening notice and re-assessment proceedings before the CIT(A). The CIT(A) referred to the decisions of Hon'ble Supreme Court in case of Anshul Jain vs. Pr. CIT, (2022) 143 taxmann.com 38 (SC) and decision of Hon'ble Allahabad High Court in case of Vivek Saran Agarwal vs. UOI, (2023) 157 taxmann.com 80 (Allahabad) and observed that the grounds raised by the appellant in challenging the jurisdiction and procedure do not stand the test of merit. The CIT(A)

observed that during assessment proceedings, ample opportunities were given to the assessee, but he failed to file any documentary evidences as well as prove source of cash deposits. He referred to section 251(1) of the Act wherein it is stipulated that in cases where an order was passed as a 'best judgment' assessment u/s 144 of the Act, the CIT(A) is vested with the authority to set aside such assessment and remand the matter to AO for fresh evaluation. He also referred to the decision of Hon'ble Supreme Court in case of CIT vs. Anjum M H Ghaswala, (2001) 252 ITR 1 (SC) wherein it was held that charging of interest u/s 234A/B/C is mandatory and not at the discretion of the AO. Accordingly, he set aside the order of AO for de novo adjudication.

5. Aggrieved by the order of the CIT(A), the assessee filed appeal before the Tribunal. The learned Authorized Representative (Id. AR) of the assessee submitted paper books including copies of the notice u/s 148 dated 29.03.2018, notice u/s 142(1) dated 23.08.2018, submission u/s 148 dated 26.07.2018 and copy of death certificate of the assessee (date of death 10.04.2015). He submitted that the assessee had expired on 10.04.2015, but the notice u/s 148 of the Act was issued much later by the AO on 29.03.2018. Thus, notice was issued on a dead person. He also submitted that the AO was intimated twice about the death of Shri Vanmalibhai Mulibhai Patel. The Id. AR relied on the decision of Gujarat High Court in case of Rashid Lala vs. ITO,

(2017) 77 taxmann.com 39 (Guj.) wherein it was decided that the re-opening was not valid under similar facts. In the said case, though it was pointed out by the heir of the deceased assessee that the assessee has expired long back and, therefore, the notice issued in her name and/or against a dead person is not valid, instead of taking corrective measures as provided under section 292B and to issue fresh notice against the legal heir of the deceased, the AO had continued with the reassessment proceedings against the dead person. Hence, the Hon'ble jurisdictional High Court set aside the notice issued u/s 148 of the Act. The assessee raised legal ground before the CIT(A) and contended that the assessment was void ab initio due to absence of notice u/s 148 of the Act. However, the CIT(A) simply set aside the order of AO and remanded the matter back to the file of AO without deciding the jurisdictional and legal grounds raised by the appellant.

6. On the other hand, learned Senior Departmental Representative (Id. Sr. DR) for the revenue supported the order of lower authorities.

7. We have heard both the parties and perused the materials available on record. We have also deliberated on the decision relied upon by Id. AR of the appellant. It is an undisputed fact that the appellant had raised five grounds of appeal before the CIT(A), which include jurisdictional and legal issues on validity of reopening and re-assessment proceedings. Such grounds are at serial Nos.1 and 2 of the grounds of appeal before CIT(A). The

appellant had made a submission that notice was issued to the deceased person on 29.03.2018, though the assessee had expired on 10.04.2015. The CIT(A) has reproduced submission of the assessee at pages 3 to 8 of the appellate order. However, he has not decided the validity of reopening on the jurisdictional issue and has simply dismissed the ground by stating that the AO issued notice based on tangible information available on record. Such decision by the CIT(A) is not correct because the merit of reopening is the second stage, the primary one being assumption of jurisdiction to reopen the case u/s 147 by issuing notice u/s 148 of the Act on a dead person. The said defect was not cured u/s 292B of the Act, as held by the Hon'ble High Court in case of Rashid Lala (supra). The AO proceeded without taking any corrective measure and completed the assessment u/s 144 r.w.s. 147 of the Act. During the appellate proceedings, the CIT(A) has also not decided the jurisdictional and legal grounds and has simply set aside the order of AO and referred the case back to AO for making a fresh assessment. The Id. AR submitted that the matter may be restored to the file of CIT(A) to decide the legal issue. The Id. Sr. DR has not opposed the contention of the Id. AR. The Co-ordinate Benches of Hyderabad in case of Eyegear Optics India Pvt. Ltd. vs. DCIT, in ITA No.1347 & 1291/Hyd/2024, dated 14.05.2025, held that where assessment was reopened in case of assessee u/s 147 of the Act and was completed u/s 144 of the Act disallowing some expenditures, the CIT(A)

instead of summarily setting aside matter to the file of AO for making fresh assessment, ought to have taken a call as regards specific ground based on which validity of jurisdiction was assumed by AO for framing re-assessment. The Tribunal set aside the order of CIT(A) and restored the matter to his file with a direction to adjudicate the specific jurisdictional ground. Further, under similar facts and circumstances, the ITAT, Surat in case of Prime Co-operative Bank Ltd. vs. ITO, in ITA No.19/SRT/2025, dated 10.11.2025 has set aside the order of CIT(A) and remand back to the file of CIT(A). Similarly, ITAT, Pune in the case of Shamrao Gopal Benake vs. ITO, in ITA No.1036/Pun/2025, dated 12.08.2025 has also set aside the order of CIT(A) and remanded the matter back to his file with a direction to decide the appeal afresh adjudicating all the grounds including legal grounds raised by the assessee. The ITAT, Hyderabad in case of Tours5 Com vs. ITO, 176 taxmann.com 496 held that the power to set aside order u/s 144 of the Act does not absolve the CIT(A) from adjudicating legal issues, particularly validity of jurisdiction assumed by AO for making assessment or reassessment. The facts of the instant appeal are similar to the facts of the cases cited supra. We do not find any reason to deviate from the findings of the co-ordinate Benches (supra). Therefore, we set aside the order of CIT(A) and remand the matter to his file with a direction to decide the appeal afresh by adjudicating of the jurisdictional and legal grounds raised by the appellant after providing

reasonable opportunity of being heard to assessee. Accordingly, appeal of assessee is allowed for statistical purposes.

8. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in accordance with Rule 34 of ITAT Rules, 1963 on 04/12/2025 in the open court.

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

Surat

दिनांक/ Date: 04/12/2025

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

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Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat