

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ  
IN THE INCOME TAX APPELLATE TRIBUNAL  
Visakhapatnam Bench, Visakhapatnam

Before Shri Ravish Sood, Judicial Member  
and  
Shri Balakrishnan S., Accountant Member

आ.अपी.सं /ITA No.584/Viz/2025  
(निर्धारण वर्ष/Assessment Year: 2016-17)

The Kanaka Mahalakshmi Cooperative Bank Limited, Visakhapatnam. PAN: AACFT6489J	Vs.	DCIT/ACIT, Circle-1(1), Visakhapatnam.
(Appellant)		(Respondent)

आ.अपी.सं /ITA No.572/Viz/2025  
(निर्धारण वर्ष/Assessment Year: 2016-17)

ACIT, Visakhapatnam.	Vs.	The Kanaka Mahalakshmi Cooperative Bank Limited, Visakhapatnam. PAN: AACFT6489J
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:	Ms. K. Chudamani, CA	
राजस्व द्वारा/Revenue by:	Shri Shahnawaz UL Rahman, CIT-DR	
सुनवाई की तारीख/Date of Hearing:	26/11/2025	
घोषणा की तारीख/Date of Pronouncement:	05/12/2025	

आदेश / ORDER

**PER. RAVISH SOOD, JM:**


The captioned cross-appeals filed by the assessee firm/revenue are directed against the order passed by the Commissioner of Income

Tax (Appeals), National Faceless Appeals Centre, Delhi, dated 22/07/2025 which in turn arises from the order passed by the Assessing Officer (for short, "Ld. AR") under section 147 r.w.s 144B of the Income Tax Act, 1961 (for short, "the Act"), dated 24/05/2023 for Assessment Year 2016-17. The assessee firm has assailed the impugned order of the CIT(A) on the following grounds of appeal:

1. "The order of the learned Commissioner of Income Tax (Appeals) is contrary to the facts and also the law applicable to the facts of the case.
2. The learned Commissioner of Income Tax (Appeals) erred in setting aside the matter back to the Assessing Officer (AO), without adjudicating any of the legal grounds raised by the Appellant questioning the jurisdiction of the learned AO, thus rendering the action of the learned Commissioner of Income Tax (Appeals) unsustainable in law.
3. The action of the learned Commissioner of Income Tax (Appeals) is not in accordance with the powers under Section 251 of the Income-tax Act, 1961, which only permits him to set aside orders of assessment made under Section 144 of the Act.
4. Any other ground that may be urged at the time of appeal hearing."

2. On the other hand, the department is aggrieved with the order of the CIT(A) on the following grounds of appeal:

- "1. The Order of the Ld. CIT(A), NFAC, Delhi is erroneous in law and to the facts of the case.
2. The Ld. CIT(A) had erred in setting aside the order of the assessment completed u/s.143(3) r.w.s. 147 r.w.s 144B of the Income Tax Act, in contravention to the provisions of section 251(1)(a) of the Income Tax Act, 1961.
3. The Ld. CIT(A) failed to appreciate the fact that the assessment was not made u/s.144 of the Act and erroneously set aside the assessment to the AO for fresh assessment.
4. The Ld. CIT(A) ought to have called for a remand report from the AO on the additional information furnished by the assessee during appellate proceedings and decide the case on merits.

ACIT vs. Kanaka Mahalakshmi Cooperative Bank Ltd. 

5. The Department craves leave to add or delete or amend or substitute any ground of appeal before and/or at the time of hearing of appeal.
6. For these and other grounds that may be urged at the time of appeal hearing, it is prayed that all these above additions be restored”.

3. Succinctly stated, the AO based on information that the assessee cooperative bank had made cash deposits of Rs.45 lakhs in its bank account No.006005000398 with ICICI Bank Limited in the names of its Deputy Managers, which on being queried was stated to have been done to facilitate discharging its liability by issue of Demand Drafts to its customers, the AO initiated proceedings under section 147 of the Act. An order under section 148A(d) of the Act, dated 29/06/2022, was passed by the AO. Thereafter, the AO issued notice under section 148 of the Act, dated 29/06/2022. In compliance, the assessee filed its return of income declaring an income of Rs. 6,70,23,220/-.

4. Thereafter, the AO vide his order under section 147 r.w.s 144B of the Act, dated 24/05/2023 determined the income of the assessee at Rs. 27,63,80,380/- after making certain additions, viz., (i) addition under section 68 of the Act on account of unexplained Demand Drafts issued by the assessee society: Rs.19,76,90,944/-; and (ii) addition under section 68 of the Act towards unexplained cash deposits in the bank accounts of the customers having no PAN/Aadhar/KYC details: Rs.1,16,66,219/-.

5. The assessee being aggrieved with the assessment order, carried the matter in appeal before the CIT(A), who observed that as the assessee bank had failed to substantiate its explanation regarding the source of the impugned additions made in its case viz., (i) addition under section 68 of the Act on account of unexplained "Demand Drafts" issued by the assessee bank: Rs.19,76,90,944/-; and (ii) addition under section 68 of the Act towards unexplained cash deposits in the bank accounts of the customers having no PAN/Aadhar/KYC details: Rs.1,16,66,219/-, therefore, the AO had added the said amounts as unexplained cash credits under section 68 of the Act. The CIT(A) observed that the assessee society had filed before him additional evidence under Rule 46A of the Income Tax Rules, 1962. The CIT(A) observed that as the assessment order was passed under section 147 r.w.s 144B of the Act, without affording a proper opportunity of being heard to the assessee bank, thus, in the interest of justice, set aside the matter to the file of the AO and allowed the appeal for statistical purposes.

6. Both the assessee and the revenue aggrieved with the CIT(A) order have carried the matter in appeals before us.

7. Ms. K. Chudamani, Chartered Accountant, the Learned Authorised Representative (for short, "Ld. AR") for the assessee bank,

at the threshold of hearing of the appeal submitted that the order passed by the CIT(A) suffers from serious infirmities. Elaborating on her contention, the Ld. AR submitted that though the assessee society had in context of the “Ground of appeal No.3” specifically assailed the validity of the notice issued by the AO under section 148 of the Act, dated 19/04/2021 based on multi facet reasons, viz., (i) that as the assessment in the case of the assessee bank was earlier framed under section 143(3) of the Act, dated 10/12/2018, wherein the issue based on which its case had now been reopened under section 147 of the Act, i.e., cash deposits of Rs.45 lakhs made by the assessee in its bank account with ICICI Bank Limited, was examined in the course of the original assessment proceedings and no new fresh/tangible material had thereafter come to the notice of the AO, therefore, the case could not have been reopened based on a mere “change of opinion”; (ii) that as the assessment in the case of the assessee society was concluded vide original order of assessment passed under section 143(3) of the Act, dated 10/12/2018, therefore, as per the “first proviso” of section 148 of the Act, in the absence of any failure on its part to fully and truly disclose all the material facts necessary for framing of assessment in its case for the subject year, i.e., AY 2016-17 its case could not have been reopened after a lapse of period of four years from the end of the relevant

assessment year; (iii) that the notice under section 148 of the Act which was originally issued on 19/04/2021 was dropped in view of the judgment of the Hon'ble Supreme Court in the case of Ashish Agarwal (supra) and the fresh notice was issued on 29/06/2022 under the new regime, which was barred by limitation as the same could not have been issued after the expiry of period of three years from the end of the relevant assessment year, unless the income escaping assessment was more than Rs.50 lakhs and such income is in the form of an "asset"; (iv) the notice under section 148 of the Act, dated 29/06/2022 was invalid as the same was issued by the Asst. Commissioner of Income Tax, Circle-1(1), Visakhapatnam, i.e., the Jurisdictional Assessing Officer (JAO) and not by the Faceless Assessing Officer (FAO) as was mandatorily required as per the "E-assessment income escaping assessment scheme-2022" framed in terms of section 151A of the Act; (v) that as the notice under section 148 of the Act, dated 29/06/2022 did not bear any DIN on its face, therefore, the same was in violation of the CBDT Circular No.19/2019, dated 14/08/2019 and thus, for the said reason also was liable to be struck down; (vii) as the notice under section 148 of the Act, dated 29/06/2022 was issued beyond the period of three years from the expiry of the relevant assessment year, therefore, the AO had grossly erred in not obtaining the approval of the specified authority as

contemplated under section 151(ii) of the Act, wherein instead of obtaining the approval of the Principal Chief Commissioner of Income Tax (PCCIT), the approval has been obtained from Principal Commissioner of Income Tax (PCIT); and (viii) that as the notice under section 148 of the Act, dated 29/06/2022 was issued during the pendency of the proceedings that were earlier initiated vide notice under section 148 of the Act, dated 19/04/2021, which were dropped only vide order dated 16/01/2023, thus, the initiation of the proceedings vide notice under section 148 of the Act, dated 29/06/2022 during the pendency of the earlier assessment proceedings were non-est in the eyes of law.

8. The Ld. AR vehemently submitted that the CIT(A) had grossly erred in law and facts of the case, and had though culled out the “written submissions” of the assessee bank wherein it had in context of the “Ground of appeal No.3” assailed the validity of the jurisdiction that was assumed by the AO for issuing notice under section 148 of the Act, dated 29/06/2022 for multi facet reasons, but had failed to deal with either of the said issues and summarily set aside the matter to the file of the AO for re-adjudication. The Ld. AR submitted that the non-speaking order passed by the CIT(A) cannot be sustained and is liable to be struck down.

9. Per contra, Shri Shahnawaz UI Rahman, Ld. CIT-DR submitted that the CIT(A) had grossly erred in law and facts of the case and exceeded the jurisdiction vested with him by setting aside the assessment order, which was passed by the AO by his order passed under section 143(3) r.w.s 147 r.w.s 144B of the Act, dated 24/05/2023. Elaborating on his contention, the Ld. CIT-DR vehemently submitted that though the “first proviso” to section 251(1)(a) of the Act as had been made available on the statute vide Finance (No.2) Act, 2024 w.e.f 01/10/2024, vests jurisdiction with the CIT(A) to set-aside the order of assessment made under section 144 of the Act back to the AO for making a fresh assessment, but the same could not have been exercised for setting aside the assessment which in the present case was framed under section 143(3) r.w.s 147 r.w.s 144B of the Act, dated 24/05/2023.

10. We have thoughtfully considered the contentions advanced by the Learned Authorised Representatives of both parties in the backdrop of the orders of the authorities below, and also considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions.

11. Admittedly, it is a matter of fact discernible from the record that the assessee bank, vide specific “Grounds of appeal No.2 and 3”, had based

on multi-facet reasons assailed the validity of the notice issued by the AO U/s 148 of the Act, dated 29/06/2022, viz., (i) that as the assessment in the case of the assessee bank was earlier framed under section 143(3) of the Act, dated 10/12/2018, wherein the issue based on which its case had now been reopened under section 147 of the Act, i.e., cash deposits of Rs.45 lakhs made by the assessee in its bank account with ICICI Bank Limited, was earlier examined in the course of the original assessment proceedings, thus, in absence of any fresh tangible material coming to the notice of the AO, the concluded assessment could not have been reopened based on a mere “change of opinion”; (ii) that as the assessment in the case of the assessee bank was concluded vide original order of assessment passed under section 143(3) of the Act, dated 10/12/2018, therefore, as per the “first proviso” to section 148 of the Act, in the absence of any failure on its part to fully and truly disclose all the material facts necessary for framing of assessment, its case for the subject year, i.e., AY 2016-17 could not have been reopened after a lapse of a period of four years from the end of the relevant assessment year; (iii) that the notice under section 148 of the Act that was originally issued on 19/04/2021 was dropped in view of the judgment of the Hon’ble Supreme Court in the case of Ashish Agarwal (supra) and the fresh notice was issued on 29/06/2022 under the new regime, which was

barred by limitation as the same could not have been issued after the expiry of period of three years from the end of the relevant assessment year, unless the income escaping assessment was more than Rs.50 lakhs and such income is in the form of an “asset”; (iv) the notice under section 148 of the Act, dated 29/06/2022 was invalid as the same was issued by the Asst. Commissioner of Income Tax, Circle-1(1), Visakhapatnam, i.e., the Jurisdictional Assessing Officer (JAO) and not by the Faceless Assessing Officer (FAO) as was mandatorily required as per “e-assessment income escaping assessment scheme-2022” framed in terms of section 151A of the Act; (v) that as the notice under section 148 of the Act, dated 29/06/2022 did not bear any DIN on its face, therefore, the same was in violation of the CBDT Circular No.19/2019, dated 14/08/2019 and thus, for the said reason also was liable to be struck down; (vii) as the notice under section 148 of the Act, dated 29/06/2022 was issued beyond the period of three years from the expiry of the relevant assessment year, therefore, the AO had grossly erred in not obtaining the approval of the specified authority as contemplated under section 151(ii) of the Act, wherein instead of obtaining the approval of the Principal Chief Commissioner of Income Tax (PCCIT), the approval was obtained from the Principal Commissioner of Income Tax (PCIT); and (viii) that as the notice under

section 148 of the Act, dated 29/06/2022 was issued during the pendency of the proceedings that were earlier initiated vide notice under section 148 of the Act, dated 19/04/2021, which were dropped only vide an order dated 16/01/2023, thus, the initiation of the proceedings vide notice under section 148 of the Act, dated 29/06/2022 during the pendency of the earlier assessment proceedings was non-est in the eyes of law. However, we are unable to comprehend that, though the adjudication of the aforesaid multi-facet issues based on which the assessee bank had assailed the validity of jurisdiction assumed by the AO for issuing notice under section 148 of the Act, dated 29/06/2022, could have safely be done by calling for and referring to the assessment record, but the CIT(A), for the reasons best known to him, had summarily set aside the matter to the file of the AO with a direction to reframe the assessment after affording a proper opportunity of being heard to the assessee. We find it incomprehensible that though the CIT(A) had culled out the contentions that were raised by the assessee before him, based on which the validity of the notice issued under section 148 of the Act was challenged before him, but had failed to adjudicate the same based on the facts that were borne on record.

12. Be that as it may, we further find substance in the contentions of the Ld. CIT-DR that the CIT(A) had clearly exceeded his jurisdiction by

setting aside the matter to the file of the AO. We say so, for the reason that “first proviso” to section 251(1)(a) of the Act as had been made available on the statute vide the Finance (No.2) Act, 2024, w.e.f 01/10/2024, though vests with the CIT(A) the jurisdiction to set aside the assessment and refer the case back to the AO for making a fresh assessment, but the same is limited only to the cases where the order of assessment was made under section 144 of the Act, and could not have been whimsically applied to the case of the assessee bank before us where the assessment was framed under section 143(3) r.w.s 147 r.w.s 144B of the Act, dated 24/05/2023.

13. Be that as it may, we are of the view that the non-speaking order passed by the CIT(A), i.e., wherein the specific legal issues based on which the validity of the jurisdiction assumed by the AO to issue notice under section 148 of the Act, dated 29/06/2022, had not been addressed by him by adopting an evasive approach, cannot be approved by us. Apart from that, we find that the CIT(A) had even otherwise exceeded the jurisdiction that was vested with him under the “first proviso” to section 251(1)(a) of the Act by setting aside the assessment order passed by the AO under section 143(3) r.w.s 147 r.w.s 144B of the Act, dated 24/05/2023, which, thus, on the said count itself cannot be sustained. We, thus, in terms of our aforesaid deliberations are unable

to persuade ourselves to subscribe to the non-speaking order of the CIT(A), which, as observed by us hereinabove, had even otherwise been passed by exceeding the jurisdiction vested with him.

14. We, thus, in terms of our aforesaid deliberations, set aside the matter to the file of the CIT(A) with a direction to re-adjudicate the appeal after considering the contentions that were raised by the assessee bank in the course of the original proceedings and dispose of the same based on a speaking order. Needless to say, the CIT(A) in the course of the set aside proceedings shall afford a reasonable opportunity of being heard to the assessee bank.

15. Resultantly, both the cross-appeals filed by the assessee bank and the revenue are allowed for statistical purposes in terms of our aforesaid observations.

Order pronounced in the open court on 05<sup>th</sup> December, 2025.

<b>Sd/- (BALAKRISHNAN S.) ACCOUNTANT MEMBER</b>	<b>Sd/- (RAVISH SOOD) JUDICIAL MEMBER</b>
---	---

Hyderabad,  
Dated 05<sup>th</sup> December, 2025  
**\*\*OKK / SPS**

Copy to:

S.No	Addresses
1	The Kanaka Mahalakshmi Cooperative Bank Limited, D.No.49-34-22, Main Road, Akkayyapalem, Visakhapatnam, Andhra Pradesh-530016.
2	DCIT/ACIT, Circle-1(1),Pratyakshakar Bhavan, MVP Colony, Visakhapatnam. (ii) ACIT, 4 <sup>th</sup> Floor, Direct Taxes Building, MVP Double Road, Opp. Raithu Bazar, Visakhapatnam, Andhra Pradesh-530017.
3	The Pr. Commissioner of Income Tax, Visakhapatnam.
4	The DR, ITAT, Visakhapatnam Bench
5	Guard File

TRUE COPY

SENIOR PRIVATE SECRETARY  
ITAT, VISAKHAPATNAM