

IN THE INCOME TAX APPELLATE TRIBUNAL GUWAHATI BENCH, GUWAHATI
(Through Virtual Hearing at Kolkata)

BEFORE SHRI RAJESH KUMAR, AM
AND
SHRI MANOMOHAN DAS, JM

ITA No.75/GTY/2025
(Assessment Year: 2016-17)

Assam Valley Finance and
Investment Pvt. Ltd.
House No.1, Niligiri Path,
Zoo Road, Guwahati-781024

vs.

DCIT, Circle 1
Aayakar Bhawan, Christian Basti,
G.S road, Guwahati-781005,
Assam

(Appellant)

(Respondent)

PAN No. AABCA6974B

Assessee by : Shri Miraj D Shah, AR
Revenue by : Shri Santosh Kumar Karnani,
DR

Date of hearing: 12.11.2025

Date of pronouncement: 18.12.2025

ORDER

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the National Faceless Appeal Centre, Delhi (hereinafter referred to as the "Ld. CIT(A)"] dated 06.03.2025 for the AY 2016-17.

2. At the time of hearing, the Id. Counsel for the assessee pressed ground no.12 and 13 only, which are extracted below:-

"12. For that the assessment order passed u/s 147/143(3) of the Income Tax Act, 1961 was without jurisdiction and hence the Ld CIT(A) erred in confirming the assessment order. The assessment order was bad in law and should be quashed.

13. For that the facts and circumstances of the case the notice u/s 143(2) of the Income Tax Act 1961 was without jurisdiction and bad in law and hence the entire assessment order is bad in law and the same should be quashed."

2.1. The facts in brief are that the assessee company is engaged in the business of trading and investment of shares/securities as well as providing loans and advances. During the year, the assessee filed the return of income on 17.10.2016, declaring total income at ₹nil. The case of the assessee was reopened u/s 147 of the Income-tax Act, 1961 (the Act) by issuing notice u/s 148 of the Act on 30.03.2021. The assessee complied with the said notice by filing the return of income on 04.07.2021, declaring nil income. Thereafter, the notice u/s 143(2) and 142(1) along with questionnaire were issued on 15.11.2021. The assessee complied with the said notices and questionnaire issued by the Id. AO during the course of assessment proceedings. Finally, the AO framed the assessment by making an addition of ₹4,47,48,164/- as unexplained cash credit u/s 68 of the Act in respect of loss shown by the assessee in the profit and loss account.

2.2. In the appellate proceedings, the Id. CIT (A) dismissed the appeal of the assessee.

2.3. After hearing the rival contentions and perusing the materials available on record, we find that in this case the assessment has been framed by the National Faceless assessment Centre, Delhi vide order dated 29.03.2022, passed u/s 147 read with section 144B of the Act. We note that notice u/s 143(2) of the Act was issued on 15.03.2021, and thereafter, the notices u/s 142(1) of the Act, were issued on 25.01.2022 and 06.02.2022, which were duly complied with the assessee. The Id. AO noted that the assessee has shown loss

from trading derivative and stock options. The Id. AO added the same as unexplained cash credit u/s 68 of the Act.

2.4. The Id. Counsel for the assessee submitted before us that the provisions of Section 151 of the Act were inserted into the statute book with effect from November 1, 2020 and these provisions were modified on 29.03.2022 vide notification number 18/2022 on the e-assessment of income escaping assessment of income, 2022. The Id. AR submitted that notice issued by NFAC as well as consequent assessment framed is without jurisdiction as these provisions were notified on 29.03.2022, when the order itself was framed by the NFAC on 29.03.2022. The Id. AR relied on the decision of co-ordinate bench in case of MD Mahimud SK vs. ITO in ITA Nos. 2230 & 2229/KOL/2024 for A.Y. 2015-16 & 2017-18 vide order dated 04.03.2025, wherein the co-ordinate bench held as under:-

"11. We have perused the section of Section 151A of the Act, which deals with the faceless assessment of income escaping assessment and was brought on the statute book by taxation and other law (realization and amendment of certain provisions) Act, 2020, with effect from 01.11.2020 which was notified on 29.03.2022 vide notification no.18/2022/F. No. 370142/16/2022-TPL(Part)]. Therefore, the assessment proceedings were taken by the National Faceless Assessment Centre, Delhi by issuing notice u/s 142(1) dated 09.02.2022 and thereafter the assessment was framed accordingly after issuing show cause notice which in our opinion is without jurisdiction. The provisionw of Section 151A of the Act were broughton the statute book with effect from 01.11.2020. However, the same were made effective and applicable with effect from 29.03.2022 vide notification no. when the CBDT notified the new scheme for assessment of income escaping assessment scheme, 2022. In our considered view the assessment framed is without jurisdiction and cannot be sustained. The case of the assessee find force from the decision of Nabiul Industrial Metal Pvt. Ltd., Paschim Medinipur VS. I.T.O., in ITA no. 1328/KOL/2024 for A.Y. 2017-18, the order dated 15.10.2024, wherein a similar issue has been decided in favor of the assessee. For the sake of ready reference, the notice issued u/s 142(1) dated 09.02.2022 and show cause notice dated 17.03.2022, are extracted below:-



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
National Faceless Assessment Centre
Delhi



To,
MD MAHIMUD SK
S/O ABDUL RAJJAK VILL-KISMAT NARAYANPUR,PO-
SRIRAMPUR SD-ENGLISHBAZAR
MALDA 732216, West Bengal

PAN:
BQYPS8209L

Assessment Year:
2015-16

Date:
09/02/2022

DIN:
ITBA/AST/F/142(1)/2021-
22/1039573181(1)

Notice under sub-section (1) of Section 142 of the Income Tax Act, 1961

Dear Taxpayer,

Kindly refer to ongoing assessment proceedings in your case for A.Y. 2015-16 under Faceless Assessment Scheme, 2019.

2. We appreciate the anxiety and uncertainty that is facing all of us in the times of Covid-19. This communication is to assist you in ending one uncertainty, which is pending e-Assessment in your case for the Assessment Year 2015-16.
3. You are requested and required to kindly furnish or cause to be furnished on or before 12/02/2022 by 04:47 PM, the accounts and documents specified in the Annexure to this notice.
4. The accounts or documents, as mentioned above, are required to be submitted online electronically in 'E-proceedings' facility through your account in e-Filing website (www.incometaxindiaefiling.gov.in)

Yours faithfully,

Additional / Joint / Deputy / Assistant Commissioner of Income Tax,
National Faceless Assessment Centre,
Delhi



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
National Faceless Assessment Centre
Delhi



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To,
MD MAHIMUD SK
S/O ABDUL RAJJAK VILL-KISMAT
NARAYANPUR,PO-SRIRAMPUR SD-
ENGLISHBAZAR
MALDA 732216, West Bengal
India

PAN:
BQYPS8209L

Assessment Year:
2015-16

Date:
17/03/2022

DIN:
ITBA/AST/F/147(SCN)/2021-
22/1040949460(1)

Show cause Notice as to why the proposed variation should not be made

Mrs/ Mr/ M/s,

1. We appreciate the anxiety and uncertainty that is facing all of us in the times of Covid-19. This communication is to assist you in ending one uncertainty, which is pending e-Assessment in your case for the Assessment Year 2015-16.
2. The variations as per the draft assessment order may be seen which are proposed to be made in your case:-

Credible information had been received for the FY 2014-15 relevant to AY 2015-16, that the assessee had aggregated credit turnover is Rs. 16.99 lacs and debit turnover is 16.99 lacs during the period 01.04.2014 to 31.03.2015 in the bank accounted maintained in Bank of Baroda bearing a/c no. 39920100006975. Prima facie there was reason to believe that the assessee had total credit/deposit in bank account during the meaning of section 147 of the Act. Assessment proceedings u/s 147 were initiated after recording reasons and seeking prior approval of Pr. Commissioner of Income-tax. Accordingly, statutory notice U/s 148 of the Act was issued & sent to the assessee by DIN & Document No. ITBA/AST/S/148/2020-21/1032066973(1) dated 31.03.2021 through E-mail requiring the assessee to file his Income Tax Return for the A.Y 2015-16 within 30 days of service of the said notice. In compliance of notice u/s 148, the assessee filed her return of income vide acknowledgement No. 345878730280421 dated 28.04.2021 declaring an income of Rs. 2,25,800/-. During the year under consideration the assessee earned income under the Head Income from Business and Income from other Sources. Statutory notices u/s 143(2), 142(1) alongwith questionnaire were issued to assessee.

2. During the course of assessment proceedings it has been noticed that assessee had deposited cash in Bank of Baroda bearing a/c no. 39920100006975 and in State Bank of India bearing A/c No. 31561107456. In response to notice u/s 143(2) dated 29.04.2021, assessee submitted his reply dated 11.08.2021 stating that he has filed his return of income for the AY 2015-16 showing a turnover of Rs. 25,46,080/- and Net Profit u/s 44AD of Rs. 2,25,780/- besides this assessee receives S/B interest of Rs. 3,280/- during the A.Y. 2015-16. He is doing mainly labour Contract business on the different part

12. Considering the above facts and legal position, we are of the considered opinion that the order passed by the NFAC, Delhi is without jurisdiction and is hereby quashed. The appeal of the assessee is allowed."

2.5. In our opinion, the notice issued by NFAC as well as consequent assessment framed dated 29.03.2022, are without jurisdiction as been held in the aforesaid decision as extracted above. Besides it is also incorrect to make addition in respect of loss claimed in the profit and loss account as unexplained cash credit u/s 68 of the Act. The addition on this count also cannot be sustained. We therefore, inclined to quash the assessment framed by NFAC, Delhi on the ground of lack of jurisdiction. The ground nos.12 and 13 are allowed.

2.6. So far as the re-opening of assessment is concerned, we observe that the same is made with total non-application of mind and in a casual manner as the name of the brokers whose statements were recorded by the investigation wing who admitted to have done trading to generate loss but we note that they did not have any dealings with the assessee. In other words, the assessee never executed any trades through that brokers. Therefore, reopening of assessment is bad in law. We note that the assessee has been engaged in trading and investment in shares as well as providing loans and advances. It was the allegation of the Id. AO in the reasons to believe that the assessee M/s Assam Valley Finance and Investment Pvt. Ltd. has indulged in reporting of non-genuine profit/loss as illiquid derivations of Bombay Stock Exchange platform thereby claiming fictitious loss in equity / derivative trading during the financial year. The Id. AO noted that the assessee has entered into these transactions through brokers namely Harish Kumar Singhania, Pawan Kumar Kayan and Sanjay Kumar Periwal etc., who in their

sworn statement admitted that they entered into trades only to generate losses. However, we find that the assessee has traded through three brokers namely; Bahubali Forex Pvt. Ltd., Odyssey Securities Pvt. Ltd and NS Broking Pvt. Ltd. as per the table extracted in para no.4 of the assessment order. Therefore, the reasons recorded by the Id. AO are devoid of any merit and has been recorded with complete non-application of mind and in a very casual manner. In our opinion, the reopening of assessment based on the said reasons cannot be sustained. Accordingly, we quash the reopening of assessment on the basis of such reasons recorded, where there is no live link between information and the formation of believe. It is a case of borrowed satisfaction. The case of the assessee find support from the decision of M/s R.S. Vinimay Pvt. Ltd. Vs. ITO in ITA No. 1513/KOL/2025 for A.Y. 2016-17, wherein the co-ordinate bench has held as under:-

"6. In our opinion, the AO has to exercise powers as conferred upon him by section 147 r.w.s. 148 of the Act with great care and caution as by exercising the reassessment jurisdiction u/s. 147, the AO unsettles the already completed assessment putting the assessee to a huge inconvenience and harassment. In the present case, the AO has incorrectly reopened the assessment by not even verifying the facts that there were no trades in F & O segments executed by the brokers referred to by the both the authorities. Therefore, considering these facts and circumstances the reopening of assessment is void ab initio and invalid in the eyes of law on the ground of non application of independent application of mind to the information received from the wing as well as on barrowed satisfaction. The case of the assessee finds support from the decision in the case PCIT Vs Meenakshi Overseas Pvt Ltd (2017) 82 taxmann.com 300 (Del). In the said decision, Hon'ble Delhi High Court has held that where the reasons to believe contain not the reasons but the conclusions of the AO one after the other and there was no independent application of mind by the AO to the tangible material which forms the basis of the reasons to believe that income has escaped assessment. The Hon'ble High Court has held that the conclusions of the AO are at best a reproduction of the conclusion in the investigation report. Indeed it is a borrowed satisfaction. Besides the case of the assessee is squarely covered by the decisions of CIT vs. SFIL Stock Broking Ltd. in [2010] 325 ITR 285 (Del) ,GRD Commodities Ltd Vs PCIT (2023) 149 taxmann.com 223(Cal), PCIT Vs Shodiman

Investment Pvt Ltd (2018) 93 taxmann.com 153 (Bom) and Sarthak Securities Co Pvt Ltd. Vs ITO (2010) 329ITR 110(Del).

7. *We therefore respectfully following the ratio laid in the above decisions, quash the reopening of assessment along with the consequent assessment framed."*

2.7. So even on this count the reopening of assessment cannot be sustained and is hereby quashed.

3. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 18.12.2025.

Sd/-
(MANOMOHAN DAS)
(JUDICIAL MEMBER)

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated:18.12.2025

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Kolkata