



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

&

SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकरअपीलसं./ITA No. 896 & 897/RJT/2024

निर्धारणवर्ष / Assessment Year: (2013-14)

(Hybrid Hearing)

Pari Anil Gandhi C-702 Sadguru Vatika, Airport Road, 2- Maruti Nagar, Rajkot - 360001	Vs.	Income Tax Officer, Ward-2(1)(1), Aayakar Bhavan Race Course Ring Road, Rajkot - 360001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: BAHPG7804E		
(Appellant)		(Respondent)

Appellant by : Shri D. M. Rindani, Ld. AR
Respondent by : Shri Abhimanyu Singh Yadav Ld. SR. DR
Date of Hearing : **09 / 10 /2025**
Date of Pronouncement : **05 / 01 /2026**

आदेश/ORDER

Per Dinesh Mohan Sinha, JM:

Captioned two appeals filed by the assessee, pertaining to Assessment Year 2013-14, is directed against order passed under section 250 of the Income Tax Act, 1961 by National Faceless Appeal Centre (NFAC), Delhi/Commissioner of Income Tax (Appeals), dated 22/11/2024, which in turn arises out of an order passed by the Assessing Officer u/s 147 read with section 144B of the I.T. Act, on dated 28/03/2022.

2. Since, the issues involved all these appeals are common and identical; therefore, these appeals have been heard together and a consolidated order are being passed for the sake of convenience, we shall take the lead case in ITA No.896/Rjt/2024 for Assessment Year 2013-14.



3. The Grounds of appeal raised by the assessee are as follows, ITA No. 896/Rjt/2024: -

1. *The learned commissioner of income tax (appeals), national faceless appeal centre has erred in confirming the action of the assessing officer in respect of passed the order u/s.147 rws 144B of the it Act whereby assessed the total income of rs.55,32,510/- as against the returned income of rs.5,58,215/-it is totally wrong, unwarranted, unjustified and bad in law*

2. *The learned commissioner of income tax (appeals), national faceless appeal centre has erred in confirming the action of the assessing officer in respect of mentioned the facts in body of order which is very far away from the truth and pass the order on surmises and conjecture basis and made the high pinch assessment and initiated the demand of Rs.21,41,632/-it is totally wrong. Unwarranted, unjustified and bad in law.*

3. *The learned commissioner of income tax (appeals), national faceless appeal centre has erred in confirming the action of the assessing officer in respect of share transaction made with m/s Atlanta infrastructure and finance ltd Rs.23.81,700/-and share transaction made with we internet Rs.25,92,595/- i.e. Total share transaction of Rs.49,74,295/-is treated as bogus and added to the total income as per the proviso of section 68 of the it Act it is totally wrong. Unwarranted, unjustified and bad in law.*

4. *The learned commissioner of income tax (appeals), national faceless appeal centre 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 it is totally wrong, unwarranted, unjustified and bad in law.*

5. *The learned commissioner of income tax (appeals), national faceless appeal centre has erred in confirming the action of the assessing officer in respect of charging the interest u/s.234 A,B,C and d it is totally wrong. Unwarranted, unjustified and bad in law.*

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

4. The Grounds of appeal raised by the assessee are as follows, ITA No. 897/Rjt/2024: -

1. *The learned commissioner of income tax appeals national faceless appeal centre has erred in confirming the action of the assessing officer in respect of passed the rectification order u/s. 154 rws 147 of the it Act whereby applied the section 115BBE of the it Act mentioned that assessee case appear to have resulted into short levy of tax of 1 Rs.5,12,350/- and consequent levy of interest u/s.234A. 234B of the act for the period of 108 months (01.04.2013 to 31.03.2022) which works out*



to Rs.5,53,338/- u/s.234B and interest u/s.234A 15 worked out at Rs.5,225/- and thus aggregate revenue effect comes to Rs.10,70,913/- hence total demand raised Rs.32,12,392/- it is totally wrong, unwarranted, unjustified and bad in law.

2. The learned commissioner of income tax (appeals), national faceless appeal centre has erred in confirming the action of the assessing officer in respect of passed the order u/s.154 rws 147 whereby wrongly applied the section 115BBE of the it Act as the applicability of section 115BBE of the it act commenced from the A.Y. 2017-18 and the assessing officer has applied the section 115BBE of the it Act in the A.Y. 2013-14 and taxed at higher rate and initiated the demand of Rs.32,12,392/-it is totally wrong, unwarranted, unjustified and bad in law.

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

5. Facts of the Case that the assessee Smt. Pari Anil Gandhi is an individual. The assessee has filed his return of income for the A.Y 2013-14 declaring the total income of Rs. 5,58,215/-on 13.08.2013. Relevant part of the reasons recorded by then A.O before issuing the notice u/s 148 of I.T Act, 1961. This information is available on Insight portal. As per the credible information received and available in the case of the above-mentioned assessee who is one of the beneficiaries who has carried out bogus transactions in shares of M/s. Atlanta Infra & Finance Ltd. (Erstwhile also known as Kadvani Securities Ltd.). The assessee has carried out transactions of Rs. 49,74,295/- during the year under consideration. Further, it is seen that assessee has filed return of income for the A.Y. 2013-14 declaring total income at Rs. 5,58,215/-.

The purpose of introducing unaccounted cash in the books of accounts or to create fictitious losses in the return of income to avoid paying taxes due. The above mentioned assessee has, during the year relevant to Assessment Year 2013-14, carried out share transactions of Penny Stock companies which were used to providing accommodation entries in the guise of LTCG/STCG. M/s Atlanta Infra & Finance Ltd. (Erstwhile also known as Kadvani Securities Ltd.) is entry provider/penny stock company engaged



in providing accommodation entries. Since, the assessee has carried out share transactions in the said script and has earned capital gain out of the transactions in the said script during the year. Since the script is a penny script, the genuineness of income earned out of the scrip as well as amount utilized for investment in shares along with its sources has remained unexplained for the period under consideration.

As per information received from DDIT(Inv.)-III, Indore that the assessee was involved in the entries for bogus long/short term capital gains/loss for the A.Y 2013-14 and on the basis of above reasons and obtaining the necessary approval of PCIT, then A.O, issued a notice u/s 148 of I.T Act, 1961 vide DIN& Notice no. ITBA/AST/S/148/2020-21/1032111258(1) dated 31/03/2021 to the assessee requiring him to file the return of income for the A.Y 2013-14. In response to this notice u/s 148 of the I.T Act, 1961, the assessee filed his return of income for the A.Y 2013-14 declaring total income of Rs. 5,58,200/-.

As per the available information, the assessee Smt. Pari Anil Gandhi is an individual. The assessee has filed his return of income for the A.Y 2013-14 declaring the total income of Rs. 5,58,215/- on 13.08.2013. As per the information shared by the DDIT(Ivn.)-III, Indore, the assessee sold her shares in the following scripts:-

S.N	Name of the Scripts	Amount received after sale of shares
1.	M/s Atlanta Infra & Finance Ltd.	Rs. 23,81,700/-
2.	M/s We Internet Ltd.	Rs. 25,92,595/-



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DHIREN H. LOTIA
B.Com. LLB
Tax Consultant
Phone: (0281) 2465373/2465142
Fax: 2465486

DHIRENDRA & CO.
201, "Yogi Tower"
Near Moti Tanki, Rajkot - 360001
Mobile: 081409 81409 / 81550 00008
E mail: dhiren.lotia@yahoo.co.in

Date: 22.12.2021

To:
The Additional/ Deputy/ Assistant Commissioner of Income Tax,
National Faceless Assessment Centre,
Delhi

Sub: Notice u/s.142(1) of the I T Act, 1961 in the case of Pari Anilbhai Gandhi, Rajkot for AY 2013-14 - reg.
Ref: No.ITBA/AST/F/142(1)/2021-22/1038007861(1) Dated 22.12.2021.

PAN: BAHPG7804E

Respected Sir,

With reference to the above your honour has issued a notice u/s.142(1) of the I T Act and called for the details in this regards we are submit herewith the following details for your honour's kind perusal.

1. Acknowledgment of Return Receipt in respect of proof of filling the Return of Income in response to notice u/s.148 of the I T Act for AY 2013-14 is attached herewith.
2. Your honour has mentioned in your notice that, "during the year under consideration, you have carried out transactions of Rs.49,74,295/- in shares of M/s. Atlanta Infra and Finance Ltd. however you have filed return of income for the assessment year 2013-14 declaring total income at Rs.5,58,000/- only. Please explain the reason. In this regards we have to state that our above named client has made the investment in shares of M/s. Atlanta Infra and Finance Ltd amounting to Rs.23,85,699/- only. Copy of ledger account of the shares along with bill is attached herewith for your honour's kind verification. Your honour has wrongly mentioned transaction of Rs.49,74,295/- in shares of M/s. Atlanta Infra & Finance Ltd. it is totally wrong, unwarranted, unjustified and bad in law. Our above named client is doing the business of trading and investment in shares and securities. So whatever profit/loss arrived after sales and purchase, our above named client has shown the profit/loss in the P & L Account. At the end of the year, whatever profit arrived the same is shown in the return of income. Details regarding the shares of M/s. Atlanta Infra and Finance Ltd is attached herewith for your honour's kind perusal.



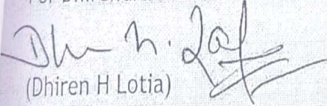
3. Our above named client is doing the business of TRADING AND INVESTMENT IN SHARES AND SECURITY. Computation of Total Income for AY 2013-14 is attached herewith.

4. Details of all the deduction claimed by our above named client during the year under consideration is attached herewith.

5. Justification of share transaction is genuine and not bogus i.e. copy of demat account statement is attached herewith for your honour's kind perusal.

We are submit herewith the details as per information called for by your honour by virtue of provision of section 142(1) of the I T Act. We hope that your honour will satisfy with above contention. So we request your honour kindly accept the same and take on records and obliged.

Thanking you,
Yours faithfully,
For Dhirendra & Co.


(Dhiren H Lotia)
Advocate
Encl: As Above.



DHIREN H. LOTIA
B.Com. LLB
Tax Consultant
Phone: (0281) 2465373/2465142
Fax: 2465486

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DHIRENDRA & CO.
201, "Yogi Tower"
Near Moti Tanki, Rajkot - 360001
Mobile: 081409 81409 / 81550 00008
E mail: dhiren.lotia@yahoo.co.in

Date: 23.02.2022

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

PAN: BAHPG7804E

Sub: Notice u/s.142(1) of the I T Act, 1961 in the case of Pari Anilbhai Gandhi, Rajkot for AY 2013-14 - reg.
Ref: No.ITBA/AST/F/142(1)/2021-22/1039833220(1) Dated 17.02.2022.

Respected Sir,

With reference to the above in continuation of our written submission your honour has issued a notice u/s.142(1) of the I T Act and further details called for in this regards we are submit herewith the following details for your honour's kind perusal:

1. Your honour has required the justification regarding the period from July 7, 2013 to January 13, 2014 price of Script rose from Rs.17.10 to Rs.86.65 in this regards we have to state that we have already submitted the written submission along with entire details before your honour. Further we have to state that our above named client is doing the business of trading and investment in shares and securities in open Market through Broker Registered under SEBI. I have no concern and no connection in Price rise of shares. This only happen stock only not supported by any of the Law. Our above named client is a bonafide Investor with money and made the investment from her own fund. Our above named client has no concern with the price it is decided by the management of the company or SEBI. And also our above named client is not aware about the penny stocks. Shares purchased by our above named client were open market transactions and not through black deal and therefore, transactions executed by the assessee at BSE through BSE registered stock broker.

2. Further your honour has mentioned in your notice that the company did not exist at its address during the relevant period in this regards under instruction



from our above named client we have to state that our above named client has never visited the company premises hence she cannot comment on the same but the financial due differences & KYC, etc are periodically submitted in the BSE, SEBI by the company.

Atlanta Infrastructure and finance ltd (kadvani securities ltd)

SR No	PUR. DATE	QTY	SALE DATE	QTY
1	31.01.12	151800	20.11.14 to 11.12.14	1272000
2	22.03.13	102000		

Note: Share split on 14.03.2014 (Face value 10 into1)

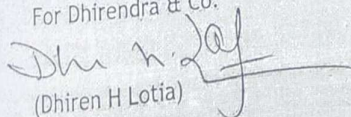
The BSE, SEBI are the Statutory authority by Finance Department of Authority they have online surveillance system to monitor the market & script price and during the above period no any such reverse order/s are passed by the Government of Authorities.

SEBI Suspende the tracing on the Script on 06.01.2015.

During the year under consideration, the company M/s. Atlanta Infrastructure and Finace Ltd are in open market. And at that time not suspended by the SEBI. So kindly accept the same and take on records and oblige.

We are submit herewith the details as per information called for by your honour by virtue of provision of section 142(1) of the I T Act. We hope that your honour will satisfy with above contention. So we request your honour kindly accept the same and take on records and obliged.

Thanking you,
Yours faithfully,
For Dhirendra & Co.


(Dhiren H Lotia)
Advocate
Encl: As Above.



DHIREN H. LOTIA
B.Com. LLB
Tax Consultant
Phone: (0281) 2465373/2465142
Fax: 2465486

DHIRENDRA & CO.
201, "Yogi Tower"
Near Moti Tanki, Rajkot - 360001
Mobile: 081409 81409 / 81550 00008
E mail: dhiren.lotia@yahoo.co.in

Date: 24.04.2023

To,
The Commissioner of Income Tax (Appeals),
Income Tax Department

PAN: BAHPG7804E

Sub: Notice u/s.250 of the I T Act, 1961 in the case of Shri Pari Anilbhai Gandhi,
Rajkot for AY 2013-14 - reg

Ref: No.ITBA/NFAC/F/APL 1/2023-24/1052106592(1) Dated : 17.04.2023

With reference to the above we are submit herewith the following few lines for your honour's kind and sympathetically consideration:

During the year under consideration, the Assessing Officer has reopening the Assessment and passed the Order u/s.147 of the I T Act whereby assessed the total income of Rs.55,32,510/- as against the returned income of Rs.5,58,215/-.. It is totally wrong, unwarranted, unjustified and bad in law. During the year under consideration your appellant has made the share Transaction with M/s. Atlanta Infrastructure and Finance Ltd amounting to Rs.23,81,700/- and share Transaction made with M/s. We Internet amounting to Rs.25,92,595/- total Share Transaction made is wrongly treated as Bogus and Added to the Total Income Of Rs. 49,74,295/- As per The Proviso 1 of Section 68, it is totally wrong, unwarranted, unjustified and bad in law.

In this context your appellant has to state that your appellant has doing the business of Trading and Investment in Shares and Securities since long. Your appellant never invested in Penny Stock. Details of Shares i.e. Number of Shares, Purchase Value, Sale Value, Purchase Date, Sale Date, etc is already submitted before the Assessing Officer. Even though the Assessing Officer has not accepted the same and Share transactions are wrongly treated as bogus as per the first proviso of section 68 of the I T Act and added to the total Income of Rs. 49,74,295/- on Surmises and conjecture basis. Because all transactions are genuine and all transactions are made in Open Market and made through BSE Registered Broker and payment made through proper banking channel. And whatever income earned by your appellant, the same is truly and correctly disclosed in the return of income. Details of Shares i.e. Number of Shares, Purchase



Value, Sale Value, Purchase Date, Sale Date, etc are attached herewith for your honour's kind verification.

Further, it would not be out of place to mention here that once the assessee has proved the identity of his creditors the genuineness of the transactions which she had with the creditors, his burden stands discharged and the burden then shifts to the revenue to show that the amounts in question, actually belonged to, or was owned by the assessee himself. In the instant case nothing contrary has been brought on record by the revenue.

According to section 68 : where in the financial year immediately preceding the assessment year the assessee has made investment which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation offered by him is not, in the opinion of the assessing officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year.

In the facts of the present case, both the nature & source of the share transaction with share have fully explained by the assessee. The assessee had discharged its onus to prove the identity, creditworthiness and genuineness of the transaction. The PAN Details, bank Account Statement, Confirmation Letter, Ledger copy of the account of the assessee are placed on record. Accordingly all the three conditions as required u/s. 68 of the act and the onus shifted to Assessing Officer to disprove the materials placed before him. Without doing so, the addition made is based on conjectures and surmises cannot be justified. In the facts and circumstances of the case as discussed above, no addition was warranted under Section 68 of the Act.

2.2 It would be pertinent to mention here that there is no material before the revenue, which could have lead to a conclusion that the said share Transaction is bogus. No such presumption could be drawn by the assessing officer merely on surmises and conjectures. Apparent has to be held as true unless the contrary is proved. Conclusion should be based on evidence.

2.3 *It is settled position of law that suspicion how so ever strong cannot take place of the character of evidence. In the case it is seen that assessee brought on record all plausible evidences as is expected in the said share transaction, however, the Revenue has not brought any material on record to disprove the evidences as adduced by the assessee. The Hon'ble Supreme Court in the case of Sreelekha Banerjee and Other v. CIT 49 ITR 112 has held "before the department rejects such evidence, it must either show an inherent weakness in the explanation or rebut it by putting to the assessee some information or evidence which it has in its possession. The department cannot be*



merely rejecting unreasonably a good explanation, convert good proof into no proof'. The AO has based his conclusion on unfounded presumption and surmises.

The Hon'ble Jodhpur Tribunal had the occasion to consider a case in respect of similar type of share Transaction. The Decision reported in 13 SOT 61 in the case of ITO vs. Smt. Kusum Lata wherein the Hon'ble Bench held that the share transaction was not bogus. The Hon'ble Bench confirmed the order of CIT(A) who held that transaction and merely because share broker could not report the transaction to Stock Exchange, it could not be said that the share transaction was bogus. The Hon'ble Bench further held that the burden of proving a transaction is always on the person asserting it to be bogus and this burden has to be strictly discharged by adducing legal evidences of a character which would either directly prove the fact of bogusness or establish circumstances unerringly and reasonably raising an inference to that effect. The Bench held that there was not evidence except speculation that this profit was not from the sale of shares. The AO had failed to establish his case and to discharge the requisite burden cast on him.

In this case, there is no evidence on record as mentioned in the show cause notice, to prove that the proceeds received against sale of shares represent assessee's unexplained /undisclosed income. Hon'ble Apex Court in the case of Kishan Chand Chella Ram vs CIT reported in 125 ITR 713 has held "that the burden is on the Department to prove that the money belongs to the assessee by bringing proper evidence on record and the assessee could not be excepted to call the concerned person in evidence to help the Department to discharge the burden that lay upon it".

2.4 At the cost of repetition, it is submitted that the assessee has furnished all the supporting corroborative evidences/necessary details in respect of share Transaction Amounting to Rs.49,74,295/-. In the absence of any cogent material in this regard, having been placed on record, no addition could not have been made by Trading of Shares are bogus and treated the same as per the section 68 of the IT Act for the year under consideration.

REGARDING THE REOPENING OF ASSESSMENT:

Approval and Sanction: CIT having mechanically granted approval for reopening of assessment without application of mind, the same is invalid and not sustainable.

- a) *German Remedies Ltd vs. Dy. CIT* (2006) 287 ITR 494 (Bom) (AY: 1997-1999)
- b) *CIT vs. Suman Waman Chaduahry* (2010) 321 ITR 495 (Bom)
- c) *SLP dismissed on 12/2/2008* (2009) 312 ITR 339 (St.)
- d) *CIT v. S. Goyanka Lines & Chemical Ltd.* (2016) 237 Taxman 378 (SC)



(113)

- e) My Car (Pune) (P.) Ltd. v. ITO (2019) 263 Taxman 626/ 179 DTR 236 (Bom.)(HC)
- f) United Electrical Company (P) Ltd vs. CIT & Ors (2002) 258 ITR 317 (Del)(HC)
- g) Asiatic Oxygen Ltd.v. Dy. CIT (2015) 372 ITR 421 (Cal.) (HC)
- h) Maruti Clean Coal And Power Ltd. v. ACIT (2018) 400 ITR 397 (Chhattisgarh) (HC)
- i) ITO v. Virat Credit & Holdings Pvt. Ltd. ITA NO. 89/DEL/2012 dt. 09/02/2018 (Delhi)(Trib),
- j) Sunil Agarwal v. ITO [2002] 83 ITD 1 (TM) (Delhi)(Trib),
- k) Banke Bihar Properties Pvt. Ltd. v. ITO (Delhi)(Trib).
- i. Merely affixing a 'yes' stamp and signing underneath suggested that the decision was taken by the Board in a mechanical manner as such, the same was not a sufficient compliance under section 151 of the Act. The approval is a safeguard and has to be meaningful and not merely ritualistic or formal. Central India Electric Supply Co. Ltd. vs. ITO (2011) 51 DTR 51 (Del)(HC) , Dy. CIT v. Dharampal Satyapal Ltd. (2016) 130 DTR 241/ 175 TTJ 217 (Delhi)(Trib.) , PCIT v. N. C. Cables Ltd. (2017) 391 ITR 11/ 149 DTR 90 (Delhi)(HC)
- ii. Sanction granted by writing "Yes, I am satisfied" is not sufficient to comply with the requirement of s. 151 because it means that the approving authority has recorded satisfaction in a mechanical manner and without application of mind, (ii) If information is received from investigation wing that assessee was beneficiary of accommodation entries but no further inquiry was undertaken by AO, said information cannot be said to be tangible material per se and, thus, reassessment on said basis is not justified:
- a) Pioneer Town Planners Pvt. Ltd vs. DCIT, (2018) 195 TTJ 388 (SN)(Delhi)(Trib.),
- b) Ghanshyam vs. ITO, dtd: 19/06/2018 (ITAT Agra) (2018) 194 TTJ (Agra)(UO) 25
- c) Blue Chip Developers (P) Ltd vs. ITO [dt 02.12.2019 ITA no. 1061 / DEL / 2019].
- iii. Failure on part of Assessing Officer to take sanction of appropriate authority would go to very root of validity of assumption of jurisdiction by Assessing Officer hence the order is bad in law. Anil Jaggi. v. CIT (2018) 168 ITD 599 (Mum) (Trib.)
- iv. AO can issue notice only after getting approval. Thus, the ld.CIT(A) has rightly quashed the assessment because the very foundation for issuance of notice



under section 148 is the approval from the competent authority, i.e. Commissioner of Income Tax, and in the absence of such, such notice is void ab initio ITO vs. Ashok Jain, [ITA.No.1505/Ahd/2017, dtd:14/11/2018 (ITAT Surat)]

v. Sanction of commissioner instead of JCIT renders reopening is void : There is no statutory provision under which a power to be exercised by an officer can be exercised by a superior officer. When the statute mandates the satisfaction of a particular functionary for the exercise of a power, the satisfaction must be of that authority. Where a statute requires something to be done in a particular manner, it has to be done in that manner .

a) Ghanshyam K. Khabrani v. ACIT (2012) 346 ITR 443 (Bom)(HC)

b) DSJ Communication Ltd. .v. DCIT (2014) 222 Taxman 129 (Bom.)(HC)

c) Purse Holdings India P. Ltd. v. ADDIT(IT)(2016) 143 DTR 1(Mum.)(Trib.)

d) Yum ! Restaurants Asia Pte Ltd v. Dy. DIT (No.1) (2017) 397 ITR 639 (Delhi) (HC)

e) CIT vs. Aquatic Remedies Pvt. Ltd [2018] 406 ITR 545 (Bom)(HC)

f) Sanction by CIT instead JCIT .The fact that the sanction is granted by a superior officer is not relevant -PCIT vs. Khushbu Industries (Bom)(HC).

vi. In case of CIT v. Gee Kay Finance And Leasing Co. Ltd. (2018) 401 ITR 472 (Delhi) (HC) it was observed that the satisfaction and approval of the Chief Commissioner or the Commissioner under section 151(1) was a sine qua non before issuance of a notice under section 148 by the Assessing Officer, who might be of the rank of an Income-tax Officer or Assistant Commissioner or Deputy Commissioner, but when such notice was to be issued after the expiry of four years period of limitation, the sanction of the Chief Commissioner was a precondition. The proviso to section 151(1), when it referred to an Assessing Officer, could also mean not merely an Assessing Officer below the rank of an Assistant Commissioner and a Deputy Commissioner but also all Assessing Officers.

vii. S. 147 vs. S. 263: If the AO has incorrectly or erroneously applied law and income chargeable to tax has escaped assessment, the Revenue should resort to s. 263 and revise the assessment and not reopen u/s 147. When matter was referred to the CIT for seeking approval, instead of holding that the matter falls u/s 263 and not u/s 148, has given approval u/s 151 which shows non-application of mind and mechanical grant of approval. Therefore, the assumption of jurisdiction u/s 147 cannot be sustained and

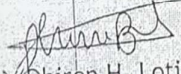


(115)

is held as invalid in eyes of law : Krish Homes Private Limited vs. ITO, ITA No. 237/JP/2019, CO: 16/JP/ 2019 23/12/2019 (ITAT Jaipur).

viii. Where Assessing Officer issued notice under section 148 after four years from end of relevant assessment year without obtaining sanction under section 151, then impugned notice under section 148 was unjustified and, consequently, entire reassessment proceedings stood vitiated - Even if assessment was reopened in consequence of or to give effect to any finding or direction of Appellate Authority, requirement of sanction u/s. 151 is mandatory for issuing notice u/s. 148. Sonu Khandelwal vs. ITO [2018] 173 ITD 67 (ITAT Jaipur).

i. Considering the facts of the case that there is absence of a valid sanction in the case of the appellant, It is thereby humbly prayed that the Grounds of Appeal of the appellant be kindly allowed and the reassessment proceedings be quashed.

Thanking you,
Yours faithfully,
For Dhirendra & Co.,

(Dhiren H. Lotia)
Advocate
Encl: As Above.

However, show cause notice as to why proposed variation should not be made was issued to assessee on 26-03-2022 for filing reply by 27-03-2022. But no response filed by the assessee. It seems that assessee has nothing to submit in her favor. Accordingly, the income of the assessee is assessed as under:



Returned income	= Rs. 5,58,215/-
(i) addition	= Rs. 49,74,295/-

Assessed income	= Rs.55,32,510/-

6. That the assessee filed an appeal against the order of assessment before Ld. CIT(A) dated on 22/11/2023, which was dismissed by the Ld. CIT(A). on 22.11.2024

7. That the assessee field an appeal against the impugned order dated 28.03.2022 before this Tribunal.

i). The Ld. AR Submitted that the assessment re-open is contrary to law. The addition confirmed by the Ld. CIT(A) by wrong observation. The Ld. AR submit notice u/s. 148 is unsigned the reason for re-opening of assessment were on incorrect facts. The Ld. AR submitted security purchase by the assessee in 2013 detail submitted.

ii). On the contrary the Ld. DR. Relied on the order of lower authorities.

8. We have heard both the parties and perused the material available on record. And also perused the paper book submitted by the assessee. We note that the assessee has filed the return of income for A.Y. 2013-14 declaring net income of Rs. 49,74,295/- the assessee has also claimed the capital gain u/s. 10(38) amount of Rs. 9,74,255/- that the Assessing Officer ha re-open the assessment and issue notice U/s. 148 of I. T. Act, on the ground that assessee has carried out bogus transaction with Atlanta infra and finance Ltd. and amount of Rs. 23,81,700/-. And M/s We internet Ltd of Rs. 25,92,595/- While making an assessment, AO



has issued notice to the assessee and the assessee has replied to the notice of Ld. AO that the assessee has obtain the amount of Rs. 49,74,295/- by share transaction the details in form of tax audit report along with the audited accounts, Ledger account of Atlanta Infra & Finance Ltd, new name (Kadvani Sec Ltd.), investment in shares, copy of Bank statements held with Union Bank of India, Ledger accounts of purchase and sales of shares, copy of purchase and sales bills of Niv yahits, Demat accounts statements, copy of statement of holdings, investors report of the appellant from Atlanta Share Shoppee Ltd, and along with the replay filed by the assessee time to time which the Ld. AO was not satisfied with the genuineness of transaction. However, the assessee has explained that the information and transaction detail has be submitted and also relied on the judgement of Hon'ble Apex Court in the case of Kishan Chand Chella Ram vs CIT reported in 125 ITR 713 has held:

"That the burden is on the Department to prove that the money belongs to the assessee by bringing proper evidence on record and the assessee could not be expected to call the concerned person in evidence to help the Department to discharge the burden that lay upon it".

9. The assessee has further objected for re-opening of an assessment and borrowed satisfaction and reopened based on incorrect fact, in support of claim the assessee has also submitted various judgements before the AO. The AO was not satisfied with the submission made by the assessee and made an assessment with an additional income of Rs. 49,76,255/- u/s. 68 of the Act. however, we noted that the assessee has replied to all notices issued by Ld. AO and submitted his transaction details. We further note that Ld. CIT(A) has confused the action of AO and give its findings that the re-opening of an assessment was justified and the addition made by the Ld. AO was sustain by Ld. CIT(A) by order dated 22.11.2024. The Ld. AR of the assessee bring to our notice that notice u/s. 148 of the Act, for re-opening of an assessment was issued by the AO on dated 31.03.2021 was un-signed. (notice placed in paper book page no. 27). We further



perused the record and noted that the AO has credible information received. Whereby the assessee who is one of the beneficiaries who has carried out bogus transactions in shares of M/s. Atlanta Infra & Finance Ltd. (Erstwhile also known as Kadvani Securities Ltd.) The assessee has carried out transactions of Rs. 49,74,295/- during the year under consideration. Further, it is seen that assessee has filed return of income for the A.Y. 2013-14 declaring total income at Rs. 5,58,215/-. That the assessee claimed that reopened is based on incorrect facts where by it was alleged that the shares was sold in financial year of 2013-14. The correct facts that the party, Atlanta infra and finance Ltd. and amount of Rs. 23,81,700/- . And M/s We internet Ltd the share sold on 20.11.2014 & 11.12.2014. the detail of sale was in written submission that is comply to notice u/s.142(1) of the IT Act filed on 23.02.2022. the details as undermentioned:

1. Your honor has required the justification regarding the period from July 7, 2013 to January 13, 2014 price of Script rose from Rs.17.10 to Rs.86.65 in this regards we have to state that we have already submitted the written submission along with entire details before your honor. Further we have to state that our above-named client is doing the business of trading and investment in shares and securities in open Market through Broker Registered under SEBI. I have no concern and no connection in Price rise of shares. This only happen stock only not supported by any of the Law. Our above-named client is a Bonafide Investor with money and made the investment from her own fund. Our above-named client has no concern with the price it is decided by the management of the company or SEBI. And also, our above-named client is not aware about the penny stocks. Shares purchased by our above-named client were open market transactions and not through black deal and therefore, transactions executed by the assessee at BSE through BSE registered stock broker.

Further your honor" has mentioned in your notice that the company did not exist at its address during the relevant period in this regard under instruction from our above-named client we have to state that our above-named client has never visited the company premises hence she cannot comment on the same but the financial due differences & KYC, etc. are periodically submitted in the BSE, SEBI by the company.



SR No	PUR. DATE	QTY	SALE DATE	QTY
1	31.01.12	151800	20.11.14 to 11.12.14	1272000
2	22.03.13	102000		

Note: Share split on 14.03.2014 (Face value 10 into 1)

The BSE, SEBI are the Statutory authority by Finance Department of Authority they have online surveillance system to monitor the market & script price and during the above period no any such reverse order/s are passed by the Government of Authorities.

SEBI Suspense the tracing on the Script on 06.01.2015.

During the year under consideration, the company M/s. Atlanta Infrastructure and Finance Ltd are in open market. And at that time not suspended by the SEBI. So kindly accept the same and take on records and oblige.

10. Considering the facts and circumstance of the case. We are of the considered opinion that in the present case, that notice was issued u/s. 148 on 31.03.2021 was in physical mode and on perusal of notice it appears that notice is not signed. We further note that all the issue related to this case was available before the AO such as purchase and sale transaction number of share details Bank details, Demate account etc. and along with the legal/technical issue such as re-opening of assessment mechanically incorrect material facts with the AO. The approval was obtained mechanically by saying yes etc. The AO has issued a show cause notice on dated 26.03.2022 (paper book page no. 75 to 89) this notice remain uncompiled with by the assessee. During the course of appellate proceedings, before the Ld.CIT(A), the assessee filed written submission along-with entire evidences furnished of 06.06.2024, and there is no presence before Ld.CIT(A) and assessment records are not available before us to examine the fact of unsigned notice, therefore this appeal is remitted back to the file of AO for fresh assessment. We further note that during the course of argument. The assessee has never tried to place the assessment record before this Bench. in view of the above



we are of the view that one more opportunity given to the assessee to comply with the direction/notice issued by AO and submit the requisite detail/information as and when asked by AO with this remark with set-aside the order of Ld. CIT(A) dated 22.11.2024 accordingly we remand this matter back to the file of AO for a fresh adjudication after giving opportunity of hearing the assessee uninfluenced by is earlier order in any matter. The assessee is also directed to ensure participant in the hearing and when only be fixed by Ld. AO and AO shall be at liberty to pass appropriate orders in accordance with law.

ITA 897/Rjt/2024 for AY 2013-14:

11. The assessee is in appeal before us against the rectification order u/s. 154 of the Act, we direct the AO to examine the mistake and rectify the mistake as per the provision of Act.

12. In the result, both the assessee's appeals are allowed for statistical purpose.

Order pronounced in the open court on 05 / 01 /2026.

Sd/-

(Dr. Arjun Lal Saini)
Accountant Member

Sd/-

(Dinesh Mohan Sinha)
Judicial Member

Rajkot

दिनांक/Date: 05 / 01 /2026

//True Copy//

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