

IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, MUMBAI
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER &
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER
ITA No. 3946/MUM/2024 (AY: 2014-15)
(Physical hearing)

Neptune Fincot Pvt. Ltd. C/101, 1 st Floor, Shankar Dhan Plaza, Jawaharlal Nehru Road, Mulund (W), Maharashtra - 400 067. PAN : AACCN0451F	Vs	ACIT, Circle-15(1)(2), Mumbai Room No. 483, 4 th Floor, Aayakar Bhavan, M.K. Road, New Marine Lines, Mumbai-400 020.
Appellant / Assessee		Respondent / Revenue

Assessee by	Shri V.G. Vinde & Shri Kumar Kale CA's
Revenue by	Shri Layaqat Ali Aafaqui, Sr. DR
Date of Institution	08.08.2024
Date of hearing	06.01.2026
Date of pronouncement	06.01.2026

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER;

1. This appeal by assessee is directed against the order of Id. CIT(A)/NFAC dated 09.07.2024 for A.Y. 2014-15. The assessee has raised following grounds of appeal:

"1. On the facts and in the circumstances of the case, and in law, the reassessment proceedings u/s.147 of the Act is bad in law, having been initiated under the pre-amended law that existed prior to 1.4.2021 even though the relevant notice u/s.148 was actually served on the appellant on 1.4.2021 at 01:29:51 AM IST. The appellant, therefore, prays that the assessment order u/s.147 read with Section 144B of the Act, dated 31.03.2022 be quashed, being bad in law and illegal.

2. On the facts and in the circumstances of the case, and in law, the Ld. CIT(A) erred in upholding the reassessment proceedings u/s.147 of the Act. The appellant submits that mandate of Section 147 of the Act was not satisfied by the Ld. AO before reopening of the assessment. The appellant, therefore, prays that the assessment

order u/s.147 read with Section 144B of the Act, dated 31.03.2022 be quashed, being bad in law and illegal.

3. On the facts and in the circumstances of the case, and in law, the Ld. CIT(A) erred in confirming the addition of Rs.77,32,714/- made by the Ld. AO u/s.69A of the Act on account of alleged unexplained money. The Ld. CIT(A) failed to appreciate, and ought to have held, that -

(a) there was no evidence or material on record for the transactions on NSEL wherein the allegation of client code modification (CCM) was made by the Ld. AO:

(b) despite specific request made by the appellant for transaction level data of such CCM, the Ld. AO did not provide the same, which was against the basic principles of natural justice;

(c) there was no clarity as to whether such CCM resulted in any fictitious profit or loss;

(d) in absence of transaction level data, the Ld. AO was not justified in holding that the appellant failed to adduce any evidence regarding those transactions, as it means requiring a person to prove a negative thing;

(e) the appellant had duly produced all material evidence in its possession to prove genuineness of the transactions done on NSEL, which were duly recorded in its regular books of account and had offered the net profit of Rs.2,65,475/- earned therefrom; and

(f) the appellant had neither any access to, nor any control of, the trade terminal of its brokers, and thus, the appellant was not in a position to do alleged CCM.

In view of above, the appellant prays that the addition of Rs.73,32,714/- u/s.69A be deleted.

4. Your appellant craves leave to alter, modify, amend or delete any of the above grounds of appeal, or to add one or more new ground(s), as may be necessary."

3. Rival submissions of both the parties have been heard and record perused.

The Id. Authorised Representative (Id. AR) of the assessee submits that

case of assessee for A.Y. 2014-15 was reopened under section 147. Notice under section 148 dated 31.03.2021 was issued on 01.04.2021. Copy of notice under section 148 and the e-mail communication through which it was send is also placed on record. The e-mail communication clearly shows the date of issuance of such notice on 01.04.2021 at 1:29:51 am. This fact was also accepted by assessing officer in his comment / report furnished before this bench on 07.10.2025. The Id. AR of assessee submits that notice under section 148 was issued beyond statutory period which cannot be condoned in any circumstances. Therefore, notice itself is invalid and subsequent action initiated on such notice is *void ab initio*. To support his submission, the Id. AR of the assessee relied upon the decision of Delhi High Court in Suman Jeet Agarwal vs ITO (2022) 143 taxmann.com 11 (Delhi), decision of Bombay High Court in Shah Nanji Nagsi Exports Private Ltd. (2025) 175 taxmann.com 1067 (Bombay), decision of Mumbai Bench Tribunal in Gupta Builders and Developers vs ACIT ITA No. 4361/M/2025 dated 03.09.2025 & Hyderabad High Court in Kalyan Chillara vs DCIT W.P. Nos. 18098, 14302, 14331, 19083, 20301, 20925, 20935, 21181, 21805, 21949 and 22543 of 2022.

4. On the other hand, Id. Sr. DR for the Revenue submits that notice under section 148 was generated on 31.03.2021 and was send through Income Tax Business Application (ITBA) portal. Once, the notice was issued and was uploaded on ITBA portal it has become out of control of assessing officer. Thus, assessee cannot take plea that notice under section 148 is time barred.

5. We have considered the rival submissions of both the parties and have gone through the lower authorities. We have also deliberated on various case laws relied on Id. AR of the assessee. We find that notice under section 148 bears the date as of 31.03.2021. Before us, the Id. AR of the assessee has placed copy of screen shot of ITBA portal, which clearly shows that notice under section 148 was in fact issued on 01.04.2021. To ascertain the actual timing, a report was obtained from assessing officer. The assessing officer furnished detail of ITBA portal wherein it shows that notice under section 148 was sent on 01.04.2021 at 1:29:46 am. It was served on assessee through e-mail on 01.04.2021 on 1:29:50 am. We find that Hon'ble jurisdiction High Court in Shah Nanji Nagsi Exports Private Ltd. vs DCIT (supra) held that where notice under section 148 was sent to assessee on 1-4-2021, since notice had not been issued within time frame as indicated by provisions of section 149(1), read with section 13(1) of Information Technology Act, 2000, same was to be quashed.
6. Further Hon'ble Delhi High Court in Suman Jeet Agarwal vs ITO (supra) also held that mere generation of notice under section 148 on ITBA software cannot in fact or in law constitute issue of notice, it is only upon due dispatch, that notice can be said to have been issued. Date of issue of notice is not important, it is date of signing notice which is important, hence, where notice was dated 31.03.2021 but had been digitally signed on 01.04.2021, date of notice will be 01.04.2021. Thus, considering the admitted position of fact that notice under section 148 was issued only on 01.04.2021. Therefore, the notice under section 148 is invalid being issued

beyond the period of limitation, hence, subsequent action initiated thereon is *void ab initio*. In the result, the assessee succeeded ground no. 1 of the appeal. Once the assessee succeeded on legal issue thus, adjudication on merit have become academic.

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

Order pronounced in the open court on 06/01/2026

Sd/-

Sd/-

(ARUN KHODPIA)
ACCOUNTANT MEMBER

(PAWAN SINGH)
JUDICIAL MEMBER

Mumbai; Dated 06/01/2026
Vishvajeet Sr PS

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

By Order

Assistant Registrar
ITAT, Mumbai