

**IN THE INCOME TAX APPELLATE TRIBUNAL
'G' BENCH: MUMBAI**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER AND
SHRI JAGADISH, ACCOUNTANT MEMBER**

**ITA No.4484/Mum/2025
Assessment Year: 2013-14**

Gita M Shah

A-501, Pleasant Palace, Sodawala Lane, Borivali West,
Maharashtra-400092

**National Faceless Assessment
Centre**

Circle 42(1)(1), Kautalya Bhavan,
Mumbai

PAN: AJWPS0867Q

(Appellant)

(Respondent)

Appellant by
Respondent by

: Ms. Shivani Shah
: Shri Arun Kanti Datta, CIT DR

Date of Hearing
Date of Pronouncement

: 15.12.2025
: 13.01.2026

ORDER

PER JAGADISH, A.M :

Aforesaid appeal preferred by the assessee against the order passed by the Learned Commissioner of Income Tax (Appeal), National Faceless Appeal Centre (NFAC), Delhi [hereinafter "CIT(A)"] dated 11.07.2024 for Assessment Year (AY) 2013-14 in the matter of assessment framed by the Assessing Officer [hereinafter "A.O"] u/s. 147 r.w.s 144B of the Income-tax Act, 1961 (hereinafter "the Act")

dated 08.05.2023. Whereby the appeal filed by the assessee was dismissed ex-parte for non prosecution.

2. There is a delay of 287 days in filing the appeal by the assessee. The assessee has filed a condonation petition/affidavit stating the reason that the appellate order was sent to the registered e-mail address which was not brought to the appellant's notice by her accountant responsible for monitoring tax communications and she came to know of the CIT(A)'s order only on receipt of a penalty order under Section 271(1)(c) referring to the said order, and immediately assessee took steps to file the present appeal. We have considered the petition/affidavit and are satisfied that there was sufficient cause for not filing the appeal within the prescribed time limit. We accordingly condone the delay.

3. The assessee is an individual and filed return of income declaring total income of Rs. 17,87,780/- on 16.12.2013. The return was processed u/s 143(1) of the Income-tax Act, 1961. Subsequently, the AO reopened the assessment by issue of notice u/s 148 of the Income-tax Act on 29.06.2021. The A.O thereafter on 25/05/2022, in compliance of direction of Hon'ble Supreme Court in the case of *Union of India vs. Ashish Agarwal*, issued notice u/s. 148A(b) of the Act, enclosing the material and documents to show cause why notice

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u/s. 148 should not be issued . The AO thereafter, considering the submission of the assessee passed order u/s 148A(d) with approval of Pr CCIT Mumbai and issued notice u/s. 148 of the Act on 28.07.2022. The A.O conducted the reassessment proceeding , and finally passed assessment order u/s 147 r.w,s 144B of the Act , making addition of long term capital gain of Rs.2,96,53,989/- in respect of sale of shares of M/s. JRI Industries Infrastructure Limited , claimed as exempt u/s 10(38) of the Act, holding it accommodation entry . The A.O also made addition of Rs. 5,93,080/- as commission expenses paid for the accommodation entry at the rate of 2% of the sale consideration. The assessee aggrieved by the assessment order filed appeal before the Ld. CIT(A) on 02/06/2023. The Ld. CIT(A) issued notices on 15/02/2024, 04/03/2024, 18/03/2024 and final show-cause on 04/07/2024 but the assessee failed to make any written submission. Consequently, the Ld. CIT(A) dismissed the appeal ex-parte without adjudicating the grounds raised on merits or otherwise.

4. Against the said order the assessee is in appeal before us raising following grounds :

"1. The Order passed u/s 147 r.w.s. 144B of The Act, 1961 for the AY 2013-2014 is illegal, invalid, void ab initio and contrary to law and wholly without jurisdiction.

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2. *On the basis of facts and circumstances of the case and in law, the Ld. AO erred in not providing the copy of the approval obtained u/s 151 of The Act, 1961.*
 3. *On the basis of facts and circumstances of the case and in law, the Ld. AO has erred in treating income exempt u/s 10(38) of The Act, 1961 as taxable income.*
 4. *On the basis of facts and circumstances of the case and in law, the Ld. AO did not rebut the evidence submitted by the appellant during the course of the re-assessment proceeding and merely relying upon the report of the investigation wing.*
 5. *On the facts and circumstances of the case and in law, the Ld. AO has erred in adding consideration received on the sale of shares of Rs.2,96,53,989/- as income u/s 68 of The Act, 1961 even though it was long term capital gain exempt u/s 10(38) of The Act, 1961.*
 6. *On the basis of facts and circumstances in law, the Ld. AO has erred in making addition of Rs.5,93,080/- (2% of 2,96,53,989/-) u/s 69C towards commission paid for providing accommodation entries without any basis and only on presumption.*
 7. *On the basis of facts and circumstances of the case, the Ld. AO has erred in initiating the penalty proceeding u/s 271(1)(C) of The Act, 1961 for the AY 2013-2014.”*
5. In addition to the ground originally raised before the Ld. CIT(A) the assessee has raised additional grounds challenging the jurisdiction of the reassessment proceedings as under :

“1. On the facts and circumstances of the case and in law, the Assessment Order is time barred as held by Hon'ble Supreme Court in the case of Union

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of India vs. Rajeev Bansal as reported in 469 ITR 46 based on relevant dates noted by the AO in the assessment Order itself.

2. On the facts and circumstances of the case and in law, the Assessment Order is bad in law because the notice u/s 148 of the Act issued on 28.07.2022 was issued by the jurisdictional Assessing officer instead of faceless unit.

3. On the facts and circumstances of the case and in law, the Assessment Order is bad in law for this reason also that the notice u/s 148 of the Act issued on 28.07.2022 is without DIN.”

6. The Ld. Authorized Representative (A.R.) in support of the legal ground has submitted that the reassessment proceedings were initiated pursuant to the notice issued u/s. 148 in consequence of the direction of *Hon'ble Supreme Court in the case of Union of India vs. Ashish Agarwal*. As per the laws subsequently explained by the Hon'ble Supreme Court in the case of *Rajeev Bansal vs. Union of India* , the order u/s. 148A(d) was required to be passed within the surviving period of limitation as on 1/04/2021 and in the present case the order u/s.148A(d) was not issued within surviving limitation period rendering the notice u/s. 148 time barred and invalid and consequently, the entire reassessment proceedings and the assessment order passed pursuant there to are *void ab initio* and liable to be quashed. The Ld.AR in this respect has relied on the decision of *Hon'ble Bombay High Court in Gurprit Singh vs. DCIT in*

writ petition no. 315 of 2023 dated 08/05/2025 and other case laws in this respect. The Ld.AR has further submitted that these legal grounds was not specifically raised before the Ld. CIT(A) but all the available facts are already on record and born out from assessment order itself therefore relying on the judgment of *Hon'ble Supreme Court* in the case of *NTPC Ltd. Vs. CIT*, it was contended that the additional legal ground deserves to be admitted.

7. The Learned Departmental Representative (Ld. D.R) on the other hand, opposed the admission of additional ground and submitted that the assessee remained noncompliant throughout the appellate proceedings before the Ld. CIT(A) leading to dismissal of appeal ex-parte. The Ld. DR further submitted that the factual matrix necessary to adjudicate the issue of limitation u/s. 148A(d), including dates of notices, replies and passing of orders, is not clearly emerging from the record therefore the issue requires proper verification.

8. We have carefully considered the rival submissions and perused the material available on record. It is settled legal position that a pure question of law which goes to the route of the matter and does not require investigation of new facts, can be raised at any stage of appellate proceedings. The *Hon'ble Supreme Court* in the case of *NTPC* has categorically held that the Tribunal had jurisdiction to

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examine the question of law which arises from the facts, as found by the authorities below and having bearing on the tax liability of the assessee even if such question have not raised earlier. In the present case the legal grounds raised by the assessee challenges the very assumption of jurisdiction for reopening of the assessment on the ground of limitation. If the contention of the assessee found to be correct the reassessment proceedings would be rendered *void ab initio*. Therefore in principle the legal ground raised by the assessee is admissible.

9. At the same time, it is an admitted position that the assessee did not corporate with the appellate proceedings before the Ld. CIT(A) resulting in dismissal of appeal ex-parte. The Ld. CIT(A) has not adjudicated the issue either on merits or on legal reassessment proceedings. It is also noticed that the assessment order does not record the specific date on which the assessee filed its reply to the notice issued u/s. 148A(b) nor does it clearly set out the complete chronology whether assessee has been given further extension of time to submit the reply which are relevant for determination of the surviving period of limitation as laid down by *Hon'ble Supreme Court in the case of Union of India vs. Rajeev Bansal*. The adjudication of legal grounds raised by the assessee would necessarily require statutory timeline,

dates of notices issued, extension granted , reply filed and order passed and this exercise is best under taken by the first appellate authority. Therefore, considering the totality of facts and circumstances including the ex-parte dismissal of the appeal by Ld. CIT(A), nature of legal grounds raised, the requirement of factual verification of statutory timeline and the principle of natural justice , we are of considered view that the matter deserves to be restored to the file of Ld. CIT(A) for de-nova adjudication. The Ld. CIT(A) is directed to admit and adjudicate the legal grounds raised by the assessee challenging the validity of reassessment proceedings including the issue of limitation u/s. 148A(d). The Ld. CIT(A) is directed to examine the issue in the light of the law laid down by the Hon'ble Supreme Court in the case of *Union of India vs. Rajeev Bansal* and considering the case laws relied by the assessee including the case of Gurprit Singh vs. DCIT of Hon'ble jurisdictional High Court and adjudicate the grounds after verifying the relevant facts and records in accordance with law.

10. The assessee is also directed to fully cooperate with the appellate proceedings.

11. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on 13th day of January, 2026 at Mumbai.

Sd/-

(BEENA PILLAI)
Judicial Member

Sd/-

(JAGADISH)
Accountant Member

Mumbai, Dated: 13th January, 2026.

Poonam Mirashi
(Stenographer)

Copy of the order forwarded to:

1. Appellant
2. Respondent
3. The CIT
4. The CIT (Appeals)
5. The DR, I.T.A.T.

By order

(Asstt. Registrar)
ITAT, Mumbai