

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI**

**SHRI ARUN KHODPIA, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No.998/MUM/2025
(Assessment Year: 2006-2007)**

Mohd Shafi Isamail Merchant

803, Panchvati Panch Marg, Off. Yari Road,
Versova, Mumbai – 400061. Maharashtra

[PAN: AAMPM85055H]

..... **Appellant**

Income Tax Officer 24(2)(1)

Piramal Chamber, Mumbai – 400012.
Maharashtra

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee

: Shri Ashwin Chhag

For the Respondent/Department

: Shri Kiran K. Chhatrapati

Date

Conclusion of hearing

: 09.01.2026

Pronouncement of order

: 20.01.2026

ORDER

Per Rahul Chaudhary, Judicial Member:

1. The Assessee has preferred the present appeal against the Order, dated 24/12/2024, passed by the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as the '**CIT(A)**'], under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as 'the **Act**'], whereby the Ld. CIT(A) had set-aside the Assessment Order, dated 06/03/2014, passed under Section 144 read with Section 147 of the Act, for the Assessment Year 2006-2007 in terms of First Proviso to Section 251 the Act.
2. The Assessee has raised following grounds of appeal :
 - "1. That while Ld. NFAC(A) set-aside the case back to NFAC(A), failed to appreciate and resolving the grounds of appeal that this reopening by the Ld. AO is without jurisdiction. Ld. NFAC(A)

should have resolved the issue of jurisdiction raised prior to set it aside back to the AO.

2. *That the order of the Id. NFCA(A) setting aside the matter back to the AO is arbitrary in the circumstances where all the fact are on the record, including the agreement which is alleged to have not on record, and issue raised are jurisdictional and legal in nature. It has gone unnoticed that the jurisdiction of CIT(A) is co-terminus with the Assessing Officer.*
3. The Assessee is an individual. For the Assessment Year 2006-2007 reassessment proceedings were initiated in the case of the Assessee on the basis of AIR-Information available with the Assessing Officer to the effect that the Assessee had invested INR.43,62,400/- in purchase of immovable property during the relevant previous year. According to the Assessing Officer, the Assessee did not respond to the notices issued during the course of hearing. Therefore, the Assessing Officer proceeded to frame assessment on the Assessee under Section 144 of the Act. After taking into consideration copy of the registered agreement furnished by the Joint Sub-Registrar Lonaval District Pune, in response to notice issued under Section 133(6) of the Act, the Assessing Officer concluded that the Assessee had purchased immovable property for consideration of INR.43,62,400/-, paid stamp duty of INR.2,61,749/- and registration fee of INR.30,000/-. In absence of any representation on behalf of the Assessee, the Assessing Officer added the aggregate of the aforesaid amounts in the hands of the Assessee assessing the income for the Assessment Year 2006-2007 at INR.47,54,150/-.
4. Being aggrieved, the Assessee filed appeal before the Learned CIT(A). It was contended by the Assessee that at the relevant time the Assessee was resided at 809, Panchvati Punch Marg, Versova Yari Road, Andheri, Mumbai - 400061 whereas the assessment order was addressed at old address i.e. B-4, Sai Nagar, Yari Road, Varsova, Andheri (E), Mumbai - 400061. It

was submitted that even the notices were issued at the old address and therefore, the Assessee had no knowledge of the reassessment proceedings under Section 147 of the Act. The Assessee also challenged the validity of assessment proceedings before the Learned CIT(A) raising following grounds:

- i. It was claimed that the mandatory notices under the provisions of the Act were not served on the Assessee, hence, the assessment order is void-ab-initio.
 - ii. There was no compliance of the provisions of Section 148(2) of the Act on the part of the Assessing Officer
 - iii. It was contended that it was a case to verify the source of investment and not the case of escapement of income
 - iv. The Assessee had contended that the addition was made merely on the base of the AIR-Information
5. The Learned CIT(A) called for a Remand Report from the Assessing Officer in respect of all the above issued vide Letter, dated 25/07/2016. In paragraph 6 of the said letter, the Assessing Officer was also directed to send the case-records along with the remand report. Vide letter dated 24/10/2017, the Assessing Officer furnish the Remand Report wherein it was, inter-alia, stated that the reassessment proceedings were undertaken after compliance that the provisions of the Act. The Assessing Officer had obtained prior approval from the competent authority (i.e. Joint Commissioner of Income Tax Range - 20(3), Mumbai). Hence, the provisions of Section 148(2) of the Act were also complied with. The Assessing Officer further stated that the Assessee had not appeared before the Assessing Officer till the finalization of the Remand Report, therefore, the transaction under consideration could not be cross-verified. After taking into consideration, the aforesaid Remand Report, the Learned CIT(A) disposed off the appeal

preferred by the Assessee vide Order, dated 24/12/2014, impugned by way of the present appeal. The Assessing Officer was directed by the Learned CIT(A) to frame the assessment afresh after verification of documents furnished by the Assessee. The Assessee was also directed to provide documentary evidence in support of the contentions raised.

6. The Assessee has now preferred the present appeal before the Tribunal contending, inter-alia, that the Learned CIT(A) had failed to adjudicate the jurisdictional challenge to the validity of reassessment proceedings. It was vehemently contended by the Learned Authorized Representative that despite repeated requests made by the Assessee and the directions given by the both the appellate authorities a copy of reasons recorded for reopening assessment have not been placed on record. It was submitted that even in the remand report the Assessing Officer had not provided reasons recorded for reassessment and had merely placed reliance upon Section 292BB of the Act. The Learned Authorized Representative for the Assessee invited our attention to Order Sheet, dated 03/04/2025 and 16/09/2025, in the present appellate proceedings whereby the Revenue was directed by this Tribunal to place on record a copy of reason recorded for reopening assessment. However, the same have not been complied with till date. It was submitted by the Learned Authorized Representative that in identical facts and circumstances the reassessment proceedings were quashed in the following cases by drawing an adverse inference against the Revenue:

- Union of India & Ors. Vs. Rai Singh De Singh Bist & Anr. (1973) 88 ITR 200 (SC)
- Suresh Chand Garg Vs. Assistant Commissioner of Income Tax (1992) 42 ITD 166

- Ravikumar Nath (HUF) Vs. Income Tax Officer 29(3)(1) [ITA No.3300/Mum/2019, Assessment Year 2005-2006, dated 14/06/2022]
 - Shri Ganesh Umanath Nayak Vs. Income Tax Officer 22(1)(5) [ITA No.228/Mum/2021, Assessment Year 2008-2009, dated 17/03/2023]
7. Per contra Learned Departmental Representative supported the order passed by the Assessing Officer and the Learned CIT(A). It was submitted that Assessee had been non-compliant during the assessment as well as appellate proceedings. The Assessee did not appear before the Assessing Officer during the assessment proceedings. Even in the remand proceedings the Assessee failed to place before the Assessing Officer relevant documents and details. No case on merit has been made out by the Assessee. It was submitted that the Assessing Officer has clearly recorded in the Assessment Order that notice under Section 148 of the Act was issued on 12/03/2013 and the case of the Assessee was reopened under Section 147 of the Act after taking prior approval of Joint Commissioner of Income Tax, Range - 20, Mumbai. However, the Learned Departmental Representative expressed his inability to place on record copy of reasons recorded for reopening assessment and furnish a copy of Email, dated 08/07/2025, received from the Income Tax Officer 24(2)(1), Mumbai wherein it was stated that reasons recorded for reopening reassessment were not available and the Learned Departmental Representative was asked to advance submissions on the basis available facts and circumstances before the Tribunal.
8. We have considered the rival submissions and have perused the material on record.
9. While passing the Assessment Order, under Section 144 read

with Section 147 of the Act for the Assessment Year 2006-2007 the Assessing Officer had recorded that (a) reassessment proceedings were initiated on the basis of AIR-Information to the effect that the Assessee had purchased immovable property; (b) necessary approval was taken from the competent authority, and (c) notice under Section 148 of the Act was issued to the Assessee on 12/03/2013. We note that the Assessee had challenged the validity of the reassessment proceedings before the Learned CIT(A) on the ground that provisions of Section 148(2) of the Act were not complied with. It was contended that reassessment proceedings were initiated without recording reasons for reopening assessment under Section 148 of the Act. The Learned CIT(A) called for Remand Report along with case-records. While the Assessing Officer filed Remand Report, case-records were not provided to the Learned CIT(A). While disposing of the appeal preferred by the Assessee, the Learned CIT(A) directed Assessing Officer to frame fresh assessment without returning any finding on the jurisdictional challenge. The Assessee carried the issue in appeal before the Tribunal. In order to adjudicate the contentions raised by the Assessee, the Tribunal gave following directions vide order, dated 03/04/2025:

"The Assessee has raised specific issue that Assessing Officer has not complied with the mandatory condition as enshrined under Section 148(2) of the Act. The Assessee further claimed that the said issue was raised before the Ld. Commissioner, who vide letter dated 25/07/2016 has sought for remand before from the Assessing Officer on four issues including noncompliance of the provision of Section 148(2) of the Act. The Ld. DR seeks time to file reasons recorded, the case pertains to Assessment Year 2006-2007. Considering the peculiar facts and circumstances for substantial justice, the Assessing Officer through Ld. DR, is directed to file reasons recorded for reopening of the case under Section 147 of the Act in compliance of the provision of Section 148(2) of the Act, while serving advance copy to the Ld. AR/Assessee. List the matter on 21/05/2025." (Emphasis

Supplied)

10. Since the above directions were not complied with, last & final opportunity was granted to the Revenue vide Order, dated 16/09/2025:

"Despite of specific direction to the Assessing Officer through Ld. DR for filing of reasons recorded for reopening of the case as per the provisions of Section 148(2) of the Act, as challenged by the Ld. Counsel for the Assessee specifically, no compliance has been made and therefore this Court is inclined to decide this appeal on the basis of material available on record. However, in the interest of justice, this Court deem it appropriate to afford one more but last and final opportunity to the Assessing Officer to file the reasons recorded within 30 days from today. Case is adjourned to 15/12/2025. In the meantime, this Court expects from the JAO to take appropriate call, for making fresh Assessment Order, in compliance to the impugned order." (Emphasis Supplied)

11. The Revenue has failed to comply with the directions issued by the Tribunal and has failed to bring on record the reasons recorded for reopening the assessment in the case of the Assessee for the Assessment Year 2006-2007. As per Letter, dated 08/01/2026, filed by the Learned Departmental Representative, vide Email, dated 08/07/2025, the Assessing Officer has also expressed inability to furnish relevant documents and had requested the Ld. Departmental Representative to proceed with hearing of appeal before the Tribunal based upon material on record. On perusal of record, we find that the reasons recorded for reopening assessment do not form part of record. The same have not been reproduced in the Assessment Order. Even during the appellate proceeding before the Learned CIT(A), the case records were not furnished along with the Remand Report. The Revenue has also failed to comply with the directions issued by the Tribunal to place on record reasons recorded for reopening assessment. The Assessee has placed on record, the following decisions of Tribunal wherein adverse

inference was drawn against the Revenue on account of failure of the Revenue to comply with the directions of the Tribunal to place on record relevant material.

- Suresh Chand Garg Vs. Assistant Commissioner of Income Tax (1992) 42 ITD 166
- Ravikumar Nath (HUF) Vs. Income Tax Officer 29(3)(1) [ITA No.3300/Mum/2019, Assessment Year 2005-2006, dated 14/06/2022]
- Shri Ganesh Umanath Nayak Vs. Income Tax Officer 22(1)(5) [ITA No.228/Mum/2021, Assessment Year 2008-2009, dated 17/03/2023]

12. Taking the above decision of the Tribunal into consideration, we draw negative inference against the Revenue to the effect that no reasons were recorded for reopening of assessment in the case of the Assessee for the Assessment Year 2006-2007. Accordingly, we accept the contention of the Assessee that the reassessment proceedings were initiated without complying with the requirements of Section 147 and 148 of the Act, and therefore, the same are quashed. As a result, the Assessment Order, dated 06/03/2014, is also quashed and the consequent demand deleted.
13. In view of the above, Ground No. 1 and 2 raised by the Assessee are allowed.
14. In result, appeal preferred by the Assessee is allowed.

Order pronounced on 20.01.2026.

Sd/-
(Arun Khodpia)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 20.01.2026
Milan, LDC

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त/ The CIT
4. प्रधान आयकर आयुक्त/ Pr.CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT,
Mumbai
6. गार्डफाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापितप्रति //True Copy//

उप/सहायकपंजीकार /(Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai