

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER
ITA No. 5850/MUM/2025 (AY : 2016-17)**

(Physical hearing)

Diamond Tradecom Private Limited Shop No. 1, Shiv Ganga CHS Ltd., Ram Kuwar Thakur Road, Dahisar (East), Mumbai – 400068. [PAN No. AACCD8131A]	Vs	ITO, Ward-12(2)(1), Mumbai Room No. 147B, Aayakar Bhavan, M.K. Road, Mumbai – 400020.
Appellant / Assessee		Respondent / Revenue

Assessee by	Shri Subhash Chhajed, CA
Revenue by	Shri B. Laxmikanth, Sr. DR
Date of institution of appeal	23.09.2025
Date of hearing	27.01.2026
Date of pronouncement	27.01.2026

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER;

1. This appeal by assessee is directed against the assessment order of Id. CIT(A)/NFAC, Delhi dated 29.07.2025 for Assessment Year (A.Y.) 2016-17. The assessee has raised the following grounds of appeal:

"1. On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in confirming the impugned assessment order u/s 147 r.w.s. 144 and 144B of the Act completed by Ld. AO without complying with the jurisdictional and mandatory requirements and conditions envisaged in section 147/148/151 of the IT Act, 1961 and therefore the entire Reassessment proceedings u/s 147/148 of the Act are liable to be quashed as null and void And bad in law.

2. On the facts and circumstances of the case and in law, Ld. CIT(A) vide impugned order passed u/s 250 of the Act erred in not quashing the impugned assessment order passed u/s 147/148 being based on invalid jurisdictional notice u/s 148 dated 30.07.2022 For Assessment year 2016-17 issued in violation of mandate of sec. 149(1)(a) of 1961 Act completely disregarding the fact that alleged escapement of income is less than 50 lacs at Rs. 37,25,000/- as per order u/s 148A(d) of the Act issued on 30/07/2022.

3. On the facts and circumstances of the case and in law, Ld. CIT(A) vide impugned order passed u/s 250 of the Act erred in not quashing the impugned assessment order passed u/s 147/148 being based on invalid jurisdictional notice u/s 148 dated 29.07.2022 issued without obtaining the sanction from specified authority viz PCCIT u/s 151(ii) of the Act as the impugned Notice has been issued after the lapse of 3 years from the end of Assessment year 2016-17 on 31st March 2020.

4. On the facts and circumstances of the case and in law, Ld. CIT(A) ought to have appreciated that the Jurisdiction Assessing officer (JAO) has no jurisdiction to issue notice u/s 148 of the IT Act.,1961 after the CBDT notification No. 18 of 2022 dated 29-03-2022 issued u/s 151 A of the Act mandating the reassessment proceedings in faceless manner by Faceless Assessing officer (FAO) from 29th March 2022 onwards.

5. On the facts and circumstances of the case and in law the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi erred in dismissing the grounds of appeal for non – prosecution and non- attendance by the appellants without disposing off each ground of appeal on merits, without stating the reasons for determination and the decisions thereon in terms of section 250(6) of the Income Tax Act., 1961. The Appellant therefore request your honour to set aside the appellate order passed by the Hon. CIT (A) AND remand back the matter to the file of Hon. CIT(A) for fresh adjudication on merits.

6. On the facts and circumstances of the case and in law, Ld. CIT(A) erred in the confirming the addition of Rs.3,07,000/- u/s 69A of the IT Act.,1961 made by the Ld. AO being unexplained money as investment in equity shares.

7. On the facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the addition of Rs. 34,18,000/- made by the Ld. AO as short term capital gain on sale of equity shares by assuming the cost of acquisition at Rs. 1,00,000/-

8. The appellant craves the leave to add, modify, amend or delete any of the grounds of appeal on or before the final hearing and all the above grounds are without prejudice to each other."

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

The learned Authorised Representative (Id. AR) of the assessee submits that apart from the merits of the case, he has raised two legal grounds of appeal.

The Id. AR of the assessee submits that case of assessee for A.Y. 2016-17

was reopened by issuing notice under section 148 dated 30.06.2021. After the decision of Hon'ble Apex Court in Union of India vs Ashish Agarwal (SC) in other appeal no. 3005/2022 dated 04.05.2022, the assessing officer passed order under section 148(d) dated 30.07.2022. Subsequent to passing order under section 148, a fresh notice under section 148 dated 30.07.2022 was issued. The notice under section 148 was issued with prior approval of Principal Commissioner of Income Tax (PCIT)-4, Mumbai dated 29.07.2022. The PCIT was not competent to grant approval for issuance of notice under section 148. The assessing officer was required to obtain approval of Principal Chief Commissioner of Income Tax (Pr. CCIT) or Chief Commissioner of Income Tax (CCIT). Thus, the notice issued with the prior approval of PCIT – 4 is invalid and subsequent action initiated thereon is void ab initio. Further, the escaped income is less than Rs. 50.00 lakhs, therefore, reopening under section 147 from the end of relevant assessment year, when the escapement of income was less than Rs. 50.00 lakh, the reopening is itself invalid. Ultimately, the assessing officer made addition of Rs. 34,18,000/- which is less than Rs. 50.00 lakh. Thus, the assessee has good case on both the legal issues that is escaped income is less than Rs. 50.00 lakh and approval under section 151 is not by competent valid. To support his submission, the Id. AR of the assessee relied the decision of Bombay High Court in Ramesh Bachulal Mehta WP No. 271 of 2023 dated 11.08.2025, Mumbai Tribunal in ACIT vs Manish Financial in ITA No. 5055 & 5050/M/2024 & C.O. No. 231 & 230/M/2024 dated 02.12.2024 and in Adil Aspi Engineer vs ITO, W.P. No. 3846 of 2022 along with various other Writ Petitions dated 15.09.2023.

3. On the other hand, learned Senior Departmental Representative (Id. Sr. DR) for the Revenue supported the order of lower authorities. The Id. Sr. DR for the Revenue submits that assessee has not raised such objection before assessing officer.
4. In short rejoinder, the Id. AR of the assessee submits that both the plea raised by him a legal plea and goes to the jurisdiction of assessing officer which is purely legal in nature.
5. I have considered the rival submissions of both the parties and gone through the orders of lower authorities carefully. I have also deliberated on various case laws relied by Id. AR of the assessee. There is no dispute that case of assessee for A.Y. 2016-17 was reopened by issuing notice under section 148 dated 30.06.2021. It is a matter of record that after decision of Hon'ble Apex Court in UOI vs Ashish Agarwal (supra), the assessee was allowed fresh opportunity and order under section 148A(d) was passed on 30.07.2022. A fresh notice under section 148 dated 30.07.200 was issued with the prior approval of Pr. CIT -4 as mentioned in para 3 of notice itself. Admittedly, the case of assessee for A.Y. 2016-17 was reopened beyond three (3) year from the end of relevant assessment year, therefore, the assessing officer was required to obtain the approval of Pr. CCIT or CCIT as prescribed under section 151(ii) of the Act. Thus, the notice issued under section 148 itself invalid. Further, the escaped income and the assessed income is admittedly less than Rs. 50.00 lakhs, therefore, the case falls in section 149(1)(b), hence, the assessment order is also bad in law. Thus, the assessee succeeded on both the legal plea. Considering the fact that I have allowed appeal of the

assessee on legal plea, therefore, adjudication on merit have become academic.

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

Order pronounced in the open Court on 27/01/2026.

Sd/-

PAWAN SINGH
JUDICIAL MEMBER

MUMBAI, Dated: 27 /01/2026
Biswajit

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