

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH, 'SMC': NEW DELHI**

**BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER**

**ITA No.7591/Del/2025  
[Assessment Year: 2011-12]**

<b>Seema Puri 4524, Near DLF City Clyb DLF Phase-IV, Gurgaon Haryana -122002 PAN No. AFGPPP3527C</b>	<b>Vs.</b>	<b>ITO Ward- 59 (1) Delhi</b>
Appellant		Respondent

Assessee by	Ms. Uma Upadhaya, CA Sh. Ayush garg, CA
Revenue by	Sh. Manoj Kumar, Sr. DR

<b>Date of Hearing</b>	<b>06.01.2026</b>
<b>Date of Pronouncement</b>	<b>30.01.2026</b>

**ORDER**

**PER C.N. PRASAD, JM,**

This appeal is filed by the assessee against the order of the Ld.Addl/ JCIT(A), Bhubaneshwar vide order dated 24.09.2025 for the A.Y. 2011-12. In this appeal the assessee has raised following grounds of appeal :-

*“1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals), (hereinafter referred to as CIT(A)) is bad, both in the eyes of law and on facts.*

2. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the order of the AO despite the fact that reopening the assessment of the Income Tax Act, 1961 ("the Act") and consequent reassessment order under section 147/143(3) without complying with the statutory conditions and the procedure prescribed under the law are bad and liable to be quashed.*

3. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the order of the AO despite the fact that notice issued under section 148 of the Act and consequent reassessment order under section 147/143(3) are illegal, without jurisdiction, invalid and liable to be quashed.*

4. (i) *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in confirming the order of the AO despite the fact that the reassessment proceedings initiated by the AD are illegal, as the reasons recorded for the issue of notice under section 148 are bad in the eyes of law and are contrary to the facts.*

(ii) *That the learned CIT(A) has erred both on facts and in law in confirming the order of the AO ignoring the fact that there is no live nexus between the reasons recorded and the belief formed by the AO.*

(iii) *That the learned CIT(A) has erred both on facts and in law in confirming the order of the AO despite the fact that the reassessment order passed by the AO is bad and liable to be quashed as the same has been reopened on the basis of the reasons which are vague and have been recorded without application of mind on the part of the AO.*

5. *On the facts and in the circumstances of the case, the learned CIT(A) has erred, both in law*

*and on facts, in upholding the reopening of the assessment proceedings, which was initiated solely on the erroneous premise that the assessee had not filed the return of income for the impugned assessment year, whereas the assessee had duly filed the return of income within the due date prescribed under section 139(1) of the Act. The reopening, therefore, lacks any valid basis and is liable to be quashed.*

*6. (i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law, in confirming the order of the AO despite the fact that the reassessment proceedings initiated by the learned AO without obtaining valid statutory prior approval of the prescribed authority as per section 151 of the Act is bad in law and liable to be quashed.*

*(ii) That the purported approval is illegal, mechanical in nature and has been given without application of mind.*

*7. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the order of the AO in reopening of the assessment proceedings despite the fact that the same has been made by the AO on the basis of borrowed satisfaction without independent application of his own mind.*

*8. (i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of Rs. 21,00,000/- made by the AO on account of amount received from M/s Focus Industrial Resources Limited treating the same as unexplained cash credit.*

*(ii) That the abovesaid addition has been confirmed rejecting the contention of the assessee that the amount is received on*

*account of forfeiture of advance received against sale of property and therefore the addition made by the AO treating the same as unexplained cash credit is invalid and unsustainable.*

*(iii) That the abovesaid addition has been confirmed rejecting the detailed submissions and explanations along with the evidences brought on record by the assessee in this regard.*

*9. (1) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of Rs. 52,500/- made by the AO alleging that assessee has paid the commission at the arbitrary rate of 2.5% on the above amount of Rs. 21,00,000/-received by the assessee.*

*(ii) That the abovesaid addition has been confirmed rejecting the detailed submissions and explanations along with the evidences brought on record by the assessee in this regard.*

*10. On the facts and circumstances of the case, the learned CIT(A) has erred both on fact and in law, in confirming the addition despite the fact that the same has been made by the AO indulging in surmises and conjectures without bringing on any direct evidence against the assessee, only on the basis of presumptions and assumptions.*

*11. On the facts and circumstances of the case, the learned CIT(A) has erred both on fact and in law, in confirming the abovesaid addition despite the fact that the same has been made by the AO on the basis of statement of third parties recorded at the back of the assessee without providing the opportunity to the assessee to cross examine the same.*

*12. On the facts and circumstances of the case, the learned CIT(A) has erred both on fact and in law, in confirming the abovesaid addition without conducting any independent enquiry/verification under section 133(6)/131 of the Income Tax Act.*

*13. The appellant craves the leave to add, amend or alter any of the grounds of appeal.”*

2. The Ld. Counsel for the assessee at the outset submitted that the assessee is challenging the validity of notice u/s. 148 of the Act and consequential assessment made pursuant to such notice as bad in law for the reason that the assessment was reopened on the ground that the assessee did not file her return of income but whereas the assessee had filed her return of income u/s.139 of the Act on 31.07.2011 which was also acknowledged by the AO while completing the assessment u/s.143(3) r.w.s. 147 of the Act dated 27.12.2018. The Ld. Counsel for the assessee, therefore, submitted that there was no application of mind while issuing notice u/s.148 of the Act by the AO. The notice was issued on wrong premise and without verifying the facts and, therefore, such notice is bad in law.

3. The Ld. Counsel for the assessee further submitted that the approval u/s.151 of the Act is also bad in law since such an approval is mechanical and without verifying the facts properly.

4. The Ld. Counsel for the assessee placing reliance on the following decisions submits that reopening u/s.148 is void ab initio as the reasons recorded proceeded on an incorrect factual assumption that assessee had not filed return of income whereas the return was duly filed by the assessee :-

1. *Smt. Anar Devi Versus ITO 1 (3) (1) Mathura 2025 (3) TMI 1464 Dated: March 28, 2025 ITAT AGRA*
2. *ITO, Ward-35 (7), New Delhi. Versus Smt. Sumitra Devi 2024 (3) TMI 35 Dated:- February 28, 2024*
3. *Sunrise Education Trust Versus Income Tax Officer (Exemption) 2018 (2) TMI 1471 Dated:- February 19, 2018 GUJARAT HIGH COURT*
4. *Ashish Natvarlal Versus The Income Tax Officer, Ward-1, Navsari. 2021 (4) TMI 815 Dated:- April 19, 2021 ITAT SURAT*
5. *Braham Prakash Lakra Versus The I.T.O Ward 67 (1) Ne3w Delhi 2019 (11) TMI 1002 Dated :- November 19, 2019*
6. *Chander Jain S/o Late Sh. ACIT Circle 39 (1) New Delhi., DCIT 39 (1) New Delhi ., DCIT Circle 63 (1) New Delhi*
7. *M/s. Sunil Kumar Rastogi HUF Versus Income Tax Officer- 34 2019 (12) TMI 1612 Dated December 2, 2019 Allahabad High Court*

5. On the other hand the Ld. DR supported the orders of the authorities below.

6. Heard rival submissions, perused the orders of the authorities below. In this case reasons recorded for reopening of assessment u/s.148 of the Act was that the assessee had obtained accommodation entries from M/s. Focus Industrial Resources Ltd. through Sh. Pradeep Kumar Jindal as he was operating and controlling this company. One of the reasons recorded for reopening of assessment u/s.148 was that the assessee did not file her return and this is a case of no

assessment was made and the only requirement to initiate proceedings u/s.147 is reason to believe income had escaped assessment.

7. Perusal of the assessment order shows that the assessee, as a matter of fact, filed her return of income on 31.07.2011 u/s.139 of the Act declaring income of Rs.6,00,270/- which was also acknowledged by the Assessing Officer. Therefore, the premise on which the assessment was reopened i.e. the assessee did not file return of income is false and factually incorrect.

8. In the case of ITO Vs. Sumitra Devi the Delhi Bench of the Tribunal in ITA No.906/Del/2020 and Cross Objection No.173/Del/2022 dated 28.02.2024 held as under :

*“9.2 We have heard the submission of the parties and perused the records. According to the Ld. CIT(A) apart from the receipt of information from the Investigation Wing, the Ld. AO made independent local enquiries and requisite enquiries from the Banks which formed the basis of issue of notice under section 148 of the Act. It however appears that it has escaped the attention of the Ld. CIT(A) that specific ground No. 11 was taken before him that the purported ‘reasons to believe’ are based on the allegation that the assessee did not file her return of income, whereas, as a matter of fact the return of income was filed by the assessee. Evidence of filing e-return by the assessee on 29.10.2010 for AY 2010-11 and processing thereof on 21.02.2011 under section 143(1) of the Act appears at page 1 and 1A of the Paper Book. At page 11 of Paper Book is placed copy of reasons recorded by the Ld. AO (ward 44(4), New Delhi) dated 29.03.2017 wherein it is specifically mentioned that the assessee has not filed her return of income for the concerned year. Therefore the amount of Rs. 1,00,75,000/- has escaped assessment for failure to disclose fully and truly all material facts necessary for assessment. In proforma for obtaining approval of Ld. PCIT (page 9 of Paper Book) against column 8(a)*

also the information given by the Ld. AO is in negative to the question 'whether any voluntary return had already been filed'. It is, therefore, obvious that the primary reason to believe escapement of income is alleged non filing of return for AY 2010-11 by the assessee which is contrary to the facts on record. The factum of non-consideration of ITR filed by the assessee on the part of the Ld. AO has been accepted by the Ld. CIT(A). In such a scenario Hon'ble Gujarat High Court in Sunrise Education Trust, 92 taxmann.com 74 observed as under:-

"5. Having heard Ld. Counsel for the parties and having perused the documents on record, it could be straightaway seen that the Assessing Officer in the reasons recorded, proceeded on the erroneous footing that the assessee had not filed return at all. The first premise for issuing the notice was thus factually incorrect. It is now not disputed by the Revenue that the assessee did file return of income for the year under consideration which was duly acknowledged by the Department. The entire reasoning thus proceeded on the wrong premise that the assessee had never filed the return. This itself would be suffice to annul the notice of re-opening the assessment".

9.3 The decision (supra) squarely applies to the facts of the assessee's case before us. The Co-ordinate Bench of Delhi Tribunal relied upon the decision (supra) of Hon'ble Gujarat High Court in its order in Braham Prakash Lakra vs. ITO in ITA No. 7650/Del/2018 decided on 19.11.2019. Reference may also be made to the decision of Hon'ble Delhi High Court in CIT vs. Indo Arab Air Services (2016) 283 CTR 92 (Del) wherein the Hon'ble Court observed that while law does not require AO to form definite opinion by conducting any detailed investigation regarding escapement of income from assessment, it certainly did require to form prima facie opinion based on tangible material which provide nexus or link to having reason to believe that income escaped assessment. The Ld. AR placed reliance on the decisions of Jaipur Bench of the Tribunal in Narain Dutta Sharma vs. ITO (2018) 91 taxmann.com 463 (Jaipur-Trib) and Hon'ble Gujarat High Court in Sagar Enterprises vs. ACIT (2002) 257 ITR 335(Guj) in support of his submissions. Following the decisions (supra) and applying their ratio to the facts of the assessee's case we sustain CO No. 2 of the assessee which is sufficient to hold that the notice under section 148 issued to the assessee is bad in law and deserves to be quashed. We do so."

9. Ratio of this decision applies to the facts of the assessee's case. Similar view has been taken by the Surat Bench of the Tribunal in the case of Ashish Natvarlal Vashi Vs. ITO (supra). Ratio of this decision applies to the assessee's case. Respectfully following the said decisions I hold that the reasons recorded for reopening of assessment u/s.148 of the Act are bad in law and consequently the assessment made u/s.143(3) r.w.s. 147 of the Act dated 27.12.2018 pursuant to such invalid notice is also bad in law, void-ab-initio. Accordingly, the same is hereby quashed.

10. Since I have quashed the assessment on legal ground the grounds on merits need not be gone into since it would be only of academic in nature at this stage and they are left open.

11. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 30.01.2026.

Sd/-

**[C.N. PRASAD]**  
**JUDICIAL MEMBER**

**Dated:** 30.01.2026

*NEHA, Sr. P.O.\**

Copy forwarded to:

1. Appellant
2. Respondent
3. PCIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi