

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SURAT” BENCH, SURAT**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND  
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

**ITA No. 894/SRT/2023  
Assessment Year:2013-14**

Ketan Natvarlal Shah, Plot No. 275, Udha Hospital & Life Line Charitable Trust,Nr. Cine Park Cinema, Silvassa Road, Channod, Vapi, Gujarat - 396191 <b>[PAN – AGUPS7338H]</b>	Vs.	Income Tax Officer, International Taxation, Surat - 395007
(Appellant)		(Respondent)
Assessee by	Shri P M Jagasheth, CA	
Revenue by	Shri Ajay Uke, Sr. D.R	
Date of Hearing	21.01.2026	
Date of Pronouncement	03.02.2026	

**ORDER**

**PER NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER:**

This appeal is filed by the assessee against the order of Commissioner of Income Tax (Appeals), Ahmedabad-13, [hereinafter referred to as ‘CIT(A)’] dated 26.10.2023 for the Assessment Year (A.Y.) 2013-14 in the proceeding u/s 147 r.w.s. 144 of the Income Tax Act [hereinafter referred to as ‘the Act’].

2. The brief facts of the case are that the assessee had filed his original return of income for A.Y. 2013-14 on 26.09.2013 declaring total income of Rs.30,89,810/-. Thereafter, a revised return was filed on 05.12.2013 with income of Rs.32,91,930/-. The original assessment was

completed u/s 143(3) on 28.03.2016 at total income of Rs.32,91,930/-. The case of the assessee was reopened u/s 147 and the assessment was completed u/s 143(3) r.w.s. 147 of the Act on 28.08.2018 at total income of Rs. 32,91,930/-. Thereafter, second reopening was done by issue of notice u/s 148 of the Act on 31.03.2021 and the assessment was completed u/s 147 r.w.s 144 of the Act on 17.05.2022 at total income of Rs.1,22,06,930/-. An addition of Rs.89,14,996/- was made on account of undisclosed LTCG while completing this assessment.

3. Aggrieved with the second reassessment order dated 17.05.2022 the assessee had filed an appeal before the first appellate authority which was decided by Ld. CIT(A) vide the impugned order and the appeal of the assessee was dismissed.

4. Now the assessee is in second appeal before us. The following grounds have been taken in this appeal:

1. *On the facts and in the circumstances of the case as well as the law on the subject, the learned Assessing Officer has erred in re-opening the assessment and issuing notice u/s.148 of the Income Tax Act, 1961*
2. *On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of the Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in passing order u/s 147 rws.144 of the Income Tax Act, though appellant complied all the notices during the course of assessment proceedings.*
3. *On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of the Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in*

*considering the short term capital loss amounting to Rs.89,14,996/- as Speculative loss and not allow to set off against long term capital gain.*

4. *On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of the Income Tax (Appeals) has not offered adequate opportunities to hear the case and passed ex-parte order and hence the case may please be set aside and restored back to the CIT(A) or AO*
5. *On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of the Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in initiating penalty proceedings u/s 274 rws 271(1)(c) of the Income Tax Act, 1961*
6. *On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of the Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in charging interest u/s 234B and 234C of the Act on account of delay in payment of tax.*
7. *It is therefore prayed that the above addition may please be deleted as learned members of the tribunal may deem it proper.*
8. *Appellant craves leave to add, alter or delete any ground(s) either before or in the course of the hearing of the appeal.*

5. The first ground taken by the assessee is against reopening of the assessment and issue of notice u/s 148 of the Act. Shri P M Jagasheth, the Id. A.R. of the assessee explained that though the notice u/s 148 of the Act issued by the AO is dated 31.03.2021, the said notice was actually issued and sent on 01.04.2021. In support of this contention the assessee has filed a copy of the “e-proceedings” with detail of all actions taken by the Department in the case of the assessee. The Id. AR further submitted that since the notice u/s 148 was issued by the Systems on 01.04.2021 the AO was required to pass order u/s 148A(d) of the Act

and thereafter a fresh notice u/s 148 of the Act was required to be issued, in accordance with the amended provisions of the Act. According to the Ld. AR, since no order u/s 148A(d) of the Act was passed in the case of the assessee, the notice issued u/s 148 of the Act earlier was *ab initio* void.

6. Per contra, Shri Ajay Uke, the Id. Sr. DR, supported the order of the AO.

7. We have considered the rival submissions. The AO has mentioned in the assessment order that notice u/s 148 of the Act for AY 2013-14 was issued on 31.03.2021. However, from the evidence brought on record in the form of copy of "Notices for e-Proceedings" it is found that the said notice u/s 148 of the Act was issued by the Systems on 01.04.2021 and not on 31.03.2021. This fact has not been disputed by the Revenue. In fact we had also fixed the matter for clarification in order to ascertain whether the procedure u/s 148A(b) and section 148A(d) was followed by the AO in event of notice being issued on 01.04.2021 by the Systems. It was clarified that the notice u/s 148 was issued by the AO on 31.03.2021 under the old provisions of the Act.

8. The provision for issue of notice u/s 148 of the Act was amended with effect from 01.04.2021. Under the old provision there was no requirement to take action as provided u/s 148A of the Act. The AO did not initiate action u/s 148A of the Act, for the reason that he had issued

the notice u/s 148 of the Act on 31.03.2021 under the old provision. Hon'ble Gujarat High Court had held in the case of *Saumil Abhinash Baheti in Civil Application No. 3804 of 2022 dated 17.06.2025* that where the notice u/s 148 of the Act dated 31.03.2021 was served through e-mail on 01.04.2021, the notice would be an invalid notice. In the present case the notice u/s 148 of the Act sent through email on 1<sup>st</sup> April, 2021, was not barred by limitation. Nevertheless, considering the fact that the notice was issued on 01.04.2021, the said notice was required to be treated as notice u/s 148A(b) of the Act as per the direction of *Hon'ble Supreme Court in the case of Union of India and others Vs. Shri Ashish Agrawal and others (444 ITR 1)(SC)*. Thereafter, the AO was required to pass order u/s 148A(d) of the Act and issue a fresh notice u/s 148 of the Act. Further, these actions were required to be completed within the surviving period. In the present case neither the notice u/s 148 issued on 01.04.2021 was treated as notice u/s 148A(b) of the Act under the new provisions nor any order u/s 148A(d) was passed by the AO. Thus the notice u/s 148 of the Act issued by the AO was neither within time limit of the old provision nor in accordance with the procedure laid down under the amended provision with effect from 01.04.2021. Therefore, the notice u/s 148 of the Act issued by the AO on 31.03.2021 which was served on the assessee on 01.04.2021 is quashed and the assessment order made u/s 147 r.w.s 144 of the Act dated 17.05.2022 in pursuance thereof, is set aside.

9. Since the legal ground taken by the assessee has been allowed and the assessment order has been set aside, all other grounds taken by the assess have become academic in nature.

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

**Order pronounced in the Court on 03/02/2026 at Ahmedabad.**

**Sd/-**  
**(SANJAY GARG)**  
Judicial Member

**Dated - 03<sup>rd</sup> February, 2026**

*Nk*

*True Copy*

**Sd/-**  
**(NARENDRA PRASAD SINHA)**  
Accountant Member

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण / DR, ITAT,
6. गार्ड फाईल / Guard file.

आदेशानुसार/BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad