

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"A" BENCH MUMBAI**

**BEFORE HON'BLE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER &  
HON'BLE SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA No. 3395/Mum/2025  
(Assessment Year: 2008-09)**

M/s Armstrong Energy Pvt. Ltd. 5 <sup>th</sup> Floor, Militia Apartment, Mathur Pakhadi Road, Mazgaon, Mumbai - 400010	Vs.	DCIT 6(1) (1), Mumbai Room No. 504, 5 <sup>th</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai 400020
PAN/GIR No. AAFCA3807R		
(Applicant)		(Respondent)

**ITA No. 2940/Mum/2025  
(Assessment Year: 2008-09)**

ACIT 6(1) (1), Mumbai Room No. 504, 5 <sup>th</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai 400020	Vs.	M/s Armstrong Energy Pvt. Ltd. 5 <sup>th</sup> Floor, Militia Apartment, Mathur Pakhadi Road, Mazgaon, Mumbai - 400010
PAN/GIR No. AAFCA3807R		
(Applicant)		(Respondent)

Assessee by	Shri Nishit Gandhi
Revenue by	Shri Rajesh Kumar Yadav (CIT-DR)

Date of Hearing	10.12.2025
Date of Pronouncement	16.02.2026

आदेश / ORDER

**PER SANDEEP GOSAIN, JM:**

These cross-appeals have been filed by the assessee as well as the Revenue against the common order dated 19.02.2025 passed by the National Faceless Appeal Centre, Delhi [hereinafter referred to as "Ld. CIT(A)"] for the Assessment Year 2008-09.

Since the issues involved in both the appeals are common and arise out of the same impugned order and pertain to the same assessee. Thus, both the appeals were heard together and are being disposed of by this consolidated order. The grounds, as raised by the Assessee are as follows:

*"1. On the facts and circumstances of the case and in law, the CIT(A) erred in setting aside the assessment order to the assessing officer for fresh assessment by applying the provisions of section 251(1)(a) of the Income Tax Act, 1961. The section 251(1)(a) is not applicable to the appellant as original assessment order was passed u/s 143(3) r.w.s. 147 of the IT Act, 1961 The section 251(1)(a) is applicable only in cases where assessment order is passed u/s 144 of the IT Act, 1961. The set aside by the CIT(A) is totally bad in law*

*2. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred by dismissing the ground that the reassessment proceedings initiated by the Ld. A.O. u/s 147 of the I. T. Act, 1961 and issuing the notice u/s 148 of the I. T. Act, 1961 is grossly incorrect, invalid and bad in law*

*3. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred by dismissing the ground that the notice issued by the Ld. A.O u/s 148 of the I. T. Act, 1961 merely in change of opinion as assessment has already been completed u/s 143(1) of the Income Tax Act, 1961.*

*4. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred by dismissing the ground that the notice issued by the Ld. A.O. u/s 148 of the I. T Act, 1961 merely on the basis of information received by his office*

*from DGIT (Inv.), Mumbai, which is nothing more than borrowed satisfaction as there was no independent finding of the Ld. A.O. before issuing the notice u/s 148 of the IT Act, 1961*

*5. On the facts and circumstances of the case and in law, the Ld. AO has not provided copy of reasons recorded and satisfaction note at the time of notice issued u/s 148 of the Income Tax Act, 1961*

*6. On the facts and circumstances of the case and in law, the Ld. A.O. has erred by not providing copy of the incriminating material/ evidence/ information received including the statement of Mr. Praveen Kumar Jain and Ashish Chokhani before passing the assessment order and it is against the principal of natural justice.*

*7. On the facts and circumstances of the case and in law, the approval given to the Ld. A.O. u/s 151(2) for issuing the notice u/s 148 of the I. T. Act, 1961 is in a mechanical manner and the reassessment order passed thereby is grossly incorrect, invalid and bad in law.*

*8. On the facts and circumstances of the case and in law, the Ld. A.O. had made addition in respect of share capital & share premium received by the appellant during the year under consideration from 13 parties amounting to Rs. 10,50,00,000/- u/s 68 of the I. T. Act, 1961 without considering the facts and documents submitted by the appellant during the assessment proceedings.*

*9. On the facts and circumstances of the case and in law, the Ld. A.O. had made same addition in respect of share capital & share premium received by the appellant from same 13 parties amounting to Rs. 10,50,00,000/- (wrongly amount was taken Rs. 11,00,00,000/- in AY 2009-10) u/s 68 of the I. T. Act, 1961 while passing the assessment order dated 31/03/2015 of AY 2009-10.*

*10. On the facts and circumstances of the case and in law, the Ld. A.O. had made addition in respect of share capital & share premium received by the appellant during the year under consideration from 4 parties amounting to Rs. 1,00,00,000/- u/s 68 of the I. T. Act, 1961 without considering the facts and documents submitted by the appellant during the assessment proceedings.*

11. On the facts and circumstances of the case and in law, the Ld. A.O. had made same addition in respect of share capital & share premium received by the appellant from same 4 parties amounting to Rs. 1,00,00,000/- u/s 68 of the IT. Act, 1961 while passing the assessment order dated 31/03/2015 of AY 2009-10.

12. On the facts and circumstances of the case and in law, the Ld. A.O. had made addition in respect of share capital & share premium received by the appellant during the year under consideration from 2 parties amounting to Rs. 80,00,000/- u/s 68 of the I. T. Act, 1961 without considering the facts and documents submitted by the appellant during the assessment proceedings.

13. On the facts and circumstances of the case and in law, the Ld. A.O. has ignored the fact that the appellant has not received any amount from M/s. Virtual Tours India Pvt. Ltd. of Rs. 20,00,000/- during the year. The Ld. AO has made the addition in respect of opening balance of share capital/premium of Rs. 20,00,000/- received from M/s. Virtual Tours India Pvt. Ltd and for opening balance, no addition can be made u/s 68 of the IT Act, 1961. Thus, the addition made u/s 68 of the IT Act, 19621 is bad in law.

14. On the facts and circumstances of the case and in law, the Ld. A.O. has ignored the fact that the appellant has received only Rs. 30,00,000/- from M/s. Suvi Rubber Pvt. Ltd. during the year. The balance amount of Rs. 30,00,000/- was received in earlier years and the Ld. AO has made the addition to that extent in respect of opening balance of share capital/premium received from M/s. Suvi Rubber Pvt. Ltd and for opening balance, no addition can be made u/s 68 of the IT Act, 1961. Thus, the addition made u/s 68 of the IT Act, 19621 is bad in law.

15. On the facts and circumstances of the case and in law, the Ld. A.O. has erred by not allowing an opportunity of cross examination with Mr. Praveen Jain and Mr. Abhishek Chokhani on whose statement the Ld. AO has relied upon for initiating and completing the reassessment proceedings. In this regard, the appellant relies on following decisions:

i. *Kishanchand Chellaram vs CIT 1980 125 ITR 713 (SC)*.

ii. *H. R. Mehta vs. ACIT, Mumbai (Bombay High Court) [2016] 72 taxmann.com 110 (Bombay).*

16. *The appellant craves leave to add, alter, amend or modify any or all grounds*

The grounds, as raised by the **Revenue** are as follows:

*(1) On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in setting aside the impugned order and restored the matter to the file of the AO with a direction to AO for making a fresh assessment after giving adequate opportunities to the assessee, whereas due diligence was done by the AO while finalising the assessment as per the provisions of the Act.*

*(2) On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in not appreciating the fact that the AO has at the time of finalizing the assessment on the basis of information received made enquiries as well as offered ample opportunities to the assessee for submission of details/evidence in support of the claim made.*

*(3) On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in not appreciating the fact that the AO made local enquiries about the information received on the parties involved and then came to the conclusion that the same were unexplained in nature and is a non-genuine transaction and treated the same as unexplained cash credit.”*

2. Ground No. 1 raised by the Assessee and Ground Nos. 1 to 3 raised by the Revenue are inter-related and interconnected and both the Assessee as well as Revenue have challenged the order of Ld. CIT(A) in restoring the matter back to the file of AO in contravention of the provisions of Section 251 of the Act, therefore we have

decided to adjudicate the same through the present consolidated order.

3. **Ground No. 1:** We have heard the rival submissions, perused the material available on record, the orders of the lower authorities, and the judicial precedents cited before us. From the records, it is evident that in the present case the Assessing Officer made additions under Section 68 of the Income-tax Act, 1961 (“the Act”) on the ground that the assessee was found to be a beneficiary of bogus concerns. During the course of appellate proceedings, the Ld. Commissioner of Income Tax (Appeals) [“CIT(A)”], after noticing certain discrepancies in the assessment order, set aside the same and restored/remanded the matter to the file of the Assessing Officer by invoking the provisions of Section 251(1)(a) of the Act.

4. In this regard, we have carefully examined the scope and ambit of powers conferred upon the CIT(A) under Section 251(1)(a) of the Act. We found that prior to 01.10.2024, the powers of the CIT(A) were restricted only to confirming, reducing, enhancing, or annulling the assessment. Hence, power to set aside an assessment and remand the matter to the Assessing Officer was not available. It is only pursuant to the amendment brought in by the Finance Act, 2024, with effect from 01.10.2024, that the Ld. CIT(A) had been empowered to set aside an assessment and restore the matter to the file of the Assessing Officer. But that too only in cases where the assessment order

has been framed as **best judgment** cases under Section 144 of the Act. Reliance in this regard has been placed on the decision of the Coordinate Bench of the Tribunal in the case of **ITO vs. Sapien Educational Society [2025] 177 Taxmann.com 368**, wherein the amended provisions of Section 251(1)(a) have been duly considered.

5. On careful consideration of the facts of the present case and the legal position discussed above, we find that the assessment order in the instant case was admittedly framed under Section 143(3) of the Act and not under Section 144 of the Act. Therefore, the proviso to Section 251(1)(a) of the Act, even after its amendment, has no application to the facts of the present case. Consequently, in our view the Ld. CIT(A) lacked the **statutory authority** to set aside the assessment order and remand the matter to the file of the Assessing Officer.

6. In view of our above discussion, we hold that the action of the Ld. CIT(A) in restoring/remanding the matter to the Assessing Officer suffers from a jurisdictional infirmity. As a result, the order passed by the Ld. CIT(A) is rendered null and void and is hereby quashed.

7. Accordingly, the above grounds raised by the assessee as well as by the Revenue stands allowed.

8. **Ground Nos. 2 to 5:** These grounds raised by the assessee are interrelated and interconnected and relates to

challenging the validity of reopening of the assessment as upheld by the Ld. CIT(A). Accordingly, we proceed to adjudicate these grounds by way of the present consolidated order.

9. We have heard the rival submissions, perused the material placed on record, the orders passed by the lower authorities, and the judicial precedents relied upon and cited before us. From the records, it is evident that the assessment in the present case was reopened on the basis of information received from the DGIT (Inv.), Mumbai, alleging that the assessee was a beneficiary of bogus concerns operated by Shri Praveen Kumar Jain and had obtained accommodation entries from such concerns. It was further alleged that the assessee had received share capital and share premium from certain entities floated by Shri Ashish Chokhani, the details of which have been mentioned in paragraphs 2, 3 and 5 of the assessment order. However, on careful examination of the material on record, we find that in the impugned reassessment proceedings no income had, in fact, escaped assessment. As it was observed that identical additions in respect of share capital/share premium received from the very same entities had already been made in Assessment Year 2009-10. This factual position was specifically brought to the notice of the Assessing Officer by the assessee by way of objections dated 03.11.2015, copies of which are placed at Pages 76 to 83 of the Paper Book. Notably, neither the Assessing Officer nor the Ld. CIT(A) had disputed this factual position. Even in the grounds of

appeal filed by the Revenue, no challenge has been raised on this aspect.

10. We also noticed that the assessment for AY 2009-10 was completed under Section 143(3) of the Act vide order dated 31.03.2015, i.e., prior in time to the impugned reassessment order for AY 2008-09, which was passed under Section 143(3) read with Section 147 of the Act vide order dated 28.03.2016. The relevant facts can be summarised as under:

Sr. No.	Particulars
1.	Assessment order passed for <b>AY 2009-10</b> on <b>31.03.2015</b> after making addition of Rs. 11,00,00,000/- in respect of share capital received from different entities
2.	Thereafter, assessment order was passed for <b>AY 2008-09</b> passed on <b>28/03/2016</b> after making addition in respect of share capital received from the same entities of which addition was already made in the assessment order dated 31.03.2015 passed for AY 2009-10, resulting into duplication of addition of same amount twice.

From the above facts, it is manifest that the additions of ₹11,00,00,000/- in respect of share capital receipts from the said entities were already subjected to assessment in AY 2009-10. The same receipts were once again brought to tax in the impugned reassessment for AY 2008-09, leading to duplication of addition of the same income.

11. In view of the aforesaid undisputed factual position, we hold that the very foundation for initiation of reassessment proceedings is vitiated, as the reasons recorded for reopening do not demonstrate that any income chargeable to tax had escaped assessment. Therefore, we are of the view that when no income has, in fact, escaped assessment, the assumption of jurisdiction under Section 147 of the Act in the present set of facts is unsustainable in law.

12. Accordingly, we hold that the reopening of assessment in the present case is bad in law. Consequently, the reassessment order passed pursuant thereto is hereby quashed.

Thus, the grounds raised by the assessee are allowed.

13. **Ground Nos. 6 & 7:** These grounds raised by the assessee are interrelated and interconnected, and relates to challenging the validity of sanction/approval granted under section 151(2) of the Income-tax Act, 1961 for issuance of notice under section 148. Therefore, these grounds are being adjudicated together by way of this consolidated order.

14. We have heard the learned counsels for both the parties and perused the material available on record, including the orders of the Revenue authorities and the judicial precedents cited before us. On careful examination of the records, it is noticed that the sanction/approval under section 151 of the Act, in the present case, had been granted without due application of mind. It is evident that the very same transactions, which had already formed the basis for reopening the assessment for Assessment Year 2009–10, were again treated as “reasons to believe” that income had escaped assessment for the impugned Assessment Year 2008–09 as well.

15. In our view grant of approval on such identical reasons, without independent examination, clearly demonstrates non-application of mind by the sanctioning authority. We are of the considered view that the requirement of obtaining sanction under section 151(2) of the Act is a mandatory safeguard intended to prevent arbitrary, unwarranted or mechanical reopening of completed assessments. Thus the provision casts a duty upon the higher authority to examine whether a *fit case* exists for issuance of notice under section 148 of the Act or not.

16. In the present case, the sanction had been accorded in a routine and mechanical manner. Despite the fact that the assessment for Assessment Year 2009–10 had already been reopened on the basis of the very same transactions, still the assessment for the impugned Assessment Year 2008–09 has

again been reopened on identical reasons. Therefore, such approval, granted without independent application of mind, is in clear violation of the mandate of section 151(2) of the Act.

17. Accordingly, we hold that the sanction/approval granted for reopening the assessment in the present case is bad in law and the same is hereby quashed.

18. Other grounds raised by the Assessee are not being adjudicated, in view of our findings while adjudicating Ground Nos. 1 to 7, wherein the reopening of assessment and the consequential proceedings have been held to be bad in law, the other grounds raised by the assessee do not survive for adjudication and therefore, needs no adjudication.

19. In the net result appeal file by the assessee is partly allowed and also the appeal filed by the Revenue stands allowed.

Order pronounced in the open court on 16.02.2026

Sd/-

**(PRABHASH SHANKAR)**  
**ACCOUNTANT MEMBER**

Sd/-

**(SANDEEP GOSAIN)**  
**JUDICIAL MEMBER**

Mumbai, Dated 16/02/2026

*RY*  
*Sr. PS.*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)

4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई/ DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार ( Asst. Registrar)  
आयकर अपीलीय अधिकरण, मुम्बई / ITAT, Mumbai