

आयकर अपीलीय अधिकरण न्याय पीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, MUMBAI

BEFORE SHRI PAWAN SINGH, JM &
SHRI ARUN KHODPIA, AM

I.T.A. No. 2569/Mum/2025
(Assessment Year: 2009-10)

I.T.A. No. 2568/Mum/2025
(Assessment Year: 2010-11)

Nitin Chaturbhug Garg, E Wing, 1302, The Spring, Plot No. 4, Road Pali, Sector-20, Kalamboli Node, Raigarh, Kalamboli Node, Maharashtra-410218. PAN: AEOPG9568B	Vs.	CIT (A), Ward-41(3)(3), Kautilya Bhavan, Mumbai.
Assessee -अपीलार्थी / Appellant	:	Revenue - प्रत्यर्थी / Respondent

Assessee by : Shri Nikhil Natekar, AR

Revenue by : Shri Leyaqt Ali Aafaqui, Sr. DR

Date of Hearing : 06.01.2026

Date of Pronouncement : 13.02.2026

ORDER

Per Arun Khodpia, AM:

The captioned appeals are preferred by the assessee challenging the order of Commissioner of Income Tax (Appeals)/ National Faceless Appeal Centre (NFAC), Delhi (in short “Ld. CIT(A)”, dated 12.02.2025 and 18/02/2025 for the Assessment Years (AY) 2009-10 & 2010-11 respectively, which in turn arises

from the assessment order passed under section 147 r.w.s. 144 of the Income Tax Act, 1961 (the Act) dated 25.03.2015 and 24.02.2016, respectively.

2. Since the aforesaid two appeals pertains to same assessee, with identical facts and under similar grounds of appeal, thus are heard together and decided under this common order.

3. ITA No. 2569/Mum/2025 for AY 2009-10 has been taken up as the lead case, our decision therein shall apply mutatis mutandis to the second appeal in ITA No. 2569/Mum/2025 for AY 2010-11. The grounds of appeal raised by assessee for AY 2009-10 are as under:

“1. The learned CIT has not considered the fact that the notice issued for reassessment is not duly served upon, making the assessment proceeding void, ab initio.

2. The learned CIT has not considered that the notice under Section 148 of the Income Tax Act is without proper jurisdiction and non-est, and consequently invalid. Hence, the order passed under Section 144 r.w.s. 147 was invalid, and defects in the notice are not curable.”

4. The brief facts of the case for AY 2009-10 are that the assessee has filed its return of income on 29.09.2009 declaring total income of Rs. 1,96,829/-, which is processed under section 143(3) of the Act. Further the assessment under section 143(3) was completed on 26.07.2011, determining the total income of assessee at Rs. 2,17,770/-. Subsequently the case of assessee was reopened under section 147 of the Act by issuance of notice under section 148 on 24.03.2014. During the entire reopening assessment proceedings, the

assessee remained silent with no compliance to the queries raised by the ld. AO vide notices under section 142(1) of the Act. In conclusion the assessment was completed under the provisions of section 144 of the Act by making a disallowance of Rs. 1,54,55,773/- on account of non-genuine / bogus purchases. Aggrieved with the aforesaid disallowance assessee preferred an appeal before the ld. CIT(A) raised the question on the validity of assessment framed under section 144 r.w.s. 147 dated 25.03.2015, alleging that the notice under section 148 of the Act, in order to invoke the provisions for reopening of assessment was not validly served to the assessee. It is further claimed by the assessee that even the notices under section 142(1) and 143(2) of the Act are not served to the assessee.

5. To the aforesaid contention raised by the assessee before the ld. CIT(A), he observed that the assessee had furnished various additional evidence for examination, which were never submitted before the ld. AO, hence it would be proper to set-aside and remit back the matter to the ld. AO for fresh assessment after examining the fresh evidence produced.

6. Aggrieved with the aforesaid decision by the ld. CIT(A), assessee preferred an appeal before the ITAT.

7. At the outset, the ld. AR representing the assessee submitted that the assessee is proprietor of M/s Garg Enterprises, engaged in the business of retail

trading in Plywood, Wood and Laminates. The case of assessee was reopened stating the reason that the assessee was the beneficiary of bogus purchase bills during the relevant previous year. The assessment was passed under section 144 r.w.s. 147 making addition of Rs. 1,54,55,773/- under section 69C of the Act. It is submitted that notice issued by the ld. AO were never served to the assessee, therefore was completely unaware of the proceedings initiated. It was the submission that the ld. CIT(A) has not considered the fact that notice for re-assessment was not duly served upon the assessee. To substantiate such contention the ld. AR submitted that for AY 2009-10, no information was provided to the assessee towards the RTI application dated 14.03.2023 to Income Tax Officer, Ward-41-3(3), Mumbai, whereas for AY 2010-11 copy of affixture of notice was provided to the assessee according to which the notice was affixed by Inspector on the instruction of ITO, Ward-24(2)(1), Mumbai at Shri Kutchi Brahma Panchayat Wadi-3, Panjarapole Lane, Mumbai-400004, whereas the income tax return were filed by the assessee with the address 14, Neelkanth, Rani Sati Marg, Malad (E), Mumbai-400097. Copy of notice affixed is placed in assessee's PB at page no. 11. It is contended that the assessee has furnished same address in his return of income, which is also the address in the PAN data base of the assessee and also address in the last income tax return furnished by the assessee for AY 2013-14. Basis such information, the ld. AR argued that the notice is issued and served at a place other than the address recorded in Income tax return and hence, the notice is not served upon the

assessee validly was a violation of assessment procedure. On the issue, the ld.

AR placed his reliance on various decisions as under:

1. CIT vs. Shital Prasad Kharag Prasad [2006] 280 ITR 541 (All. HC)
2. Harsingar Gutkha Pvt. Ltd. vs. CIT [2011] 336 ITR 90 (All. HC)
3. CIT Vs. Kanpur Plastipack Ltd. reported in (2017) 390 ITR 381
4. Y. Narayan Chetty vs. ITO (1959) 35 ITR 388 (SC);
5. CIT vs. Thayaballi Mulla Jeevaji Kapasi (1967) 66 ITR 147 (SC)
6. CIT vs. Kurban Hussain Ibrahimji Mithiborwala (1971) 82 ITR 821 (SC)
7. CIT vs. Hotline International Pvt. Ltd. (296 ITR 0333)
8. CIT (Central)-I vs. Chetan Gupta ITA No. 1891/Del/2012 dated 15.09.2015; 382 ITR 613
9. CIT vs. Ceban India Ltd. ITA No. 85 of 2009, Jul 7, 2009

8. Referring to aforesaid judicial pronouncements, it is submitted that the notice under section 148, in present case was not served on the assessee in the manner as provided in the statute, failing which the proceedings stand vitiated. It was the submission that in absence of valid service of notice, the ld. AO lacks jurisdiction to make the reopening assessment, therefore the assessment without valid service of notice vitiates and can be sustained in the eyes of law.

9. The ld. AR raised one more issue regarding jurisdiction of the ld. AO who had framed the assessment i.e. ITO, Ward -30(2)(4), Mumbai, whereas the first notice to initiate the re-assessment proceedings was issued by the ITO-24(2)(1), Mumbai. Copy of notice dated 18.08.2014 issued by ITO-Ward-24(2)(1), Mumbai was placed before us at PB page No. 44 marked as "Exhibit F". Further as per copy of return of income, the address of the assessee is

demonstrated before us found to be 14, Neelkanth, Rani Sati Marg, Malad(E), Mumbai-400097. Copy of return placed before us as “Exhibit C”. It is contended that the jurisdiction of the assessee’s case was lying with ITO-Ward-30(2)(4) who had completed the assessment, however since the notice under section 148 was issued by ITO-24(2)(1), who is not the Jurisdictional Officer over the case of assessee, therefore, the assessment framed based on a notice issued by Non-Jurisdictional AO would not confer a valid assumption of Jurisdiction to the ITO 30(2)(4), who had framed the assessment, the assessment framed thus cannot sustained in law and liable to be struck down. The ld. AR placed his reliance on various decisions on the aforesaid aspect detailed as under:

1. Kiran Bhanwarlal Jogani Vs. ITO-5(3)(3), ITA No. 2441/Mum/2022 on 10.01.2023
2. Manish Kumar & Sons HUF, Faridabad vs. ITO, Ward-1(5). [ITA No. 1563/Del/2018]
3. ITAT Raipur in case of Mata Road Carriers Vs. DCIT, ITA No. 79/RPR/2016 dated 10.07.2023.

10. In backdrop of aforesaid submissions, it was the prayer that the assessment in the present case vitiates on two counts, first the notice was not validly served on the assessee and secondly the notice under section 148 was issued by Non-Jurisdictional AO, therefore even if the assessment was framed by Jurisdictional AO, the same would be without valid assumption of

Jurisdiction. Thus, such assessment cannot sustain being bad-in-law and void ab-initio.

11. Per contra, the ld. DR representing the revenue submitted that notice was issued properly following the provisions of section 282(1) (b) of the Act following the procedure provided under Code of Civil Procedures, 1908 (5 of 1908). If there was any change of address, the same was not informed by the assessee to the Department for which there is a procedure and mechanism prescribed in the law. The affixture was made in the circumstances when the assessee was out of Mumbai for two weeks. The notice under section 133(6) was issued to Credit Information Bureau (India) Ltd. (CIBIL) to provide latest information as per their data base to trace the assessee, according to which one address was provided by CIBIL and the notice was forwarded on that address but again returned back by the Postal Authorities, another notice under section 133(6) was sent to DHFL, Bandra (E) to ascertain the authenticity of Housing Loan taken as per information in CIBIL. It is submitted that the ld. AO has tried all the methods to serve the notice under section 148 of the Act to the assessee and finally the notice was served through affixture on 04.09.2014, therefore it cannot be said that there was no proper service of notice under section 148 of the Act. It is further submitted that emails were also sent to the address / email ID available in the return of assessee. Regarding change of AO from Ward-24(2)(1) to Ward 30-(2)(4), it is submitted that there must be an order under

section 127(1) which needs verification from records. It was the submission that since the ld. CIT(A) had allowed the assessee's one more opportunity by setting aside the issue to the file of ld. AO, the assessee can pursue all such contentions before the ld. AO, as everything goes and depends on verification of records. The ld. Sr. DR, accordingly, supported the orders of ld. CIT(A).

12. We have considered the rival submissions and perused the material available on record and case laws relied upon by the assessee. Admittedly in the present matter, the assessee was totally non-compliant during the assessment proceedings for which it is stated that notices were not validly served by the ld. AO to the assessee in accordance with the procedure laid down in the law, therefore in absence of valid service of notice, the assessment framed therein would be void ab-initio and liable to be quashed. Further the first notice was issued by ld. ITO, Ward-24(2)(1), Mumbai, however the assessment was finally framed by ITO, Ward-30(2)(4), Mumbai. Admittedly, the assessment was finally framed by Jurisdictional AO only. However, whether there is any order passed under section 127(1) for change of incumbent or not, needs to be verified from the records. For AY 2009-10 in response to RTI by the assessee regarding notices for reopening, no information could be provided by the concerned officer that is the ITO, Ward-41(3)(3), Mumbai, whereas for AY 2010-11 the notice was affixed at an address which is not on record for the assessee. No proof has been furnished before us, regarding the valid service of

notice at the assessee's address i.e. 14, Neelkanth (supra), therefore the validity of service of notice could not be established by the revenue.

13. In view of such violation the proper service of notice, we are unable to concur with the submissions of the revenue, whereas find substance in the contention raised by the assessee following the decision of Hon'ble Allahabad High Court in the case of **CIT vs. Shital Prasad Kharag Prasad (supra)**, wherein the Hon'ble High Court has held that the service of valid notice under section 147 is the foundation for initiation of reassessment and a condition precedent for the validity of notice. If the notice under section 148 was not served validly being a Jurisdictional notice, the same cannot be curable under section 292B of the Act. Further in the case of **Harsingar Gutkha Pvt. Ltd. vs. CIT (supra)** Hon'ble Allahabad High Court, has dealt with the same issue qua provisions of section 143(2) r.w.s. 282 of the Act, according to which a notice or requisition under the Act may be served on the person therein named either by post or if it was a summon issued by the Court under the Code of Civil Procedure. The valid service of notice is further substantiated by various Courts under that decision, which are relied upon by the assessee herein referred to (supra). In sum and substance, it can be held that in absence of the valid service of notice under section 148, the assessment proceedings are rendered to be bad-in-law. In present case the revenue has squarely failed in substantiating the validity of service of notice for AY 2009-10, whereas for AY 2010-11 the

notice was affixed on an address other than the address on record for the assessee, to which no satisfactory reply or clarification could be brought on record by the revenue.

14. In backdrop of such facts and circumstances respectfully following the decisions of Hon'ble Courts referred to (supra), we find that the re-opening assessment framed in the present matter under section 144 r.w.s. 147 of the Act, passed without valid Jurisdiction by the ld. AO de hors valid service of notice under section 148 of the Act, cannot be held as tenable in the eyes of law.

15. Regarding change of incumbent the order under section 127(1) was not placed before us and the same is subject matter of verification, therefore we are keeping that said ground of assessee open at this stage.

16. In result, the assessment framed under section 147 r.w.s. 144 for both the AY i.e. 2009-10 and 2010-11 are quashed for the want of valid service of notice under section 148 of the Act.

17. Resultantly, the appeal of assessee for AY 2009-10 and 2010-11 are allowed, in terms of our aforesaid observations.

Order pronounced in the open court on 13-02-2026.

Sd/-
(PAWAN SINGH)
Judicial Member

Mumbai, Dated : 13-02-2026.

**SK, Sr. PS*

Sd/-
(ARUN KHODPIA)
Accountant Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai