IN THE INCOME TAX APPELLATE TRIBUNAL BENCH-RANCHI
VIRTUAL HEARING AT KOLKATA

Before Shri Sonjoy Sarma, Judicial Member
and Shri Ratnesh Nandan Sahay, Accountant Member

I.T.A. No.414/Ran/2025
Assessment Year: 2011-12

Badrinath Sales Pvt. Ltd...Appellant
Near Football Ground,
Tata Kandra Main Raod,
Jharkhand- 831013.
[PAN: AACCB5555A]

vs.

DCITACIT, Circle-1, JSR..Respondent

Appearances by:
Shri Akshay Ringasia, AR, appeared on behalf of the appellant.
Shri Kailash Gautam, Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : February 06, 2026
Date of pronouncing the order : February 13, 2026

ORDER

Per Sonjoy Sarma, Judicial Member:

This appeal filed by the assessee is directed against the order of the CIT(A)-3, Patna (hereinafter referred to as "CIT(A)") dated 28.08.2025 passed under Section 250 of the Income-tax Act, 1961 (hereinafter referred to as the "Act").

2. Brief facts of the case are that the assessee is a company engaged in the business of trading in iron and steel. For the assessment year 2011–12, it filed its return of income declaring total income of ₹1,14,389. A survey under section 133A was conducted on 22.03.2018 at the business premises of the assessee. During the course of survey, it was noticed that the registered office of the assessee company was found closed and business activities were being carried on from the premises of M/s Prem Steel, proprietary concern of Shri Ramji Lal Agarwal. No regular books of account were found at the premises. The Director

present could not produce books of account despite summons under section 131 of the Act. A stock register was stated to have been produced subsequently. As per the return of income, the assessee had disclosed closing stock of ₹23,49,500. The Assessing Officer observed that turnover had substantially declined as compared to earlier years. It was further noticed that during the financial year relevant to AY 2011–12, the assessee had sundry creditors amounting to ₹7,30,925, the genuineness of which was doubted. Based on the above observations, the Assessing Officer formed a belief that the assessee had not disclosed income fully and truly, and accordingly initiated reassessment proceedings under section 147 of the Act. Notice under section 148 of the Act dated 31.03.2018 was issued. The issue of Service of Notice under Section 148 of the Act, the notice under section 148 was sent through speed post, which was returned unserved with postal remark “Not Known” issued through ITBA portal/e-mail, which also failed, subsequently served through process server on 08.04.2018, as recorded in the assessment order itself as alleged by the assessee. The assessee raised a specific objection that though the notice was dated 31.03.2018, it was actually served only on 08.04.2018, i.e., beyond six years from the end of AY 2011–12, and therefore the reassessment proceedings were barred by limitation. However, the Assessing Officer rejected the objection and completed reassessment by making the additions on account of alleged suppression of stock ₹18,55,295 and disallowance of commission expenditure: ₹3,00,000 by assessing the total income of assessee at ₹22,69,680.

3. Aggrieved by the above order the assessee went in appeal where the ld. CIT(A) dismissed the appeal and sustained the reassessment as well as additions.

4. Dissatisfied with the above order the assessee is in appeal before this tribunal, the assessee contended that notice under section 148,

though dated 31.03.2018, was never served within the period of limitation and service through speed post and e-mail had failed and actual service took place only on 08.04.2018, which is beyond six years. Therefore, the reassessment is void ab initio. On merits, it was submitted that books of account were never rejected under section 145(3)of the act and no discrepancy in physical stock was found. The additions were made merely on suspicion due to fall in turnover. The Ld. AR stated that for AY 2018–19, assessment was completed under section 143(3) after the same survey, accepting opening stock without any addition. Since opening stock of AY 2018–19 represents closing stock of earlier years, including AY 2011–12. When, once opening stock is accepted in subsequent year, closing stock of earlier year cannot be disturbed. The ld. AR submitted his written submissions in the following manner:

"Issuance of notice beyond the time barring period

1.1 ***For ground 1,2 & 3: The Ld. assessing officer has erred issuing notice under section 148 beyond the time barring date of 31.03.2018.***

1.1.1 *That it is a matter of fact that the last date for issuance of notice under section 148 qua the assessment year was 31.03.2018.*

1.1.2 *That it is humbly submitted that the impugned notice under 148 suffered from following characteristic:*

1.1.2.1 It was served upon the assessee only on 08.04.2018.

1.1.2.2 The same was not digitally signed but bore the hand written signature of the Ld. AO along with the common seal of his good office.

1.1.2.3 It is impossible that the letter could not be served by the postal department even though the assessee Company was subjected to survey merely 8 days back and even thereafter was duly served on 08.04.2018.

1.1.2.4 That the department has not brought on record a single piece of evidence which can prove that the said notice was dispatched on 31.03.2018 neither any similar copy for service on the mail has been produced.

1.1.2.5 *That no record of such notice is available on the Income Tax Portal even though copies of other notices like 142(1) and 147 is available for the said proceedings.*

1.1.3 *That basis above, it can be asserted as a matter of fact that the impugned notice under section 148 is time barred and thus bad in law. Consequently, all the subsequent proceedings against the same stands null and void.*

1.1.4 *That it is a settled proposition that issuance of notice means that the same must be dispatched to the assessee and in the given case there is no such proof. Thus, such notice has not been* ***issued*** *within the limitation specified in the Act. Hence, the same is barred by limitation and is rendered null and void.*

Issuance of 148 on a presumptive basis

1.2 ***For ground 1,2 & 4: That the Ld. assessing officer has erred in law by issuing notice under 148 without any tangible evidence and on a presumptive basis.***

1.2.1 *That as clearly laid out in the reason to believe, the sole reason for issuance of notice under 148 is that a survey was carried out in the premises of the assessee during AY 2018-19 and even without completion of the assessment of the said year, it was presumed by the Ld. Assessing officer that stock has declared 7 years back was incorrect. This was without even considering the finding of the assessment AY 2018-19.* ***Moreover, all the records for the said year was duly produced, perused and no addition was made.***

1.2.2 *That clearly assessing officer had no tangible evidence to suggest that for the impugned AY, the stock was undervalued. Such reason to can at best be treated as a figment of his imagination and assumptions. In fact, how can value of stock in past be disputed without any physical verification, corroborative evidence suggesting otherwise or proven discrepancy in prior or subsequent sales. Clearly there was no such element involved in the given scenario.*

1.2.3 *That similarly, the creditors as submitted in the return was not even doubted but simply finds a reference without nay logical or evidential allegation against it.*

1.2.4 *That your appellant will fail in its duties if we fail to refer to the text of the said reason to believe, wherein in a very absurd fashion, the Ld. AO forms a reason to believe that the difference between the opening and closing stock deserves to be taxed. The relevant noting is re-produced as under:*

> *"… Apart from this, as per the balance sheet opening stock was Rs.53,04,800/- and closing stock was Rs.23,49,500/-. However, in course of survey assessee could not give any explanation regarding closing stock. Though the assessee's*

turnover has been increased but stock has been decreased. In view of this, value of closing stock of Rs.23,49,500/- shown by the assessee is doubtful. Though, the onus was on the assessee to substantiate its accounts by producing books of accounts but the assessee failed to do so. There was undisclosed stock of Rs.29,53,300/- (Rs.53,04,800/- Rs.23,49,500/-). In view of this, the undersigned has reason to believe that in this case, income has escaped assessment for A.Y. 2011-12."

As evident from above, simply mentioning about the survey, the assessing officer for no reason went on to form an opinion that difference between the opening an closing of the stock for AY 2011-12 has escaped assessment which is most absurd, imaginary and devoid of merits.

1.2.5 *That it is an established law that the "reason to believe" must be against a **tangible evidence** whereas the **reason served upon your assessee lacks the same.***

1.2.6 *That such re-assessment proceedings have been repeatedly been quashed by the courts on the grounds that they fail to declare a **tangible evidence** justifying the re-opening of assessment under section 148 read with section 147 of the Act.*

1.2.7 *From the above para it can be clearly observed that the reason supplied is not based on a single shred of evidence. Rather it is biased on the fact that there was survey (against which no addition was made.) and simply relies on allegation which have been proved to be wrong the assessment proceeding corresponding to the year of survey. It is not based on something which may indicate that the income of the assessee has escaped assessment.*

1.2.7.1 ***Krown Agro Foods Pvt. Limited vs Assistant Commissioner (Delhi High Court) -*** *Emphasizing on the relevancy and importance of the reason to believe, the Hon'ble High Court observed:*

*"13. The reason to believe recorded by the Assessing officer is not based on any material that had come to the knowledge of the Assessing Officer. There is a mere suspicion in the mind of the assessing officer and the notice under section 147/148 has been issued for the purpose of verification and for clearing the cloud of suspicion. The reasons to believe recorded do not show as to on what basis the Assessing Officer has formed a reasonable belief... It is apparent the Assessing Officer suspects that the income has escaped assessment. However, mere suspicion is not enough. **The reasons to believe must be such, which upon a plain reading, should demonstrate that such a reasonable belief could be formed on some basis/ foundation and had in fact been formed by the Assessing Officer that***

income has escaped assessment. *No such reasonable belief can be inferred from the purported reasons to believe recorded."*

1.2.7.2 ***Suresh M Bajaj vs. ITO (ITAT Delhi) –*** *The Hon'ble bench held:*

"wrong and invalid assumption of Jurisdictional and all subsequent proceedings is pursuance thereto can't be held as sustainable and valid hence, the same deserve to be quashed and we quash the same."

The above ratio decidendi has been upheld and followed in the cases of ***Balakrishna H. Wani vs. ITO 321 ITR 519 (Bom)*** *and* ***DCIT v. Dr. M.J. Naidu (2017) 59 ITR 13 (SN) (Vishakha) (Trib)*** *as well.*

1.2.8 *That it is further submitted that Hon'ble Supreme court in the case of Indian Oil Corporation vs. ITO Reported in 159 ITR 956 has held that "Reason to Believe" is not the same thing as "Reason to Suspect". In such circumstances, it is submitted that initiation of proceedings is apparently untenable . From the decision of the Supreme Court, it is clear that mere statement of facts in the form of a report is not a substitute for reasons that are required to be recorded before issuing a notice under section 148 of the act.*

Thus, such baseless and roving enquiry is not permitted in the realm of law.

Non-Applicability of 144

1.3 ***For ground 5: That the Ld. AO has grossly erred in law and in fact by passing order under 144 when notices under 142(1) was complied with and made part of the assessment order as well.***

1.3.1 *That it is a matter of fact that the impugned order has been passed under section 144 of the Act under best judgment.*

1.3.2 *That section 144 can be invoked only in following cases:*

1.3.2.1 *The assessee has failed to file return under 139.*

1.3.2.2 *The assessee had failed to comply with notice under 142(1)*

1.3.2.3 *The assessee not complied with directions of notice under 143(2)*

1.3.3 *That clearly the assessee satisfies none of the conditions specified above. Thus, invoking best judgment assessment under 144 itself render the entire order bad in law.*

1.3.4 *That as far as compliance of 142(1) is concerned, the Ld. AO himself refers to the reply of the assessee with respect to alleged stock discrepancy and then ironically goes on to invoke section 144 on grounds of non-compliance. Thus, he blows hot an cold in the same breathe.*

A copy of the screen reflecting reply to notice under 142(1) is enclosed at page 32 of this submission for your kind reference.

1.3.5 *That the assessing officer erred in passing order under section 144 of the Act after considering the reply filed by the assessee in response to notice issued under section 142(1) by the assessing officer which is not in accordance with the accepted and well established norms of assessment and therefore, the order under section 144 passed by the assessing officer is bad in law and deserves to be cancelled.*

Wrongful Addition of Stocks

1.4 ***For ground 1: That the Ld. AO has grossly erred in law and in fact by making an addition of INR 18,55,295/- presuming it to be undisclosed stock***

1.4.1 *That the sole ground for making addition by the assessing officer with respect to the stock is change in stock turnover ratio.*

1.4.2 *That moreover, it is humbly submitted that such practice of making addition on the basis of low Stock Turnover Ratio is highly unusual and illogical, considering the fact that there is no dispute as to the opening stock, purchases and G.P Under these circumstances when Opening stock and G.P. has not been disputed, there do not arise any reason to estimate the closing sock.*

1.4.3 *That further, there has been no doubts casted upon the sales and purchase of subsequent year and even in the assessment after survey, no discrepancy in the stock was noted. Thus, assuming stock of seven years back to be wrong is without limbs.*

1.4.4 *That also the Ld. AO fails to appreciate that the assessee had been reducing its stock in order for better management of working capital which is only benefical for the business.*

1.4.5 *A similar situation arose before ITAT Lucknow Branch in case of* ***S.E. Enterprises Private Limited vs Department of Income Tax in ITA no 485(LKW) 2010 –*** *In the said case since no stock register was being maintained by the assessee, stock was presumed to be 11% of the turnover and the difference between such presumed stock and book value was added in the hands of the assessee. Deleting such addition and upholding the order of the CIT(A), the Hon'bel Tribunal observed as under:*

"In the instant case, the AO has not made any effort to carry out necessary investigation of the case and establish that there was either suppression of sales or undervaluation of closing stock.

There is no material on record to justify the addition. *In fact, the AO has not brought any material on record to arrive at the finding that the value of stock was not disclosed correctly.* ***We find that the sales declared by the assessee were supported by regular books of accounts which had been audited by the auditors. There is no dispute that the valuation of closing stock was done at the end of the financial year on the basis of physical verification carried out by the directors and the employees. It is also observed that the gross profit shown at 10.11% as against 10.08% in the immediate preceding year is slightly higher.*** *The AO has not given any adverse comments regarding the method of accounting regularly followed by the assessee. In fact, there was no change in the method of accounting followed by the assessee to ascertain the physical quantity of closing stock and working out value of it."*

Similar view has been taken by ITAT Delhi in ***ACIT vs National Cable Industries in ITR no. 4145/DEL 2015****.*

1.4.6 *That apart from the above direct judgments, it is also submitted that even the Sales Tax department has accepted the sales of the assesee without finding any defects in value of sale or purchase of goods.*

Wrongful disallowance of commission expense

1.5 ***For ground 4:That the order passed by the Ld. AO has erred in law by making an addition of INR 3,00,000/- with respect to commission expenses incurred by the assessee.***

1.5.1 *That the Ld. AO disallowed commission payment of Rs 3,00,000 observing that same is doubtful and do not relate to the business of the assesee.*

1.5.2 *It is humbly submitted that commission, payment is an integral part of business of assesee and without engaging brokers to promote the sale, no trading concern dealing in trading of Iron Steel survives. It is also a fact on record that in the immediate Financial Year 2009-10(A.Y. 2011-12) the sale of the assesee company was 15.17 Cr which was substantially increased to Rs 26.28 crs i.e. an increase of 73.24% which could only be achieved with active support of brokers who helped in increase in sales and therefore the A.O. was highly unjustified this in treating this payment of commission as bogus. Therefore, it is humbly prayed that his addition should also be deleted.*

1.5.3 *That moreover, necessary TDS had also been deducted on such payment and other proofs like PAN and bank statement indicating such payments could also have been provided. However, no such document was ever sought and neither any show cause in this regard was submitted upon the assessee. Thus, the assessee was never given an opportunity to justify such expenses.*

1.5.4 *That there is no allegation that such expenses were never incurred. Rather the same has been disallowed in a very casual and mechanical manner without appreciation of necessary facts.*

The TDS ledger in this regard is enclosed at page 34 of this paper book for your kind reference."

5. On the other hand, Ld. DR supported the order of the Authority below

6. We, after hearing the rival submission of the party and pursuing the material available on record in the present case of the assessee it is evident that Speed post notice was returned unserved and ITBA/e-mail service does not show that the notice was served on the assessee and notice was ultimately served through process server on 08.04.2018. The assessment order itself records that the notice was not served through post and was ultimately served through process server. The ITBA portal also does not reflect successful service on 31.03.2018. The service of notice within limitation is a jurisdictional requirement, mere issuance of notice without valid service does not confer jurisdiction on the Assessing Officer. Since the notice under section 148 of the Act was served beyond six years from the end of the relevant assessment year, the reassessment proceedings are barred by limitation and are therefore invalid in law. Even otherwise, on merits, we find in the present case of assessee that Books of account were not rejected. No material was brought on record to establish suppression of stock and additions were made merely on estimation and fall in turnover. Moreover, for AY 2018–19, the Assessing Officer accepted the opening stock in scrutiny assessment under section 143(3) of the Act. .Once opening stock in a subsequent year is accepted, the closing stock of earlier year cannot be treated as incorrect. Therefore, additions made on account of stock are unsustainable. In view of the above facts and legal position reassessment proceedings are held to be barred by limitation, and additions made are

also unsustainable on merits. The issue relating to commission expenses, the ld. AR categorically stated that TDS had been also deducted on such payment and PAN and bank statement also indicating that such payments have been made. Since payments were made through banking channel and TDS had been deducted, therefore, such disallowance cannot be made in mechanical manner. Accordingly, the commission expenses disallowance of Rs.3,00,000/- is also directed to be deleted. Accordingly, the appeal of the assessee is allowed. The Assessing Officer is directed to delete all additions.

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

Kolkata, the 13th February, 2026.

Sd/-	Sd/-
[Ratnesh Nandan Sahay]	**[Sonjoy Sarma]**
Accountant Member	**Judicial Member**

Dated: 13.02.2026.
RS

Copy of the order forwarded to:
1. Appellant
2. Respondent
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches