

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH MUMBAI

**BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
AND**

MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER

ITA No. 6829/MUM/2025

Assessment Year: 2015-16

Nimish Vivek Juvekar, A-602 Shrushti CHS, Plot No.15, Sector 20, Kharghar, Navi Mumbai-410210 (PAN : AGNPJ1442L)	Vs.	The Income Tax Officer Ward 20(2)(1), The ITO Ward 20(2)(1) Piramal Chambers Lalbaug Parel, Mumbai- 400012
(Appellant)		(Respondent)

Present for:

Assessee : Shri Dinesh Shah

Revenue : Shri Lyaqat Ali Afaqui, SR. AR

Date of Hearing : 23.12.2025

Date of Pronouncement : 27.02.2026

ORDER

PER OM PRAKASH KANT, AM:

This appeal by the assessee is directed against order dated 5th August, 2025 passed by the Ld. Commissioner of Income Tax (Appeals) – National Faceless Appeal Centre (NFAC), Delhi [in short, “the Ld. CIT(A)”] for assessment year 2015-16 raising following grounds:

“1.1 The notice under section 148A(b) was issued on 19.03.2022. The order under section 148A(d) was issued on 06.04.2022 and the consequential notice under

section 148 was also issued on 06.04.2022 by the Jurisdictional Income Tax Officer, Ward 20(2)(1), for A.Y 2015-16

As per the judgment of the Hon'ble Supreme Court in *Deepak Steel and Power Ltd v. CBDT (2025) 476 ITR 369*, any notice issued after 01.04.2021 for A.Y. 2015-16 is time-barred. Further, the benefit of relaxation under the TOLA Act, 2020 is not available. Therefore, the reassessment proceedings are barred by limitation, and the assessment is liable to be declared null and void.

1.2 The Learned CIT(A) NFAC erred in law by not declaring the order null and void, despite the correct legal position having been specifically brought to his notice. The order passed by CIT(A) NFAC, therefore, deserves to be quashed as time-barred.

2.1 The reassessment notices for A.Y. 2015-16 under sections 148A(b), 148A(d), and 148 were issued on 06.04.2022 by the Jurisdictional AO. However, as per CBDT Notification dated 29.03.2022 and section 151A of the Act, such notices were required to be issued by the National Faceless Assessing Officer under the scheme framed by CBDT, and not by the Jurisdictional AO.

The Hon'ble Bombay High Court in *Hexaware Technologies Ltd. v. ACIT (2024) 464 ITR 430 (Bom)*, along with several other High Courts, has confirmed this legal position. Hence, the reassessment proceedings initiated by the Jurisdictional AO are without jurisdiction, bad in law, and liable to be quashed as null and void

3.1 Without prejudice to the above grounds, the notices under sections 148A(b), 148A(d), and 148 were issued by the Jurisdictional AO based on borrowed satisfaction, without application of his independent mind. On this ground alone, the reassessment order deserves to be declared null and void.

3.2 Even if it is assumed that the AO made necessary enquiries and applied his mind, the facts of the case clearly show that no taxable income exceeding the prescribed threshold of Rs. 50 lakhs has escaped assessment. Specifically:

- The appellant was allotted a flat in exchange for his old flat under a redevelopment scheme of the society building.
- The gains from sale of long-term shares and securities were exempt under section 10(38) of the Income-tax Act, 1961.
- The hardship allowance received by the appellant constitutes a capital receipt and is not taxable.

Accordingly, even on merits, no income has escaped assessment, and the proceedings initiated under section 148 do not survive. The reassessment order passed is, therefore, liable to be cancelled.”

2. The brief facts are that reassessment proceedings were initiated based on information flagged under the Risk Management Strategy formulated by the Central Board of Direct Taxes (CBDT). The Assessing Officer issued notice u/s 148 of the Act after following the due procedure of law. The assessee did not comply with the said notice and not filed the return of income.

Therefore, the Assessing Officer issued various notices u/s 142(1) of the Act, but the same were not complied. In response to show-cause notice issued, the assessee sought adjournment and thereafter submissions were filed without any supporting evidences. Consequently, assessment was completed under section 147 read with section 144 on 11.03.2024.

2.1 The Assessing Officer in the re-assessment proceeding noted that the assessee has transferred property on account of the re-development and therefore, any gain arisen, accrued or received on account of such transaction was required to be offered to tax under the head 'capital gain'. But the assessee had neither filed any original return of income nor any response to notice u/s 148 of the Act. Thus, the Assessing Officer treated the redevelopment transaction as transfer giving rise to short-term capital gain of ₹1,60,84,565/-, adopting cost of acquisition at Nil and treating the holding period as less than 36 months. The Assessing Officer in the order passed u/s 147 r.w.s. 144 on 11th March, 2024 alongwith making addition of short term capital gain of Rs. Rs.1,60,84,565/- also made other additions of gain arising on transfer of securities, failure to explain source of payment of credit card amounting to Rs.7,955,37/-, interest received of Rs.23,378/- etc.,

2.2 On further appeal before the Ld. CIT(A), the assessee pleaded that he was residing at Kharghar, Navi Mumbai but since February 2022, he went to United Kingdom i.e. in London, on a student visa for study. The assessee lost his parents and now there was nobody else in his family to look after his financial investment in India and taxation matter. The assessee explained that one of his friend took care of attending the income tax matters but he was also not aware of the digital process of scrutiny of the Income Tax Department and he was under honest and bona fide belief that whenever tax hearing would be there, the income tax notice would come by post or through notice server and, therefore, the assessee could not attend personally to the notice as issued by the Assessing Officer. It was explained on the part of the assessee that he had not purchased any new flat but he had received new flat in lieu of the old flat due to redevelopment of the building.

2.3 The Ld. CIT(A) in view of observation that the Assessee was residing in the United Kingdom during the proceedings and lacked local support due to the demise of his parents, which constituted a *bona fide* reason for non-compliance. Invoking the amended powers under Section 251(1)(a) (w.e.f. 01.10.2024), the Ld. CIT(A) set aside the assessment and remanded the matter to the AO for *de novo* adjudication. The Assessing Officer was directed to pass a fresh order uninfluenced by earlier observations. The relevant finding of ld CIT(A) is reproduced as under:

“The AO has passed the order u/s 144 of the Act in this case for non-filing of further details by the assessee.

In view of the power conferred as per clause (a) of sub-section (1) of section 251 of the Act, applicable with effect from 01.10.2024, it will be just and proper, in the interest of substantial justice, to set aside the impugned assessment order passed u/s 144 of the Act back to the file of the AO for deciding the case afresh, as per the provisions of the Act and for the reasons for which the case was reopened u/s 147 of the Act. The action as proposed above will render sufficient opportunity for the appellant to explain his case with documentary evidences in his possession.

Needless to say, the AO shall provide reasonable opportunity of being heard to the appellant in accordance with the principles of natural justice. He will, under power conferred upon him in accordance with the provisions of the Act, will also free to call for any information / evidence that may be necessary for computation of total income of the assessee. It is also incumbent upon the assessee to provide all cooperation to the AO for disposal of the case. Further, the Assessing Officer shall pass the order in without being influenced by the ex-parte order passed in this case.

In the result, the assessment is set aside to the file of the AO for fresh assignment.”

3. Before us, the Ld. Counsel for the Assessee raised fundamental legal challenges regarding the validity of the reassessment. As these grounds have been raised for the first time before us, therefore, same are in the nature of the additional ground. The assessee filed a written plea that said ground should be considered as additional ground. We have considered the application of the assessee of treating the same as additional ground.

Since these grounds are purely legal and go to the root of the jurisdiction, requiring no fresh investigation of facts, we admit them as additional grounds. In doing so, we draw strength from the settled position of law in *National Thermal Power Corporation Ltd. v. CIT (1998) 229 ITR 383 (SC)*, which permits the raising of such legal queries at any stage of the appellate proceedings.

4. We have heard the rival submissions and perused the material on record. At the outset, it is material to note that the Ld. CIT(A) has already set aside the ex parte assessment and restored the matter to the Assessing Officer for fresh adjudication on merits. The core of the Assessee's grievance lies in the "jurisdictional infirmity" of the reassessment. The Assessee argues that the notice dated April 6, 2022, is *void ab initio* as it falls outside the permissible window for A.Y. 2015-16 under the post-TOLA (Taxation and Other Laws Relaxation Act) regime. While we note that the Ld. CIT(A) has already restored the matter to the AO on merits, we are of the considered view that a challenge to the "very inception of proceedings" (jurisdiction) must precede the adjudication of the "merits of the assessment." A valid jurisdiction is a condition precedent to a valid assessment.

4.1 The principal legal objection raised before us pertains to limitation and jurisdiction in issuing notice under section 148 for A.Y. 2015-16 after 01.04.2021. However, from the material presently available on record, it is not discernible:

- (i) whether any notice under the unamended provisions was issued prior to 31.03.2021;
- (ii) whether the impugned notice dated 06.04.2022 was issued pursuant to or in consequence of the judgment of the Hon'ble Supreme Court in *Union of India v. Ashish Agarwal*; and
- (iii) whether the procedural requirements under section 151A and the applicable CBDT notifications were duly complied with.

4.2 These foundational aspects require factual verification. In appellate proceedings, while pure questions of law may be decided if the relevant facts are admitted or undisputed, where the adjudication of a legal issue is intertwined with foundational factual examination, it is appropriate that such issues be first examined by the primary fact-finding authority.

4.3 Since the assessment itself stands set aside by the Ld. CIT(A) and remitted for fresh adjudication, we are of the considered view that the ends of justice would be met if the legal objections raised by the assessee — including limitation, jurisdiction under section 151A, and alleged borrowed satisfaction — are also restored to the file of the Assessing Officer for comprehensive adjudication.

4.4 In light of the above, we find it appropriate to expand the scope of the remand. The AO is directed to adjudicate upon:

- (i) **First:** The legal validity of the notice issued under Section 148, specifically regarding the period of limitation and the applicability of *Deepak Steel (supra)*.
- (ii) **Second:** The validity of the notice in light of the Faceless Assessment Scheme and Section 151A.
- (iii) **Third:** If jurisdiction is found to be validly assumed, the AO shall decide the matter on merits, providing the Assessee a reasonable opportunity to produce evidence regarding the redevelopment scheme and the nature of capital receipts.

4.5 All issues are kept open. The Assessing Officer shall pass a reasoned and speaking order in accordance with law after affording due opportunity of hearing to the assessee. We clarify that we have expressed no opinion on the merits of the legal or factual issues.

5. In the result, appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 27/02/2026.

Sd/-
(Kavitha Rajagopal)
Judicial Member

Sd/-
(Om Prakash Kant)
Accountant Member

Mumbai;

Dated: 27/02/2026

Ankit, Sr.P.S.

Copy to:

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

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai