

IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.741/SRT/2025

Assessment Year: (2016-17)

(Hybrid Hearing)

Vipulkumar Parbhubhai Patel, 378/1/2, Nishar Faliya, Puna Gam, Nr. Police Chowki, Surat - 395010	Vs.	ITO, Ward – 2(3)(4), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: COIPP7919F		
(Appellant)		(Respondent)

Appellant by	Shri Suresh K. Kabra, CA
Respondent by	Shri Ajay Uke, Sr. DR
Date of Hearing	27/11/2025
Date of Pronouncement	24/12/2025

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

This appeal by the assessee emanates from the order passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') dated 05.12.2024 by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short, 'CIT(A)'] for the assessment year (AY) 2016-17.

2. The grounds of appeal raised by the assessee are as under:

"1. The Ld CIT(A)/NFAC has erred and was not just and proper on the facts of the case and in law in not adjudicating the Ground No.1 with regard to notice u/s 148.

2. The Ld CIT(A)/NFAC has erred and was not just and proper on the facts of the case and in law in setting aside the matter without considering the Legal Ground No.1.

3. PRAYER:

3.1 The Legal Ground in connection with Notice u/s 148 may kindly be adjudicated.

3.2 Personal hearing may be granted.

3.3 Any other relief that your honours may deem fit may be granted.

4. The appellant craves leave to add, amend, alter or delete any or all of the above grounds of appeals.”

3. The appeal filed by the assessee is late by 132 days in terms of provisions of section 253(3) of the Act. The assessee has filed affidavit giving reasons for delay in filing appeal before the Tribunal. In the condonation petition, the appellant submitted that the CIT(A) set aside the assessment order to the AO. Therefore, there was no need to file appeal before the Tribunal. Hence, the assessee approached the tax consultant after some time, who stated that the CIT(A) has not adjudicated the legal ground regarding time barring notice issued u/s 148 of the Act. He advised to file appeal before the Tribunal. Therefore, there is a small delay of 132 days in filing the appeal. Since, the delay was not deliberate and intentional, the learned Authorized Representative (Id. AR) requested to condone the delay and admit the appeal for hearing.

4. On the other hand, the learned Senior Departmental Representative (Id. Sr. DR) for the revenue submitted that the Tribunal may decide the matter as it thinks fit.

5. We have considered the prayer of the appellant for condonation of delay. Since the CIT(A) set aside the order of AO for fresh assessment, the assessee did not file appeal before the Tribunal. However, the CIT(A) had not adjudicated the legal and jurisdictional issue. Therefore, on advise of the new tax consultant, the appeal was filed after a delay of 132 days. Considering the

facts discussed above, we find that the delay was not deliberate and intentional on the part of assessee. There was a lack of guidance on the part of his earlier tax consultant, who was looking after his tax matter. Moreover, the assessee was not going to be benefitted by filling appeal belatedly. It is now fairly settled that when technical consideration and cause of substantial justice are pitted against each other, the cause of substantial justice may be preferred. Hence, delay in filling appeal is condoned and admitted for hearing.

6. Brief facts of the case are that assessee filed his return of income on 23.03.2017, declaring total income of Rs.3,21,031/-. Subsequently, the case of the assessee was re-opened by issue of notice u/s 148 of the Act on 29.07.2022 in consequence to the order u/s 148A(d) of the Act. The Assessing Officer (in short, 'AO') issued various statutory and show-cause notices, but, there was no reply by the assessee. The assessee had purchased a Lexus car in cash by pay Rs.45,60,700/-. Since the assessee did not file any reply, the AO added Rs.47,70,000/- u/s 69 of the Act. The order u/s 147 r.w.s. 144 r.w.s. 144B of the Act was passed on 28.02.2023, determining total income Rs.50,91,030/-.

7. Aggrieved by the order of AO, the assessee filed this appeal before the CIT(A). The CIT(A) has reproduced the submission of the appellant and found that AO has passed an ex-parte order u/s 144 of the Act. He invoked power conferred on him u/s 251(1)(a) of the Act, w.e.f. 01.10.2024, and set aside the assessment order to the file of AO for de novo assessment.

8. Aggrieved by the order of CIT(A), the assessee filed appeal before the Tribunal. The learned Authorized Representative (Id. AR) of the assessee, at the outset, submitted that the notice issued by the AO u/s 148 of the Act on 27.07.2022 is time barred. The notice should have been issued on or before 13.06.2022 in view of the decisions of the Hon'ble Supreme Court in cases of Union of India vs. Rajeev Bansal, (2024) 469 ITR 46 (SC) and Union of India & Others vs. Ashish Agarwal, Civil Appeal No.3005/2022. He, therefore, submitted that the notice u/s 148 of the Act may be quashed and the consequential order u/s 147 r.w.s. 144 r.w.s. 144B of the Act should be set aside.

9. On the other hand, the learned Senior Departmental Representative (Id. Sr. DR) of the revenue supported the order of lower authorities.

10. We have heard both the parties and perused the materials available on record. The assessee has raised multiple grounds challenging the validity of notice issued u/s 148 of the Act and submitted that the impugned notice was barred by limitation. The Id. AR submitted a chart giving the details of various notices issued by the AO. The original notice u/s 148 of the Act was issued on 30.06.2021. Therefore, the surviving period as per the decision of Hon'ble Supreme Court in case of Rajeev Bansal (supra) was one day only. However, it is extended by seven days as per proviso u/s 149 of the Act. The AO issued notice u/s 148A(b) of the Act on 21.05.2022 giving time upto 05.06.2022 to file the reply. The assessee did not submit any response. Accordingly, the time barring date for issue of notice was 13.06.2022. But, order u/s 148A(d) of the Act and

notice u/s 148 of the Act were issued on 27.07.2022. Hence, the notice issued on 27.07.2022 is beyond the surviving time barring date of 13.06.2022.

10.1 The Hon'ble Supreme Court in case of Ashish Agarwal (supra) held that notices issued u/s 148 of the Act during the period 01.04.2021 to 30.06.2021 shall be treated as show cause notices u/s 148A(b) of the Act. However, the said decision does not grant any extension of limitation beyond the statutory provisions of section 149 of the Act. Subsequently, the Hon'ble Supreme Court in case of Rajeev Bansal (supra) held that (i) the time granted to the assessee for responding to notice u/s 148A(b) is required to be excluded in terms of the 5th proviso to section 149, (ii) after such exclusion, the AO is entitled to issue notice u/s 148 only within the surviving limitation period and (iii) any notice issued beyond such surviving period is barred by limitation and invalid in law. The Hon'ble Gujarat High Court in case of Dadabhai Abhalbhai Darbar vs. ITO, (2025) 179 taxmann.com 425 (Guj.) has followed the above ratio and held that notice u/s 148 issued beyond the surviving period is invalid.

10.2 In the present case, the facts are not in dispute. The notice u/s 148A(b) of the Act was issued on 21.05.2022. The assessee was granted time till 05.06.2022 to file reply after receipt of information. After excluding this period, the last permissible date for issuance of notice u/s 148 was 13.06.2022. However, the order u/s 148A(d) of the Act was passed on 26.07.2022. Thereafter, notice u/s 148 of the Act was issued on 27.07.2022, which is clearly beyond the prescribed

limitation period. Limitation goes to the root of jurisdiction and such a defect is not curable. Therefore, the assumption of jurisdiction by the AO itself is invalid.

10.3 Since the notice issued u/s 148 of the Act was held to be barred by limitation, the entire re-assessment proceedings including the assessment order passed u/s 147 r.w.s. 144 r.w.s. 144B of the Act and the appellate order passed by the CIT(A) are liable to be quashed. Consequently, the order of CIT(A) is set aside and the AO is directed to delete the addition made in the assessment order. Accordingly, the ground raised by the appellant is allowed.

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

Order is pronounced in terms of provisions of Rule 34 of ITAT Rules, 1963
on 24/12/2025

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

Surat

दिनांक/ Date: 24/12/2025

SAMANTA (On tour Mumbai)

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

// TRUE COPY //

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat