आयकर अपीलीय अधिकरण, हैदराबाद पीठ

IN THE INCOME TAX APPELLATE TRIBUNAL

Hyderabad 'A' Bench, Hyderabad

श्री रवीश सूद, माननीय न्यायिक सदस्य एवं श्री मधुसूदन सावडिया, माननीय लेखा सदस्य

SHRI RAVISH SOOD, HON'BLE JUDICIAL MEMBER

AND

SHRI MADHUSUDAN SAWDIA, HON'BLE ACCOUNTANT MEMBER

आयकरअपीलसं./**I.T.A. No.1530/Hyd/2025**

(निर्धारणवर्ष/ **Assessment Year:2013-14)**

Vensar Constructions Company Limited, Hyderabad. PAN: AAACV8199G	*VS.*	ACIT, Circle-17(2), Hyderabad.
(अपीलार्थी/ Appellant)		**(प्रत्यर्थी/ Respondent)**

करदाताकाप्रतिनिधित्व/ Assessee Represented by	:	Shri GVN Hari, Advocate (Hybrid Hearing)
राजस्वकाप्रतिनिधित्व/ Department Represented by	:	Shri D. Praveen, Sr. AR
सुनवाईसमाप्तहोनेकीतिथि/ Date of Conclusion of Hearing	:	26/03/2026
घोषणा की तारीख/ Date of Pronouncement	:	30/03/2026

ORDER

PER RAVISH SOOD, JM:

The present appeal filed by the assessee company is directed against the order passed by the CIT(Appeals), dated 24.12.2019, which in turn arises from the order passed by the AO under Section 143(3) r.w.s. 147, dated 24.12.2019, for the Assessment Year 2013-14. The

assessee company has assailed the impugned order of the CIT(Appeals) on the following grounds of appeal before us:

> "1. The order of Learned Commissioner of Income Tax (Appeals) is contrary to the facts and also the law applicable to the facts of the case.
>
> 2. The learned Commissioner of Income Tax (Appeals) ought to have held that the notice issued u/s 148 is not in accordance with the law and hence the same is liable to be quashed and consequently the learned Commissioner of Income Tax (Appeals) ought to have held that the entire reassessment proceedings are void ab initio.
>
> 3. Without prejudice to the above, the learned Commissioner of Income Tax (Appeals) is not justified in sustaining the addition of Rs.25,00,000 made by the assessing officer towards alleged unexplained income in the nature of accommodation entry from M/s Patel Engineering Limited.
>
> 4. The learned Commissioner of Income Tax (Appeals) ought to have appreciated that the impugned amount is not in the nature of income and did not even belong to the impugned assessment year.
>
> 5. Any other ground that may be urged at the time of appeal hearing."

2. Succinctly stated, the assessee-company, which is engaged in the business of civil contract works, had filed its return of income for A.Y. 2013-14 on 30.09.2013, declaring an income of Rs. 4,18,57,150/-.

3. The original assessment was framed by the AO vide his order passed under Section 143(3) of the Act, dated 11.03.2016, determining the total income of the assessee company at Rs. 4,29,49,174/-.

4. Subsequently, the AO, based on information received from the Investigation Wing, Mumbai, that the assessee company had allegedly received accommodation entries to the extent of Rs. 25 lacs from M/s

Pandhe Group, reopened its concluded assessment by issuing notice under Section 148 of the Act, dated 30.03.2019.

5. During the course of the reassessment proceedings, the AO, based on the information received from the Investigation Wing pursuant to search proceedings conducted in the case of “Pandhe Group”, observed that the assessee company had, during the subject year, received amounts aggregating to Rs. 25 lacs. The AO, observing that the assessee company, despite being afforded sufficient opportunity, had failed to substantiate the genuineness of the transactions by producing supporting documents, viz. agreements, bills, etc., held the aforesaid amount of Rs. 25 lacs as its unexplained income. Accordingly, the AO framed the reassessment vide his order passed under Section 143(3) r.w.s. 147 of the Act, dated 24.12.2019, determining the income of the assessee company at Rs. 4,54,49,174/-.

6. Aggrieved, the assessee company assailed the assessment order before the CIT(A).

7. Ostensibly, the CIT(A) observed that the AO had received specific and credible information from the Investigation Wing linking the assessee with the accommodation entries unearthed during the search proceedings conducted on “Pandhe group”. The CIT(A) was of the view that the information received by the AO constituted tangible material

enabling him to form a *prima facie* belief that the income of the assessee company had escaped assessment. Also, it was observed by him that at the stage of reopening, the AO is only required to form a "reason to believe" and is not required to conclusively establish escapement of income. The CIT(A) also rejected the contention of the assessee company that the reopening was based on borrowed satisfaction, and observed that the AO had applied his mind to the information received. On merits, the CIT(A) sustained the addition by observing that the assessee company had failed to substantiate its claim with supporting evidence and that the material gathered during the course of search proceedings clearly indicated that the transactions were accommodation entries. Accordingly, the CIT(A), after considering the submissions of the assessee company, found no infirmity in the view taken by the AO and upheld his order.

8. The assessee company aggrieved with the CIT(A) order has carried the matter in appeal before us.

9. Shri GVN Hari, the Ld. Authorised Representative (AR) of the assessee company, submitted that the reopening of assessment is bad in law as the same had been made beyond four years from the end of the relevant assessment year without there being any failure on the part of the assessee company to disclose fully and truly all material facts necessary for assessment. The Ld. AR submitted that the original

assessment was framed by the AO, vide his order passed under Section 143(3) of the Act, dated 11/03/2016, wherein all primary facts were duly disclosed (copy of assessment order placed on record). The Ld. AR took us through the copy of the "reasons to believe" based on which the concluded assessment of the assessee company was reopened and submitted that there was no whisper in the same that the case was being reopened for any failure of the assessee company to fully and truly disclose all material facts necessary for framing of its assessment. The Ld. AR to support his contention that, now when the AO had not stated in the "reasons to believe" that the concluded assessment framed in the case of the assessee company was being reopened for the reason that it had failed to fully and truly disclose all material facts necessary for its assessment, there was no valid assumption of jurisdiction by him to initiate the impugned proceedings, had relied on the judgment of the Hon'ble High Court of Andhra Pradesh in Anne Venkata Vishnu Vara Prasad Vs. ACIT (2018) 405 ITR 491 (AP). Accordingly, it was submitted by the Ld. AR, that the AO had grossly erred in law and facts of the case in assuming jurisdiction and reopening the concluded assessment of the assessee company beyond a period of four years from the end of the assessment year, i.e., in contravention of the "1st proviso" to Section 147 of the Act. Alternatively, the Ld. AR submitted that as the reopening of the concluded assessment of the assessee company was based solely on

the information received from the Investigation Wing without any independent application of mind by the AO, therefore, the same suffered from the vice of borrowed satisfaction.

10. Per contra, the Ld. Senior Departmental Representative (DR) supported the orders of the lower authorities and submitted that the AO had received specific information from the Investigation Wing regarding accommodation entries and had duly recorded the reasons before issuing notice under Section 148 of the Act. The Ld. Sr. DR submitted that the information received by the AO from the Investigation wing constituted tangible material and was sufficient to form a belief that the income of the assessee company had escaped assessment. It was further contended that the sufficiency of material cannot be examined at the stage of reopening of the assessment. Apart from that, the Ld. Sr. DR submitted that the assessee company had failed to substantiate the genuineness of the subject transactions with “Pandhi group” even during the course of the reassessment proceedings.

11. We have heard the Ld. Authorised representatives of both parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions.

12. As the Ld. AR has assailed the validity of the jurisdiction assumed by the AO for framing the assessment, we shall first deal with the same. Before proceeding further, we deem it apposite to cull out the “reasons to believe” based on which the concluded assessment was reopened by the AO, as communicated to the assessee company, which reads as under (relevant extract):

> “Sir/ Madam/M/s.
>
> Subject: Reasons for re-opening in your own case for A.Y 2013-14:-Reg
>
> With regard to the issue of notice u/s 148 dated 31.03.2019 for the A.Y. 2013-14 in your case, as requested by you, the reasons recorded for re-opening the assessment are provided as under:
>
> *"As per the information provided by the Investigation Wing, Mumbai, it is noticed that the assessee company has received an amount to the tune of Rs 25,00,000/-from M/s Patel Engineering Ltd, operated by one Sri Anil Kumar Kabra, which was found to be an accommodation entry provider without having any business. Hence, the amount of Rs 25 lakhs received during the F.Y 2012-13 relevant to A.Y 2013-14 from the shell company needs to be added to the total income and is to be brought to tax."*
>
> In view of the above, the case is reopened u/s 147 of the IT Act, 1961.
>
> VENUDHARGODESI
> CIRCLE-17(2),
> HYDERABAD”

13. Admittedly, the original assessment was framed by the AO vide his order passed under Section 143(3) of the Act, dated 11.03.2016. Thereafter, the AO had reopened the concluded assessment of the assessee company and issued a notice under Section 148 of the Act, dated 30.03.2019, i.e., beyond a period of four years from the end of the relevant assessment year.

14. As per the “first proviso” to Section 147 of the Act (as was then available on the statute), reopening of a concluded assessment beyond four years was permissible only where there was a failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. On a perusal of the “reasons to believe” recorded in the case of the assessee company, which had formed the basis for reopening of its concluded assessment, we find that there is no allegation or finding by the AO that there was any failure on the part of the assessee company to fully and truly disclose all material facts necessary for framing its assessment. As is discernible from the record, the reopening of the concluded assessment of the assessee company is admittedly based on the information received from the Investigation Wing.

15. In our considered view, the observations of the CIT(A) that the AO had tangible material and that sufficiency of such material cannot be examined do not address the statutory requirement mandated under the “first proviso” to Section 147 of the Act. The existence of tangible material, by itself, is not sufficient in cases where reopening of a concluded assessment is beyond four years. Rather, what is additionally required is a finding of failure on the part of the assessee to fully and truly disclose all material facts necessary for its assessment, which, we find, is conspicuously absent in the present case. We find

that the absence of any allegation in the "reason to believe" that the concluded assessment of the assessee company was being reopened beyond a period of four years from the end of the assessment year, as there was failure on its part to fully and truly disclose all material facts necessary for its assessment, goes to the root of assumption of jurisdiction by the AO for initiating the impugned proceedings. Our view is fortified by the judgment of the **Hon'ble High Court of Andhra Pradesh** in **Anne Venkata Vishnu Vara Prasad Vs. ACIT (2018) 405 ITR 491 (AP)**, wherein the Hon'ble Court had, inter alia, for the reason that there was no mention in the "reasons to believe" that the concluded assessment of the assessee was being reopened beyond a period of four years from the end of the relevant assessment year, i.e., AY 2010-11, as there was a failure on his part to fully and truly disclose all material facts necessary for framing the assessment, quashed the notice issued u/s 148 of the Act, dated 31/03/2017, as well as the consequential assessment framed on the basis of the same. For the sake of clarity, we deem it apposite to cull out the observations of the Hon'ble High Court, as under:

> "In the cases on hand, as already stated supra, neither in the notices dated 31.03.2017 nor in the reasons furnished in September/ October, 2017, did the AO record the presence of the aforestated jurisdictional conditions for reopening the subject assessments. Even thereafter, when she rejected the petitioners' objections under her letters dated 17.11.2017, the AO did not do so. **Thus, as matters stand, the AO never opined that issue of the subject notices was warranted on the ground that the petitioners did not disclose fully and truly all material facts necessary for their assessment** or that the income that escaped assessment during that year amounted to or was likely to amount to one lakh rupees or more. **The absence of these jurisdictional conditions in her reasons for seeking to reopen the assessments beyond four years is fatal to**

the very issuance of the impugned notices. Trite to state, the reasons communicated by the AO to the petitioners must be the same reasons furnished to the competent authority for seeking approval under Section 151 of the Act of 1961, as the AO cannot modify, add to or delete from such reasons to suit her own purposes at different points of time. Further, when the reasons recorded by the AO are the only material that can be looked into by the competent authority for granting approval under Section 151 of the Act of 1961, the absence of such jurisdictional conditions therein would invariably vitiate the approval, if any, by the competent authority, as he could not have recorded the requisite satisfaction under Section 151 of the Act of 1961, when the fundamental jurisdictional conditions justifying the reopening of the assessments beyond the normal four-year period did not even find mention in the reasons recorded by the AO.

On the above analysis, this Court finds that reopening of the petitioners' assessments for the assessment year 2010-11 by way of the notices dated 31.03.2017 issued under Section 148 of the Act of 1961 and the rejection of their objections thereto by the letters dated 17.11.2017 cannot be sustained on grounds more than one. The attempt on the part of the Revenue to do so is an abuse of power as the facts demonstrate that the very basis for such reopening was the subject matter of the appeals before the Appellate Tribunal and, thereafter, before this Court. That apart, the jurisdictional conditions precedent that there must be failure on the part of the petitioners to disclose fully and truly all material facts necessary for their assessment for the assessment year 2010-11 and that the income which escaped assessment would amount to one lakh of rupees or more, did not even find mention in the notices or the reasons for reopening the assessments. In the absence thereof, reopening of such assessments beyond the period of four years cannot be countenanced.

The writ petitions are accordingly allowed. The notices dated 31.03.2017 issued under Section 148 of the Act of 1961 and the rejection of the petitioners' objections thereto vide letters dated 17.11.2017 are declared illegal. The original Assessment Orders of the petitioners in relation to the assessment year 2010-2011, which have been upheld in appeal by the Appellate Tribunal and, thereafter, by this Court, shall be binding upon the Revenue."

(emphasis supplied by us)

Also, we find that a similar view had been taken by the **Hon'ble High Court of Bombay** in **Sound Casting (P) Ltd. Vs. Dy. CIT (2012) 250 CTR 119 (Bombay)**. It was observed that, as there was no allegation in the reasons disclosed to the assessee company that there was any failure on its part to fully and truly disclose material facts necessary for assessment, the jurisdictional condition for reopening the assessment beyond a period of four years was not fulfilled. For the sake of clarity,

we deem it apposite to cull out the observations of the Hon'ble High Court, as under:

> "2. **The reopening of the assessment has admittedly taken place beyond a period of four years from the end of the relevant Assessment Year. There is no allegation in the reasons which have been disclosed to the assessee that there was any failure on his part to fully and truly disclose material facts necessary for assessment for that assessment year. Hence, we find merit in the contention that the jurisdictional condition for reopening the assessment beyond a period of four years has not been fulfilled**. Even during the course of hearing, it has not been the submission of the Revenue that there was any suppression of material facts on the part of the Petitioner.
>
> **(emphasis supplied by us)**

Further, we find that a similar view was taken by the **High Court of Bombay** in ***Bhavesh Developers vs. AO & Ors. (2010) 229 CTR 160 (Bom)***, wherein it was observed as under:

> "**Significantly, the reasons that have been disclosed to the assessee do not contain a finding to the effect that there was a failure to fully and truly disclose all necessary facts, necessary for the purpose of assessment. In these circumstances, the condition precedent to a valid exercise of the power to reopen the assessment, after a lapse of four years from the relevant assessment year, is absent in the present case**. There is merit in the submission which has been urged on behalf of the assessee that an exceptional power has been conferred upon the Revenue to reopen an assessment after a lapse of four years. The conditions which are prescribed by the statute for the exercise of such a power must be strictly fulfilled and in their absence, the exercise of power would not be sustainable in law."
>
> **(emphasis supplied by us)**

We thus, in the backdrop of our aforesaid deliberations and the settled position of law, are of a firm conviction that as the AO had reopened the concluded assessment of the assessee company beyond a period of

four years from the end of the relevant assessment year, and there is no mention in the "reasons to believe" that the case was being reopened for the failure of the assessee company to fully and truly disclose all material facts necessary for its assessment, therefore, the AO had wrongly assumed jurisdiction and proceeded with and framed the impugned assessment vide his order passed under Section 143(3) r.w.s 147 of the Act, dated 24.12.2019. We, thus, in terms of our aforesaid observations, quash the assessment order passed by the AO under Section 143(3) r.w.s 147 of the Act, dated 24.12.2019, for want of a valid assumption of jurisdiction on his part.

16. As we have quashed the reassessment on jurisdictional ground, we refrain from adjudicating the other grounds based on which the impugned assessment has been assailed before us, which, thus, are left open.

17. In the result, the appeal of the assessee company is allowed in terms of our aforesaid observations.

Order pronounced in the open court on 30th March, 2026.

Sd/- **(मधुसूदन सावडिया)** **(MADHUSUDAN SAWDIA)** **लेखासदस्य/ACCOUNTANT MEMBER**	**Sd/-** **(रवीश सूद)** **(RAVISH SOOD)** **न्यायिकसदस्य/JUDICIAL MEMBER**

Hyderabad, dated 30/03/2026.
**OKK/sps*

आदेशकीप्रतिलिपिअग्रेषित/ **Copy of the order forwarded to:-**

1.	निर्धारिती/The Assessee	:	Vensar Constructions Company Limited, Plot No.20, Flat No.201, Sri Chaitanya Residency, Street No.2. Sagar Society, Road No.2 Banjara Hills, Hyderabad, Hyderabad, Telangana-500034
2.	राजस्व/ The Revenue	:	ACIT, Circle 17(2) Signature Towers, Kothaguda, Kondapur, Hyderabad, Hyderabad, Telangana-500084
3.	The Principal Commissioner of Income Tax, Hyderabad.		
4.	विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण /DR,ITAT, Hyderabad.		
5.	The Commissioner of Income Tax		
6.	गार्डफ़ाईल / Guard file		

आदेशानुसार / BY ORDER

KAMALA KUMAR ORUGANTI

Digitally signed by KAMALA KUMAR ORUGANTI
Date: 2026.03.30 14:53:48 +05'30'

Sr. Private Secretary
ITAT, Hyderabad.