

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, AHMEDABAD**

**BEFORE: SHRI SANJAY GARG, JUDICIAL MEMBER
AND
SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 1325/Ahd/2024
(निर्धारण वर्ष / Assessment Year : 2014-15)

Vaibhav Reality Development Limited 4 th Floor, Vaibhav Building, 39/1, Arunoday Society, Alkapuri, Vadodara, Gujarat- 390007	बनाम / Vs.	The Income Tax Officer Ward-2(1)(1), Vadodara [Old: Ward: 2(1)(4)]
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCR2956D		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Tushar Hemani, Sr. Advocate & Shri Kushal Fofaria, AR
प्रत्यर्थी की ओर से/Respondent by :	Shri Alpesh Parmar, CIT. DR

Date of Hearing	03/02/2026
Date of Pronouncement	21/04/2026

ORDER

PER ANNAPURNA GUPTA, AM:

The present appeal has been filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (hereinafter referred to as “NFAC”), Delhi (hereinafter referred to as “CIT(A)”) dated 06.05.2024 passed under Section 250 of the Income Tax Act, 1961 (hereinafter referred to as the “Act”) and relates to Assessment Year (A.Y.) 2014-15.

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

- “1. *Ld. CIT(A), NFAC, Delhi has erred in law an or fact to confirmed AO's reopening U/s. 147(2)(b) of the act and issue of notice U/s. 148 of the IT Act.*
2. *Ld. CIT(A), NFAC, Delhi has erred in law an or fact to confirm AO's addition of Rs 1,55,00,000/- only on the basis of admission of one of the directors Smt. Parul J. Shah under her statement U/s. 133A of the Act during the course of survey without considering the fact that the appellant company has already shown an amount of Rs. 3,40,75,002/- in its audited books of accounts and offered profit under a ROI filled for A.Y. 2014-15.*
 - 2.1 *Ld. CIT(A), NFAC, Delhi has erred in law an or fact to confirm AO's addition of Rs 1,55,00,000/- ignoring the fact that the Ld. AO has already taxed 8% NP on gross receipts of Rs. 5,90,33,002/- in which unaccounted receipts of Rs. 3,40,75,002/- have already been including, consequently, further addition made by the AO amounts to double taxation.*
3. *Ld. CIT(A), NFAC, Delhi has erred in law an or fact to upheld addition of Rs. 1,53,63,500/- out of AO's addition of Rs. 3,94,63,500/- ignoring the fact that entries reported by the AO at page no. 4 & 5 of the assessment order are already recorded in the books of accounts and the AO has taxed 8% profit thereon.*
 - 3.1. *Ld. CIT(A), NFAC, Delhi has erred in law an or fact to upheld addition of Rs. 1,53,63,500/- out of which Rs. 1,27,00,000/- pertains to Shri Jaykant K. Shah pertaining to land at Royal Bank Amit Jagera as per the finding given in appellate order, consequently, no addition can be upheld in appellant's case.*
4. *Ld. CIT(A), NFAC, Delhi has erred in law an or fact to confirm AO's assessment U/s. 144 instead of section 143(3) of the act and thereby confirm estimated addition of Rs. 47,22,640/- as against appellant's business income shown at Rs. 5,54,552/- in the ROI (based on audited accounts) ignoring the law that provision of section 44AD is inapplicable considering facts of the appellant's case.”*

3. Brief facts relating to the case are that a survey action u/s.133A of the Act was carried out at the business premises of the assessee during the impugned assessment year A.Y 2014-15,

on 24.03.2014. During the course of survey proceedings various incriminating documents were found which allegedly revealed the assessee to have received on-money in cash, in lieu of flats sold in its project "Hari Sai Sharnam". One of the Directors and key person of the assessee company Smt. Parul J. Shah confirmed the aforesaid fact and admitted the same to have not been accounted for in the regular books of accounts of the assessee. The said alleged unaccounted income of the assessee pertaining to the impugned year was admitted to be the tune Rs.1,55,00,000/-. Return of income was filed by the assessee for the impugned year declaring income of Rs.5,54,550/-, which was processed u/s.143(1) of the Act. However, subsequently on the basis of the information procured during survey action conducted on the assessee, the case of the assessee was reopened since the AO noted that while admittedly the unaccounted income of the assessee was Rs.1,55,00,000/- for the impugned year, however, in the return of income filed, the assessee had shown net profit of only Rs.4,91,029/-. He, accordingly, recorded reasons to believe that income to the extent of Rs.1.55 Crores had escaped assessment. Notice u/s.148 of the Act was issued to the assessee in response to which no return of income was filed by the assessee. Copy of reasons recorded by the AO for reopening of the case of the assessee were also supplied to the assessee and several notices were issued to the assessee to submit its reply which, however, were not complied with by the assessee. Noting that the assessee had undisclosed income of Rs.1.55 Crores during the year, which were not declared in its books of accounts, the AO accordingly rejected the books of accounts of the assessee

u/s.145(3) of the Act and estimated the profits earned by applying rate of 8% to the total receipts declared in the P&L account of the assessee which came to Rs.47,22,640/-. Further, he sought the assessee's explanation with respect to the amount of Rs.1.55 Crores allegedly admitted by the Director of the assessee company to be undeclared and undisclosed income of the assessee to which the assessee sought sometime to respond to stating that its accounting data was not available with it. The AO, however, held that since the Director of the assessee company had admitted to Rs.1.55 Crores being the unaccounted income of the assessee, accordingly, the same was added to the total income of the assessee. Further, the AO confronted the assessee with impounded material Annexure-A-4, which revealed amounts totaling in all Rs.3,94,63,500/- received in cash by the assessee from various persons. The assessee submitted all the amounts mentioned in the said Annexure to be duly accounted for in its books of accounts, however, in the absence of any substantiation of the same with supporting evidences, the AO rejected the assessee's contention and treated the entire amount of Rs.3,94,63,500/- as unaccounted income of the assessee. Thus, the AO determined the assessee's taxable income at Rs.5,96,86,140/- comprising of the business income estimated by applying 8% rate to the turnover declared by its assessee in its books of accounts amounting to Rs.47,22,640/- and the addition made of undisclosed income revealed during survey amounting to Rs.1,55,00,000/- and Rs.3,94,63,500/-.

4. The assessee carried the matter in appeal before the Ld. CIT(A) who upheld the rejection of books of accounts and the

addition made by estimating the book profits of the assessee as also the addition made on account of undisclosed income of Rs.1.55 Crores. With respect to the addition made on account of notings in impounded materials Annexure – A-4 amounting to Rs.3.94 Crores, the Ld. CIT(A) gave relief of Rs.2,41,00,000/- while the balance amount was confirmed for want of evidences.

5. Aggrieved by the same, the assessee has come up in appeal before us.

6. Ground No.1 raised by the assessee reads as under:

1. *Ld. CIT(A), NFAC, Delhi has erred in law an or fact to confirmed AO's reopening U/s. 147(2)(b) of the act and issue of notice U/s. 148 of the IT Act.*

7. The above ground challenges the validity of the assessment framed in the present case u/s.147 of the Act. The argument of the Ld. Counsel for the assessee before us was that the reopening had been resorted to by the AO without a valid approval from the authority specified u/s.151 of the Act. His contention was that in the present case an authority higher to the authority specified u/s.151 of the Act had granted approval and that it was settled law that sanction needed to be granted u/s.151 of the Act by specified authority only and even sanction from higher authority could not validate reopening. Reliance was placed on the following decisions for the aforestated proposition of law:

- ▶ *CIT v. Aquatic Remedies P. Ltd. - [2020] 113 taxmann.com 451 (SC);*
- ▶ *CIT v. Aquatic Remedies P. Ltd. - [2018] 406 ITR 545 (Bombay);*
- ▶ *CIT v. SPL's Siddhartha Ltd. - [2012] 345 ITR 223 (Delhi);*
- ▶ *Kisan Discretionary Trust v. ACIT-ITA No. 608/Ahd/2005;*

► *Sardar Balbir Singh v. ITO-[2015] 39 ITR(T) 574 (Lucknow-Trib.)*

8. With respect to the facts of the case, he pointed out that the impugned assessment year before us was A.Y. 2014-15. That notice u/s.148 of the Act was issued to the assessee on 22.03.2018 i.e. within four years from the end of the assessment year. That as per the provisions of Section 151(2) of the Act applicable during the impugned period i.e. when the notice u/s.148 of the Act was issued to the assessee in 2018, approval of the Joint Commissioner was required where reopening was resorted to within four years from the end of the relevant assessment year. Our attention was drawn to the provisions of Section 151 of the Act as under:

“151. (1) No notice shall be issued under section 148 by an Assessing Officer, after the expiry of a period of four years from the end of the relevant assessment year, unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice.

(2) In a case other than a case falling under sub-section (1), no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of Joint Commissioner, unless the Joint Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.

(3) For the purposes of sub-section (1) and sub-section (2), the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner or the Joint Commissioner, as the case may be, being satisfied on the reasons recorded by the Assessing Officer about fitness of a case for the issue of notice under section 148, need not issue such notice himself.]”

9. He pointed out from the reasons recorded in the present case that the approval, however, was taken from the Pr. Commissioner

of Income Tax-2, Surat. Our attention was drawn to para 5 of the reasons recording the said fact as under:

“5. In this case, more than four years have not lapsed from the end of assessment year under consideration. Hence, necessary sanction to issue notice u/s.148 is being obtained from the Pr.CIT-2, Surat, as per the provisions of section 151 of the Act.”

10. Ld. DR was unable to controvert either the facts as pointed out by the Ld. Counsel for the assessee:

- That the reopening had been resorted to within four years from the end of the relevant assessment year and,
- that the approval for issuance of notice u/s.148 of the act was granted by the PCIT,

nor he was able to controvert the position of law that specified authority for granting approval in the facts of the present case was the Joint Commissioner.

11. It is, therefore, an undisputed fact that the approval for issuance of notice u/s 148 of the Act in the present case was granted by an officer higher in rank (PCIT) to that specified in law(JCIT).

12. Ld.Counsel for the assessee has drawn our attention to the decision of the Hon’ble high court of Bombay in the case of Aquatic Remedies (P) Ltd.(supra) holding that when a statute mandates satisfaction of a particular manner, it has to be done in that manner. SLP of the department against the judgement of the Hon’ble High court was dismissed by the Hon’ble Apex Court, in its order reported in (2020) 113 taxmann.com451(SC). Even the Hon’ble Delhi High court has reiterated the said proposition of

law in the case of SPL's Siddhartha Ltd.(supra). Ld.DR was unable to draw our attention to any contrary decision of either the Hon'ble jurisdictional High court or the Hon'ble apex court.

13. In the light of the above, we have no hesitation in holding that the approval granted to the reasons recorded for reopening of the case of the assessee is not in accordance with law and hence invalid. The reopening therefore, we hold, is invalid.

14. Another contention raised by the Ld. Counsel for the assessee challenging the validity of the reopening done in the present case was that in the facts of the present case scrutiny assessment was mandated by CBDT for survey cases and the same could not have been substituted by reopening. That the present case not having been taken up for regular scrutiny it clearly violated the binding instruction of CBDT.

15. The contention was that as per CBDT Circular No.10/2013 dated 05.08.2013 laying down criteria for selection of cases for scrutiny in A.Y. 2014-15, survey cases were mandatorily required to be scrutinized, except where return of income excluding the disclosure made during survey is not less than the return of income of the preceding year. He contended that the AO had held that since the assessee had returned income of only Rs. 4,91,029/-, therefore, disclosure of Rs.1.55 Crores surrendered during survey was not made in the return of income. Therefore, the case of the assessee was required to be taken up for compulsory scrutiny as per CBDT instruction (supra). However, not having been taken up for regular scrutiny it clearly violated

binding instruction of CBDT. He contended that the AO trying to resort to reopening u/s.147 of the Act for the very same reason of disclosure made during survey, which was compulsorily required to be scrutinized in regular assessment, for reopening the case of the assessee was not permissible. His contention was that the assessee had already recorded on-money in its books of accounts and there was no escapement at all and had the return being selected for scrutiny as per binding CBDT Instruction, this fact would have been ascertained by the AO at this stage itself requiring no reopening of the case of the assessee. For the aforesaid reasons, he contended that the reopening in the present case was not sustainable in the eyes of law and needed to be quashed.

16. We are not in agreement with the contention of the Ld. Counsel for the assessee. It is not the case of the Ld. Counsel for the assessee that in the facts as prevailed in the present case before us, of a survey being conducted on the assessee, law compulsorily required scrutiny assessment to be done. His contention is that CBDT Instruction directed the AOs to conduct compulsory scrutiny in such cases. Therefore, the AO having not done regular scrutiny in the facts of the present case did not violate any provisions of law. It was only an administrative directive of the Department which he probably violated. The fact that the AO was in possession of information, revealed during survey conducted on the assessee, of having earned unaccounted income in cash to the tune of Rs.1.55 Crores and the same having not apparently being disclosed in the return of income filed, it was a clear case of formation of belief of escapement of income.

The reopening, therefore, resorted by the AO was in accordance with law. This contention raised by the Ld. Counsel for the assessee is accordingly rejected.

17. In view of the above, we hold that there being no valid approval for reopening the case of the assessee, there was no valid jurisdiction assumed by the AO to frame assessment u/s.147 of the Act. The assessment order passed as a consequence is void without valid jurisdiction and is accordingly directed to be quashed.

18. Since, we have quashed the assessment order, the grounds raised on merits are not being adjudicated by us being mere academic in nature.

19. In the result, the appeal of the assessee is allowed in above terms.

This Order pronounced on 21/04/2026

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

Ahmedabad; Dated 21/04/2026

S. K. SINHA

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आदेश की प्रतिलिपि अशेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad**