

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE MS. SUCHITRA RAGHUNATH KAMBLE, JUDICIAL MEMBER &  
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

**आयकर अपील सं./ITA No.1212/SRT/2024**

**Assessment Year: (2012-13)**

**(Hybrid hearing)**

Nazar Impex Pvt.Ltd. 408, Saryu Diamond Complex, Jadda Khadi, Mahidharpura, Surat-395 003	<b>बनाम/ Vs.</b>	Income Tax Officer Ward-1(1)(3), Surat, Aaykar Bhavan, Majura Gate, Opp. New Civil Hospital, Surat-395 001
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AACCN3603R</b>		
<b>(अपीलार्थी/Appellant)</b>		<b>(प्रत्यर्थी/Respondent)</b>

<b>निर्धारिती की ओर से /Appellant by</b>	Shri Himanshu Gandhi, CA
<b>राजस्व की ओर से /Respondent by</b>	Shri Ajay Uke, Sr-DR
<b>सुनवाई की तारीख/Date of Hearing</b>	04/06/2025
<b>उद्घोषणा की तारीख/Date of Pronouncement</b>	21/07/2025

**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 26.09.2024 by the National Faceless Appeal Centre, Delhi /Commissioner of Income-tax (Appeals), [in short 'NFAC/CIT(A)'] for the Assessment Year (AY) 2012-13, which in turn assessment order passed by Assessing Officer (in short, 'AO') u/s 144 r.w.s. 147 of the Act on 30.12.2019.

2. Grounds of appeal raised by the assessee for the appeals are as under:

*"1. **Ground 6.** On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming rejection of books of account under section 145(3) of Income Tax, Act 1961 without pointing out any defect in books of account and even the return income on the basis of books of account were also not disputed.*

2. **Ground 7.** *On the facts and circumstances of the case as well and law, the Ld. CIT(A) erred in not allowing expenditure against the income.*

3. **Ground 8.** *Appellant craves leave to add further grounds or to amend or alter the existing grounds of appeal on or before the date of hearing.*

4. **Ground 1.** *On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming issuance of notice under section 148, even though there is no new tangible material for reopening.*

5. **Ground 2.** *On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming validity of proceedings under section 148 initiated without obtaining proper sanction from appropriate authority under section 151 of Income Tax Act, 1961.*

6. **Ground 3.** *On the facts and circumstances of the case and law, the Ld. CIT(A) failed to considered that the issue which is subject matter of appeal cannot be considered again in reassessment proceeding.*

7. **Ground 4.** *On the facts and circumstances of the case and law, the Ld. CIT(A) failed to considered that addition cannot be made on any ground if no addition made on basis of reason recorded for reopening.*

8. **Ground 5.** *On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming the addition of rs.33,81,582/- made by Ld. AO on account of commission income on sales, imports and loan outstanding.”*

3. Brief facts of the case are that the appellant filed his return of income for A.Y. 2012-13 declaring total income Rs.4,69,120/- on 25.09.2012. A search and seizure action u/s 132 of the Act was conducted in case of Rajendra Jain and other groups on 03.10.2013. The seizure made at the premises of Rajendra group at Oberoi Splendor Building, JVL Road, Andheri (E), Mumbai revealed that the assessee had transactions with the searched persons and thereafter the assessee was also covered u/s 133A of the Act. It was revealed that assessee was indulged in issue of bogus bills in the form of accommodation entries. Accordingly, notice u/s 153C was issued and after providing opportunity of hearing to the assessee, assessment order u/s 144 r.w.s. 153C was passed on 29.01.2016 determining total commission at

Rs.33,81,582/- on which expenses of 25% was allowed and the total income was assessed at Rs.25,36,186/-. Subsequently, the case was reopened on the basis of information received from DDIT(Inv.)/UnitIX(2)/BL/SALL/Inti/2013-14 dated 15.07.20214. It was found that the assessee had entered into transactions of Rs.5,44,66,359/- with M/s Rose Impex, a concern run and controlled by Bhanwarlal Jain group, which was providing accommodation entries of unsecured loan and bogus purchases to various beneficiaries. Accordingly, notice u/s 148 was issued on 30.03.2009 after obtaining prior approval from competent authority. The assessee filed return in response to the said notice declaring the same income. The reasons for reopening was given to assessee and objection raised by the assessee was disposed of by the AO by passing an order. Subsequently, a show cause notice was issued on 14.12.2019 in response to which the assessee filed reply that his business is genuine but no supporting details were given to substantiate his claim. The AO thereafter rejected the books of account u/s 145(3) of the Act and estimated income at 0.2% on the import of Rs.1,31,96,98,887/-, 0.5% on bogus loan entry of Rs.13,73,03,854/- and 0.02% of Rs.27,83,25,785/- on local sale of Rs.27,83,25,785/-. The total commission income of Rs.33,81,582/- was added to the revised total income. Aggrieved by the order of AO, assessee preferred appeal before Ld. CIT(A) where the appellant challenged validity of reopening in absence of any new tangible material and without proper sanction from the appropriate authority. The appellant also

contended that no addition can be made if there is no addition based on the reasons recorded for reopening. The appellant also challenged the rejection of books of account u/s 145(3) of the Act without pointing out any defects in the books of account. The CIT(A) rejected the ground on validity of reopening by holding that case was reopened on the basis of information received by AO after proper application of mind that there was reason to believe that income had escaped assessment. He also upheld the addition in respect of commission income on transaction of Rs.5,46,66,359/- with M/s Rose Impex, a concern run and controlled by Bhanwarlal Jain group. The appeal was dismissed by CIT(A).

4. Further aggrieved by the order of CIT(A), the assessee has filed present appeal before the Tribunal. The learned Authorized Representative (Id. AR) of the assessee filed factual and legal paper book and submitted that the reopening u/s 147 is invalid because no new tangible material for reopening was available with the AO. The information relied upon by the AO was already available with the AO. The information vide letter No. DDIT(Inv.) U-IX(2)/BL/SAL/Inti/2013-14, Unit IX(2), Mumbai dated 15.04.2014 was already on record of AO which was verified by him. The AO had also verified the details gathered during the survey proceedings and held that appellant had not taken accommodation entries from M/s Rose Impex, but on the contrary the appellant was in the business of providing accommodation entry. Hence, the AO assessed income on the basis of commission at

Rs.33,81,582/- and determined the income at Rs.25,36,186/- after allowing 25% of the commission as expenses (Rs.8,45,396/-). Ld. AR submitted that there was no new tangible material as the information dated 15.07.2014 were already available with AO while passing the order u/s 144 r.w.s 153C on 29.01.2016. The Ld. AR also submitted that assessment order and ledger account of M/s Rose Impex were provided to the AO during the said assessment proceedings. Hence, the reopening is not based any new tangible material and is, therefore, invalid and bad in law. He also relied on the following decisions (i) DCIT vs. Bajaj Allianz Life Insurance Company Ltd. (2021) 125 taxmann.com 71 (SC), (ii) Nilamen Sandipbhai Parikh vs. ACIT (2019) 109 taxmann.com 336 (Guj); (iii) Siddhi Develops and Builders vs. ACIT (2021) 129 taxmann.com 117 (Guj); (iv) CIT vs. Mohmed Juned Dadani (2013) 30 txmann.com 1 (Guj) and (v) CIT vs. Jet Airways (I) Ltd. (2010) 195 Taxman 117 (Bom).

5. On the other hand, learned Sr-DR for the revenue supported the order of lower authorities. He submitted that AO reopened the assessment based on the information received by the AO which is mentioned in the reasons for reopening. The AO has followed the due procedure and rejected the objection of the appellant to the reopening of the assessment. The CIT(A) has also passed the order after considering order of AO and submission of appellant. He requested to confirm the order of CIT(A).

6. We have heard both the parties and perused the materials available on record. We have also deliberated the case laws relied upon by Ld. AR of the appellant. There was a search and seizure action u/s 132 of the Act in case of Rajendra Jain group, Bhanwarlal group and others on 03.10.2013 by the Investigation Wing, Mumbai. On the basis of material found from the premises of Shri Rajendra Jain, a survey action u/s 133A was also conducted in case of the appellant. Subsequently, notice u/s 153C was issued to the appellant and after granting opportunity of hearing and after discussing various facts including the statements recorded during the search and in the post search proceedings, assessment order was passed u/s 144 r.w.s 153C of the Act on 29.01.2016 by working out commission income at Rs.33,81,582/-. The AO allowed expenses towards the above commission income @ 25% of the said income. The total income was accordingly determined at Rs.25,36,146/-. Subsequently, the AO reopened the assessment based on information gathered from the DDIT(Inv.)/Unit Mumbai vide letter No. No. DDIT(Inv.)U-IX(2)/BL/SAL/Inti/2013-14, Unit IX(2), Mumbai dated 15.04.2014. It is clear that the information received from Investigation Wing dated 15.04.2014 was already available with the AO when he started the original assessment proceedings u/s 153C of the Act. In fact, notice u/s 153C of the Act was issued to the appellant on 13.01.2015, which was almost 9 months after the letter of the DDIT(Inv.) dated 15.04.2014. The AO in the original assessment order u/s 153C has also mentioned the *modus operandi* of the

business of providing accommodation entry in the nature of bogus sales and unsecured loans. The AO has also referred to the statement of Shri Harilal P Nahar, Director of the appellant and thereafter added the commission income on import, loan and local bills @ 0.20%, 0.50% and 0.02% respectively. Therefore, it is clear that the existing information from the DDIT(Inv.) dated 15.04.2014 has been used to reopen the case. There was no new tangible and credible information with the AO to reopen the assessment. The Revenue has not been able to controvert the above fact by placing any materials before us. The decisions relied upon by Ld. AR are directly on the issue and support the case of the appellant. The Hon'ble judrsidctional High Court in case of Nilamen Sandipbhai Parikh (supra) has held that AO has power to reopen the assessment provided there is tangible material to come to the conclusion that there is escapement of income and the reasons must have a live link with the formation of belief. Reopening based on mere change of opinion lacks validity and the notice u/s 148 cannot be sustained. In the present case, the information was already there when the original order u/s 153C of the Act was passed by the AO. Using the same information after 4 years from the end of the assessment year to reopen the assessment would tantamount to change of opinion on the existing fact, which is not permissible as held by the various Hon'ble Courts. Hence, the impugned notice u/s 148 dated 30.09.2019 is quashed. Consequently, the reassessment order us/ 1444 r.w.s. 147 dated 30.12.2019 is also set aside.

Since assessment order has been quashed on jurisdictional ground itself, other grounds are not being adjudicated.

7. In the result, assessee's appeal is allowed.

Order is pronounced in accordance with Rule 34(3) of the ITAT Rules, 1963 on 21/07/2025 in the open court.

**Sd/-**  
**(SUCHITRA R. KAMBLE)**  
**JUDICIAL MEMBER**

सूरत /Surat

दिनांक/ Date: 21/07/2025

Dkp Outsourcing Sr.P.S\*

**Sd/-**  
**(BIJAYANANDA PRUSETH)**  
**ACCOUNTANT MEMBER**

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त (अपील)/ The CIT(A)
- विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, सूरत/ DR, ITAT, SURAT
- गार्ड फाईल/ Guard File

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By order/आदेश से,

सहायक पंजीकार  
आयकर अपीलीय अधिकरण, सूरत

