आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट।
IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER &
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकर अपील सं/.**ITA No.384/RJT/2024**
निर्धारणवर्ष /**Assessment Year: 2017-18**

Kishan Beej Kashivishvanath Road Nr. P & T Office Jamnagar – 361 001 PAN : AACFK 2114 P	बनाम Vs.	ITO, Ward-2(1) Jamnagar – 361 001
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से/Assessee by : Shri Kalpesh Doshi, AR

राजस्व की ओर से/Revenue by : Shri Abhimanyu Singh Yadav, Sr-DR

सुनवाई की तारीख/Date of Hearing : 20/01/2025

घोषणा की तारीख/Date of Pronouncement : 11/04/2025

ORDER

PER DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER:

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2017-18 is directed against the order passed by the Learned Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre, Delhi [in short 'Ld.CIT(A)/NFAC'], under section 250 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), dated 30.03.2024, which in turn arises out of an assessment order passed by the Assessing Officer u/s 147 r.w.s. 144B of the Act, dated 19.3.2022.

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

1.That, the Ld. CIT(A) has wrongly passed the order without providing proper opportunity of being heard.

2.That, the Ld. CIT(A) has wrongly confirmed reopening of assessment u/s 147 of the l.T. Act, 1961.

3.That, the Ld. CIT(A) has wrongly confirmed addition of Rs. 21,92,000/- u/s 69 A of the l.T. Act, 1961 on account cash deposit in bank account.

4.That, the Ld. CIT(A) has wrongly confirmed applicability of provisions of section 115BBE of the IT Act, 1961.

5.That, the Ld. CIT(A) has confirmed levy of interest u/s 234A, 234B and 234C of the I.T. Act, 1961.

6.That, the Ld. CIT(A) has wrongly confirmed initiation of penalty u/s 271AAC and 272(A)(1)(d) of the Act,1961.

7.The assessee craves leave to add, amend, alter, or withdraw any aforesaid grounds of appeal.

3. The facts of the case which can be stated quite shortly are as follows: The assessee filed return of income, declaring an income of Rs. 48,770/- for the assessment year 2017-18, on 28.10.2017, which was processed at returned version. As per information available with the department, the assessee has made cash deposits amounting to Rs. 21,92,000/-in its Bank Account No. 006000400000066 maintained with the Nawanagar Co-operative Bank during demonetization period. The assessee has failed to disclose details of cash deposits during demonetization in its return of income. Accordingly, proceedings u/s 147 of the Income Tax Act were initiated after recording reasons and after taking approval from the Joint Commissioner of Income Tax Range-1 Jamnagar vide DIN & Documents No. ITBA/AST/S/118/2020-21/1031948080(1) dated 30.03.2021. The notice u/s 148 of the I.T. Act, was issued on 31.03.2021, which was duly served upon the assessee through E-filing account of the assessee/registered E-mail Id of the assessee. No return of

income was filed in response to notice u/s 148 of the Act, by the assessee. Thereafter, notice u/s 142(1) of the Act, was issued on 15.11.2021. Further notice u/s 142(1) of the Act, dated 16.12.2021 along with questionnaire was issued. However, the assessee did not file reply before the assessing officer, therefore assessing officer made addition of Rs. 21,92,000/-, under section 69A r.w.s. 115BBE of the Income-tax Act, 1961.

5. Aggrieved by the order of the assessing officer, the assessee carried the matter in appeal before the ld.CIT(A), who has confirmed the action of the assessing officer. The ld.CIT(A) has just narrated the facts mentioned in the assessment order, and adjudicated the issue on merit and confirmed the finding of the assessing officer. Therefore, the assessee is in further appeal before this Tribunal.

6. Shri Kalpesh Doshi, Learned Counsel for the assessee, vehemently argued on ground no.2 raised by the assessee, challenging the reopening of assessment under section 147/148A of the Act, and stated that notice issued under section 148 of the Act, is dated 31.3.2021, however, the Income Tax Authority has digitally signed the said notice on the next day, that is on 01.04.2021, at 12:45pm. On 1st April 2021, there was a change in law, relating to reopening of assessment. Therefore, the notice issued by the assessing officer itself is invalid. The notice dated, as on 31.03.2021, was signed on 01.04.2021, by the designated Income Tax Authority, therefore, amended provisions of the Act, will be applicable. The ld. Counsel for the assessee submitted as on 01.04.2021, if the assessing officer wanted reopen the assessment, then in that circumstances, the reopening is to be done, as per the judgement of the Hon'ble Supreme Court in Ashish Agrawal, (2022) 138 taxmann.com 64 (SC), which the assessing officer has failed to do so, therefore, reopening of assessment is bad in law.

7.The ld. Counsel also stated that in all the notices issued by the assessing officer, the income escaped assessment is shown to the tune of Rs.21 lakhs, which is not applicable after 1st April 2021. The criteria to issue the notice, after 1st April 2021 is that if the income escaped assessment exceeds Rs.50 lakhs, then only notices can be issued to the assessee in new law regime, after after 1st April 2021. The ld.Counsel for the assessee submitted that the notices were issued to the assessee by following new provisions of the Act, which are applicable after 1.4.2021. However, the order was passed by the assessing officer under the old provisions of the Act. The ld.Counsel for the assessee also took us through the approval given by the Appropriate Income-tax Authority and stated that the approval was not taken prior to the issuance of the notice under section 148 of the Act, therefore, reassessment order passed by the assessing officer, under section 147 of the Act, may be quashed.

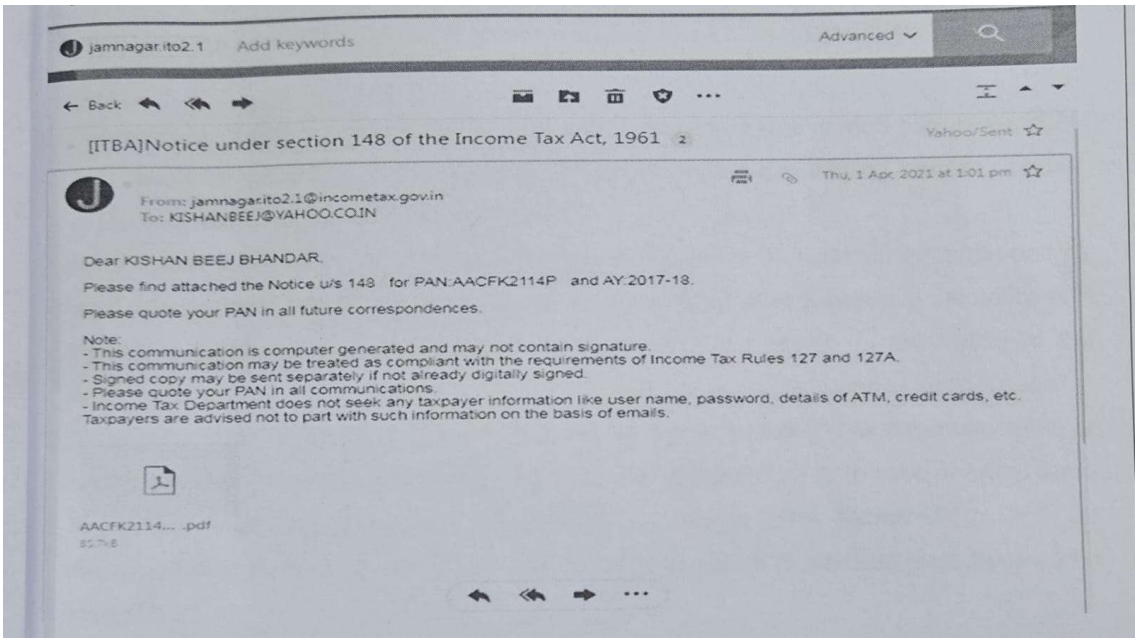
8. On the other hand, the ld.DR for the Revenue submitted that as per the section 292B of the Act, the notice issued by the assessing officer will be deemed to be correct, when the assessee has participated in the assessment proceedings. The ld.DR also pointed out that the assessing officer as well as the ld.CIT(A) has passed the *ex parte* order, therefore, the matter may be remitted back to the file of the assessing officer. The ld.DR further submitted that the Hon'ble Apex Court in Suo Moto Petition No.3 of 2020 vide order dated Jan.10. 2022 has allowed the time limit to the assessing officer due to COVID-19 pandemic. Therefore, the Suo Moto Writ Petition No. 29 of 2022 is applicable to the assessing officer. Therefore, due to COVID 19, this relaxation was given by the Hon'ble Supreme Court, and this judgement is, over and above, the judgement passed by the Hon'ble Supreme Court in the case of Ashish Agarwal (supra) and in the case of Rajeev Bansal, (2024) 76 taxmann.com 70

(SC).Therefore, the ld.DR contended that order of the assessing officer may be upheld.

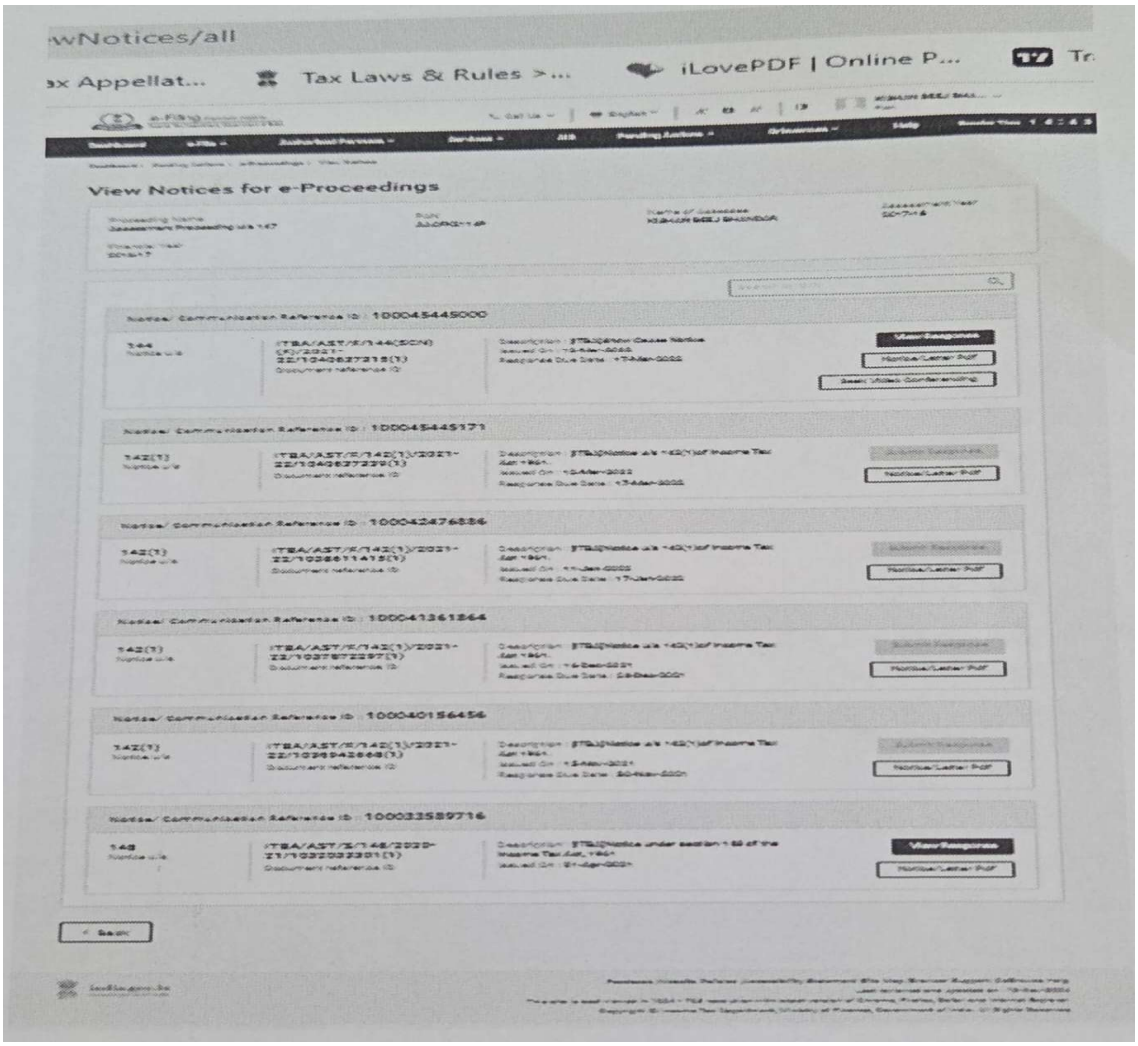
9. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee. First, we shall adjudicate ground no.2 raised by the assessee, challenging the reassessment proceedings under section 147/ 148 of the Act, as bad in Law. The assessee is a partnership firm engaged in the business of trading of agriculture seeds, fertilizers, pesticides, etc. and a dealing in pesticides and fertilizer. The return of income for the year is filed on 28/10/2017, declaring total income at Rs. 48,772/-. The assessee- firm is regularly maintaining books of accounts and the books of account are duly audited by a qualified Chartered Accountant u/s 44AB of the I.T. Act, 1961. The assessment for the assessment year under consideration is reopened by issuing notice u/s 148 of the Act dated 31/03/2021. The order is passed u/s 147 r.w.s. 144 of the Act, by determining total income at Rs.22,40,770/- and making addition of Rs. 21,92,000/- u/s 69A of the Act. The notice u/s 148 of the Act is challenged by the assessee on two (grievances)counts, Viz: (i)Notice is barred by limitation and (ii) Procedure laid down u/s 148A is not followed. Now we shall take these grievances, one by one as follows:

10. Learned Counsel for the assessee submitted that notice is barred by limitation.The notice u/s 148 of the Act, dated 31/03/2021 **has been digitally signed on 01/04/2021**. Therefore, the notice u/s 148 has been issued only after it has been digitally signed. Since the notice is digitally signed on 01/04/2021, at 12:45 pm, therefore, the notice u/s 148 has been issued beyond the time limit. The notice u/s 148 of the Act is enclosed at page no. 21 of the assessee`s paper book, and it can be seen from the notice and the note mentioned in the said notice, which contains a statement **"If digitally signed, the date of digital**

signature may be taken as date of document". The digital signature of notice is 01/04/2021 at 12:45 pm. The screenshot of digital signature is enclosed at page no. 22 of the assessee`s paper book.It is also stated that digitally signing a notice is an act different from the act of issuing the notice. In this regard it is stated that notice is served on email id of the Appellant on 01/04/2021. The screenshot of email is as under:



The issue date, as per income tax portal, is also 01/04/2021. The screenshot from the portal is as under:



The process of digitally generating the notice on the system was carried out on 01/04/2021. The impugned notice could not have been issued prior to the same being signed. The date of the said notice is duly reflected as on 01/04/2021.It has been consistently held that the expression **'issue'** in its common parlance and its legal interpretation means that the issuer of the notice must after drawing up the notice and signing the notice, make an obvious act to ensure due dispatch of the notice to the addressee. It is only upon due dispatch, that the notice can be said to have been 'issued'. Mere generation of Notice on the ITBA Screen cannot in fact or in law constitute issue of notice, whether the notice is issued in paper form or electronic form. In case of paper form, the notice must be dispatched by post on or

before 31st March 2021 and for communication in electronic form the e-mail should have been dispatched on or before 31st March 2021.

11. We find that the despatch by email has been carried out on or after 1st April 2021 and therefore, the impugned notice has been issued after 31/03/2021 i.e. on 01/04/2021.In this regards, reliance is placed on following judgements:

(i)Acropolis Realty (P.) Ltd v. ITO [2024] 168 taxmann.com 406 (Delhi)

"Section 149(1)(a), provides that no notice u/s 148 shall be issued beyond the period of three years except in cases that fall within the scope of section 149(1)(b). It is clear from the annexure to the said impugned notice that the assessee's income, which has possibly escaped assessment, is below the threshold limit of ₹50 lakhs. Therefore, the time limit as provided in clause (b) of section 149(1) is not applicable. It is thus the petitioner's case that the impugned notice was issued beyond the period prescribed under the Act and therefore the same is liable to be set aside. [Para 4]

In the present case the impugned notice was digitally signed on 1-4-2023. Thus, the process of digitally generating the same on the system was completed on 1-4-2023. Plainly, the impugned notice could not have been issued prior to the same being signed. The fact that the steps to generate the impugned notice commenced on 31-3-2023 cannot be a ground to hold that the impugned notice was issued on 31-3-2023. The date of the said notice is correctly reflected as 1-4-2023. In addition, it is also pointed out that the DIN & Notice Number mentioned in the impugned notice – ITBA/AST/F/148A(SCN)/2023-24/1051828274(1) – also indicates that the impugned notice was issued in the financial year 2023-24. [Para 7]

In view of the above, there is merit in the contention that the reassessment proceedings could not have been initiated beyond the period of three years from the end of the relevant assessment year (assessment year 2019-20) as the income in respect of which the Assessing Officer has information to suggest that it has escaped assessment, is below the threshold limit of ₹50 lakhs. [Para 8]."

(ii) Suman Jeet Agarwal v. ITO [2022] 143 taxmann.com 11 (Delhi)

"The notices which were digitally signed on or after 1st of April, 2021, are held to bear the date on which the said Notices were digitally signed and not 31st March 2021. The said petitions are disposed of with the direction that the said Notices are to be considered as show-cause-notices under section 148A(b) of the Act as per the directions of the apex Court in the Ashish Agarwal (supra) judgment."

(iii)Bennett Coleman & Co Ltd. V. NFAC (I.T.A. No.1387/Mum/2023) (Mum. Trib.)

The court held that the signing of the assessment order is an integral part of order generation in e-assessment and the assessment proceedings conclude only after the order is digitally signed, therefore, signing of the assessment order should not be brushed aside lightly. Therefore, the

signing of the assessment order is a mandatory requirement and not a procedural formality unless the order is signed assessment does not complete. As per the Faceless Assessment Scheme 2019 which was substituted for e-assessment by Notification No. S.O.2745(E) dated 13/08/2020 w.e.f. 13/08/2020 as per Clause xiv, the assessment unit shall, after taking into account all the relevant material available on the record make in writing, a draft assessment order and then as per Clause xvi, the National e-Assessment Centre shall examine the draft assessment order and finalise the assessment within the period of limitation. In the instant case the assessment order finalized by NFAC is dated 01/10/2021 which is obviously beyond the period of limitation. It is held that the impugned assessment order dated 28/09/2021 was not made till 30/09/2021 and it was not digitally signed and was an incomplete assessment order which was completed on 01/10/2021 and hence, barred by limitation.

12. From the above facts and position in law, we find that assessment order passed by the assessing officer, should be quashed as the notice under section 148 of the Act, is barred by limitation. That is, on the basis of illegal notice, assessment order should be quashed.

13. We also note that procedure laid down u/s 148A of the Act is not followed by the assessing officer. The law for reopening of assessment u/s 147/148 of the I.T. Act has been amended w.e.f. 01/04/2021. Since, the notice u/s 148 of the Act, is issued on 01/04/2021, the new provisions are applicable for reopening of assessment as directed by Hon'ble Supreme Court in the case of Ashish Agarwal[2022] 138 taxmann.com 64 (SC). The Hon'ble Supreme Court vide para 6.2 and 6.4 has held as under:

> *"Under the substituted provisions of the I.T. Act vide Finance Act, 2021, no notice under section 148 can be issued without following the procedure prescribed under section 148A. Along with the notice under section 148, the Assessing Officer is required to serve the order passed under section 148A. Section 148A is a new provision which is in the nature of a condition precedent.*
>
> *"It provides that before issuing any notice under section 148, the Assessing Officer shall*
>
> *(i) conduct any enquiry, if required, with the approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;*
> *(ii) provide an opportunity of being heard to the assessee, with the prior approval of specified authority;*
> *(iii) consider the reply of the assessee furnished, if any, in response to the show-cause notice referred to in clause (b); and*

(iv) *decide, on the basis of material available on record including reply of the assessee, as to whether or not it is a fit case to issue a notice under section 148 and*

(v) *the Assessing Officer is required to pass a specific order within the time stipulated."*

However, the assessment order u/s 143(3) of the Act has been passed under the old law by following the procedure as stated under the old provisions prior to amendments in the year 2021. Therefore, the AO is failed to follow the procedure as laid down under the new regime of proceedings u/s 148, wherein following procedure is required to be followed.

- *"148A(a): conduct any enquiry, if required, with the approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;*
- *148A(b): provide an opportunity of being heard to the assessee, with the prior approval of specified authority;*
- *148A(c): consider the reply of the assessee furnished, if any, in response to the show-cause notice referred to in clause (b); and*
- *148A(d): decide, on the basis of material available on record including reply of the assessee, as to whether or not it is a fit case to issue a notice under section 148 and the Assessing Officer is required to pass a specific order within the time stipulated."*

As per the amended provisions, prior to issuing notice u/s 148 of the Act, the Ld. AO is required to conduct inquiry u/s 148A(a) and show cause is required to be issued u/s 148A(b) of the Act. The show cause notice must be based on the information available. The issue under consideration is whether there is 'information suggesting escapement of income' so as to invoke section 147 and issue notice under section 148.

14. Under the old law, the opening words were *'If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year'.* As against that, in the amended section, the opening words are: *'If any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year'.* Therefore, the term missing in the new

section is 'reason to believe'. Under the new provisions, section 147 can be invoked only if any income chargeable to tax has 'escaped assessment'. Thus, the AO is required to be *prima facie* satisfied that there is 'escapement of income', unlike earlier law which permitted action based on mere reason to believe. Mere reason to believe, cannot be a ground for carrying out assessment under section 147 of the Act.Therefore, there are two conditions as per section 148, **firstly,** the Assessing Officer should have information; **secondly,** such information should suggest that there is an escapement of income. The phrase 'information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment' is explained in *Explanation 1* to section 148 of the Act.The word 'suggest' is not defined in the 1961 Act and therefore, one has to ascertain its meaning from other sources. As per Advanced Law Lexicon - The word 'suggest', either in its meaning as ordinarily employed or as affected by the context of the will, that can be regarded as expressive of confidence, or belief, or desire, or hope, or will, or as the equivalent of a word of entreaty or recommendation, is in fact, and a precatory word at all, in the ordinary sense. As per Black's Law Dictionary - To introduce indirectly to the thought; to propose with difference or modesty; to hint; to intimate. As per Merriam-Webster - 'to call to mind by thought or association'. The expression 'information' in the context in which it occurs must, mean instruction or knowledge derived from an external source concerning facts or particulars, or as to law relating to a matter bearing on the assessment vide: CIT v. A. RAMAN & CO. [1968] 67 ITR 11 (SC)]. Therefore, section 148 would point out to concrete information which could be facts which point out to a case of income having escaped assessment. Section 148A would only assist the Assessing Officer in coming to a conclusion whether such information is good enough to allow a notice to be issued under section 148. The new provisions should be interpreted so as to make them workable in accord with the intent to achieve the purpose for which statutory change was brought about. On a conjoint reading of

section 147 and section 148, it is clear that the *escapement of income is a sine qua non* for initiating proceedings u/s 147 of the Act. Therefore, availability of the 'information which suggests that there is an escapement of income' is a pre-requisite for issuing notice under section 148 of the Act. The argument that omission of phrase 'reason to believe' has gotten away and has given way to 'information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment' would mean that there should be no need for any reason seems incorrect. The phraseology of amended section 148 makes in unmistakable terms clear that there should be concrete information as defined in *Explanation 1* to section 148 of the Act. Such information should be suggestive of income escaping assessment and such information should be objective in nature. In other words, the arguable subjectivity in the pre-amendment provision is given a go-by. For conducting assessment under section 147 of the Act, there should be not only escapement but also the reason to believe that there is such escapement, the reason being the information itself. Hence, a plausible view could be taken that post-amendment of the provision; the escapement has to be established with concrete information.

15. Now coming to the assessee`s case under consideration, taking into account above provisions of the Act, we note that books of accounts of firm are duly audited and firm is maintaining regular books of accounts. The reopening is carried out on account of cash deposit in bank. It is established principle that merely because cash is deposited in bank does not lead to escapement of income. The cash deposits are duly recorded in the books of accounts and income from such deposits is duly considered at the time of filing of return of income. Therefore, reopening is conducted merely on account of reason to believe, as against escapement of income with concrete information on hand. The AO has failed to establish with concrete information that there is escapement of income.

We also find that AO is also required to take the approval as per new provision of section 151 of the Act. The provisions are reprodued hereunder:

> ***[Sanction for issue of notice.***
>
> ***151.*** *Specified authority for the purposes of* section 148 *and* section 148A *shall be,—*
>
> *(i) Principal Commissioner or Principal Director or Commissioner or Director, if three years or less than three years have elapsed from the end of the relevant assessment year;*
>
> *(ii) Principal Chief Commissioner or Principal Director General or* ***[***]*** *Chief Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year:]*
>
> ***[Provided*** *that the period of three years for the purposes of clause (i) shall be computed after taking into account the period of limitation as excluded by the third or fourth or fifth provisos or extended by the sixth proviso to sub-section (1) of* section 149.*]"*

The notice u/s 148 of the Act has been issued after obtaining the approval from JCIT Range 1, Jamnagar. The said fact is stated in notice u/s 148 of the Act. The AO is required to follow the procedure under new law and required to follow the approval as per Section 148A(d) of the I.T. Act, 1961. Therefore, the notice has been issued without obtaining the approval as prescribed under amended provision of section 151 of the Act.In this regards, reliance is placed in the case of UOI v. Rajeev Bansal [2024] 167 taxmann.com 70 (SC) the Hon'ble court has dealt with various issues as under:

"Para 68: After 1-4-2021, the Income-tax Act has to be read along with the substituted provisions.

The substituted provisions apply retrospectively for past assessment years as well. On 1-4-2021, TOLA was still in existence, and the revenue could not have ignored the application of TOLA and its notifications. Therefore, for issuing a reassessment notice under section 148 after 1-4-2021, the revenue would still have to look at: (*i*) the time limit specified under section 149 of the new regime; and (*ii*) the time limit for issuance of notice as extended by TOLA and its notifications. The revenue cannot extend the operation of the old law under TOLA, but it can certainly benefit from the extended time limit for completion of actions falling for completion between 20-3-2020 and 31-3-2021. [Para 68]

Para no. 48: After 1-4-2021, the time limits prescribed under the new regime came into force.

The ordinary time limit of four years was reduced to three years. Therefore, in all situations, reassessment notices could be issued under the new regime if not more than three years have elapsed from the end of the relevant assessment year.

Para 50: Threshold limit u/s 149(1)(b) of the Act.

Another important change under section 149(1)(b) of the new regime is the increase in the monetary threshold from Rs. 1 lakh to Rs. 50 lakhs. The old regime prescribed a time limit of six years from the end of the relevant assessment year if the income chargeable to tax which escaped assessment was more than Rs. 1 lakh. In comparison, the new regime increases the time limit to ten years if the escaped assessment amounts to more than Rs. 50 lakhs.

Para 51:Given section 149(1)(b) of the new regime, reassessment notices could be issued after three years only if the income chargeable to tax which escaped assessment is more than Rs. 50 lakhs. The proviso to section 149(1)(b) limits the retrospectivity of that provision with respect to the time limits specified under section 149(1)(b) of the old regime. [Para 51]"

16.Therefore, considering the above facts and circumstances and position in law, as narrated above, we quash the reassessment order itself, and allow the appeal of the assessee. As the reassessment itself is quashed, all other issues on merits of the additions, in the impugned assessment proceedings, are rendered academic and infructuous.

17. In the result, appeal filed by the assessee is allowed.

Order is pronounced in the open court on 11/04/2025

Sd/-	**Sd/-**
(DINESH MOHAN SINHA)	**(DR.ARJUNLAL SAINI)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

राजकोट /Rajkot
दिनांक/ Date: 11/04/2025

**vk*

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, राजकोट/ DR, ITAT, RAJKOT
- गार्डफाईल/ Guard File

By order/आदेशसे,

//True copy//

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot