

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
(DELHI BENCH 'G' NEW DELHI)
BEFORE SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No. 5015/DEL/2024 (A.Y. 2013-14)

ITA No. 5016/DEL/2024 (A.Y. 2014-15)

Shree Ganesh Commodity Brokers B-10 Ravi Plaza, 95-97 Green Square Market, Hisar, 125001, Haryana PAN: ACBFS5547B	Vs.	ITO Ward-1 Hissar
Appellant		Respondent
Assessee by	Advocate C. S. Anand and Advocate Vaishnavi Yadav	
Revenue by	Sh. Mahesh Kumar, CIT(DR) and Shri Manish Gupta, Sr. DR	
Date of Hearing	26/05/2025	
Date of Pronouncement	/06/2025	

ORDER

PER YOGESH KUMAR, U.S. JM:

The captioned Appeals are filed by the Assessee represented by its former partner Sh. Rajkumar Jangid, challenging the orders dated 22/10/2024 passed by the Commissioner of Income Tax (Appeal)/National Faceless Appeal Centre- Delhi ('NFAC'/ Ld. CIT(A) short) pertaining to Assessment Years 2013-14 and 2014-15 respectively. The Assessee raised similar grounds of Appeal in both the appeals except variation in amount. For the sake of convenience, the Grounds of Appeal of Assessee's Appeal in Assessment Year 2013-14 are reproduced as under:-

"1. The initiation of proceedings u/s 147 and issuance of notice u/s 148, in the name of a dead/non-existing entity, are liable to be quashed.

2. The notice dt.27.07.2022 issued u/s 148 is liable to be quashed because it was a case of issuance of notice after lapse of more than 3 years from the end of the relevant assessment year and the JAO was not in possession of books of account or order documents or evidence which reveal that the income chargeable to tax, represented in the form of an asset has escaped assessment.

3. The notice dt.27.07.2022 u/s 148 is liable to be quashed because the same was not bearing DIN.

Even in the letter dt. 28.07.2022, it was mentioned "This is to inform you that Notice u/s 148 of the Income-tax Act, 1961 dated 28/07/2022 is having Document No. (DIN) ITBA/AST/M/148_1/2022-23/1044242880(1)".

4. The re-assessment order dt. 25.05.2023 passed u/s 147 r.w.s. 144B is liable to be quashed/ annulled because the jurisdictional notice u/s 148 was not served in accordance with the provisions of the I.T. Act, 1961.

5. The re-assessment order dt. 25.05.2023 passed u/s 147 r.w.s. 144B is liable to be quashed/ annulled because an order disposing the objections raised, was not passed prior to the passing of the said assessment order.

6. The re-assessment order dt. 25.05.2023 passed u/s 147 r.w.s. 144B is liable to be quashed/ annulled because the facts relating to the assessment order passed originally (as recorded in para 1.1 of the said assessment order) are incorrect.

7. The conclusion drawn "Since the deduction of expenses is not admissible in the instant case, as mentioned above, the total income of Rs. 3,82,53,897/-is treated as unexplained cash credit and added back the same to the returned income of the assessee filed for the AY 2013-14 u/s 68 of the I.T. Act, 1961 and the same is taxed u/s 115BBE of the I.T. Act, 1961" (as recorded in para 8 on page 46-47 of the said re-assessment order) is devoid of merits.

8. The invocation of the provisions of section 68 w.r.t. Rs.38253897/- is illegal because no such amount was ever

credited in the books of accounts M/s SHREE GANESH COMMODITY BROKERS.

9. On the peculiar facts of the case and in law, the addition made u/s 68 a Rs.38253897/- (Rs.37503821/- being the amount of loss incurred Rs.750076/- being the amount of assumed expenses incurred for getting arranged the loss of Rs.37503821/-) is liable to be deleted.

ADDITIONAL GROUNDS OF APPEAL

10. The letter-cum-notice dt. 30.05.2022 issued by the JAO u/s 148A(b), on the strength of notice dt. 21.06.2021 u/s 148, is not a valid notice in the eyes of law because the said notice dt.21.06.2021 u/s 148 was not challenged before the High Court by filing a Writ petition.

11. The order dt.27.07.2022 passed by the JAO u/s 148A(d), on the strength of notice dt.30.05.2022 u/s 148A(b) which in-turn was based upon the notice dt.21.06.2021 u/s 148, is not a valid order in the eyes of law because the notice dt.21.06.2021 u/s 148 was not challenged before the High Court by filing a Writ petition.

12. The notice dt. 27.07.2022 issued by the JAO u/s 148, on the strength of order dt. 27.07.2022 u/s 148A(d) which in-turn was based upon the notice dt.30.05.2022 u/s 148A(b) and notice dt. 21.06.2021 u/s 148, is not a valid notice in the eyes of law because the notice dt. 21.06.2021 u/s 148 was not challenged before the High Court by filing a Writ petition.

13. The letter-cum-notice dt.30.05.2022 issued by the JAO u/s 148A(b) is liable to be quashed because the same had been issued in a non-faceless manner, in utter violation of the provisions of section 151(1A).

14. The order dt.27.07.2022 passed by the JAO u/s 148A(d) is liable to be quashed because the same had been passed in a non-faceless manner, in utter violation of the provisions of section 151(1A).

15. The notice dt. 27.07.2022 issued by the JAO u/s 148 is liable to be quashed because the same had been issued in a non-faceless manner, in utter violation of the provisions of section 151(1A).

16. The re-assessment order dt. 25.05.2023 passed u/s 147 rws 144B is bad in law because the same was not passed on the strength of the notice dt.21.06.2021 u/s 148.

17. The re-assessment order dt. 25.05.2023 passed u/s 147 rws 144B is bad in law because the same was barred by limitation, in as much as the period of limitation was required to be counted from 21.06.2021 (which was the date of issuing the notice u/s 148).

18. The additions of Rs.38253897/- made u/s 68 are not sustainable because no addition/disallowance under the head 'Capital Gains' was made. The re-assessment proceedings were initiated on the ground that the Short Term Capital Loss was claimed.

3. Brief facts of the case are that, the Assessee partnership firm namely of M/s Shri Ganesh Commodity Brokers was formed on 01/01/2012 by and between Sh. Surendra Rampuria and Rajkumar Jangid. The Assessee firm filed return of income for Assessment Year 2012-13 declaring total income of Rs. 5,78,663/- and for Assessment Year 2014-15 filed return on 29/11/2014 declaring income of Rs. 5,36,430/-. The returns filed for both the years were taken up for scrutiny under CASS and the assessment orders came to be passed u/s 143(3) of the Act on 11/06/2015 determining total income of the Assessee at Rs. 7,28,660/- for Assessment Year 2013-14 and Rs. 7,36,430/- for Assessment Year 2014-15 on 06/12/2016.

4. The cases of the Assessee for both Assessment Year 2013-14 and 2014-15 were reopened u/s 147 of the Act. Assessment order for Assessment Year 2013-14 u/s 147 r.w. Section 144B of the Act came to be passed on 25/05/2023 by determine the income of the Assessee

at Rs. 3,88,32,560/- by making an addition of Rs. 3,82,53,897/- u/s 68 of the Act. Similar addition was also made for Assessment Year 2014-15 u/s 68 of the Act of Rs. 13,28,44,452/- by computing the total income of the Assessee at Rs. 13,35,80,882/-.

5. Aggrieved by the assessment orders for Assessment Year 2013-14 & 2014-15 the Assessee preferred appeals before the Ld. CIT(A). The Ld. CIT(A) vide orders dated 22/10/2024, dismissed the Appeals of the Assessee. As against the orders of the Ld. CIT(A), the Assessee preferred the captioned Appeals on the grounds mentioned above.

6. The Ld. Counsel has not pressed the Ground No. 3 in both the Appeals, which is on the issue of DIN. Recording the submission of the Ld. Assessee's Representative, the Ground No. 3 of Assessee's appeals are dismissed.

7. The Ld. Counsel for the Assessee addressing on Ground No. 1 of the appeals submitted that the Assessee partnership firm was constituted on 01/01/2012, however, the Assessee firm was dissolved later on. The said fact of dissolution of firm has been duly informed to the Department/A.O. on 28/11/2014 itself and also requested for cancellation of PAN in the name of the firm. However, the assessment order has been passed in the name of dissolved firm which is a dead entity, therefore, the order passed against a dead entity is a non-est,

thus sought for deletion of the addition made by the A.O. which has been confirmed by the Ld. CIT(A) by setting aside the order impugned.

8. The Ld. Counsel further submitted that the Ld. A.O. issued notice dated 21/06/2021 and 13/04/2021 u/s 148 of the Act for the Assessment Years 2013-14 and 2014-15 respectively in the name of M/s Shree Ganesh Commodity Brokers which was at that point of time, a non-existing entity. Therefore, submitted that the issuance of notice on non-existing entity and framing the assessment orders thereupon will vitiate entire assessment proceedings for defective/non-service of notice. The Ld. Counsel further submitted that the A.O. who was fully aware of dissolution of the firm, ought to have issued notice to the then existing partners of the firm as on the date of dissolution and should have served the notice u/s 148 of the Act on those partners. Thus, the Ld. Counsel submitted that the assessment order passed by the A.O. for both the Assessment Years are without issuing/serving proper notice u/s 148 of the Act therefore, sought for allowing the Ground No.1.

9. Per contra, the Ld. Departmental Representative submitted that though the Assessee firm has been dissolved, the Assessee/partners of the firm cannot escape from tax liability. The Ld. Departmental Representative further submitted that as per Section 189 of the Act, it is inevitable for the A.O. to make the assessment of the total income of

the dissolved firm as if no such dissolution had taken place and all the provisions of the Act shall apply so far as may be to such assessment. The Ld. Departmental Representative further submitted that the issuance of notice being a part of the assessment proceedings, the notice u/s 148 of the Act has been rightly issued to the Assessee firm to its address and assessment order also framed in the name of the Assessee as if no such dissolution had taken place, which is in compliance with provision of Section 189 of the Act. Therefore, sought for dismissal of Ground No 1 of the Assessee.

10. We have heard both the parties and perused the material available on record. The Assessee firm Shree Ganesh Commodity has been constituted on 01/01/2012 by and between Sh. Surendra Rampuria and Rajkuamr Jangid which carried out business of purchase and sale of shares, securities, commodities etc. The Assessee firm has filed its last ITR on 29/11/2014 for Assessment Year 2014-15.

11. The Assessee represented by its ex-partner, Sh. Raj kumar Jangid filed a letter addressing to Income Tax officer on 28/11/2014 informing that, 'the Assessee firm has been dissolved, the bank accounts of the Assessee stood closed on or before 05/04/2014 and there is no assets or any liabilities of the firm' and requested the A.O. to take cognizance of the letter and sought for cancellation of the PAN

with immediate effect. The copy of the said letter dated 28/11/2024 is placed at Page No. 25 of the Paper Book, which is reproduced as under:-

25

SHREE GANESH COMMODITY BROKERS
 B-10, 95-97, Ravi Plaza, Green Square Market, Hisar, Haryana-125001

Date: 28/11/2024

To,
The Income Tax Officer
Ward-4
Hisar

Dear Sir,

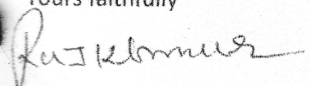
In the matter of: M/s Shree Ganesh Commodity Brokers (PAN: ACBFS5547B)
Subject: Intimation regarding Dissolution of Partnership and request for surrender of PAN.

I, Rajkumar Jangid (Ex-Partner of the firm, since dissolved), hereby inform you that –

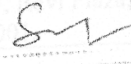
- A. The firm stood dissolved.
- B. The bank accounts stood closed on or before 05/04/2014.
- C. Now there is neither any asset nor any liability of the firm.

I, Rajkumar Jangid (Ex-Partner of the firm, since dissolved) request you to please take cognizance of this letter and remove the name of the firm from the list of live assesses while arranging the cancellation of PAN with immediate effect.

Thanking you

Yours faithfully


Rajkumar Jangid – (Ex-Partner of the firm, since dissolved)
 Contact No. : 9321453091
 E-Mail ID. : jangirr26@yahoo.co.in

आयकर विभाग (का.अ.)
हिसार
28 NOV 2024
प्राप्ति संख्या 

(Sanjay Singh)
CPIO-cum-Income Tax Officer
Ward-4, Hisar

12. It is the contention of the Ld. Assessee's Representative that the assessment order has been passed against dead entity, therefore, the assessment order itself is non-est. We observe that the provision of Section 189 of the Act provides for framing of assessment in the name of firm which has been dissolved or discontinued its business. For the sake of ready reference provision of Section 189 is reproduced as under:-

“ Firm dissolved or business discontinued.

189. *(1)Where any business or profession carried on by a firm has been discontinued or where a firm is dissolved, the Assessing Officer shall make an assessment of the total income of the firm as if no such discontinuance or dissolution had taken place, and all the provisions of this Act, including the provisions relating to the levy of a penalty or any other sum chargeable under any provision of this Act, shall apply, so far as may be, to such assessment.*

(2)Without prejudice to the generality of the foregoing sub-section, if the Assessing Officer or the Joint Commissioner (Appeals) or the Commissioner (Appeals) in the course of any proceeding under this Act in respect of any such firm as is referred to in that sub-section is satisfied that the firm was guilty of any of the acts specified in Chapter XXI, he may impose or direct the imposition of a penalty in accordance with the provisions of that Chapter.

(3)Every person who was at the time of such discontinuance or dissolution a partner of the firm, and the legal representative of any such person who is deceased, shall be jointly and severally liable for the amount of tax, penalty or other sum payable, and all the provisions of this Act, so far as may be, shall apply to any such assessment or imposition of penalty or other sum.

(4)Where such discontinuance or dissolution takes place after any proceedings in respect of an assessment year have commenced, the proceedings may be continued against the person referred to in sub-section (3) from the stage at which the proceedings stood at the time of such discontinuance or dissolution, and all the provisions of this Act shall, so far as may be, apply accordingly.

(5)Nothing in this section shall affect the provisions of sub-section (6) of section 159.”

13. The provision of Section 189 of the Act mandates that where there is a firm is dissolved, the AO shall make an assessment of the total income of the firm as if no such dissolution had taken place and all the provisions of the Act including the provisions relating to levy of a penalty or any other sum chargeable under any provisions of this Act shall apply to such assessment. Thus, the provisions of Section 189 of the Act keeps the firm alive for the purposes of assessment despite its dissolution. The said provision ensures that the firm which is dissolved does not escape the liability to tax after its dissolution. Therefore, we do not find any substance in the argument of the Ld. AR that the A.O. cannot frame the assessment in the name of dissolved firm.

14. Another contention of the Ld. Assessee's Representative that the notice u/s 148 of the Act has been issued in the name and address of dissolved firm and also to an inactive e-mail id and based on such issuance of notice, the assessment has been framed, which cannot sustain in the eyes of law.

15. As could be seen from the notice issued by the A.O. u/s 148 of the Act dated 21/06/2021 for Assessment Year 2013-14 and 13/04/2021 for Assessment Year 2014-15, both the notices have been issued in the name of '*Shree Ganesh Commodity Brokers, B-10, Ravi Plaza, 95-97, Green Square Market, Hisar, 125001, Haryana, India*'. It is pertinent to note that as on the said date, the Assessee firm has

been dissolved. Further, it is vehemently contended by the Assessee that the registered e-mail id of the Assessee firm i.e. 'info@shreeganesh.co.in' has been suspended long ago due to non-payment of subscription as the Assessee firm itself has been dissolved. Therefore, the alleged notice sent by the Department were not received by any of the ex-partners of the Assessee firm.

16. Further, after the dissolution of the Assessee firm, the Assessee represented by its ex-partner had informed the A.O. regarding the dissolution of the firm on 28/11/2014 itself. However, though the fact of dissolution of the Assessee firm was well within the knowledge of the Department/A.O., after six years five months from the date of the said information provided by the Assessee, the A.O. issued notice u/s 148 of the Act in the name and address of Assessee. Further, it is also observed that subsequent notices u/s 148A (b) of the Act dated 30/05/2022, notice u/s 148(d) of the Act dated 27/07/2022 and notice u/s 148 of the Act dated 27/07/2022 were also issued on the very same name and address of the Assessee firm. None of the above notices have been issued to the partners of the dissolved firms or to the partners immediately before the dissolutions.

17. The provision of Section 283 (2) of the Act deals with service of notice in case of dissolved firm. For the sake of ready reference, provision of Section 283 of the Act are reproduced as under:-

Section 283***Service of notice when family is disrupted or firm, etc. is dissolved.***

“(1) After a finding of total partition has been recorded by the Assessing Officer under Section 171 in respect of any Hindu family, notices under this Act in respect of the income of the Hindu family shall be served on the person who was the last manager of the Hindu family, or, if such person is dead, then on all adults who were members of the Hindu family immediately before the partition.

(2) Where a firm or other association of persons is dissolved, notices under this Act in respect of the income of the firm or association may be served on any person who was a partner (not being a minor) or member of the association, as the case may be immediately before its dissolution.”

18. As per the provision of Section 283(2) of the Act, when the firm is dissolved and the said fact of dissolution has been duly informed to the A.O. /Department, the Ld. A.O. is required to issue notice to the partners of the Assessee immediately before its dissolution. In the present case, no notice u/s 148 of the Act has been issued to any of the partners immediately before the dissolution of the Assessee firm. Admittedly notice has been issued in the name of dissolved firm itself. Therefore, in our considered opinion, the said notice issued in the name and address of the non-existing entity is in violation of Section 283(2) of the Act and the said notice has not sanctity in the eyes of law.

19. The Hon'ble High Court of Gujarat in the case of Nathalal Hemabhai Patel Vs. ITO {[2024] 167 taxmann.com 337 (Gujarat)}, decided the very same issue of issuance of notice u/s 148A(b) of the

Act, order u/s 148A(d) of the Act and also the notice u/s 148 of the Act issued in the name of partnership which already stood dissolved. Wherein the Hon'ble High Court quashed the notices u/s 148A(b) & 148 as well as the order passed u/s 148A(d) of the Act by relying on the ratio laid down by the Hon'ble Supreme Court in the case of Commissioner of Income Tax, New Delhi Vs. Maruti Suzuki India Limited reported in [2019] 107 taxmann.com 375/265 Taxman 515/416 ITR 613. The relevant portion of the Judgment reproduced as under:-

“ 8. Having heard the Learned Advocates for the respective parties, it appears that the respondent-Assessing Officer has issued the impugned notice u/s 148A(b) of the Act in the name of the partnership firm having PAN No. AAFFP3449M as well as passed the order u/s 148A(d) of the Act against the said firm which has already been resolved with effect from 31st March, 2016.

9. In view of the undisputed fact about the dissolution of firm and issuance of notice in name of the dissolved firm, the impugned notice and the order would not be tenable more particularly, when the petitioner has in reply to the notice issued u/s 148A (b) of the Act has drawn the attention of the respondent-Assessing Officer about such fact.

10. In view of the settled legal position as held by the Hon'ble Apex Court in case of Commissioner of Income Tax, New Delhi Vs. Maruti Suzuki India Limited reported in [2019] 107 taxmann.com 375/265 Taxman 515/416 ITR 613, the impugned notice and the order are required to be quashed and set aside.”

20. The similar ratio has also been laid down in following judicial decisions:-

- a). ACIT Vs. M/s. Neha Enterprises, 2017 SCC OnLine ITAT 19117 ITA No. 3666/Mum/2015-Order dated 20.12.2017,
- b). SavitaKapila Vs. ACIT, 426 ITR 502 (Delhi),
- c). DCIT Vs. NDC Telecommunications India Pvt. Ltd., 2018 SCC OnLine ITAT 691 ITA No. 3011/Del/2015-Order dt. 16.10.2018,
- d). Pr. CIT Vs. Maruti Suzuki (India) Ltd. 416 ITR 613 (SC),
- e). Alok Knit Exports Ltd. Vs. DCIT, 446 ITR 748 (Bom)

21. Considering the above facts and circumstances and also the ratio laid down in the above Judgments, as the notice u/s 148 of the Act has not been served on the partners of the Firm immediately before its dissolution in compliance, in compliance with provision of Section 283(2) of the Act, the assessment framed based on such notice deserves to be set aside. Thus, we allow Ground No. 1 of the Assessee's Appeal and quash the respective assessment orders framed u/s 147 r.w Section 144B of the Act pertaining to Assessment Year 2013-14 and 2014-15.

22. The Ld. Counsel also canvassed one more argument addressing on Ground No. 7, 8 & 9 of the Grounds of Appeal of the Assessee contending that the invocation of provision of Section 68 of the Act by the A.O. is illegal because no such amount was ever credited in the books of accounts of the Assessee. The Ld. Counsel has also relied on the order of the Co-ordinate Bench in the case of Marut Nanda & Co. Vs. ITO, Ward-1, Hisar in ITA No. 4751/Del/2024 {2025 SCC OnLine ITAT 1702}. Thus, sought for deletion of the addition.

23. The Ld. Department's Representative contended that mere mentioning of incorrect provision of law does not render assessment invalid, thus sought for rejecting the contention of the Ld. Assessee's Representative.

24. As per the assessment orders, the Assessee firm had traded in several distinct scripts. It is the case of the Assessee that all trades (buy and sell) had been executed with Stock Exchanges in accordance within the framework of applicable regulatory provisions and the transactions were routed through Demat accounts and were recorded in its books of account which were subjected to audit. It is an undisputed fact that the Assessee firm had not claimed any expense of Rs.7,50,076/- and Rs. 13,28,44,452/- for Assessment Year 2013-14 and 2014-15 respectively on account of brokerage. Therefore, the question of disallowance thereof did not arise. The AO nowhere in the assessment order mentioned that the said amount being the amount treated as unexplained cash credit in terms of section 68 Act which has been credited into the books of the said partnership firm.

25. Apart from the same, the said money of Rs.3,82,53,897/- for Assessment Year 2013-14 and Rs. 13,28,44,452/- for Assessment Year 2013-14 had not been credited into the books of the assessee firm. It is the case of the Assessee that the said loss was actually resulted in an out go and depletion of funds. Therefore, the said business loss could fall within the expression (unexplained cash credit). The out go/loss has resulted in a debit transaction, rather than credit transactions. Therefore, the A.O. could not have made the addition u/s 68 of the Act.

26. The Co-ordinate Bench of the Tribunal in the case of Marut Nandan & Co. in ITA No.4751/Del/2024 2025 SCC OnLine ITAT 1702), while dealing with the similar issue held as under:-

“18. At this juncture, we also however advert to the merits of the addition under s. 68 of the Act. It is pointed out on behalf of the assessee that it has neither claimed any short term capital gains nor claimed any exempt capital gain tax. Thus, the allegation that unaccounted money has been routed using penny stocks is prima facie bereft of any logic. The assessee has actually incurred business losses on the transactions in Banas Finance Ltd., a stock which is otherwise duly listed on the platform of the exchanges and transactions registered have been routed through SEBI registered stock brokers. The loss claimed has actually resulted in an outgo and depletion of funds. Hence the business loss by no stretch of imagination could fall within the expression 'unexplained cash credits'. The outgo/loss has resulted in a debit transaction rather than credit transaction. Hence, the additions made under s. 68 is impermissible in law at the threshold. We find apparent rationally in the plea of the assessee for inapplicability of s. 68 of the Act to deny a business loss claimed to have occurred to the assessee. The assessee thus succeeds on this aspect as well.”

27. In view of the above discussion and following the ratio laid down by the Tribunal in the case of Marut Nandan & Co. (supra), we find merit in the contention of the Ld. Assessee's Representative, therefore, we are of the opinion that the additions made u/s 68 of the Act in both the Assessment Years are not permissible. Accordingly, the addition made by the A.O. which has been confirmed by the Ld. CIT(A) is liable to be deleted even on merit. Accordingly, we allow Ground No. 7, 8 & 9 of the Assessee.

28. Since we have allowed the Ground No. 1, 7, 8 & 9 of the Assessee by quashing the assessment order/deleting the addition, we refrain from adjudicating other legal grounds having become academic in nature.

29. In the result, appeal of the Assessee in ITA No. 5015/Del/2024 and 5016/Del/2024 are partly allowed.

Order pronounced in the open court on 02nd July, 2025

Sd/-

**(MANISH AGARWAL)
ACCOUNTANT MEMBER**

Date:- 02.07.2025
R.N, Sr.P.S*

Sd/-

**(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**