आयकर अपीलीय अधिकरण, सूरत न्यायपीठ, सूरत ।

In The Income Tax Appellate Tribunal, "SMC"
Surat Bench, Surat
Before Dr. Arjun Lal Saini, Accountant Member

आयकर अपील सं./ITA No. 55/SRT/2026

[निर्धारण वर्ष/Assessment Year: 2012-13]

Modern Furniture, Atlanta Building, Khergam Road, Chikhli Tal Chikhli Dist Navsari, Gujarat-396521	**Vs.**	Income Tax Officer, Ward-3,206, Income Tax Office, Char Pool, Avabaug, Navsari, Gujarat -396445
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: **AAEFM2443B**		
(अपीलार्थी/Assessee)		**(प्रत्यर्थी/Respondent)**

Assessee by	:	Shri Rajesh Upadhyay, Ld. AR
Respondent by	:	Shri Ajay Uke, Ld. Sr. DR
Date of Hearing	:	14/05/2026
Date of Pronouncement	:	24/07/2026

:: ORDER ::

<u>Per, Dr. Arjun Lal Saini, AM:</u>

Captioned appeal filed by the assessee, pertaining to Assessment Year 2012-13, is directed against the order passed under section 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") by Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC) Delhi, dated 12.12.2025, which in turn arises out of an order passed by the Assessing Officer u/s 143(3) r.w.s. 147 of the Act, on 03.12.2019.

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

1. *Ld. ADDL/JCIT[A]-2, has erred in law and on facts to upheld A.O.'s reopening u/s 147 and issue of notice u/s 148 of the Act.*

2. *Ld. ADDL/JCIT[A]-2, has erred in law and on facts to confirm addition of Rs.2,19,621/-, being 10% estimate of N.P. on assessee's business turnover of Rs.21,96,215/-, without any basis and ignoring the provisions of Section 44AD/44AF of the Act.*

> 3. *Ld. ADDL/JCIT[A]-2, has erred in law and on facts to sustain action of the A.O. to reject assessee's books of account u/s 145 (3) of the I.T. Act only on the ground that the assessee has not filed ROI u/s 139(1) of the I.T. Act.*

3. Succinct facts are that assessing officer received information that assessee-firm has deposited cash and not filed its return of income. In order to tax the escaped income by way of cash deposit, the assessee's case was reopened after recording reason. Subsequently, notice u/s 148 of the I.T. Act was issued on 29/03/2019 and served on the assessee. In response to notice issued u/s 148 of the Act, the assessee has filed the return on 26.04.2019. The notice u/s 143(2) of the Act, was issued to the assessee on 18.10.2019. Statutory notices were issued from time to time. In response to the notices/letters issued, the assessee has filed submissions. After perusing the details made available on record and submission made by assessee, a show cause notice dated 27/11/2019 was issued to the assessee, which reads as under:-

> *"Please refer to this office letter dated 17.11.2019 whereby you were requested to furnish certain details in connection with your assessment proceedings. The details called for has not received till date. On going through the Bank statement account No.29112011000080 with Bank of India, Chikhli, it is noticed that you have made cash deposit of Rs.67,73,556/- and other credit entries totalling to Rs.72,00,001/-. In absence of any details, you are requested to show cause as to why the total credit entries appearing in your account amounting to Rs.72,00,001/- should not be added to your total income. You are asked to file the above reply on or before 29.11.2019 along with supporting evidence for verification. If you fail to furnish the details /information within the given time, the order shall be passed u/s 144 of the I.T. Act making the above addition. You are requested to make submission online."*

4. In response to above show -cause notice, the assessee has filed his submission on 29.11.2019, which reads as under:

> *"With reference to your above cited notice regarding cash deposit in Bank account No.291120110000080 of Rs.67,73,556/- and other credit entries totalling to Rs.72,00,001/- during the F.Y. 2011-12, I have to state that my bank statement shows total credits of Rs.21,96,215/-. I am enclosing herewith Xerox copy of said bank account statement for your verification.*

I am also enclosing herewith Xerox copy of partnership Deed for verification of interest & salary paid to working partner Narottambhai Patel. Please note that Shri Alpesh N Patel is not working partner."

5. However, assessing officer rejected the above contention of the assessee and observed **with regard to credit entries appearing in the Bank, that assessee's contention is correct.** However, the assessee had not filed the return within due date. Section 139(1) of the Income Tax Act, 1961 makes it mandatory for partnership firm to file return of income regardless of level of income earned. Therefore, it can be safely presumed that the books of accounts maintained by the assessee is incorrect, not reliable and hence liable to be rejected. Accordingly the book result shown by the assessee was rejected by the assessing officer, by invoking the provisions of Section 145(3) of the I.T. Act. After rejecting the book result, the profit has to be estimated. During the year, on going through the Bank statement, it was noticed by the assessing officer that turnover of the assessee is to tune of Rs.21,96,215/-, as claimed by assessee. The turnover of the assessee is therefore, taken at Rs.21,96,215/- and assessing officer held that it will be fair and reasonable to estimate the profit @10% of the turnover which comes to Rs.2,19,622/-. Such estimated profit was added to the total income of the assessee.

6. 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. Before the learned CIT(A), the assessee has challenged the reopening of assessment and stated that reasons were recorded based on the facts that cash was deposited in the bank account which remains unexplained. However, the final addition was made by the assessing officer on different footing by rejecting the books of accounts and estimating the profit on the turnover and assessing officer did not make the addition on account of cash deposited in bank account as per reasons recorded by him. However, ld.CIT(A) noticed that reopening was triggered by specific information of cash deposits coupled with non-filing of return. Reasons

were recorded and notice u/s 148 was issued on 29.03.2019; the assessee filed a return in response and participated thereafter. No procedural infirmity vitiating jurisdiction has been demonstrated by the assessee, therefore, ld.CIT(A) held that the reassessment culminated in an addition flowing from the very issue that formed the basis of "reason to believe" and hence, ld.CIT(A) dismissed the technical ground raised by the assessee, challenging the jurisdiction to reopen the assessment under section 147 of the Act. The ld. CIT(A) also confirmed the addition on merits of the case.

7. Aggrieved by the order of the ld. CIT(A), the assessee is in further appeal before this Tribunal.

8. I have heard, both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the ld CIT(A) and other materials brought on record. Shri Rajesh Upadhyay, Learned Counsel for the assessee, argued that assessee's case was reopened on the basis of information that the assessee had deposited cash in bank and had not filed a return of income for assessment year (AY) 2012-13. In fact, the assessee had filed the return of income. In reassessment, after calling for details and examining the bank statement, the assessing officer treated the bank credits and other credits of Rs.21,96,215/- as turnover, and rejected books of accounts u/s 145(3) of the Act and estimated net profit @10% and added Rs.2,19,622/- (10% of Rs.21,96,215), therefore, assessing officer did not make the addition on account of cash deposited in the bank account for that reasons were recorded by the assessing officer, therefore learned Counsel for the assessee, contended that assessing officer did not make the addition in accordance with the reasons recorded by him and made addition on different footing by estimating the turnover, hence the very basis of reopening is bad in law and therefore, reassessment order framed by the assessing officer under section 147 of

the Act, dated 03.12.2019 may be quashed. On the other hand, Ld. DR for the revenue submitted that reasons recorded by the Assessing Officer does not contain any infirmity and therefore, reassessment proceedings, initiated against the assessee is valid.

9. I have considered the submissions of both the parties. I note that assessee has challenged the notice u/s 148 of the Income Tax Act, 1961 and reasons recorded by the assessing officer. The notice u/s 148 and reasons recorded by the Assessing Officer, are reproduced below, for better understanding the issue under consideration:

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE INCOME TAX OFFICER
WARD 3, NAVSARI

To. MODERN FURNITURE ATLANTA BUILDING , KHERGAM ROAD, CHIKHLI TAL CHIKHLI DIST NAVSARI 396521 , Gujarat India	

PAN:	AY:	Dated:	Notice No :
AAEFM2443B	2012-13	29/03/2019	ITBA/AST/S/148/2018-19/1015507145(2)

Notice Under Section 148 Of The Income Tax Act, 1961

Sir/ Madam/ M/s,

Whereas I have reasons to believe that your Income chargeable to Tax for the Assessment Year 2012-13 has escaped Assessment within the meaning of section 147 of the Income Tax Act, 1961.

I, therefore, propose to assess/ re-assess the income/ loss for the said Assessment Year and I hereby require you to deliver to me within 30 days from the service of this notice, a return in the prescribed form for the said Assessment Year.

This notice is being issued after obtaining the necessary satisfaction of the Pr. CIT,VALSAD

INCOME TAX DEPARTMENT

SOMESH TIWARI
WARD 3, NAVSARI

(In case the document is digitally signed please refer Digital Signature at the bottom of the page)

EG499841906IN
29 MAR 2019

आयकर अधिकारी Income Tax Officer वार्ड-3, नवसारी

Note: If digitally signed, the date of digital signature may be taken as date of document.
INCOME TAX OFFICE, CHARPOOL, AWABAUG, NAVSARI, Gujarat, 396445
Email: NAVSARI.ITO3@INCOMETAX.GOV.IN.

This document is digitally signed
Signer: SOMESH TIW
Date: Friday, March 2019 12:03 PM
Location: GUJRAT.

Form for recording the reasons for initiating proceedings u/s.147 of the Income-tax Act, 1961 and for obtaining the approval of the Pr. CIT, Valsad.

1	Name and address of the assessee	Modern Furniture Khergam Road, Chikhli, Navsari
2	P.A. No.	AAEFM2443B
3	Status	Individual
4	Details of the Assessing Officer having jurisdiction over the Assessee.	ITO, Ward-3, Navsari
5	A.Y. In respect of which is proposed to issue notice u/s.148	2012-13
6	Quantum of income which has escaped to assessment	Rs. 67,73,556/-
7	Whether the provisions of Section 147(a) or 147(b) are applicable or both	Explanation 2(a) of section 147 of the Act.
8	Whether the assessment is proposed to be made for the first time. If the reply is in the affirmative please state: (a) Whether any Vol. Return has already been filed. (b) If so, the date of filing of the said return	Yes No
9	If the answer to item 8 is in the negative please state: (a) the income originally assessed (b) Whether if this case is for under assessment at too low a rate assessment which has been made the subject of the excessive loss or depreciation.	N.A.
10	Whether the provision of section 150(1) is applicable, if the reply is in the affirmative the relevant facts may be stated against No.11 and it may be brought out that the proviso of Section 150(2) would not stand in the way of initiating provisions of section 148.	N.A.

11. Reasons for reopening of the assessment in case of **Modern Furniture for A.Y. 2012-13** u/s 147 of the IT Act.

1. The assessee is an Individual residing at Khergam Road, Chikhli, Navsari Assessee has not filed his return of income for A.Y. 2012-13.
2. As per information available with the department, received from ITO Ward-1, Navsari the assessee has deposited cash amount of Rs 67,73,556/- in its bank account held with Bank of India during the F.Y 2011-12 relevant to the A.Y. 2012-13.

(11)

3. On verification of details/data available, it is noticed that the assessee has deposited cash amount of Rs. 67,73,556/- in its bank account held with Bank of India during the F.Y. 2011-12 relevant to the A.Y. 2012-13.
4. The assessee has not filed its return of income for A.Y. 2012-13 and the assessee has deposited cash amount of Rs. 67,73,556/- in its bank account held with Bank of India out of its undisclosed income during the year which was not offered for tax. Thus, the total amount of Rs. 67,73,556/- as discussed above, has escaped assessment in the hands of assessee. Further the information is unearthen during the assessment proceedings in case of Narottam G. Patel in ward-1 Navsari and also verified from systems and bank account provided by the ITO, ward-1 Navsari.
5. As per details available on record, the assessee has not filed return of income for A.Y. 2012-13 and also not filed any response to the query letters issued to assessee. Thus, I have reason to believe that the assessee has deposited cash amount of Rs. 67,73,556/- in its bank account held with Bank of India out of its undisclosed income during the year which was not offered for tax therefore, the same has escaped assessment in the hands of assessee for the year under consideration.
6. In view of the above, the assessee's case falls within the explanation 2(a) of the section 147 of the I.T. Act, i.e. "*where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax,*" As such, I have a reason to believe that an income of Rs. 67,73,556/- as stated above, has escaped assessment in the hands of the assessee for the year under consideration. I am satisfied that the case of the assessee is a fit case for action u/s 147 of the Act by reason of assessee's failure to disclose fully and truly all the material facts necessary for assessment.

Place: Navsari
Date: 22/03/2019

(Somesh Tiwari)
Income-tax Officer,
Ward-3, Navsari

12 **Whether the Addl.CIT is satisfied on the reason recorded by the AO that it is a fit case for the issue of a notice u/s. 148 of the I.T. Act, 1961:**

As there is no evidence available on record w.r.t. the source of

12

M F Modern

investments and also in assessee has not filed its return of income, it is a case where source of investment amounting to Rs. 67,73,556/- in the bank has not been explained. Therefore, in my view, it is a fit case for initiating action u/s 148 of the I.T. Act and I am in agreement with the AO that the income has escaped assessment within the meaning of section 147 of the I.T. Act.

[Prasoon Kabra]
Joint Commissioner of Income-tax,
Navsari Range, Navsari

22/03/2019

13	**Whether the Pr. CIT is satisfied on the reasons recorded by the AO that it is a fit case for issue of Notice u/s 148 of the I.T. Act.** On the basis of reasons recorded, I am satisfied that it is a fit case for issue of notice u/s 148 of IT Act (Rajiv V. Nabar) Chief Commissioner of Income-tax(OSD), Holding charge of PR. CIT, Valsad

10. I have gone through the above reasons recorded by the Assessing Officer and noted that reasons recorded by the assessing officer states that assessee did not file the return of income. However, in fact, the assessee had filed the return of income for the assessment year 2012-13, under section 139(1) of the Act, which is placed on paper book page No.2 of assessee's paper book. The computation of total income

of the assessee is also placed on paper book page No.3 and 4, the assessee also submitted the profit and loss account and balance-sheet which is placed at paper book page No.5 & 6. The assessee also submitted the ledger account of Narottambhai G Patel and Alpesh N Patel, before the lower authorities. I note that assessing officer has reopened the case, as there was cash deposit of Rs.67,73,556/- and other deposits of Rs.72,00,001/- in assessee's bank account no. 29112011000080. However, assessing officer has not made any addition on account of cash or other deposit in bank accounts. The assessing officer has made addition on account of profit estimation at Rs.2,19,622/-, (10% of Rs.21,96,215) which can be seen from Para-4, Page 3 of Assessment Order. Therefore A.O.'s reopening is not valid in law in view of Bombay High Court judgment in the case of CIT vs. Jet Airways (1) Ltd. (2011) 331 ITR 236 (Bom). Hence, reassessment proceedings should be quashed. This view has also been ventilated by the Hon`ble Delhi High Court in the case of Ranbaxy Laboratories Ltd,336 ITR 136 (Del), wherein it was held as follows:

> ***"18.** We are in complete agreement with the reasoning of the Division Bench of Bombay High Court in the case of Jaganmohan Rao (supra) [sic—Jet Airways (I) Ltd. (supra)]. We may also note that the heading of s. 147 is "Income escaping assessment" and that of s. 148 "Issue of notice where income escaped assessment". Sec. 148 is supplementary and complimentary to s. 147. Sub-s. (2) of s. 148 mandates reasons for issuance of notice by the AO and sub-s. (1) thereof mandates service of notice to the assessee before the AO proceeds to assess, reassess or recompute escaped income. Sec. 147 mandates recording of reasons to believe by the AO that the income chargeable to tax has escaped assessment. All these conditions are required to be fulfilled to assess or reassess the escaped income chargeable to tax. As per Expln. 3 if during the course of these proceedings the AO comes to conclusion that some items have escaped assessment, then notwithstanding that those items were not included in the reasons to believe as recorded for initiation of the proceedings and the notice, he would be competent to make assessment of those items. However, the legislature could not be presumed to have intended to give blanket powers to the AO that on assuming jurisdiction under s. 147 regarding assessment or reassessment of escaped income, he would keep on making roving inquiry and thereby including different items of income not connected or related with the reasons to believe, on the basis of which he assumed jurisdiction. For every new issue coming before AO during the course of proceedings of assessment or reassessment of escaped income, and which he intends to take into account, he would be required to issue a fresh notice under s. 148."*

11. In view of the reasons set out above, as also bearing in mind entirety of the case, I am of the considered view that the reasons recorded by the Assessing Officer, as set out earlier, were not sufficient reasons for reopening the assessment proceedings. I, therefore, quash the reassessment proceedings. As the reassessment itself is quashed, all other issues on merits of the additions, in the impugned assessment proceedings, are rendered academic and infructuous.

12. In the result, the appeal is allowed in the terms indicated above.

Order is pronounced in the open court on 24/07/2026.

Sd/-
[Dr. Arjun Lal Saini]
लेखा सदस्य/Accountant Member

//True Copy//

Surat
दिनांक/ Date: 24/07/2026
Copy of the order forwarded to :

- The assessee
- The Respondent
- CIT
- The CIT(A)
- DR, ITAT, Surat
- Guard File

By order

Sr. Private Secretary
ITAT, Surat