

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "E" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)  
AND  
SHRI RAJ KUMAR CHAUHAN (JUDICIAL MEMBER)**

**ITA No. 679/MUM/2025  
Assessment Year: 2007-08**

Kalpana Dilip Mehta as Legal Heir of  
Dilip Dalpatlal Mehta,  
51 Anupam Society, Manav Mandir  
Road, Walkeshwar,  
Mumbai-400006.

**PAN NO. AACPM 4426 E**  
**Appellant**

**Vs.** ACIT 19(1),  
Piramal Chambers  
Mumbai-400012.

**Respondent**

Assessee by : Mr. Suchek Anchaliya, CA a/w  
Mr. Tushar Nagori, CA  
Revenue by : Mr. Biswanath Das, CIT-DR

Date of Hearing : 25/03/2025  
Date of pronouncement : 15/04/2025

**ORDER**

**PER OM PRAKASH KANT, AM**

This appeal has been preferred by the assessee against the order dated 07.01.2025 passed by the Ld. Commissioner of Income-tax (Appeals) – 51, Mumbai [in short ‘the Ld. CIT(A)’] for assessment year 2007-08, raising following grounds:



1. The CIT (A) failed to appreciate that the notice u/s 143(2) of the Act was time barred and bad in law, and hence, the assessment based on such a notice was ab initio void. Hence, the assessment order is liable to be quashed.

2. The CIT (A) failed to appreciate that the assessment order dated 18th March, 2014 passed by the AO was time barred, and hence, bad in law. Hence, the assessment order is liable to be quashed.

3. The CIT (A) failed to appreciate that the reopening of assessment u/s 147 of the Act merely on the basis of loose, uncertified and unverified sheets purportedly received from foreign government is not justified. Hence, the reopening of assessment is bad in law and may be quashed.

4. The CIT (A) failed to appreciate that the recorded reasons contain factual mistakes that the alleged undisclosed bank account was found "consequent to survey". As it is not possible to improve upon the reasons once recorded, the factual mistake in the recorded reasons make the reopening of assessment bad in law.

5. The CIT (A) failed to appreciate that the AO was not justified in disposing off the Assessee's objections to reopening of assessment in a non-speaking manner without dealing with any of the Assessee's contentions. Therefore, the reopening of Assessee's assessment was bad in law 6. The CIT (A) failed to appreciate that the Assessee did not have any bank account outside India, much less the bank account in respect of which addition has been made. The CIT (A) failed to appreciate that on the basis of the alleged 'base note' (which also did not contain the accurate particulars of the Assessee), it could not be established that the Assessee held the bank account outside India.

7. The CIT (A) failed to appreciate that no addition could have been made on the basis of uncertified/unauthenticated loose sheets, and hence, the CIT (A) erred in confirming the addition of Rs. 19,48,46,625/-.

8. The CIT (A) failed to appreciate that the refusal of the Assessee to sign the consent waiver form was justified as signing the same would have amounted to making a false



*statement that the Assessee was the owner of the alleged account and would have been used against him subsequently. Hence, the CIT (A) erred in drawing an adverse inference from the fact of refusal of the Assessee to sign the said consent waiver form.*

*9. The CIT(A) failed to appreciate that the AO had not brought any material on record to suggest that the alleged information was actually received from French Government as alleged. The CIT(A) further failed to provide authenticated/ certified copies of the same in spite of repeated requests which shows the absence of credibility of the source of the alleged information. Hence, the alleged 'base note' could not have been relied upon.*

*10. The CIT(A) failed to consider the submissions made by the Assessee, the documents relied upon and further erred in confirming the addition on the basis of factually incorrect allegations and surmises & conjectures. Thus, the CIT (A) erred in confirming the addition made by the AO in violation of the principle of natural justice.*

*11. □ 11. The CIT (A) failed to appreciate the ambiguity in the alleged 'base note', and hence, erred in confirming the addition without there being any evidence to show the currency in which the figures were mentioned in the alleged 'base note'. Furthermore, the conversion factor applied to convert such currency into INR was incorrect. Hence, the quantification of the amount of addition is bad in law.*

*The Appellant states that the above Grounds of Appeal are in addition to, in the alternative and without prejudice to each other and the Appellant further craves leave to add, amend, alter or delete any of the above Grounds of Appeal.*

2. Briefly stated, facts of the case are that assessee had originally filed his return of income for the year under consideration on 07.12.2007 declaring total income at Rs. Nil. The return of income was processed u/s 143(1) of the Income-tax Act, 1961 (in short 'the Act'). Subsequently, information was received in the case of the



assessee from the 'French' Government indicating that the assessee was maintaining a foreign bank account in HSBC Geneva, Switzerland. The said information is commonly known as the base note in relation to bank account. The said base note containing personal details of the assessee including his name, date of birth, place of birth, sex, nationality along with date of opening bank account and amount of the balance in particular year. Subsequently, a survey u/s 133A of the Act was carried out on 30.09.2011 by the Investigation Wing of the Income-tax Department, Mumbai. During the survey proceedings, the assessee was confronted with the information related to the foreign bank account, then, he accepted the amount lying in the foreign bank account as undisclosed income in his hands. In view of the information received coupled with the finding during the course of the survey proceedings, the Assessing Officer recorded reasons to believe that income escaped assessment and issued notice u/s 148 of the Act on 30.03.2012. During the course of the reassessment proceedings, a summon u/s 131 of the Act was also issued to the assessee. Further a show cause notice was also issued on 23.10.2013 calling upon as why the balance amount of Rs.19,48,46,625/- equivalent to USD 43,29,943 (@ 45 INR per USD) should not be added to the total income of the assessee. But, the assessee however responded that said account was neither opened nor operated or controlled by him. The Ld. Assessing Officer



keeping in view the facts and circumstances of the case treated the balance lying in foreign bank account of Rs.19,48,46,625/- as unexplained income as part of total income of the assessee u/s 69A of the Act.

3. On further appeal, the Ld. CIT(A) rejected the various legal grounds raised by the assessee and also dismissed the appeal of the assessee on merit of the addition.

4. Aggrieved the assessee is in appeal before the Tribunal by way of raising grounds as reproduced above.

5. With reference to ground No. 1 of the appeal, the Ld. counsel for the assessee referred to the Paper Book containing pages 1 to 85. The Ld. counsel referred to notice u/s 148 of the Act issued on 30.03.2012, a copy of which is available on Paper Book page 11. The Ld. counsel submitted that after issuing notice u/s 148 of the Act, no notice u/s 143(2) of the Act was issued in the case of the assessee, which is a jurisdictional requirement for taking a case for scrutiny thereafter as jurisdictional requirement. The Assessing Officer was required to issue notice u/s 143(2) of the Act within the limitation of six month from the end of the financial year in which the return of income was filed. The Ld. counsel submitted that first notice u/s 143(2) of the Act was issued only on 23.10.2013 whereas the limitation for issuing the notice under 143(2) expired on 30.09.2013 , since the return of income in response to notice u/s



148 was filed on 25/04/2012 , therefore, the notice u/s 143(2) of the Act issued is beyond the limitation period. Hence, the scrutiny proceedings are not sustainable in law. The Ld. counsel for the assessee in support of contention relied on the decision of the Hon'ble Supreme Court in the case of **ACIT v. Hotel Bluemoon (2010) 188 taxmann.com 113 (SC)** , decision of Hon'ble Delhi High Court in the case of **PCIT v. Paramount Biotech Industries Ltd. ITA No. 887-888/2017** and decision of the Co-ordinate Bench of the Tribunal in the case of **Dhaval Exim Pvt. Ltd. v. ACIT in ITA No. 2532/Mum/2023**.

6. In support of ground No. 2 of the appeal, the Ld. counsel submitted that the reassessment order passed by the AO was barred by the limitation and therefore, liable to be quashed. The Ld. counsel referred to the provisions of section 153 of the Act and submitted that reassessment proceedings have to be completed within one year from the end of the relevant financial year in which notice u/s 148 of the Act was served. Since the notice u/s 148 of the Act has been served on 30/03/2012, therefore, accordingly reassessment proceedings was to be completed on or before 31.03.2013 whereas the present assessment proceedings has been completed on 18.03.2014.

7. The Ld. Departmental Representative (DR) on the other hand, relied on the finding of the Ld. CIT(A) wherein he held that in view



of the information sought under exchange of information by the FT & TR Division of the CBDT, the Assessing Officer got additional one year for completion of the assessment and therefore, assessment was within the limitation. The relevant finding of the Ld. CIT(A) is reproduced as under:

*“5.1 In the 1<sup>st</sup> ground of appeal the appellant has challenged the validity of the order U/s 143(3) r.w.s. 147 on the ground that the assessment is time barred. In support of the same, the appellant states that the notice U/s 148 was served on 30.03.2012 and hence the order was required to be passed by 31.03.2013 as against the order passed on 31.03.2014. It has therefore been argued by the appellant that the order has been passed beyond the statutory time limit as prescribed in the Act and hence is time barred. This contention of the appellant was forwarded to the AO for his comments and report vide letter dated 13.07.2015. The AO vide his letter dated 01.06.2015 has informed that in the instant case a reference was made to the FT & TR Division of CBDT on 12.03.2012 to obtain certain information from the Swiss Authorities under the Articles of Exchange in the India - Switzerland DTAA and this request was duly forwarded to the Competent Authority of Switzerland by the FT & TR Division on 12.03.2013. The AO has also furnished a copy of this letter. It is thus noticed that the instant case is covered by explanation to Section 153 of the Act which lays down that the time barring period shall not include the period between forwarding of request to another jurisdiction and the date of receipt of the information or one year whichever is less. In the instant case the request was forwarded on 12.03.2013 and hence the period of limitation is extended by one year and thus there is no merit in the argument of the appellant that the case is time barred with the order having been passed on 18.03.2014 as against the time barring date of 31.03.2013. This ground of appeal of the appellant is dismissed.”*

8. The Ld. counsel for the assessee however submitted that during the relevant period there was no treaty between India and Switzerland regarding exchange of information. In the treaty which



has been signed is operative from the subsequent period from the relevant assessment year. Therefore, the reference which was sent by the FT&TR Division for the assessment year under consideration was 'invalid reference' and the invalid reference cannot validate the extension of limitation. The Ld. counsel for the assessee relied on the decision of the Co-ordinate Bench in the case of **Shri Pravin Sawhney v. ACIT in ITA No. 1539-1544/Mum/2017**.

9. We have heard rival submissions of the parties and perused the relevant materials on record. The issue in dispute raised in the ground is the period within which the Assessing Officer was required to complete the reassessment proceedings under section 147 of the Act. The relevant limitation period for passing order under section 147 of the Act has been provided under section 153(2) of the Act . The relevant provision during relevant period is reproduced as under:

*“(2) No order of assessment, reassessment or recomputation shall be made under section 147 after the expiry of one year from the end of the financial year in which the notice under section 148 was served :*

**Provided** that where the notice under section 148 was served on or after the 1st day of April, 1999 but before the 1st day of April, 2000, such assessment, reassessment or recomputation may be made at any time up to the 31st day of March, 2002 :

**Provided further** that where the notice under section 148 was served on or after the 1st day of April, 2005 but before the 1st day of April, 2011, the provisions of this sub-section shall have effect as if for the words "one year", the words "nine months" had been substituted :109





**Provided also** that where the notice under section 148 was served on or after the 1st day of April, 2006 but before the 1st day of April, 2010 and during the course of the proceedings for the assessment or reassessment or recomputation of total income, a reference under sub-section (1) of section 92CA—

(i) was made before the 1st day of June, 2007 but an order under sub-section (3) of that section has not been made before such date; or

(ii) is made on or after the 1st day of June, 2007, the provisions of this sub-section shall, notwithstanding anything contained in the second proviso, have effect as if for the words "one year", the words "twenty-one months" had been substituted:

**Provided also** that where the notice under section 148 was served on or after the 1st day of April, 2010 and during the course of the proceeding for the assessment or reassessment or recomputation of total income, a reference under sub-section (1) of section 92CA is made, the provisions of this sub-section shall, notwithstanding anything contained in the second proviso, have effect as if for the words "one year", the words "two years" had been substituted."

9.1 since in the case a reference under sub section (1) of section 92CA was made and this fact has not been disputed by the assessee, the limitation for passing the reassessment order extends to two years from the end of the financial year in which notice under section 148 was served. Since in the case notice under section 148 of the Act was served on 30/03/2012, the period of the two years from the end of the relevant year financial year i.e. 31/03/2012, expires on 31/03/2014. Since the reassessment order has been passed on 18/03/2014, therefore, the Learned DR submitted that reassessment order passed in the case is within the limitation period. But the learned counsel for the assessee has



referred to the decision of the coordinate bench of the tribunal in the case of Shri Praveen Sawhney (supra), wherein, identical reference sent to the Switzerland authorities under DTAA protocol in relation to exchange of information, as when held to be an invalid reference as the said protocol was not in operation during the year relevant assessment year. The relevant finding of the coordinate bench (supra) is reproduced as under:

*"14. The aforementioned Notification No. 2903 (E) is loud and clear and has specifically mentioned that Exchange of Information provided for in the said Protocol will be applicable for information that relates to any fiscal year beginning on or after the 1st day of April 2011 and if the said notification is read with the reference made by the department, we find that the specific periods for which the reference has been made calling for information is 1-4-1995 to 31-3-2012. Therefore, qua the notification, information called by the Revenue by issuing the said reference was invalid for the period prior to 1-4-2011.*

*15. A reference to the decisions for analogous provisions can throw some light on this issue. The Hon'ble High Court of Rajasthan was considering the reference for Special Audit u/s 142(2A) of the Act in the case of CIT v. Bajrang Textiles [2007] 294 ITR 561 (Raj.) and held as under :*

*"Direction of the AO for special audit of assessee's accounts under s. 142(2A) one day before the expiry of limitation for completing the block assessment being merely to get extension of time and AO having asked the special auditor to prepare the books of account in the form of cash book and ledger on the basis of seized documents/papers and also trading and P&L a/c which is apparently beyond the scope of the provisions of s. 142(2A), the direction for special audit was illegal and consequently, the assessment was barred by time"*

*16. Similarly, the Hon'ble Allahabad High Court in the case of Sadana Electric Stores v. CIT [2013] 36 taxmann.com 286/219 Taxman 294 held as under:*



*"Assessment—Time limit for completion—Order passed beyond limitation period—Sustainability—Assessee was subjected to special audit by approval of CIT—Assessee was asked to obtain special audit report u/s 152(2A)—Accounts audited in report was submitted— However limitation for completion of assessment u/s 153(1)(b) expired—Assessee contended that subsequent assessment order passed by AO was time barred—Held, in case of Sadana Electric Company vs. Commissioner of Income-tax and another ITA No. 167 2008 , 152(2A), identical facts were dealt wherein Court held that section 153(1)(a) reads that no order of assessment shall be made u/s 143 or Section 144 at any time after expiry of two years from end of A.Y. in which income was first assessable—Order of assessment had been passed in violation of period prescribed in aforesaid provision, therefore, order passed by AO, CIT and ITAT was set aside— Therefore order passed by lower authorities including Tribunal could not be sustained as facts and circumstances were identical."*

*17. Similar view was taken by the co-ordinate bench in the case of Consulting Engineering Services India (P.) Ltd. v. ACIT [IT Appeal No. 1443 (Delhi) of 2014, dated 5-2-2019]. Relevant findings read as under:*

*"15. We have given a thoughtful consideration to the orders of the authorities below and have carefully perused the records qua the issue. It is true that noticed dated 21-11-2011 was for both the A.Ys i.e. 2008-09 and 2009-10. However, each A.Y is considered to be a separate unit and, therefore, for each A.Y, the Assessing Officer must bring out his case. A perusal of the said notice, which is exhibited at pages 67 to 70 of the paper book, clearly reveals that though the notice pertained to accounts of A.Y 2008-09, but entire financial details referred to therein pertain to A.Y 2009-10. Even the order u/s 142(2A) of the Act dated 27-12-2011 which is exhibited at pages 91 to 98 of the paper, the ACIT has specifically mentioned that "the special audit u/s 142(2A) of the Act in the case of captioned assessee for A.Y 2009-10 is ordered accordingly". This clearly proves that while making a reference u/s 142(2A) of the Act and thereafter passing the order u/s 142(2A) of the Act, the Assessing Officer did not apply his mind and mechanically adopted the figure of A.Y 2009-10 and passed the order u/s 142(2A) of the Act for A.Y 2009-10 without realizing that he is dealing with A.Y 2008-09.*



16. The contention of the ld. DR that the letter to the appellant referred to both the A.Ys i.e. 2008-09 and 2009-10 and, therefore, there is no error in the same. We do not find any force in this contention of the ld. DR. As mentioned elsewhere, since each A.Y is considered as a separate unit the Assessing Officer should have made out a case for A.Y 2008-09 only and since the order framed u/s 142(2) of the Act also refers to A.Y 2009-10, then the same cannot be used for A.Y 2008-09.

17. The quarrel before us is as to whether the assessment order framed u/s 143(3) is passed within the period of limitation period prescribed under the Act or not. In our considered opinion, for coming to such a conclusion, we can examine whether the order passed u/s 142(2A) of the Act is in accordance with law or not. It is true that the order passed u/s 142(2A) of the Act is not appealable but when an assessment order is challenged, then the different aspects, which are integral to the process and ultimate completion of the amount can be challenged in appeal and since the ground before us is challenged for assessment being barred by limitation, we are well within our rights to consider all material aspects which were considered while framing the assessment order u/s 143(3) of the Act."

18. The co-ordinate bench in one of the group cases of *Bhushan Lal Sawhney v. Dy. CIT* [2021] 127 taxmann.com 64/190 ITD 225 (Delhi -Trib) through his L/H wife Smt. Sneha Lata Sawhney ITA Nos. 427 to 432/DEL/2017 & 434 to 439/DEL/2017 had the occasion to consider reference to Swiss authority and reply received by Swiss authority. It would be pertinent to refer to the said observation of the Co-ordinate Bench which reads as under:

"Learned Counsel for the Assessee also placed on record letter Dated 26-6-2015 issued by Swiss Competent Authority addressed to the Government of India in which it is specifically mentioned that information as required could be provided from F.Y. 2011-2012 as the prior years are not covered by temporal scope of Article 26 of the Amended Double Taxation Avoidance Agreement between India and Switzerland. Therefore, such information could be provided from 1-4-2011. Learned Counsel for the Assessee also placed on record Notification Dated 27-12-2011 between India and Switzerland Confederation for avoidance of double taxation. These would clearly show that these are applicable after



*assessment years under appeals and as per information provided vide letter Dated 26-6-2015 no such information could be provided prior to 1-4-2011. Therefore, Swiss Authorities have not provided any information to Revenue Authorities in India about assessee's bank account with HSBC, Geneva, Switzerland ITA.Nos.427 to 432/Del./2017 & ITA.Nos.434 to 439/Del./2017 Late Shri Bhushan Lal Sawhney through his L.R./Wife Smt. Sneh Lata Sawhney, New Delhi. for assessment years under appeals i.e., A.Ys. 2006-2007 to 2011-2012."*

*19. In light of the aforementioned discussion, we are of the considered view that the information called for by the department from Swiss authorities could not have been received by them for the period prior to 1-4-2011. Therefore, it would be a futile exercise to wait for such information, and that too, by an invalid reference. Therefore, in our considered opinion, the period of limitation could not be extended as claimed by the Revenue. The impugned assessments are clearly barred by limitation and deserve to be quashed.*

*20. Since we have quashed the assessments as barred by limitation, we do not find it necessary to dwell into the merits of the case. The common ground in the captioned appeals is allowed."*

9.2 Fact in the instant case are identical to the facts in the case of Shri Praveen Sawhney (supra) as the protocol in relation to the exchange of information came into operation from the first day of April, 2011 whereas the relevant financial year corresponding to the assessment year 2007-08 is from 01.04.2006 to 31.03.2007 and therefore, said protocol was not in operation during the period relevant to the assessment year therefore, this reference which was sent by the AO in the year under consideration was invalid. In view of precedent in the case of Shri Praveen Sawhney (supra), the re-assessment order should have been passed within one year from the end of the financial year in under section 148 of the Act was



served. Since in the case notice under section 148 of the act was served on 30/03/2012 and therefore the reassessment should have been completed on or before 31/03/2013 whereas the assessment order has been passed on 18/03/2014, which being beyond the period of limitation, the entire reassessment proceedings stand quashed. The ground No.2 of the appeal of the assessee is allowed

9.1 The Ld. counsel for the assessee also referred to ground No. 3 of the appeal and submitted that on the merit also Co-ordinate Bench of the Tribunal in the case of **ACIT v. Sh. Parminder Singh Kalra in ITA No. 5330/Del/2016** that addition cannot be made simply on the basis of photocopy of document indicating balance in bank account without corroboration of the same. The relevant finding of the Tribunal (supra) is reproduced as under:

*“151. We may further point out that it is settled law that statement cannot be read in isolation without any corroborative material. In the present case, we find that there is no evidence placed on record by the AO to corroborate the statement. Moreover, the Revenue itself is not clear whether the information pertains to the alleged bank account maintained with HSBC, Zurich or HSBC, Geneva as is evident from the paper book filed by the Revenue. No response has been received in response to the reference made to Swiss Competent Authority. No incriminating material whatsoever has been found during the course of the search. Under the facts and circumstances in our view, the provisions of Section 69 are not attracted to the assessee in the instant year. The AO has made the addition on the basis of suspicion pertains to the bank account.*

*152. Keeping in view, the overall facts, we are of the view that the addition made by the AO in the assessment years 2006-07 and 2007-08 cannot be sustained. Accordingly, we direct the AO to delete the same.”*





9.2 In the instant case also, addition has been made on the basis of photocopy of a document commonly known as a base note of bank account with HSBC Geneva. The said base note was obtained by a nonofficial route by the French government and then same has been forwarded to the Indian government. But the existence of said bank account has not been confirmed by the HSBC, Geneva. Therefore following the finding of the coordinate bench of the Tribunal (supra), no addition can be sustained on merit also. Since we have already quashed the reassessment proceedings on the ground of limitation in passing assessment order, the addition on merit is rendered merely academic.

10. In the result, the appeal of the assessee is allowed.

**Order pronounced in the open Court on 15/04/2025.**

**Sd/-**  
**(RAJ KUMAR CHAUHAN)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(OM PRAKASH KANT)**  
**ACCOUNTANT MEMBER**

Mumbai;  
Dated: 15/04/2025  
Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,  
(Assistant Registrar)  
**ITAT, Mumbai**