

**IN THE INCOME-TAX APPELLATE TRIBUNAL “D” BENCH,
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER**

**ITA No. 1799/MUM/2025
(A.Y. 2012-13)**

Mr. Ravi Dilip Waghela 901, Acme Regency, SV Road, Ville Parle West, Mumbai – 400 056, Maharashtra	v/s. बनाम	Income Tax Officer, Ward – 23(3)(1), Piramal Chambers, Lalbaug, Mumbai – 400 012, Maharashtra
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: ABRPW5450E		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Assessee by :	Shri Prakash Jotwani
Revenue by :	None

Date of Hearing	11.09.2026
Date of Pronouncement	21.09.2026

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against the impugned order passed by the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, arising out of the assessment order passed under section 144 read with section 147 of the Income-tax Act, 1961, for the assessment year

2012-13. In the original grounds of appeal, the assessee has challenged the additions of Rs.1,27,62,500 made under section 69C and Rs.18,85,000 made under section 68. Besides these grounds on merits, the assessee has raised a legal ground challenging the validity of the reassessment on the ground that the notice issued under section 148 dated 27.03.2019 was never validly served upon him. Since this ground goes to the very root of the jurisdiction assumed by the Assessing Officer and all the material necessary for its adjudication is already available in the assessment and departmental records, the same is admitted and taken up for adjudication at the threshold. It is well settled that a pure question of law, arising from the facts already on record and having a direct bearing upon the validity of the assessment, can be raised and adjudicated at any stage of the appellate proceedings, as held by the Hon'ble Supreme Court in *National Thermal Power Co. Ltd. v. CIT* [(1998) 229 ITR 383 (SC)].

2. The relevant facts, in brief, are that certain information was received from ADIT, Unit 2(2), Mumbai, vide letter dated 19.03.2018, to the effect that enquiries had been conducted in the case of Shri Yogesh D. Waghela, proprietor of M/s Brown Pharmaceuticals and Chemicals, which had been identified by the Maharashtra State VAT Department as a concern engaged in providing accommodation entries. On examination of its bank

account, debit and credit entries of Rs.1,27,62,500 and Rs.18,85,000 respectively were found in the name of M/s Kingsy Pharma, stated in the information to be the proprietary concern of the present assessee under PAN ABRPW5450E. On the basis of this information, proceedings under section 147 were initiated and notice under section 148 dated 27.03.2019 was issued by the ITO, Ward 1(3), Kalyan. The Assessing Officer thereafter treated the amount of Rs.1,27,62,500 as unexplained expenditure under section 69C and the amount of Rs.18,85,000 as unexplained credit under section 68 and, after taking the returned income at Rs.10,000, completed the assessment under section 144 read with section 147 at a total income of Rs.1,46,57,500.

3. The assessee's consistent case, both during the assessment proceedings and before the learned CIT(A), has been that his correct and regularly used PAN is ACRPW8234D and that PAN ABRPW5450E, in relation to which the reassessment was initiated, had been obtained without his knowledge by his former employer, Shri Veeru Mehta, by misusing his signatures and KYC documents. According to the assessee, he had worked as an office boy with Shri Veeru Mehta from September 2009 for approximately 18 months at a monthly salary of Rs.3,500 and had furnished certain documents and signatures to his employer

on the representation that these were required for employment and security purposes. His case is that M/s Kingsy Pharma, its bank account and the pharmaceutical licences in its name were created and operated without his knowledge and that he neither carried on any business in the name of M/s Kingsy Pharma nor entered into the transactions forming the basis of the additions. The merits of these allegations, however, need not be conclusively determined at this stage, because the preliminary question before us is whether the jurisdictional notice issued under section 148 was ever validly served upon the assessee.

4. Before us, the learned counsel submitted that the notice under section 148 was sent to addresses which had no connection whatsoever with the assessee and that its subsequent affixture at Sonam Apartment, Bhiwandi, was made on an unidentified locked room without first establishing that the assessee had ever resided or carried on business there. The learned Departmental Representative, on the other hand, submitted that adequate efforts had been made by the Department to serve the assessee and that the notice under section 148 was ultimately served by affixture through the Inspector. Considering the nature of the controversy, the Bench directed the learned Departmental Representative to furnish copies of the reports and contemporaneous records relating to

the service of notices issued under sections 148 and 142(1). The said records were furnished and the assessee was permitted to file a rebuttal. We have carefully examined the entire service record, the assessment order, the contemporaneous correspondence, the assessee's reply dated 27.11.2019, his statement recorded under section 131 and the rival submissions made before us.

5. The record reveals that the notice under section 148 dated 27.03.2019 was initially addressed to the assessee at "4/532, Kherwadi GSC, Government Saskiya Colony, Bandra East, Mumbai-400051" under PAN ABRPW5450E. The copy of the notice available on record bears an endorsement showing that it was not served. Curiously, the form recording the reasons for initiating proceedings under section 147 and obtaining the approval of the Principal Commissioner records an altogether different address, namely, "5th Floor, Sonam Apartment, behind Ajay Nagar, Kasar Ali, Bhiwandi-421302". The material placed before us further shows that the Department had received information that the assessee did not reside at the said Bhiwandi address and that the notices sent there were being returned. Nevertheless, the Inspector, vide report dated 16.07.2019, stated that he had visited the Bhiwandi premises, found a room locked and affixed the notice under section 148 on its door. The

accompanying panchnama is stated to have been prepared on 15.07.2019. The mere difference of one day between the panchnama and the Inspector's report may not, by itself, have any decisive significance; however, what is of far greater importance is that neither the report nor any other document brought before us discloses how the particular room was identified as the residence or business premises of the assessee, who had identified it, or what material connected the assessee with the said premises.

6. The chronology thereafter assumes considerable significance. Notices under section 142(1) dated 07.08.2019 were issued and one of them was returned by the postal authorities with the endorsement "LEFT"; it was thereafter purportedly affixed on 28.08.2019. Upon transfer of the case, another notice under section 142(1) dated 26.09.2019 was issued at the Bandra address and was again returned. The assessment order further records that a communication dated 18.10.2019, purporting to furnish the reasons recorded for reopening, was also returned with the postal endorsement "LEFT". Likewise, the show-cause notice dated 25.10.2019 was returned and was stated to have been affixed on 05.11.2019. It was only upon enquiries being made from TransUnion CIBIL that the Assessing Officer obtained two further addresses and three email IDs, whereupon the final

show-cause notice dated 22.11.2019 was sent to “Flat No. B-8, 2nd Floor, Yashodhan CHS, Sant Janabai Path, Dixit Road Extension, Near Parle College, Vile Parle (East), Mumbai-400057”, and was also transmitted by email. This notice was admittedly delivered and, immediately thereafter, the assessee responded vide letter dated 27.11.2019.

7. In his reply dated 27.11.2019, the assessee specifically stated that he had received the final show-cause notice dated 22.11.2019 through email, that the PAN mentioned therein was different from his PAN, that he had no knowledge of PAN ABRPW5450E or M/s Kingsy Pharma, and that no documents relating to the earlier notices or the said concern were available with him. The final show-cause notice dated 22.11.2019 was thus the first communication which, on the basis of the material before us, is shown to have actually reached the assessee. He explained that he had come to know of M/s Kingsy Pharma only when the Sales Tax authorities conducted a search at his residence in the year 2012 and that, upon enquiry, one Shri Hemant Ghusani, stated to be associated with Shri Veeru Mehta, informed the Sales Tax authorities that the assessee was merely an employee and had no concern with the transactions. Thereafter, summons under section 131 was issued on 29.11.2019 and the assessee’s statement was recorded, wherein

he reiterated that his correct PAN was ACRPW8234D, that he had regularly filed returns under that PAN, and that his signatures and KYC documents had been misused by his former employer. Thus, the record demonstrates that the assessee acquired actual knowledge of the proceedings only when the final show-cause notice dated 22.11.2019 was delivered at the Vile Parle address and through email, and that he objected to the disputed PAN, the earlier notices and the entire premise of the proceedings before completion of the assessment.

8. Section 282 provides the permissible modes by which a notice or other communication under the Act may be served, while Rule 127 of the Income-tax Rules specifies the addresses at which such communication may be delivered or transmitted. Where the Department seeks to rely upon service by affixture, the requirements governing substituted service cannot be reduced to a mechanical formality. The serving officer must first proceed to the address at which the assessee ordinarily resides, carries on business or personally works for gain and, if service cannot be effected in the ordinary manner, the circumstances warranting affixture must be contemporaneously recorded. Most importantly, the premises upon which the notice is affixed must first be shown to have a demonstrable connection with the person sought to be served. Affixture on the door of any locked

room, without establishing that it was the residence or business premises of the assessee, cannot constitute service upon him merely because a departmental officer had gone there and pasted a notice.

9. In the present case, there is no material to establish that the assessee ever resided, carried on business or had any connection with the premises at Sonam Apartment, Bhiwandi. The Inspector's report merely states that the room was locked and that the notice was affixed on its door. It does not disclose who identified that room as belonging to the assessee, the source from which that address was obtained, the particulars of the person who identified the premises, or the name and address of the witness in whose presence the affixture was allegedly carried out. On the contrary, the departmental record itself contained an endorsement that the assessee did not reside at the said address. The assessee has also relied upon a certificate from Sonam Apartment Co-operative Housing Society and its name board to show that neither any premises stood in his name nor did he ever reside there. These facts have not been controverted by any cogent material from the Revenue. Once the Department's own enquiry indicated that the assessee did not reside at the Bhiwandi address, affixture at the same premises could not be treated as service in accordance with law.

10. The postal endorsements “LEFT” appearing on the subsequent communications also do not advance the case of the Revenue. Such an endorsement is materially different from an endorsement of “REFUSED”. It indicates that the addressee was not residing at the address at which service was attempted and does not give rise to a presumption that he deliberately evaded service. Indeed, the subsequent conduct of the assessee furnishes a telling answer: when the correct Vile Parle address and email were eventually discovered and the final show-cause notice dated 22.11.2019 was delivered, he responded within a few days on 27.11.2019 and appeared in response to the summons dated 29.11.2019. This conduct is inconsistent with any suggestion that the assessee had been deliberately avoiding the proceedings. Rather, it corroborates his assertion that the earlier notices, including the notice under section 148, had never reached him.

11. We are conscious of the distinction between issuance of notice within the period of limitation and its service upon the assessee. The notice under section 148 was issued on 27.03.2019 and, therefore, the reassessment cannot be held invalid merely because the purported affixture took place subsequently in July 2019. As explained by the Hon’ble Supreme Court in *R.K. Upadhyaya v. Shanabhai P. Patel* [(1987)

166 ITR 163 (SC)], issuance of notice within limitation and its service are distinct requirements. Nevertheless, valid service of the jurisdictional notice remains a condition precedent for lawfully proceeding with and completing the reassessment. The foundational principle that service of notice under section 148 is not a mere procedural formality was recognised by the Hon'ble Supreme Court in *Y. Narayana Chetty v. ITO* [(1959) 35 ITR 388 (SC)]. The Hon'ble Delhi High Court in *CIT v. Chetan Gupta* [(2016) 382 ITR 613 (Delhi)] has likewise held that issuance and service of notice under section 148 are jurisdictional requirements and that reassessment cannot be completed without service of such notice. Similarly, in *Veena Devi Karnani v. ITO* [(2019) 410 ITR 23 (Delhi)], it was held that where the correct address was available in the PAN database or the returns filed by the assessee, mechanical dispatch of notices to an obsolete address could not constitute proper service. These principles squarely apply to the facts before us.

12. The possible application of section 292BB also requires consideration. The Revenue may contend that the assessee subsequently appeared pursuant to summons, gave a statement, filed a return and furnished written submissions and, therefore, should be deemed to have been validly served. However, the proviso to section 292BB expressly preserves an objection where

the assessee has raised it before completion of the assessment. The assessee's reply dated 27.11.2019, read in conjunction with the assessment order itself—which records that the earlier notices were returned unserved—establishes that the assessee objected to the non-receipt of the initiating and subsequent notices before completion of the assessment. In that reply, he clearly stated that the final show-cause notice dated 22.11.2019 had been received through email, that the PAN mentioned therein was not his regular PAN, and that he had no knowledge of that PAN, M/s Kingsy Pharma or the earlier proceedings. The assessee was a person of modest educational and occupational background and his objection cannot be discarded merely because it was not couched in technical legal language or did not specifically refer to section 148. In substance and effect, he informed the Assessing Officer that the earlier notices had not been received by him and that he disputed the very identity and PAN on the basis of which the proceedings had been initiated. The objection was thus raised before completion of the reassessment and falls within the proviso to section 292BB.

13. The assessee's subsequent cooperation also cannot be construed as an unconditional waiver of the jurisdictional defect. His appearance pursuant to summons and the submissions made thereafter have to be read in the background of the

objection already lodged on 27.11.2019. Throughout the proceedings, he continued to dispute the PAN, his alleged proprietorship of M/s Kingsy Pharma, the bank account and the receipt of the earlier notices. Participation after raising a timely objection cannot retrospectively convert affixture at an unrelated premises into valid service. Section 292BB is a rule of deemed service in the circumstances specified therein; it does not authorise the Revenue to dispense with the requirements of section 282, Rule 127 and the prescribed procedure for substituted service, particularly where the assessee has objected before completion of the assessment.

14. We also find that the recorded reasons for reopening cannot be said to have been effectively furnished merely because a communication dated 18.10.2019 was dispatched. The assessment order itself records that the said communication was returned with the endorsement "LEFT". There is nothing on record to establish that the reasons were thereafter delivered at the correct address or furnished to the assessee when he first appeared pursuant to the final show-cause notice. This circumstance further demonstrates that, until the communication dated 22.11.2019, the assessee had neither received the jurisdictional notice nor been placed in possession of the reasons upon which the reassessment had been initiated.

15. Thus, when the entire chronology is examined, the position which emerges is that the notice under section 148 dated 27.03.2019 was never served upon the assessee at his correct address; the notice sent at the Bandra address remained unserved; the subsequent affixture was made at a locked room in Sonam Apartment, Bhiwandi, without any material establishing that the assessee resided, carried on business or otherwise had any connection with that premises; and the departmental record itself indicated that he did not reside there. It was only after obtaining information from TransUnion CIBIL that the Assessing Officer discovered the Vile Parle address and email, whereupon the final show-cause notice dated 22.11.2019 was actually delivered. The assessee, in his immediate response dated 27.11.2019, disputed the PAN, denied receipt of the earlier notices and asserted that he had no knowledge of the concern or the transactions. The objection was therefore raised before completion of the assessment, and the subsequent cooperation cannot attract the deeming fiction under section 292BB.

16. In these circumstances, we hold that there was no valid service of the jurisdictional notice issued under section 148. In the absence of such service, the Assessing Officer could not lawfully assume jurisdiction to proceed with and complete the reassessment under section 147. The assessment order

passed under section 144 read with section 147 is, therefore, invalid and is hereby quashed. Consequently, the additions of Rs.1,27,62,500 under section 69C and Rs.18,85,000 under section 68, being founded upon an invalid reassessment, cannot survive.

17. Once the reassessment itself has been quashed on the jurisdictional ground, it is unnecessary for us to adjudicate the grounds challenging the additions on merits. We accordingly refrain from expressing any opinion on the genuineness of PAN ABRPW5450E, the alleged misuse of the assessee's KYC documents and signatures, ownership or operation of the bank account of M/s Kingsy Pharma, the evidentiary value of the bank-account opening documents, or the applicability of sections 68 and 69C to the impugned entries. All such grounds are left open and are rendered academic.

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

Order pronounced in the open court on 21/09/2026.

Sd/-

(ARUN KHODPIA)

ACCOUNTANT MEMBER

Sd/-

(AMIT SHUKLA)

JUDICIAL MEMBER

ITA No. 1799/Mum/2025
A.Y. 2012-13
Ravi Dilip Waghela

Place: मुंबई/Mumbai
दिनांक /Date 21.09.2026
Lubhna, Steno

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench, Mumbai.