

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE MS. SUCHITRA RAGHUNATH KAMBLE, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER
ITA Nos.1206 & 1207/SRT/2024
Assessment Years: (2010-11 & 2012-13)
(Hybrid hearing)**

Amizara Construction Pvt. Ltd., 101-102, Amizara Palace, Sumul Dairy Road, Behind Yatri Hotel, Surat – 395001, Gujarat	Vs.	ITO, Ward – 1(1)(1), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAGCA9419A		
(Appellant)		(Respondent)

Appellant by	Shri Sapnesh Sheth, Advocate
Respondent by	Shri Ajay Uke, Sr. DR
Date of Hearing	18/08/2025
Date of Pronouncement	17/11/2025

आदेश / O R D E R

PER BIJAYANANDA PRUSETH, AM:

These two appeals by the assessee emanate from the separate orders passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') by the Commissioner of Income-tax (Appeals), NAFAC, Delhi [in short, 'the CIT(A)'] for the assessment years (AYs) 2010-11 and 2012-13. With the consent of both the parties, both appeals were clubbed, heard together and are decided by a common order for brevity and convenience. ITA No.1206/SRT/2024 for AY 2010-11 is taken as 'lead' case.

2. Grounds of appeal raised by the assessee in ITA No.1206/SRT/2024, are as under:

“1. On the facts and circumstances of the case as well as law on the subject, Ld. CIT(A), NFAC instead of quashing the order passed by assessing officer has erred in setting aside the case to the file of assessing officer despite the fact that assessee is a non-existent company and its name has been struck off by Registrar of Companies.

2. On the facts and circumstances of the case as well as law on the subject, Ld. CIT(A), NFAC has erred in remitting the matter to the file of assessing officer although the remand report called for in appellate proceedings was not submitted by him.

3. On the facts and circumstances of the case as well as law on the subject, Ld. CIT(A), NFAC instead of deleting the addition made in assessment order has erred in directing the assessing officer to make fresh assessment.

4. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”

3. The grounds of appeal raised by assessee in ITA No.1207/SRT/2024, are as under:

“1. On the facts and circumstances of the case as well as law on the subject, Ld. CIT(A), NFAC instead of quashing the order passed by assessing officer has erred in setting aside the case to the file of assessing officer despite the fact that assessee is a non-existent company and its name has been struck off by Registrar of Companies.

2. On the facts and circumstances of the case as well as law on the subject, Ld. CIT(A), NFAC has erred in remitting the matter to the file of assessing officer although the remand report called for in appellate proceedings was not submitted by him.

3. On the facts and circumstances of the case as well as law on the subject, Ld. CIT(A), NFAC instead of deleting the addition made in assessment order has erred in directing the assessing officer to make fresh assessment.

4. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”

ITA No.1206/SRT/2024 (AY 2010-11):

4. Brief facts of the case are that the assessee company did not file its return of income for AY 2010-11. As per the information available with the department, the appellant had deposited substantial cash in its bank account maintained with the ICICI Bank Ltd. As per the bank statement of the appellant, cash of Rs.1,10,63,500/- was deposited in the bank account No.005205005209 maintained with ICICI Bank Ltd. on various dates during the FY 2009-10. Subsequently, case of the assessee was reopened u/s.147 of the Act and notice u/s.148 of the Act was issued on 31.03.2017. However, assessee neither filed any return of income in its response nor furnished any submission. During assessment proceedings, notice u/s.142(1) of the Act was issued to Director of the assessee company, Smt. Bhavnaben Ramanlal Shah. In reply, it was stated that the assessee company was not in existence and its name was struck off by ROC vide letter dated 21.06.2017. Regarding the source of cash and credits deposited in the ICICI bank account, she stated that there was acute shortage of funds and her husband discounted the cheque of the company and the funds received on discounting of cheques were deposited in the aforementioned bank account. It was further stated that as the company was not in existence and the affairs were totally managed by her husband, since deceased, she does not have records of the company except the bank statement.

5. Since the assessee failed to furnish any documentary evidence in support of her contention, the AO provided further opportunities to the assessee, vide statutory notices, but assessee neither filed the return of income nor furnished any cogent documentary evidence to substantiate the nature and source of cash and credits totaling to Rs.1,56,64,322/-. Therefore, AO finalized the assessment to the best of his judgment u/s.144 of the Act. The cash and credits aggregating to Rs.1,56,64,322/- made in the ICICI bank account was treated as unexplained income from undisclosed sources and the same was brought to tax. The AO passed the order u/s 144 r.w.s. 147 of the Act, determining total income at Rs.1,56,64,322/-.

6. Aggrieved by the order of AO, assessee preferred appeal before CIT(A). During appellate proceedings, assessee submitted that the assessee company was not in existence and its name was struck off by ROC vide letter dated 21.06.2017, therefore, the AO has erred in reopening assessment and passing order in the name of non-existent company. The CIT(A), however, observed that assessee had not explained as to how the assessee's bank account/PAN was operative even after striking off its name by the ROC and also no documents have been furnished by the assessee that intimation regarding the striking off its name by ROC, was given by it to the department. The CIT(A) further observed that the impugned order was passed u/s.144 r.w.s. 147 of the Act. Accordingly, exercising powers

conferred upon CIT(A) in section 251(1) of the Act, he set aside the assessment order to the AO with the direction to make fresh assessment on all the issues after giving reasonable opportunity of being heard to the assessee.

7. Aggrieved by the order of CIT(A), assessee filed present appeal before the Tribunal. The Learned Authorized Representative (Ld. AR) of the assessee has submitted a paper book containing copy of written submission filed before the CIT(A), copy of letter filed by Bhavna R. Shah to ICICI Bank and to the AO, copy of notice of ROC, Ahmedabad striking off the name of assessee company, bank statement of assessee company and copies of case laws relied upon by him. The Ld. AR of the assessee submitted that the AO is not justified in passing the assessment order in case of assessee company because company was not in existence since its name was struck off by the ROC. The Ld. AR further stated that the assessment order cannot be passed in the name of entity which is not in existence, hence, assessment order passed u/s.144 r.w.s 147 of the Act is void and is required to be quashed. Regarding the source of cash and credits of Rs.1,56,64,322/-, the Ld. AR stated that the affairs of the assessee company were handled by Shri Ramanlal P. Shah who expired on 22.09.2015. It was further submitted that the aforementioned cash and credits were made mainly from the cash received by discounting own cheques as assessee was in need of funds for carrying out of business and consequently the same did not represent

unaccounted income of the assessee. Ld. AR, therefore, requested to delete the addition of Rs.1,56,64,322/- made by the AO.

8. On the other hand, the Learned Senior Departmental Representative (Ld. Sr. DR) for the revenue supported the order of the lower authorities. He submitted that adequate opportunity was given by AO to explain the nature and source of the cash and credit in the bank account, which the assessee failed to do. He also submitted that the reopening was done when the company was in existence. He, therefore, requested to sustain the order of lower authorities.

9. We have heard both the parties and perused the materials available on record. We have also deliberated on the decisions relied upon by the Ld. AR. The grounds raised by the appellant are inter-related. It is pertinent to mention that the Finance Act, 2024 has inserted proviso below clause (a) of sub-section (1) of section 251 of the Act w.e.f. 01.10.2024 and has expanded the scope of section 251(1) of the Act expressly empowering the CIT(A) to set aside assessments framed u/s 144 and remit the matter back to the AO for fresh adjudication. It is undisputed that the present appeal arises from an assessment u/s 144 r.w.s. 147 and therefore, the CIT(A) has correctly invoked the enhanced statutory powers now available u/s 251(1) of the Act. Hence, the action of the CIT(A) is in accordance with the law in force at the time of making the order.

9.1 It is also not in dispute that no return was filed either u/s 139 or in response to 148 or 142(1) notices and no evidence regarding the nature and source of cash deposits or cheque discounting was filed before AO and CIT(A). Even before us, except for reiteration of the same explanation before AO and CIT(A), the assessee has failed to produce any material. The explanation that the funds came from discounting cheques is not supported by any documentary evidence, viz., details of cheques allegedly discounted, parties involved, discounting agents, accounting entries, ledger accounts, correspondence or confirmations, etc. It may be noted that mere assertions cannot substitute proof.

9.2 We also find that the assessee company was in existence at the time of issuance of notice u/s.148 of the Act on 31.03.2017. As per the letter of the ROC (Page 10 of PB), the name of the company was struck off with effect from 21.06.2017. Hence, the contention of Ld. AR that the notice was on a non-existent company is factually incorrect. The reliance placed by the Ld. AR on the various decisions on the impugned issue would not further the cause of the assessee. The AO was competent to issue notice u/s.148 on the basis of the information available with him to bring the escaped income of the existing company for taxation.

9.3 It is pertinent to mention here that the statute mandates assessment of the discontinued business till the point of time when the company was in existence. The assessee company continued its business for more than 7 years from the end

of the relevant previous year relevant to the AY 2010-11 and was on the list of ROC till 21.06.2017. Evidently, the assessee company was in existence and carried out business which is clear from the bank statement furnished before the lower authorities. The income component on the said transactions is required to be taxed as per the provisions of the Act including section 176 of the Act. Further, there is no evidence of such discontinuation of business having been intimated to the Department. The absence of such evidences and the continued operation of the same bank account in the name of the assessee company during the year under consideration, clearly indicates that the assessee company continued to exist for all practical purposes and remained the owner of the said bank account. Therefore, the contention that the assessee company was non-existent during the relevant previous year is not tenable.

9.4 We find that the decision of CIT(A) is based on proper appreciation of the fact and is in accordance with law. The assessment order was ex parte u/s. 144 of the Act, as no evidence was provided by the assessee at any stage and the cash deposits and credit entries of Rs.1.56 Cr. required proper verification to determine the true and correct income of the assessee. Besides, section 251(1) now expressly enables CIT(A) to set aside such assessments. In view of the same, we find no infirmity in the order of the CIT(A) restoring the matter to the AO for fresh

consideration after giving adequate opportunity. Accordingly, the order of CIT(A) is upheld and the appeal of the assessee is dismissed.

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

Order pronounced in terms of provisions of Rule 34 of ITAT Rules, 1963 on 17/11/2025 in the open court.

Sd/-
(SUCHITRA R. KAMBLE)
JUDICIAL MEMBER

Surat

दिनांक/ Date: 17/11/2025

SAMANTA

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat

