

आयकर अपीलीय अधिकरण  
कोलकाता 'ए' पीठ, कोलकाता में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'A' BENCH, KOLKATA**

श्री संजय गर्ग, न्यायिक सदस्य  
एवं  
श्री संजय अवस्थी, लेखा सदस्य  
के समक्ष  
**Before**

**SRI SANJAY GARG, JUDICIAL MEMBER  
&  
SRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No.: 439/KOL/2024  
Assessment Year: 2016-17**

**JBS Projects Pvt. Ltd.....Appellant  
[PAN: AACCCJ 0581 A]**

**Vs.**

**ITO, Ward-3(1), Kolkata.....Respondent**

**Appearances:**

**Assessee represented by:** Amit Agarwal, Adv.

**Department represented by:** Divakar Chakraborty, Addl. CIT.

Date of concluding the hearing : May 16<sup>th</sup>, 2024

Date of pronouncing the order : June 6<sup>th</sup>, 2024

**ORDER**

**Per Sanjay Awasthi, Accountant Member:**

The present appeal arises from the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') dated 26.12.2023 by the Commissioner of Income Tax (Appeals)-NFAC, Delhi [in short ld. 'CIT(A)'], pertaining to AY 2016-17.

2. In this case, there is a delay of 6 days which deserves to be condoned considering the reasons mentioned in appellant's letter dated 01.03.2024.

3. In this case, it is seen from the records that an *ex-parte* order dated 26.12.2023 u/s 250 of the Act was passed by the ld. first appellate authority

by dismissing the appeal in limine. It is further seen that the Assessing Officer (in short ld. 'AO') passed order u/s 147 read with Section 144 read with Section 144B of the Act dated 28.03.2022. The appellant had filed the appeal with as many as 6 grounds but vide his application dated 14.05.2024 3 additional grounds were filed for admittance as under:

*“1) That the impugned reassessment proceedings initiated in the instant case by way of issuing notice under the unamended provision of Section 148 of the Income Tax Act, 1961 vide notice, dated 30<sup>th</sup> March, 2021, was rendered time barred as the said notice was admittedly uploaded for communication on 14<sup>th</sup> April, 2021 beyond the time limit prescribed in the Income Tax Act for initiating a valid reassessment proceedings under the unamended provisions of section 147/ 148 of the Act which provisions were substituted/amended w.e.f. 1<sup>st</sup> April, 2021.*

*2) That, without prejudice to the above ground, the Assessing Officer erred in assuming jurisdiction to initiate reassessment proceedings under the unamended provision of section 147 to 151 of the Income Tax Act, 1961 by way of issuing notice under the said unamended provision of Section 148 of the Income Tax Act, 1961, which notice was dated 30<sup>th</sup> March, 2021 but which notice was admittedly uploaded for communication on 14<sup>th</sup> April, 2021 only and thus the Assessing Officer was required to follow the procedure prescribed under the amended provisions of section 148A of the Act before initiating a valid reassessment proceedings by way of issuing a notice under the amended section 148 of the Act.*

*3) That, without prejudice to the above ground, the Assessing Officer even otherwise could not have assumed jurisdiction under section 148A of the Act for the Assessment Year 2016-17 which was beyond 3 years from the end of the relevant Assessment Year and thus the essential condition of income escaping assessment to be more than 50 lakh, and that too represented in the form of an asset, was not getting fulfilled in the instant case.”*

3.1. Since the additional grounds of appeal challenged the assumption of jurisdiction itself, it is essential to deal with them first and thereafter, if required, proceed on the merits of the case. Briefly, the appellant has challenged that the ld. AO's order was passed by issuing and serving a notice u/s 148 of the Act beyond the stipulated legal time available for such an exercise. The appellant has taken pains to point out and file screenshots of e-mails and ITBA Portal to show that the notice dated 30.03.2021 issued u/s 148 of the Act was uploaded for communication and issued/served on the

appellant for the first time on 14.04.2021 at 09:40 PM through e-mail ID – bankura.ito1@incometax.gov.in. The screenshot is reproduced as under:

5/14/24, 2:12 PM

Gmail - Fwd: Fw: [ITBA]Notice under section 148 of the Income Tax Act, 1961

'A'



Advocate Amit Agarwal <amit25385@gmail.com>

**Fwd: Fw: [ITBA]Notice under section 148 of the Income Tax Act, 1961**

1 message

**Arvind Agarwal** <arvindagarwal.ca@gmail.com>  
To: Amit Agarwal <amit25385@gmail.com>

Fri, May 10, 2024 at 2:19 PM

----- Forwarded message -----

From: **Sandip Nandi** <sandipnandi1@yahoo.co.in>  
Date: Fri, May 10, 2024 at 2:18 PM  
Subject: Fw: [ITBA]Notice under section 148 of the Income Tax Act, 1961  
To: Arvind Agarwal <arvindagarwal.ca@gmail.com>

fyi  
Regards

----- Forwarded message -----

From: "bankura.ito1@incometax.gov.in" <bankura.ito1@incometax.gov.in>  
To: "sandipnandi1@yahoo.co.in" <sandipnandi1@yahoo.co.in>  
Sent: Wednesday, 14 April, 2021 at 09:40:46 pm GMT+3 ✓  
Subject: [ITBA]Notice under section 148 of the Income Tax Act, 1961

Dear JBS PROJECTS PRIVATE LIMITED,

Please find attached the Notice u/s 148 for PAN:AACCJ0581A and AY:2016-17.

Please quote your PAN in all future correspondences.

Note:

- This communication is computer generated and may not contain signature.
- This communication may be treated as compliant with the requirements of Income Tax Rules 127 and 127A.
- Signed copy may be sent separately if not already digitally signed.
- Please quote your PAN in all communications.
- Income Tax Department does not seek any taxpayer information like user name, password, details of ATM, credit cards, etc. Taxpayers are advised not to part with such information on the basis of emails.

**AACCJ0581A\_Notice us 148\_1031955543(1)\_30032021.pdf**  
66K

**RINA**  
**NANDI** Digitally signed  
by RINA NANDI  
Date: 2024.05.15  
19:47:47 +05'30'

3.2. The said notice being communicated to the assessee on 14.04.2021 is thus, rendered time barred as ld. AO apparently failed to follow the procedure prescribed under the amended provisions of Section 148A of the Act. It has been claimed by the appellant that the necessary screenshots and printouts are obtained from the records of the AO as also the ITBA portal. The ld. Counsel for the assessee has also relied on the following decisions for admitting the additional grounds of appeal:

- i) *Jute Corporation of India vs. CIT [187 ITR 688]*
- ii) *National Thermal Power Co. Ltd. vs. CIT [229 ITR 383]*

4. We have carefully considered the matter and it is seen from the screenshots and printouts made available by the ld. A/R that indeed the notice u/s 148 of the Act was uploaded on 14.04.2021 only. A screenshot of the ITBA portal is also relevant in this case which is reproduced as under:

Income Tax Portal, Government of India View Notices for Eproceedings Page

Description : ITBA>Show Cause Notice  
Issued On : 02-Mar-2022  
Response Due Date : 09-Mar-2022

Submit Response

Notice/Letter pdf

Notice/ Communication Reference ID : 100042910969

142(1)  
Notice u/s  
ITBA/AST/F/142(1)/2021-22/1038961766(1)  
Document reference ID

Description : ITBA)Notice u/s 142(1)of Income Tax Act 1961.  
Issued On : 21-Jan-2022  
Response Due Date : 04-Feb-2022

Submit Response

Notice/Letter pdf

Notice/ Communication Reference ID : 100040548981

142(1)  
Notice u/s  
ITBA/AST/F/142(1)/2021-22/1037271122(1)  
Document reference ID

Description : ITBA)Notice u/s 142(1)of Income Tax Act 1961.  
Issued On : 26-Nov-2021  
Response Due Date : 02-Dec-2021

Submit Response

Notice/Letter pdf

Notice/ Communication Reference ID : 100036271263

142(1)  
Notice u/s  
ITBA/AST/F/142(1)/2021-22/1033884005(1)  
Document reference ID

Description : ITBA)Notice u/s 142(1)of Income Tax Act 1961.  
Issued On : 30-Jun-2021  
Served On : 30-Jun-2021  
Response Due Date : 15-Jul-2021

Submit Response

Notice/Letter pdf

Notice/ Communication Reference ID : 100033503966

148  
Notice u/s  
ITBA/AST/S/148/2020-21/1031955543(1)  
Document reference ID

Description : ITBA)Notice under section 148 of the Income Tax Act, 1961  
Issued On : 15-Apr-2021

RINA NANDI Digitally signed by RINA NANDI  
Date: 2024.05.15 19:47:16 +05'30'

<https://portal.incometax.gov.in/ico/fo/services/#/dashboard/eProceedings/viewNotices/all>

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4.1. The ld. D/R also examined the documents and agreed that the same were from the ITBA portal.

4.2. In support of his contentions, the ld. A/R has relied on a number of authorities which have directed that any notice served beyond the stipulated time, howsoever small the gap may be between the time barring date/time and the actual issue of the notice, it would still not save the proceedings from being vitiated. Thus, reliance has been placed on the following cases:

- i) *Marudhar Vintrade Private Limited vs. Union of India & Ors. WPA No. 4382 of 2022, order dt. 12/04/2022 (Hon'ble Calcutta High Court)*
- ii) *Sandeep Kumar Shah vs. Income Tax Officer, Ward-50(1), Kolkata - ITA No. 07/Kol/2023, order dt. 30/11/2023 (ITAT Kolkata)*
- iii) *Ranicherra Rea Co. Ltd. vs. Income Tax Officer, Ward-4(4), Kolkata - ITA No.609/Kol/2023, date of order 26/02/2024 (ITAT Kolkata)*
- iv) *Mamta Choraria vs, Income Tax Officer, Ward-36(1), Kolkata I.T.A. No. 214/Kol/2024 order dated 01.05.2024 (ITAT Kolkata)*
- v) *Arun Kumar Singh Vs. Union Of India WPA No. 2646 of 2022 order dated 23<sup>rd</sup> September, 2022 (Hon'ble Calcutta High Court)*

4.3. Considering the clear evidence regarding delayed issue of notice, it is hereby held that the proceedings sought to be initiated through issue of notice u/s 148 of the Act are *void-ab-initio*. Accordingly, the order of ld. AO and ld. CIT(A) cannot be legally sustained. The assessee succeeds in respect of the additional grounds of appeal, leaving no scope for any further adjudication on the merits as per the original grounds of appeal.

5. In the result, the appeal filed by the assessee is allowed.

**Order pronounced in the open Court on 6<sup>th</sup> June, 2024.**

Sd/-  
**[Sanjay Garg]**  
Judicial Member

Sd/-  
**[Sanjay Awasthi]**  
Accountant Member

Dated: 06.06.2024

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

1. **JBS Projects Pvt. Ltd., Taldangra, S.O. Bankura, Bankura, West Bengal, 722151.**
2. **ITO, Ward-3(1), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

*//True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata