IN THE INCOME TAX APPELLATE TRIBUNAL
"PATNA BENCH, PATNA
VIRTUAL HEARING AT KOLKATA

Before Shri Duvvuru RL Reddy, Vice-President and Shri Sanjay Awasthi, Accountant Member

I.T.A. Nos.339&340/Pat/2024
Assessment Years: 2014-15 & 2015-16

ACIT, Circle-1, Patna…….....…….……Appellant

vs.

Tulshyan Metals Pvt. Ltd…….....……...…..…..Respondent
3D, Shakambari Complex,
Sabji Bazar Chowk, Nagla
Bihar-800008.
[PAN: AACCT2904K]

Appearances by:
Shri Ashok Kumar CIT, appeared on behalf of the appellant.
Shri Sandeep Goel, AR, appeared on behalf of the Respondent.

Date of concluding the hearing : November 18, 2024
Date of pronouncing the order : November 27, 2024

ORDER

Per Sanjay Awasthi, Accountant Member:

1. The captioned appeals have been preferred by the revenue against the separate orders of even date 30.01.2024 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act') for assessment years 2014-15 & 2015-16. Since, the substantive issues are common in both the assessment years and the appeals pertain to the same assessee, therefore, the two appeals are being disposed of through this single order.

2. However, in both the cases, the action of the Assessing Officer in assuming jurisdiction u/s 147 of the Act through issuance of notice u/s 148 of the Act has been in dispute, whereby, the ld. CIT(A) has held that since notice u/s 143(2) of the Act was not issued for both the years, following the issuance of notice u/s 148 of the Act, then the subsequent orders passed u/s 147 r.w.s 144, r.w.s 144B of the Act would be null and void. However, for the sake of record, the grounds in both the cases are extracted as under:

a. <u>In respect of ITA No.339/Kol/2024 for assessment year 2014-15</u>:

"1. Whether on the facts and circumstances of the case, the Ld. CIT(A)-NFAC has erred in allowing the appeal of the assessee stating that no valid notice u/s 143(2) of the Income Tax Act, 1961 is issued and failed to appreciate that assessee has not filed a return u/s 148 of the Act within 30 days from the service of the notice. The assessee has filed its ITR on ***12.03.2002*** *in response to notice u/s 148 of the Income Tax Act, 1961 dated 31.03.2021 with delay of 11 months from service of notice.*

2. Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in allowing the appeal regarding validity of reason recorded for reopening of case. In spite of the fact that approval u/s 151 of the Income Tax Act, 1961 had been obtained necessary satisfaction of the PCIT-1, Patna. In this instant case, the assessee has made financial transaction by the way of sale/ purchase of share in illiquid stack option on BSE/NSE and shown profit/loss on reversal trade to the amount of Rs.1,81,12,785/.

3. Any other ground that may be urged at the time of hearing."

b. <u>In respect of ITA No.340/Kol/2024 for assessment year 2015-16</u>:

"1. Whether on the facts and circumstances of the case, the Ld. CIT (A),NFAC has erred in allowing the appeal of the assessee stating that no valid notice u/s 143(2) of the Income tax Act, 1961 is issued and failed to appreciate that assessee has not filed a return u/s 148 of the Act within 30 days from service of the notice. The Assessee has filed its ITR on ***12/03/2002*** *in response to notice u/s 148 of the Income Tax Act, 1961.*

2. Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in allowing the appeal regarding validity of reason recorded for re-opening of case. But the fact is that approval u/s 151 of the Income Tax Act, 1961 had been obtained by the AO after necessary satisfaction of the Pr. Commissioner of Income Tax-1,Patna.

3. Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in observing that notice u/s 148 of the Income Tax Act, 1961 dated 27.03.2021 issued only on 16.04.2021. Which is contrary to fact that as per records, duly signed copy of notice u/s 148 of the Income Tax Act 1961 issued on 27.03.2021 also sent through officials mail of the department to registered e-mail (ashish-agarwal110@rediffmail.com) of the assessee-company on 30.03.2021.

4. Any other ground that may be urged at the time of hearing."

3. In both these cases, the assessee seems to have made purchase/sale of certain rarely traded equity shares on BSE/NSE. It is seen from the records that the department was in possession of some information on the basis of which notices u/s 148 of the Act were issued. Admittedly, no return was filed within the time allowed by the Assessing Officer, as a result of notices u/s 148. However, it has been recorded by the ld. CIT(A) that returns were filed, for both the years, on 12.04.2022, that is after the completion of assessment. In both the cases, the date of orders of the Assessing Officer is 24.03.2022. The primary challenge by the assessee has been that on account of non-issuance of notices u/s 143(2) of the Act after the issuance of notice u/s 148 of the Act, the resultant proceedings are legally untenable. Accordingly, for both the years, the ld. CIT(A) has relied on several authorities to hold that the assessment orders were invalid. For the sake of convenience, Para 5.2 from the order of the ld. CIT(A) is extracted as under:

> *"5.2* ***Validity of impugned assessment u/s 143(3) for want of valid jurisdictional notice u/s 143(2):*** *It is assessee/appellant case that "in pursuance to notice u/s 148 of the Act dated 31.03.2021* ***a return u/s 148 was filed vide letter dated 12.04.2022 (filed in paper book)***. (emphasis added) *Only notice u/s 142(1) were issued and no notice u/s 143(2) was ever issued much less served on assessee in response to valid return u/s 148 filed on records. To support appellant's contention appellant has placed entire notices tab in the e-proceedings of AY 2014-15 u/s 148 and after careful perusal of the same and assessment order passed which ignore the fact of return filing u/s 148, it is found that no valid notice u/s 143(2) is issued much less served on assessee to frame valid assessment u/s 147/ 144B of the Act as done vide impugned order dated 24.03.2022. In support of appellant's above legal ground appellant rightfully relied upon plethora of decisions of supreme court in CIT vs Laxman Dass Khandelwal (2019) 108 taxmann.com 183 (SC), ACIT vs Hotel Blue Moon reported in (2010) 321 ITR 362 (supra) and jurisdictional high court decision in case of Chand Bihari Agrawal Vs Commissioner of Income. Miscellaneous Appeal No. 239/2011 order dated 25.07.2023 and CIT-11 Vs Nagendra Prasad. Miscellaneous Appeal No. 662/2014, thus this ground of appellant deserves to be allowed and resultantly assessment order is declared to be invalid as per law."*

4. Since this issue goes to the root of the matter, therefore, it is adjudicated before proceeding any further into other grounds of appeal.

4.1 The ld. DR vehemently argued that since no return of income was filed in response to the notice u/s 148 of the Act, hence, there was no requirement for issuance of any further notice u/s 143(2) of the Act. It was stressed by him that a notice u/s 142(1) was issued in any case.

5. The ld. AR relied on the order of the ld. CIT(A) to canvass the point that by not issuing of a notice u/s 143(2) of the Act, the whole exercise becomes a nullity in the eyes of law.

6. We have considered the rival contentions and also perused the order of the authorities below. Right at the outset it needs to be mentioned that there appears to be some doubt about whether the assessee filed a Return of Income (hereafter ROI) before completion of assessment proceedings or after that. The Ld. CIT (A) has identically observed in paras 5.2 (ITA 339, AY 2014-15 and also for ITA 340, AY 2015-16) as under on this issue:

"*It is assessee/appellant case that 'in pursuance to notice/s 148 of the Act dated 31.03.2021 a return u/s 148 was filed vide letter dated 12.04.2022 (filed in paper book)……'…*"

In the assessment orders, both dated 24.3.2022, the Ld. AO has mentioned the fact of non-filing of ROI in both the orders in the following places:

i. Para 1 page 1
ii. Para 2 page 2
iii. Para 4 page 8
iv. Para 8 page 11

In the Grounds of Appeal the date of filing the ROI is mentioned as 12.03.2002, representing a probable typographical error, about which the Ld DR was unable to help.

6.1. Therefore, we need to presume that there was no ROI before the Ld AO, in response to his notice u/s 148 of the Act. In light of this fact all cases relied upon by the Ld. CIT (A) and Ld. AR before us become distinguishable since in the literature available on the issue of the requirement of a notice u/s 143(2) of the Act, prior to completion of assessment u/s 147 rw 143(3) of the Act, an ROI has always been filed by the assessee. In this case admittedly the Ld. AO did not have the ROI and thereby proceeded ahead to frame the assessment under section 144 of the Act, in an ex-parte manner. At this stage the relevant sections of the Act need to be extracted:

Section 143 .....

(2) Where a return has been furnished under section 139, or in response to a notice under sub-section (1) of section 142, the Assessing Officer shall,—

(i) where he has reason to believe that any claim of loss, exemption, deduction, allowance or relief made in the return is inadmissible, serve on the assessee a notice specifying particulars of such claim of loss, exemption, deduction, allowance or relief and require him, on a date to be specified therein to produce, or cause to be produced, any evidence or particulars specified therein or on which the assessee may rely, in support of such claim:

*[**Provided** that no notice under this clause shall be served on the assessee on or after the 1st day of June, 2003;]*

(ii) notwithstanding anything contained in clause (i), if he considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not under-paid the tax in any manner, serve on the assessee a notice requiring him, on a date to be specified therein, either to attend his office or to produce, or cause to be produced, any evidence on which the assessee may rely in support of the return:

*[**Provided** that no notice under clause (ii) shall be served on the assessee after the expiry of six months from the end of the financial year in which the return is furnished.]]*

Section 148 (as relevant for AY 2014-15/2015-16)

[Issue of notice where income has escaped assessment.

148.** [(1)] Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period, [* * *] as may be specified in the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished **under section 139 (emphasis added)*:]*

*[**Provided** that in a case—*

(a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005 in response to a notice served under this section, and

(b) subsequently a notice has been served under sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to sub-section (2) of section 143, as it stood immediately before the amendment of said sub-section by the Finance Act, 2002 (20 of 2002) but before the expiry of the time limit for making the assessment, re-assessment or recomputation as specified in sub-section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice:

***Provided further** that in a case—*

(a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005, in response to a notice served under this section, and

(b) subsequently a notice has been served under clause (ii) of sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to clause (ii) of sub-section (2) of section 143, but before the expiry of the time limit for making the assessment, reassessment or recomputation as specified in sub-section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice.]

[Explanation.—For the removal of doubts, it is hereby declared that nothing contained in the first proviso or the second proviso shall apply to any return which has been furnished on or after the 1st day of October, 2005 in response to a notice served under this section.]

[(2) The Assessing Officer shall, before issuing any notice under this section, record his reasons for doing so.]

A bare reading of the provision (section 148 of the Act) shows that the assessee is duty bound to file an ROI within the time period specified in the notice u/s 148 of the Act. Such ROI would be treated as a return filed u/s 139 of the Act. If we advert back to the section 143(2) of the Act, it is clear that this sub-section speaks of an ROI furnished u/s 139 of the Act. In the present case there is no ROI filed within the time allowed by the Ld. AO and the first time that we hear of this return of income is in para 5.2 of CIT(A) reproduced supra. Thus, an ROI under section 139 of the Act is essential to trigger the requirement of any notice u/s 143(2) of the Act. In fact, the leading authority on this subject, the case of Hotel Blue Moon reported in 321 ITR 362 (SC), relied on by both the Ld CIT (A) and the LD AR, clearly is based on the premise that an ROI was filed and it needed to be dealt with u/s 143(3) of the Act, thereby requiring that a notice u/s 143(2) of the Act be issued. Reference needs to be made of paras 15 and 16) of this judgement:

***"15.** We may now revert back to Section 158 BC(b) which is the material provision which requires our consideration. Section 158 BC(b) provides for enquiry and assessment. The said provision reads "that the assessing officer shall proceed to determine the undisclosed income of the Block period in the manner laid down in Section 158 BB and the provisions of Section 142, sub-section (2) and (3) of Section 143, Section 144 and Section 145 shall, so far as may be, apply." **An analysis of this sub section indicates that, after the return is filed, this clause enables the assessing officer to complete the assessment by following the procedure like issue of notice under Sections 143(2)/142 and complete the assessment under Section 143(3) (**emphasis added**).** This Section does not provide for accepting the return as provided under Section 143(i)(a). The assessing officer has to complete the assessment under Section 143(3) only. In case of default in not filing the return or not complying with the notice under Sections 143(2)/142, the assessing officer is authorized to complete the assessment ex-parte under Section 144. Clause (b) of Section 158 BC by referring to Section 143(2) and (3) would appear to imply that the provisions of Section 143(1) are excluded. But Section 143(2) itself becomes necessary only where it becomes necessary to check the return, so that where block return conforms to the undisclosed income inferred by the authorities, there is no reason, why the authorities should issue notice under Section 143(2). However, if an assessment is to be completed under Section 143(3) read with Section 158-BC, notice under Section 143(2) should be issued within one year from the date of filing of block return. Omission on the part of the assessing authority to issue notice under Section 143(2) cannot be a procedural irregularity and the same is not curable and, therefore, the requirement of notice under Section 143(2) cannot be dispensed with. The other important feature that requires to be noticed is that the Section 158 BC(b) specifically refers to some of the provisions of the Act which requires to be followed by the assessing officer while completing the block assessments under Chapter XIV-B of the Act. This legislation is by incorporation. This Section even speaks of subsections which are to be followed by the assessing officer. Had the intention of the legislature was to exclude the provisions of Chapter XIV of the Act, the legislature would have or could have indicated that also. A reading of the provision would clearly indicate, in our opinion, if the assessing officer, if for any reason, repudiates the return filed by the assessee in response to notice under Section 158 BC(a), the assessing officer must necessarily issue notice under Section 143(2) of the Act within the time prescribed in the proviso to Section 143(2) of the Act. Where the legislature intended to exclude certain provisions from the ambit of Section 158 BC(b) it has done so specifically. Thus, when Section 158 BC(b) specifically refers to applicability of the proviso thereto cannot be excluded. We may also notice here itself that the clarification given by CBDT in its circular No.717 dated 14 August, 1995, has a binding effect on the department, but not on the Court. This circular clarifies the requirement of law in respect of service of notice under sub-section (2) of Section 143 of the Act. Accordingly, we conclude even for the purpose of Chapter XIV-B of the Act, for the determination of undisclosed income for a block period under the provisions of Section 158 BC, the provisions of Section 142 and sub-sections (2) and (3) of Section 143 are applicable and no assessment could be made without issuing notice under Section 143(2) of the Act. However, it is contended by Sri Shekhar, learned counsel for the department that in view of the expression "So far as may be" in Section 153 BC(b), the issue of notice is not mandatory but optional and are to be applied to the extent practicable. In support of that contention, the learned counsel has relied on the observation made by this Court in Dr. Pratap Singh's case [1985] 155 ITR 166 (SC). In this case, the Court has observed that Section 37(2) provides that "the provisions of the Code relating to searches, shall so far as may be, apply to searches directed under Section 37(2). Reading the two sections together it merely means that the methodology prescribed for carrying out the search provided in Section 165 has to be generally followed. The expression "so far as may be" has always been construed to mean that those provisions may be generally followed to the extent possible. The learned counsel for the respondent has brought to our notice the observations made by this Court in the case of Maganlal Vs. Jaiswal Industries, Neemach and Ors., [(1989) 4 SCC 344], wherein this Court while dealing with the scope and import of the*

expression "as far as practicable" has stated "without anything more the expression `as far as possible' will mean that the manner provided in the code for attachment or sale of property in execution of a decree shall be applicable in its entirety except such provision therein which may not be practicable to be applied."

16.** The case of the revenue is that the expression 'so far as may be apply' indicates that it is not expected to follow the provisions of section 142, sub-sections (2) and (3) of section 143 strictly for the purpose of block assessments. We do not agree with the submissions of the learned counsel for the revenue, since we do not see any reason to restrict the scope and meaning of the expression 'so far as may be apply'. In our view, where the Assessing Officer in repudiation of the return filed under section 158BC(a) proceeds to make an enquiry, he has necessarily to follow the provisions of section 142, sub-sections (2) and (3) of section 143."**

6.2. Accordingly, as has been mentioned earlier, this case is distinguishable from the authorities relied upon by the Ld. CIT (A) and Ld. AR, in as much as there was no ROI before the Ld. AO, in response to his notice u/s 148 of the Act, rather the Ld. AO is seen to have proceeded without the benefit of any ROI, as is visible from various notings in his order mentioned above. However, there is some doubt about the date of filing of ROI, even though the date mentioned in the impugned order is 12.4.2022, that is after the completion of assessment. But considering the Hon'ble jurisdictional High Court's orders in the cases of: (i) Laxman Das Khandelwal [108 taxmann.com 183 (Patna)]; (ii) Chand Bihari Agarwal [154 taxmann.com 245 (Patna)]; and (iii) Nagendra Prasad [156 taxmann.com 19 (Patna)], this matter deserves to be remanded back to the file of Ld. AO for verifying the issue of filing of the ROI and thereafter recording a finding on the jurisdictional aspect in light of the directions given in the 3 cases of Hon'ble Patna High Court, referred to above. In light of this discussion, the ground pertaining to the requirement of a notice u/s 143(2) is allowed for statistical purposes for both the appeals.

7. The second ground in both the appeals is on the issue of holding the reasons recorded u/s 147 of the Act, prior to the issue of notice u/s 148 of the Act, as being inadequate or even defective. The Ld AR relied on the findings and cases relied upon by the Ld. CIT (A). While the Ld. DR vehemently argued that the assessee had neither filed the ROI nor filed any objections to the said reasons before the Ld. AO. It was averred that

the Ld. AO had no opportunity to rebut any of the contentions regarding the reasons as raised before the Ld. CIT (A).

7.2. It is seen from a perusal of the impugned order that the assessee has presented a seemingly self-serving chart, pointing out so called shortcomings in the said reasons, with the same being extensively reproduced on pages 17, 18, and 19 of the impugned orders for both the years. Admittedly the reasons show grammatical errors, but it is clear that there is no case for non-existence of reasons prior to the issue of notice u/s 148 of the Act. Drawing strength from the case of G K N Driveshaft [259 ITR 19 (SC)], being the locus classicus on this issue, we may recapitulate the following part of the order:

"We see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice under section 148 of the Income Tax Act is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices. The Assessing Officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the Assessing Officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the Assessing Officer has to dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment in respect of the abovesaid five assessment years."

7.3. It seems that the Ld AO had no opportunity to address any of the issues or grievances of the assessee regarding the content or quality of reasons recorded. The Ld CIT (A) has been admittedly swayed by the so-called errors pointed out by the assessee, thereby assuming a role and responsibility which was of the Ld. AO, as per the directions contained in the G K N Driveshaft case (supra). Accordingly, following the directions contained in the case of G K N Driveshaft (supra), we remand this matter back to the file of Ld. AO for addressing the objections of the Appellant with regard to the said reasons. The second ground in both the appeals is therefore allowed for statistical purposes.

8. The issue of the notice u/s 148 being time barred is a ground raised in ITA No. 340 and not in ITA No 339, even though the Ld CIT (A) has given relief on this point for both the years on identical findings. The Ld. DR has relied on the facts mentioned in the grounds for the ITA No 340 to argue that the statutory requirement was fulfilled. The Ld. AR, on the other hand, forcefully argued that the notice was served after the statutory limitation.

8.1. At this stage, we have access to 2 sets of facts, one through the finding of Ld CIT (A) recorded in page 25 of the impugned order for AY 2015-16, and second from the ground of appeal (ITA 340) as under:

> *Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in observing that notice u/s 148 of the Income Tax Act, 1961 dated 27.03.2021 issued only on 16.04.2021. Which is contrary to fact that as per records, duly signed copy of notice u/s 148 of the Income Tax Act 1961 issued on 27.03.2021 also sent through officials mail of the department to registered e-mail (ashish-agarwal110@rediffmail.com) of the assessee-company on 30.03.2021.*

8.2. It is felt that for ITA No 340 it would meet the ends of justice if the matter is remanded back to the Ld AO for determining whether the provisions of section 148 of the Act read with the provisions of 149 of the Act have been fulfilled or not. In this regard an extract from the case of Mayawati vs Commissioner of Income Tax reported in 321 ITR 349 (Del) should guide in deciding this issue:

6. In stark contrast, section 149 of the IT Act speaks only of the issuance of a notice under the preceding section within a prescribed period. Sec. 149 of the IT Act does not mandate that such a notice must also be served on the assessee within the prescribed period. Speaking for the Division Bench of this Court, I had occasion to observe in CIT v. Shanker Lal Ved Prakash [2007] 212 CTR (Delhi) 47 : [2008] 300 ITR 243 (Delhi) the decision in CIT v. Jai Prakash Singh [1996] 132 CTR (SC) 262 : [1996] 219 ITR 737 (SC) to the effect that failure to serve a notice under section 143(2) would not render the assessment as null and void but only as irregular. The decision of the Rajasthan High Court in CIT v. Gyan Prakash Gupta [1986] 54 CTR (Raj) 69: [1987] 165 ITR 501 (Raj) opining that an assessment order completed without service of notice under section 143(2) is not void ab initio and cannot be annulled was noted. Furthermore, from a reading of that judgment, it is evident that it had not been seriously contended that the notice under section 149 of the IT Act must also be served within the period set down in that section since the discussion centred upon section 27 of the General Clauses Act, 1897 which specifies that service of such a notice would be presumed to be legally proper as it would be deemed to

have been delivered in the ordinary course at the correct address. It had, inter alia, been expressed that: "while there would be no justification for enlarging the period of limitation prescribed by the statute itself, we should also not lose sight of the fact that disadvantage or discomfort of the assessee is only that he has to explain the correctness and veracity of the return filed by him. A reasonable balance of burden of proof must also, therefore, be maintained. In the facts and circumstances of the present case, we are satisfied that because notice was dispatched on 25th Aug., 1998 and was duly addressed and stamped, the Department has succeeded in proving its service before 31st Aug., 1998. On the other hand, the assessee has failed to prove a statement that he received the notice only on 1st Sept., 1998". Where a statute postulates the issuance of a notice and not its service, a fortiori the presumption of fiction of service must be drawn on the lines indicated in section 27 of the General Clauses Act, 1897.

7. To dispel any possible doubt, it would be of advantage to refer to R.K. Upadhyaya v. Shanabhai P. Patel [1987] 62 CTR (SC) 17 : [1987] 166 ITR 163 (SC) wherein it has been held that since the AO had issued a notice of reassessment under section 147 by registered post on 31st March, 1970, which notice was received by the assessee on 3rd April, 1970, nevertheless the notice was not barred by limitation and retained its legal efficacy. Their Lordships spoke thus:

".....A clear distinction has been made out between 'the issue of notice' and 'service of notice' under the 1961 Act. Sec. 149 prescribes the period of limitation. It categorically prescribes that no notice under section 148 shall be issued after the prescribed limitation has lapsed. Sec. 148(1) proves for service of notice as a condition precedent to making the order of assessment. Once a notice is issued within the period of limitation, jurisdiction becomes vested in the ITO to proceed to reassess. The mandate of section 148(1) is that reassessment shall not be made until there has been service. The requirement of issue of notice is satisfied when a notice is actually issued. In this case, admittedly, the notice was issued within the prescribed period of limitation as 31st March, 1970, was the last day of that period. Service under the new Act is not a condition precedent to conferment of jurisdiction on the ITO to deal with the matter but it is a condition precedent to the making of the order of assessment. The High Court, in our opinion, lost sight of the distinction and under a wrong basis felt bound by the judgment in Banarsi Debi v. ITO [1964] 53 ITR 100 (SC). As the ITO had issued notice within limitation, the appeal is allowed and the order of the High Court is vacated. The ITO shall now proceed to complete the assessment after complying with the requirement of law. Since there has been no appearance on behalf of the respondents, we make no orders for costs.

8.3. Clearly there is a distinction in the words “served” and “issued” used in sections 148 and 149 of the Act respectively. However, the Ld AO would do well to decide on this issue purely on the facts of the case. We direct accordingly. Thus, ground number 3 in ITA 340 is allowed for statistical purposes. As mentioned earlier, there is no ground on this issue in ITA Number 339 and hence no opinion is expressed on the issue for that year (AY 2014-15).

9. In result both the appeals, grounds 1 and 2 for ITA 339 and grounds 1,2 and 3 for ITA 340. Any other grounds are not specifically adjudicated since they are general and do not require any specific orders. Accordingly, these appeals are allowed for statistical purposes.

Kolkata, the 27th November, 2024.

Sd/-	Sd/-
[Duvvuru RL Reddy]	**[Sanjay Awasthi]**
Vice-President	**Accountant Member**

Dated: 27.11.2024.
RS

Copy of the order forwarded to:
1. ACIT, Circle-1, Patna
2. Tulshyan Metals Pvt. Ltd
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches