

**IN THE INCOME TAX APPELLATE TRIBUNAL "DB" BENCH: PATNA
VIRTUAL HEARING IN KOLKATA**

श्री राजेश कुमार, लेखा सटस्य एवं श्री प्रदीप कुमार चौबे, न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Pradip Kumar Choubey, Judicial Member]

**I.T.A. No. 511/PAT/2024
Assessment Year: 2015-16**

Anil Agarwal (PAN: ABNPA 9780 D)	Vs.	DCIT/ACIT, Circle-1, Muzaffarpur
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	06.03.2025
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	26.03.2025
For the assessee / निर्धारिता की ओर से	Shri Deep Agarwal, Advocate Shri Shubhankar Ghosh, Advocate
For the revenue / राजस्व की ओर से	Sh. Ashwani Kr. Singhal, JCIT

ORDER / आदेश

Per Pradip Kumar Choubey, JM:

This is the appeal preferred by the assessee against order of Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the Ld. PCIT] dated 10.07.2024 for AY 2015-16.

2. Brief facts of the case of the assessee is that the assessee is a businessmen filed its return of income for AY 2015-16 on 06.09.2015 declaring total income Nil by

claiming deduction u/s VI(A). The return was processed and regular assessment in this case had already been completed on returned income on 13.12.2016. Later on, on the basis of information received from DDIT(Inv), Wing-Mumbai, proceedings u/s 147(1) initiated. A notice u/s 148 of the Act dated 31.03.2021 was also issued. The AO assessed the total income at Rs. 1,34,75,475/-.

3. Aggrieved by the said assessment order, the assessee preferred an appeal before the Ld. CIT(A) wherein the appeal of the assessee has been dismissed.

Being aggrieved and dissatisfied the assessee preferred an appeal before us.

4. The Ld. A.R challenges the very impugned order thereby submitting that the notice issued u/s 148 was actually issued on 01.04.2021 instead of 31.03.2021, which is invalid in law. In support of his submission he filed the screenshot of income tax portal. The Ld. A.R has also cited a decision of Co-ordinate Bench of Kolkata passed in the case of Md. Hakimuddin vs. ITO passed in ITA Nos. 1159 & 1160/Kol/2023 for AY 2014-15 and 2015-16 dated 24.06.2024.

5. Contrary to that the Ld. D.R supports the impugned order.

6. Upon hearing the submission of the counsel of the respective parties, we have perused the records and find that in the present case the assessee was served with a notice u/s 148 of the Act in which date has been depicted as **31.03.2021**, however, screen shot of the income tax portal reveals that it was issued on **1.4.2021**. In support of contention the said notice issued beyond statutory time limit, the AR has filed screen shot of the ITBA portal which is as follows:



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME TAX
DC/AC CIRCLE 1, MUZF.

To, ANIL AGRAWAL 0 AGRAWAL DISTRIBUTORS , JAWAHAR LAL ROAD MUZAFFARPUR 842001 , Bihar India			
PAN: ABNPA9780D	AY: 2015-16	Dated: 31/03/2021	DIN & Notice No : ITBA/AST/S/148/2020-21/1032048649(1)

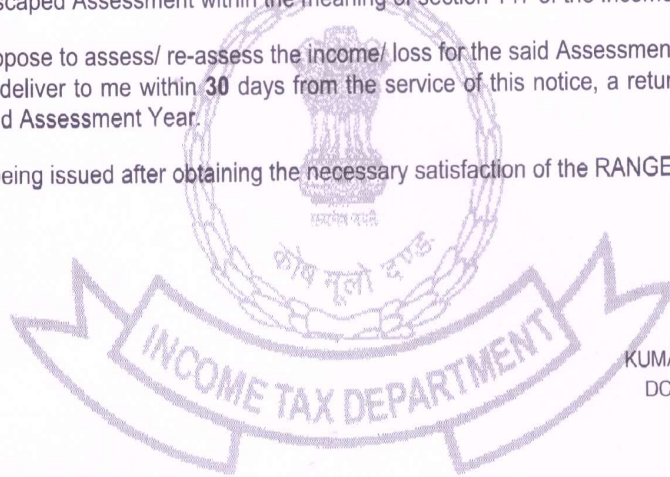
Notice Under Section 148 Of The Income Tax Act, 1961

Sir/ Madam/ M/s,

Whereas I have reasons to believe that your Income chargeable to Tax for the Assessment Year **2015-16** has escaped Assessment within the meaning of section 147 of the Income Tax Act, 1961.

I, therefore, propose to assess/ re-assess the income/ loss for the said Assessment Year and I hereby require you to deliver to me within **30** days from the service of this notice, a return in the prescribed form for the said Assessment Year.

This notice is being issued after obtaining the necessary satisfaction of the RANGE 1, MUZAFFARPUR



KUMAR RAKESH RANJAN
DC/AC CIRCLE 1, MUZF.

(In case the document is digitally signed please refer Digital Signature at the bottom of the page)

Notice/ Communication Reference ID : 100041183255		
Notice u/s	ITBA/AST/F/17/2021-22/1037690868(1) Document reference ID	Description : [ITBA]Issue Letter Issued On : 10-Dec-2021
		Submit Response Notice/Letter Pdf
Notice/ Communication Reference ID : 100039836927		
143(2) Notice u/s	ITBA/AST/F/143(2)_4/2 021-22/1036687813(1) Document reference ID	Description : [ITBA]Notice u/s 143(2)of Income Tax Act 1961. Issued On : 01-Nov-2021 Response Due Date : 16-Nov-2021
		Submit Response Notice/Letter Pdf
Notice/ Communication Reference ID : 100035911086		
Notice u/s	ITBA/AST/S/91/2021-22/1033584966(1) Document reference ID	Description : [ITBA]Intimation Letter Issued On : 21-Jun-2021 Served On : 21-Jun-2021
		Submit Response Notice/Letter Pdf
Notice/ Communication Reference ID : 100035910951		
143(2) Notice u/s	ITBA/AST/M/143(2)_4/2 021-22/1033584850(1) Document reference ID	Description : [ITBA]Notice u/s 143(2)of Income Tax Act 1961. Issued On : 21-Jun-2021 Served On : 21-Jun-2021
		Submit Response Notice/Letter Pdf
Notice/ Communication Reference ID : 100035916367		
143(2) Notice u/s	ITBA/AST/F/143(2)_4/2 021-22/1033588671(1) Document reference ID	Description : [ITBA]Notice u/s 143(2)of Income Tax Act 1961. Issued On : 21-Jun-2021 Served On : 21-Jun-2021 Response Due Date : 06-Jul-2021
		Submit Response Notice/Letter Pdf
Notice/ Communication Reference ID : 100033570571		
148 Notice u/s	ITBA/AST/S/148/2020-21/1032048649(1) Document reference ID	Description : [ITBA]Notice under section 148 of the Income Tax Act, 1961 Issued On : 01-Apr-2021
		View Response Notice/Letter Pdf
Back		

Certified to be True Copy
Deep Agarwal

7. It is evident from the documents filed before us that the said notice u/s 148 of the Act was actually issued on 1.4.2021 and not on 31.03.2021. We have also gone through the cited judgment of Co-ordinate Bench of Kolkata passed in the case of Md. Hakimuddin (supra), the Co-ordinate bench has discussed this issue after following the judgment of Co-ordinate Bench of Kolkata passed in the case of M/s Osian Stock Broking Pvt. Ltd. vs. ITO in ITA no. 375/Kol/2022 dated 12.05.2023. The operative part is reproduced herein below:

“2.4. We have carefully considered the rival contentions and also examined the documents placed before us, specially the screenshots from the ITBA Portal. It is seen that this case is squarely covered in favour of the assessee through the case of M/s. Osian Stock Broking Pvt. Ltd. (supra). The relevant portions from the said order are extracted as under:

“4. We have heard the rival contentions and gone through the records. The notice in this case has been shown to be signed on 30.09.2015, however, the same was emailed to the assessee on 03.11.2015. The Hon'ble Jurisdictional Calcutta High Court in the case of Marudhar Vintrade Pvt. Ltd. vs. Union of India & Ors.' (supra) considering the facts that the notice u/s 148 of the Act was signed on March 31 2021, however, it was actually uploaded for communication on April 1 2021 at 3 a.m. thereby treating the 1st April 2021 as issuance of impugned notice u/s 148 of the Act, quashed the reassessment proceedings holding that the provisions of Finance Act 2021 would be applicable from 01.04.2021 and therefore, before issuance any notice u/s 148 of the Act, the Assessing Officer was required to observe the statutory formalities u/s 148A of the Act. In the case in hand also, the notice was set in motion only on 03.11.2015, in our humble view, signing of the notice would not constitute as issuance of notice. The date of issuance of notice would be when it is set in motion for delivery to the assessee. So far as the contention of the ld. counsel that the issue of notice u/s 143(2) of the Act within the prescribed period in relation to the reassessment proceedings u/s 147/148 was not mandatory, we find that the issue has been settled by the various High Courts holding that even in the case of reassessment proceedings u/s 147/148 of the Act, the issuance of notice within the specified period u/s 143(2) of the Act is mandatory and that the Assessing Officer cannot assume jurisdiction u/s 143(3) of the Act without issuance of notice u/s 143(2) of the Act and this defect cannot be cured by taking recourse to the deeming fiction provided u/s 292BB of the Act. Reliance in this respect can be placed on the decision of the Delhi High Court in the case of PCIT vs. Shree Jai Shiv Shankar Traders Pvt. Ltd. IT Appeal No.1068 of 2013 dated 18.02.2015; Hon'ble Madras High Court in the case of Saphagiri Finance & Investment vs. ITO reported in (2013) 90 DTR (Mad) 289; Hon'ble Delhi High Court in the case of DIT vs. Society for Worldwide Interbank Financial Telecommunications reported in (2010) 323 ITR 249 (Del); Hon'ble Allahabad High Court in the case of CIT vs. Solarpur Cold Storage P Ltd (2014) 50 Taxmann.com 105 (All); Hon'ble Allahabad High Court in the case of CIT vs. Rajeev Sharma reported in [2011] 336 ITR 678 (All.). Since the Assessing Officer did not issue notice u/s 143(2) of the Act within the specified time period, therefore, the Assessing Officer could not have assumed jurisdiction to frame the assessment u/s 143(3) of the Act and, therefore, the impugned assessment order is bad in law and the same is accordingly held to be non-est.”

8. In the light of discussion above the assessee succeeds on the ground that assumption of jurisdiction itself was faulty and subsequent findings also become void ab-initio.

In the result, the appeal filed by the assessee is allowed on this issue.

Order is pronounced in the open court on 26th March, 2025

Sd/-

Sd/-

(Rajesh Kumar/राजेश कुमार)

(Pradip Kumar Choubey /प्रदीप कुमार चौबे)

Accountant Member/लेखा सदस्य

Judicial Member/न्यायिक सदस्य

Dated: 26th March, 2025

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Anil Agarwal, Jawaharlal Road, Muzaffarpur, Bihar-842001.
2. Respondent – DCIT/ACIT, Circle-1, Muzaffarpur
3. Ld. CIT(A)-NFAC, Delhi
4. Ld. Pr. CIT- , Patna
5. DR, Patna Bench, Patna

True Copy

By Order

Sr.Ps/Assistant Registrar
ITAT, Patna Bench, Patna