

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'SMC' BENCH MUMBAI  
BEFORE: SHRI PAWAN SINGH, JUDICIAL MEMBER**

ITA No. 6862/MUM/2024(A.Y: 2018-19)

(Physical hearing)

Gianchand Asodomal Rohera, B11, Flat No. 1001, Brahma Majestic, Nibm Road, Kondhwa Khurd, 411037.	Vs.	Ward 2(1), Mohan Plaza,Wayale Nagar, Khadak Pada, Kalyan (W)-421301.
<b>PAN: AHAPR5379Q</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri. K. Gopal, Advocate
Revenue by	Shri. Mahesh Dattatraya Londhe, Sr. DR
Date of Hearing	03/07/2025
Date of Pronouncement	04/07/2025

**Order under section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by the assessee is directed against the order of Learned Commissioner of Income Tax (Ld. CIT(A)) dated 06.12.2024 for A.Y. 2018-19.

The assessee has raised the following grounds of appeal:

" 1) The Commissioner of Income tax (Appeals) NFAC (hereinafter referred to as CIT(A)) erred in confirming the assessment and by ignoring the fact that the notice u/s. 148 of the Income tax Act. 1961 (hereinafter referred to as "the Act"), dated 31/03/2022 (Digitally signed on 01/04/2022) for A.Y 2018-19, was issued and served on the appellant on 01/04/2022, beyond the prescribed period of limitation.

2) The CIT (A) erred in upholding the assessment by ignoring the fact that the jurisdictional assessing officer (hereinafter referred to as JAO) failed to obtain approval from a proper specified authority u/s. 151 of the Act as the notice u/s. 148 was issued after lapse of three years and hence PCCIT and not the PCIT, Thane-1 has the jurisdiction to grant approval.

3) The CIT (A) erred in upholding the additions and assessment by ignoring the fact that the JAO has initiated the proceedings u/s.148A in contravention of section 151A; as the proceedings u/s.148 shall be conducted by NFAC as per the scheme

*formulated by CBDT issued vide notification No.18/2022/F No.370142/16/2022, TPL dated 29/03/2022, which has been approved by both houses of the parliament*

*4) The CIT (A) erred in confirming the additions of Rs. 12,00,000/- u/s. 69C r.w.s 115BBE on the basis of conjectures without appreciating the evidence and explanation provided by the appellant and assigning any reasons thereof.*

*5) The learned CIT(A) erred in confirming the additions of Rs. 12,00,000/- made by the assessing officer u/s. 69C without providing statements recorded behind the back of the appellant and affording opportunity for cross examination of witnesses.*

*6) The CIT (A) erred in confirming the additions and upholding the assessment by ignoring the fact that the assessment order framed by assessing officer was a non-speaking order and show-cause notice is bad in law as fresh facts related to Miss. Namarata Vivek Gavhane and Shri Anil Gavhane were brought on record at the time of show-cause notice stage, which were withheld during the course of 148A and reassessment proceedings.*

*7) The CIT (A) erred in upholding the assessment framed u/s. 144 by ignoring the fact that Ld. A.O. has not satisfied any of the condition laid down under the provisions of Section. 144 of the Act.*

*8) The CIT (A) erred in upholding the assessment despite the proceedings u/s. 148 being invalid as no objections raised by the appellant u/s. 148A (c) were disposed of as required by law.*

*9) The appellant craves leave to add, amend, modify, and alter all or any grounds of appeal at the time of hearing."*

2. Rival submissions of both the parties have been heard and record perused. The learned authorised representative (Ld. AR) of the assessee submits that the case of the assessee for A.Y. 2018-19 was reopened under section 147. The case was reopened beyond three years from the end of relevant assessment year. The notice under section 148 which bears this date of 31.03.2022 was in fact issued on 01.04.2022 at 3.35 PM. Such dated is clearly discernable from digital signature at the bottom of notice. The notice under section 148 is issued beyond the period of limitation, such notice is invalid and subsequent action initiated in pursuance of such notice is *void ab initio*. The assessee has raised specific

ground of appeal challenging the action of AO in issuing notice under section 148 beyond the time period. Such ground of appeal is purely legal in nature and can be raised at any stage of proceeding as it goes to root of the case. The Ld. AR of the assessee submit that once the legal issue is allowed in favor of assessee, the other grounds of appeal raised on merits will become academic. To support his submission the Ld. AR of the assessee relied upon Delhi Tribunal in DCIT V. SBC Minerals Pvt. Ltd. in ITA No. 3411/Delhi/2024, dated 21.02.2025.

3. On the other hand, the learned senior departmental representative (Ld. DR) submits that no such specific ground of appeal was raised by assessee before first appellate authority. Thus, the assessee is precluded from raising such plea before Tribunal.
4. In short rejoinder submission, the Ld. AR of the assessee submit that grounds of appeal raised by the assessee is purely legal in nature and does not require any investigation of new facts, the notice under section 148 itself bear date and time of issuance of such notice.
5. I have considered the submission of both the parties and have gone through the orders of lower authorities carefully. Admittedly, the case of assessee was reopened under section 147. Notice under section 148A(b) was issued to the assessee on 07.03.2022 to filed response on ITBA portal on or before 14.03.2022. The assessee filed his reply on 16.03.2022. The AO passed order under section 148A(d) of 31.03.2022 as 11.22 PM (as per digital signature). However, notice under section 148 was issued only on 01.04.2022, though

date is mentioned as of 31.03.2022. For appreciation of fact, notice under section 148 is scanned below:

 GOVERNMENT OF INDIA MINISTRY OF FINANCE INCOME TAX DEPARTMENT OFFICE OF THE INCOME TAX OFFICER WARD 2(1), KALYAN/			
To: GIANCHAND ASUDOMAL ROHIRA B11, Flat No. 1001 Brahma Majestic , Nibm Road Kondhwa Khurd Pune 411037 , Maharashtra India			
PAN: AHAPR5379Q	A.Y: 2018-19	Dated: 31/03/2022	DIN & Notice No: ITBA/AST/S/148_1/2021- 22/1042400251(1)
<b>Notice under section 148 of the Income-tax Act,1961</b>			
Sir/Madam/ M/s.			
<ul style="list-style-type: none"><li>I have the following information in your case or in the case of the person in respect of which you are assessable under the Income tax Act, 1961(here in after referred to as "the Act") for Assessment Year 2018-19<ul style="list-style-type: none"><li>information flagged by the risk management strategy formulated in this regard suggesting that income chargeable to tax has escaped assessment within the meaning of section 147 of the Act. Order under sub-section (d) of section 148A of the Act has been passed in such case vide DIN ITBA/AST/F/148A/2021-22/1042385458(1) dated 31/03/2022 and annexed herewith for reference,</li></ul></li><li>I, therefore, propose to assess or reassess such income or recompute the loss or the depreciation allowance or any other, allowance or deduction for the Assessment Year 2018-19 and I, hereby, require you to furnish, within 30 days from service of this notice, a return in the prescribed form of the Assessment Year 2018-19.</li><li>This notice is being issued after obtaining the prior approval of the PCIT, Thane-1 accorded on date 31/03/2022 vide Reference No. 100000028882694.</li></ul>			
MANOJ MADHUKAR PENDSE WARD 2(1), KALYAN/			
(In case the document is digitally signed please refer Digital Signature at the bottom of the page)			
<b>TRUE-COPY</b>			
<small>Note: If digitally signed, the date of digital signature may be taken as date of document. ,Mohan Plaza, Wayale Nagar, Khadak Pada, Kalyan (W), KALYAN, Maharashtra, 421301 Email: KALYAN.ITO2.1@INCOMETAX.GOV.IN</small>			
<small>Note:- The website address of the e-filing portal has been changed from <a href="http://www.incometaxindiaefiling.gov.in">www.incometaxindiaefiling.gov.in</a> to <a href="http://www.incometax.gov.in">www.incometax.gov.in</a>.</small>		<small>This document is digitally signed</small>	
<small>* DIN-Document identification No.</small>		<small>Signer: MANOJ MADHUKAR PENDSE Date: Friday, April 1, 2022 3:37 PM Location: PUNE, India</small>	

6. On perusal of aforesaid notice, I find the time period of digital signature is clearly discernable as on 01.04.2022 at 2.37 PM. Thus, the notice is apparently time barred. Considering the fact that notice issued under section 148 is beyond the time limit. Therefore, subsequent action initiated thereon is *void-ab-initio*. Thus,, the assessee succeeded on primary submission of Ld. AR of the assessee. In the result, ground no. 1 of the appeal is allowed. Further considering the fact

that assessee succeeded on ground no. 1, therefore specific adjudication of other grounds of appeal has become allowed.

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

Order pronounced in open court on 04.07.2025.

**Sd/-  
(PAWAN SINGH)  
JUDICIAL MEMBER**

Mumbai; Dated 04/07/2025  
Anandi Nambi, *Steno*

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**