आयकर अपीलीय अधिकरण न्यायपीठ "एक-सदस्य" मामला रायपुर में

IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH "SMC", RAIPUR

श्री पार्थ सारथी चौधरी, न्यायिक सदस्य के समक्ष
BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं./ITA No.385/RPR/2025
निर्धारण वर्ष /Assessment Year : 2018-19

Wadhawa Mission
House No.141, Anand Nagar,
Telibandha, Raipur-492 007 (C.G.)
PAN: AAAAW5873C

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-1(1), Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sakshi Gopal Agrawal, CA
Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 21.07.2025
घोषणा की तारीख / Date of Pronouncement : 22.07.2025

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM

The captioned appeal preferred by the assessee emanates from the order of the Ld.CIT(Appeals)/NFAC, Delhi dated 18.03.2025 for the assessment year 2018-19 as per the grounds of appeal on record.

2. Brief facts in this case are that the assessee is an AOP in the nature of charitable institution engaged in running school under the name of Wadhwa mission and has not filed its return of income. The case of the assessee was reopened u/s.148 of the Income Tax Act, 1961, dated 30.03.2022. During the course of reassessment proceedings, the reply to show cause notice was not considered and an ex-parte order was passed u/s. 147 r.w.s. 144 of the Act after making following additions:

Sr. No.	Particulars	Amount
1.	Addition on account of estimating business income i.e. 20% of the of the total credit entries in its bank account of Rs.57,19,915/-.	Rs.11,43,983/-
2.	Addition on account of bank interest	Rs.6,306/-

3. As per the assessment order, the assessee had failed to furnish relevant documents/evidence as per query letter of the department. The same were furnished at the appellate stage. Therefore, the Ld.

CIT(Appeals)/NFAC in the interest of natural justice had remanded all the evidences furnished for the first time before him to the file of the A.O for necessary enquiry and verification. For the sake of completeness, the relevant findings of the Ld. CIT(Appeals)/NFAC are culled out as follows:

> "5. Observation and Decision:
>
> As per Information available with the department that during the F.Y. 2017-18, ,33,655/- had been deposited by the assessee(AOP) in its bank account maintained with Canara Bank and also credited interest of Rs.6.306/- and no return of income had been filed by the assessee relevant to the assessment year 2018-19. The AO had issued a notice u/s.148 of the Act on 30.03.2022. In response, the assessee had filed return u/s.148 on 11.06,2022 but did not verify the same; hence, the AO had treated as Invalid during the assessment proceedings. It is observed that several notices were issued by the AO but no response had been received/uploaded from the assessee. Further the AO had issued a show cause notice of the Act, 1961 on 07.02.2023. In response the assessee had finally replied. The AO had stated about the assessee's reply vide order u/s. 147 r.w.s. 144 read with section 1448 of the Act is as under:
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> "During the assessment proceedings, only compliance to show cause notice dated 07.02.2023 has been made by the assessee during the entire assessment proceedings. The assessee filed return u/s.148 on 11.06.2022 but did not verify the same (hence same is treated as Invalid). Other than that, the assessee only stated that the cash deposit is from fees collected from students and submitted the copy of bank account statement but did not submit any documentary evidence or supporting proofs."
>
> In the appellate stage, the appellant stated in its submission that the society has obtained the PAN in the status of AOP for the AY 2018-19 which has not filled return of income as the income was exempted U/s Section 10(23C)(iiiad) of the Act and has maintained the proper books of accounts and the same are audited which copy of the audit report was uploaded during the appellate proceedings. It is stated that the appellant society has received the notice U/s.148 of the Act on 30/03/2022 issued by ITO, ward-1(1) in response to

said notice the appellant society has submitted E-return on 11/06/2022 which could not be E-verified due to technical glitch which copy of Computation of income has uploaded during the appellate, 'Proceedings. It is also stated that the appellant society's bank statement with Canara bank reveals that, fees received from student has been deposited in the form of cash and then utilized for various purposes for providing education to the students. The appellant society has incurred several expenditures during the year against which payment are 'being made from the bank account of Canara bank which was available before the assessing officer during the course of assessment proceedings. Even otherwise the entire surplus/profit from the education should be exempted U/s Section 10(23C)(iiiad) which is reproduced there under:

"During the course of proceeding u/s 148A the appellant has submitted all the required documents to establish that the credit entry appearing in bank statement pertains to educational activities i.e. deposit of fees collects from the students we are enclosing herewith all the documents which were produced before AO during the course of proceeding before.

As regard to addition of interest of Ps 6,306/- received from Canara bank during the year, we hereby inform you that the same interest is already been credited in audited profit and loss account and therefore the impugned addition is also liable to be deleted"

During the course of appellate proceedings, the appellant society has uploaded its submission along with computation sheet of its income, audit report and document of RC-byelaws.

In view of the above, in the interest Of natural justice, I consider that it would be appropriate to set aside the order of the Assessing Officer (AO) passed u/s 144 r.w.s 147 read with section 144B of the I.T.Act.1961 on 28/02/2023 in view of the new amendment (provision) inserted by the Finance (No.2) Act. 2024 w.e.f. 01.10.2024, with the direction that the Ld. AO will frame the assessment afresh after verifying the various documents/information before it and after allowing the appellant a reasonable opportunity to explain its case. The appellant is also directed to furnish the requisite details as required by the A.O. The A.O. is directed to collect the necessary information wherever needed. The appeal of the appellant is treated as allowed for statistical purpose."

4. At the time of hearing, the Ld. Counsel has assailed legal ground regarding validity of notice issued u/s.148A(b) of the Act wherein clear 7 days' time for compliance has not been provided to the assessee. Referring to Pages 25 & 26 of paper book, the Ld. Counsel demonstrated that notice u/s.148A(b) of the Act was issued on 20.03.2022 and compliance was sought for on 26.03.2022 which is less than 7 days excluding the date of issuance and the date when such compliance is sought for. The Ld. Counsel further submitted that as held by Hon'ble High Courts that in notice u/s.148A(b) of the Act is concerned, excluding the date of issuance of notice and date of compliance sought for mandatorily a clear cut 7 days was required.

5. Reverting to the facts of the present case of the assessee, date of issuance of notice u/s.148A(b) of the Act is 20.03.2022 and compliance from assessee sought for is 26.03.2022, therefore, a clear cut 7 days time excluding the date of issuance of notice and date of compliance sought for is absent. That the **Hon'ble Jurisdictional High Court of Chhattisgarh** in the case of **MM Wonder Park Private Limited vs. Union of India & Others, passed in Writ Petition (T) No.172/2022, dated 17.06.2022**, had observed, that the A.O had issued a show cause notice u/s.148A(b) of the Act giving just 7 days' time to the assessee/petitioner to file its reply. The Hon'ble High Court, observed that the time period of 7 days provided to the assessee vide notice u/s.148A(b) of the Act was unreasonably short,

and thus, violative of principles of natural justice. Accordingly, the Hon'ble High Court in the aforementioned case had quashed both the order passed by the A.O. u/s.148A(b) of the Act, dated 04.04.2022 and the notice u/s.148 of the Act, dated 05.04.2022, and set aside the matter to the file of the A.O. with a direction to decide the matter afresh in accordance with law after affording an opportunity of being heard to the assessee/petitioner. For the sake of clarity, the observations of Hon'ble High Court are culled out as under:

> "5. I have heard Learned Counsel appearing for the parties and perused the above referred to documents/Annexures and other material available with due care.
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> 6. From perusal of the documents/Annexures, it appears that the order dated 4.4.2022 (Annexure P2) passed under Section 148A(d) of the Act has been passed with regard to a transaction which occurred in the financial year 2014-15 after serving a notice dated 25.3.2022 (Annexure P1) and giving a mere 7 days' time to the Petitioner/assessee to furnish a reply to the said notice. The time granted to the Petitioner/assessee to submit reply to the said notice appears to be unreasonable short and the Petitioner/assessee cannot be blamed for not being able to file the reply within such a short period. Thus, it appears that there is a violation of principle of natural justice. Therefore, the prayer made on behalf of the Petitioner/assessee appears to be reasonable. Thus, the order dated 4.4.2022 (Annexure P2) passed under Section 148A(d) of the Act and the notice dated 5.4.2022 (Annexure P3) issued under Section 148 of the Act are quashed and the Respondents are directed to afford proper opportunity of hearing to the Petitioner/assessee and thereafter decide the matter afresh in accordance with law.
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> 7. Accordingly, the instant writ petition is allowed".

6. Further, the **Hon'ble High Court of Jharkhand at Ranchi** in the case of **Ranchi District Bar Association Vs. Pr. Commissioner of Income Tax, W.P (T) No.4606 of 2023, dated 27.02.2025** on the same issue has held and observed as follows:

> "2. A Division Bench of this Court in W.P.(T) No. 2640 of 2023 vide order dt. 28.08.2023 considered the provisions of the Income Tax Act and held as under:
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> "7. To decide the lis involved in the instant application it is necessary to peruse the provisions of the Act which governs the issue in hand, which is quoted herein below:-
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> Section 148A(b) of the I.T. Act.
>
> "148A (b) provide an opportunity of being heard to the assessee, by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days and but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a);
>
> "From bare perusal of Section 148A(b) it appears that minimum 7 days is required to be given to the Assessee for filing reply. This 7 day is to be calculated by ignoring the date of issue and the last date of submission. In other words, minimum 7 clear days has to be provided to the Assessee for filing reply.
>
> In this regard reference may be made to the case of Pioneer Motors (Private) Ltd. Vs. Municipal Council, Nagercoil reported in AIR 1967 SC 684 wherein at paragraph 8 and 9 the Hon'ble Apex Court has deliberated the issue with regard to counting of dates.
>
> "8. The words "not being less than one month" do imply that clear one month's notice was necessary to be given, that is, both the first day and the last day of the month had to be excluded. ……. "

When…… 'not less than' so many days are to intervene, both the terminal days are excluded from the computation".
……
9. ……. In every case the words have to be construed in the context taking into consideration the language used and the object to be achieved. As we have said above, the use of the words "not being less than one month" implies the giving of a clear month excluding both the first and the last day of the month
…….
Emphasis supplied.

8. Thus, we see that the law is no more res-integra; inasmuch as, the words 'not be less than 7 days' implies that clear seven days is obligatory to be given to the Assessee. Thus, on the one hand the notice which was given to the petitioner under Section 148A(b) was not in accordance with the provision of the Act, inasmuch as, only 6 clear days was given to him. So, on this score alone the notice under Section 148A(b) deserves to be quashed and set aside."

3. Counsel for the respondents does not dispute the said proposition of law laid down in that case.

4. Therefore, the writ petition is allowed. The impugned ex-parte assessment order as well as the penalty orders passed by the respondents are set aside. The petitioner is granted four weeks' time to reply to the show cause notice dt. 23.03.2022 and the respondents are directed to pass a fresh assessment order in accordance with law within three months from the date of filing of the reply by the petitioner to the show cause notice after complying with the principles of natural justice."

7. Further, I find that **ITAT, Ranchi "SMC" Bench** in the case of **Imran Ahmed Vs. ITO, Giridih, ITA No.357/RAN/2024, dated 18.12.2024** after relying on the judgment of the **Hon'ble High Court of Jharkhand at Ranchi** in the case of **Satish Kumar Vs. Pr. CIT, W.P (T) No.2640 of 2023** on the similar issue had held and observed as follows:

"5. The entire periphery and ambit of the legal ground is confined to the interpretation of expression "being not less then 7 days...." That as demonstrated by the assessee the notice dated 12th March, 2022 u/s.148A of the Act states that the assessee shall submit the response with supporting documents on or before 18th March, 2022. Therefore. as per Section 148A(b) of the Act, excluding these two dates i.e. date of issuance of the notice and the date on when response is sought from the assessee, a clear 7 days time should have been provided to the assessee as has been held by the Hon'ble Jurisdictional High Court in the case of Satish Kumar Vs. Pr.CIT, passed in W.P.(T) No.2640 of 2023, dated 06/28.08.2023. The relevant part of the judgment is extracted as follows :-

"7. To decide the lis involved in the instant application it is necessary to peruse the provisions of the Act which governs the issue in hand, which is quoted herein below:-

Section 148A(b) of the I.T. Act.

"148A (b) provide an opportunity of being heard to the assessee, by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days and but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a);

"From bare perusal of Section 148A(b) it appears that minimum 7 days is required to be given to the Assessee for filing reply. This 7 day is to be calculated by ignoring the date of issue and the last date of submission. In other words, minimum 7 clear days has to be provided to the Assessee for filing reply.

In this regard reference may be made to the case of Pioneer Motors (Private) Ltd. Vs. Municipal Council, Nagercoil reported in AIR 1967 SC 684 wherein at paragraph 8 and 9 the Hon'ble Apex Court has deliberated the issue with regard to counting of dates.

"8. The words "not being less than one month" do imply that clear one month's notice was necessary to be given, that is,

both the first day and the last day of the month had to be excluded. ……. “

When…… ‘not less than’ so many days are to intervene, both the terminal days are excluded from the computation”.

…….

9. ……. In every case the words have to be construed in the context taking into consideration the language used and the object to be achieved. As we have said above, the use of the words “not being less than one month” implies the giving of a clear month excluding both the first and the last day of the month …….

Emphasis supplied.

8. Thus, we see that the law is no more res-integra; inasmuch as, the words ‘not be less than 7 days’ implies that clear seven days is obligatory to be given to the Assessee. Thus, on the one hand the notice which was given to the petitioner under Section 148A(b) was not in accordance with the provision of the Act, inasmuch as, only 6 clear days was given to him. So, on this score alone the notice under Section 148A(b) deserves to be quashed and set aside.”

6. Considering the aforestated judgment as per the notice issued to the assessee u/s.148A of the Act, the assessee gets only five clear days for response i.e excluding the date of issuance of the notice and the date on which the response is sought for. This is, therefore, violative of the mandate as prescribed in the Act and also as per the principle laid down by the Hon'ble High Court (supra) Therefore, on this score alone, the notice u/s.148A(b) of the Act is hereby quashed and set aside and all the subsequent proceedings becomes a nullity and non est in the eyes of law.

7. That, since the Bench has answered this additional legal ground in favour of the assessee raised in this appeal, resultantly, all other grounds raised both on merits as well as the other legal grounds becomes academic in nature.

8. As per the above terms, the appeal of the assessee is allowed.”

8. Respectfully following the aforesaid judicial pronouncements, the notice u/s.148A(b)/148 of the Act, dated 30.03.2022 is held invalid and void ab initio, hence quashed.

9. Since notice itself u/s.148A(b)/148 has been held to be nullity, therefore, such invalid notice cannot set in motion any valid subsequent proceedings and resultantly, all other proceedings becomes non-est in the eyes of law. As the legal issue has been answered in favour of the assessee therefore the grounds on merits becomes academic only.

10. As per the aforesaid terms the grounds of appeal raised by the assessee stands allowed.

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

Order pronounced in open court on 22nd day of July, 2025.

Sd/-
(**PARTHA SARATHI CHAUDHURY**)
न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 22nd July, 2025.
SB, Sr. PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT-1, Raipur (C.G.)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "**एक-सदस्य**" बेंच, **रायपुर** / DR, ITAT, "SMC" Bench, Raipur.

5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, **रायपुर** / ITAT, Raipur