

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH”, KOLKATA

**SHRI GEORGE MATHAN, JUDICIAL MEMBER
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No. 27/KOL/2025
Assessment Year 2018-19**

Niranjan Kumar Sharma,
Adarsh Nagar Bara Behera,
Hooghly - 712246
[PAN: ALWPS4217N]

..... **Appellant**

vs.

ITO, Ward-23(1), Hooghly,
Aayakar Bhawan, Roopma Mahal,
G.T. Road, Khadina More,
PO-Chinsurah, Hooghly-712101

..... **Respondent**

Appearances by:

Assessee represented by : Manoj Kataruka, AR

Department represented by : Aditya Bikram, Sr. DR

Date of concluding the hearing : 15.07.2025

Date of pronouncing the order : 17.07.2025

ORDER

PER SANJAY AWASTHI, ACCOUNTANT MEMBER

1. This appeal arises from the order u/s 250 of the Income Tax Act, 1961 (hereafter “the Act”), dated 27.12.2024, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereafter “the Ld. CIT(A)”].

1.1 In this case, the Ld. AO is seen to have passed an order u/s 147 r.w.s 144 and 144B of the Act. Through this order, the Ld. AO has made an addition of Rs. 18,00,121/- u/s 68 of the Act on account of alleged accommodation entries, concerning unlisted equity shares.

1.2 The assessee carried this matter in appeal before the Ld. CIT(A) where also he could only partially succeed since the Ld. CIT(A) remanded the matter back to the file of Ld. AO with the direction to afford an opportunity

of hearing to the assessee so that the assessee's grievances could be addressed, including the issue related to assumption of jurisdiction since the assessee has alleged that the notice u/s 148 of the Act was not signed by the Ld.AO.

1.3 Aggrieved with this action, the assessee has approached the ITAT with the following grounds:

"1) That on the facts and in the circumstances of the case the action of the CIT(A) to uphold the action of the AO to frame assessment u/s 144 of the Act and to remit the assessment to the file of the AO even when the assessee had filed all the details and complied to all the notices is erroneous, illegal and bad in law

2) That on the facts and in the circumstances of the case the action of the CIT(A) to uphold the notice issued u/s 148 by the AO is illegal and bad in law.

3) That on the facts and in the circumstances of the case the reopening of the case made by the AO u/s 148 and the assessment framed u/s 147 as upheld by the CIT(A) is illegal, arbitrary and excessive

4) That on the facts and in the circumstances of the case the action of the Ld. CIT(A) to uphold the assessment made by the AO even when the notice issued u/s 148 was without signature and without mentioning of DIN is without jurisdiction and the assessment is illegal and bad in law.

5) That on the facts and in the circumstances of the case the action of the Ld. CIT(A) to uphold the addition of Rs. 18,00, 121/- made by the AO as unexplained cash credits u/s 68 of the Act is arbitrary, excessive, illegal and bad in law.

6) That the order of the Ld. CIT(A) confirming the action of the A. O is arbitrary excessive and illegal.

7) That the above grounds of appeal will be argued in details at the time of hearing and the appellant craves leaves to submit additional grounds of appeal if any and or alter, vary, modify or rectify the statement of facts and grounds of appeal at or before the time of hearing.

2. Before us, the Ld. AR pointed out that the notices u/s 148 of the Act (placed at pages 20-21 of paper book filed before us) was not signed by the Ld. AO. However, it is noticed that copy of said notice copy is not accompanied by any affidavit. The Ld. AR also vehemently argued that the said notice was issued by the Jurisdictional Assessing Officer (JAO) and not by the Faceless Assessing Officer. For this purpose, in his support, he relied on the case of Caishen Enterprise LLP Vs. ACIT, Circle 22(1) & Ors.

(Bombay), WP (L) No. 19620 of 2025, order dated 07.07.2025. The Ld. AR read out from portions of this order, which is in favour of the assessee, following the case of Hexaware Technologies Ltd. Vs. ACIT, Circle 15(1)(2) reported in 162 Taxmann.com 225 (Bombay). The Ld. AR argued that once it was established that the notice u/s 148 of the Act had to be issued by Faceless Assessing Officer then the notice being issued by Jurisdictional Assessing Officer was illegal. Regarding the issue of unsigned notice (supra), the Ld. AR stated that they had downloaded the copy of the notice from the Income Tax Portal only and this was also presented before the Ld. CIT(A). Regarding the merit of the case, the Ld. AR stated that the impugned transactions were with a corporate entity which was registered with ROC and was not a shell company, as has been alleged by the Ld. AO.

2.1 The Ld. DR pointed out that the case of Hexaware Technologies Ltd. (supra) was pending before the Hon'ble Apex Court and hence the issue could not be said to be settled in favour of the assessee. Regarding the other issues, the Ld. DR stated that the Ld. CIT(A) had rightly remanded the matter back to the file of Ld. AO for addressing all the grievances of the assessee, after giving an opportunity of being heard. The Ld. DR supported the impugned order.

3. We have carefully considered the rival submissions and have also gone through the records before us. The issue of jurisdiction raised by the Ld. AR, wherein the notice u/s 148 of the Act was issued by the JAO and not Faceless AO, needs to be addressed first. A review of the judicial literature on the subject reveals that this matter is now subjudice before the Hon'ble Supreme Court and the lead case is M/s Hexaware Technologies Ltd. Be that as it may, we are also aware that there is a judgment by the Hon'ble Kolkata High Court in the case of Triton Overseas (P.) Ltd. Vs. Union of India, reported in 156 taxmann.com 318 (Calcutta). In this case, the Hon'ble High Court has rendered the decision as under:

"3. Mr. Dutt, learned advocate appearing for the respondents submits that first of all

the ground taken by the petitioner is hypertechnical since mode of service does not affect the contents and merit of the notice and secondly that the issuance of the aforesaid impugned notice under Section 148 of the Act is justifiable and sustainable in law in view of the office memorandum dated 20th February, 2023 being F No. 370153/7/2023-TPI issued by the CBDT and particularly paragraph 4 of the said office memorandum upon which she relies is quoted as hereunder:

"4. It is also pertinent to note here that under the provisions of the Act both the JAO as well as units under NFAC have concurrent jurisdiction. The Act does not distinguish between JAO or NFAC with respect to jurisdiction over a case. This is further corroborated by the fact that under section 144B of the Act the records in a case are transferred back to the JAO as soon as the assessment proceedings are completed. So, section 144B of the Act lays down the role of NFAC and the units under it for the specific purpose of conduct of assessment proceedings in a specific case in a particular Assessment Year. This cannot be construed to be meaning that the JAO is bereft of the jurisdiction over a particular assessee or with respect to procedures not falling under the ambit of section 144B of the Act. Since, section 144B of the Act does not provide for issuance of notice under section 148 of the Act, there can be no ambiguity in the fact that the JAO still has the jurisdiction to issue notice under section 148 of the Act."

4. Considering the facts and circumstances of the case and submissions of the parties and in view of the aforesaid circular of the Board, I find no merit in the writ petition being WPO 1566 of 2023 and accordingly the same is dismissed."

Thus, considering the decision rendered by the Hon'ble Jurisdictional High Court, we respectfully follow the same and hold that the notice u/s 148 of the Act issued by the JAO was a valid notice. Before parting with this issue, it needs to be mentioned that the Hon'ble Bombay High Court in the case of Hexaware Technologies (supra), the Hon'ble Punjab and Haryana High Court in the case of Jatinder Singh Bangu reported in 165 taxmann.com 115 (P&H), and the High Courts of Telangana and some others have distinguished the Triton Case (supra) in the Assessee's favour. Alternatively, the Hon'ble Delhi High Court in the case of T K S Builders (P) Ltd, reported in 167 taxmann.com 759 (Del) has supported the Revenue. Needless to say, we are not aware of any decision other than the Triton case (supra) from the Hon'ble Jurisdictional High Court and thus the decision rendered therein is what binds us in deciding this issue against this assessee.

3.1 Regarding the issue of allegedly unsigned notice u/s 148 of the Act, we uphold the finding of Ld. CIT(A) in the impugned order in as much as

the Ld. AO needs to deal with this matter as directed in paras 5.2 and 5.3 of the impugned order. However, we may add that the Ld. AO would be mindful of the provisions of section 292BB of the Act in arriving at a conclusion which is within the four corners of law.

3.2 Regarding the merit of the case, it is seen that there are findings on pages 4 and 5 of the Ld. AO's order whereby the impugned transactions have been held to be non-genuine. In this regard, we are persuaded by the arguments of Ld. AR that the Ld. AO has disregarded the documentary evidences presented before him by the assessee in justification of the impugned transactions. The Ld. CIT(A) has gone by the presumption that the Ld. AO's order is an *exparte* order even though the details were filed before the Ld. AO. Considering the totality of facts and circumstances, we deem it fit to remand this matter back to the file of Ld. AO for fresh assessment with respect to the merit of the case. The Ld. AO would be free to conduct any enquiries as deemed fit, including enforcing the presence of Directors of the Companies, to enable the assessee to prove his bonafides. To this extent, we modify the directions given by the Ld. CIT(A) in the impugned order.

4. In result, this appeal is partly allowed for statistical purposes.

Order pronounced on 17.07.2025

Sd/-
(George Mathan)
Judicial Member

Sd/-
(Sanjay Awasthi)
Accountant Member

Dated: 17.07.2025
AK, Sr. P.S.

Copy of the order forwarded to:

1. Niranjan Kumar Sharma
2. ITO, Ward-23(1), Hooghly
3. CIT(A)
4. CIT
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches