

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'F': NEW DELHI**

**BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER  
AND  
SHRI KRINWANT SAHAY, ACCOUNTANT MEMBER**

ITA No.4656/DEL/2019  
(ASSESSMENT YEAR 2008-09)

ITA No.4657/DEL/2019  
(ASSESSMENT YEAR 2008-09)

Income Tax Officer, Ward-66(4), New Delhi.	Vs.	Shri Vijay Shankar Bajpai, 104, RIICO Ind. Area, School of Aeronautics Delhi Jaipur Highway, Neemrana, Rajsthan-301705.  PAN-AEPPB6550D
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Shri Rahul Bardia, CA
Department by	Ms. Harpreet Kaur, Sr. DR
Date of Hearing	19/08/2025
Date of Pronouncement	25/08/2025

**ORDER**

**PER KRINWANT SAHAY, AM:**

Appeal in this case has been filed by the Revenue against the order dated 12.08.2016 passed by the Ld. Commissioner of Income Tax (Appeals)-21, New Delhi [‘the Ld. CIT(A) for short] for Assessment Year 2008-09. Grounds of appeal are as under:

“1. On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) has grossly erred in holding that assessee has not received any notice from the department till the passing of final Assessment order because during the assessment proceedings all notices were served upon the assessee well in time as per the provisions of the IT act on the addresses available on record with the department.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) has grossly erred in ignoring the fact that notice u/s 148 was issued to the assessee well within time on the address given by the assessee himself in his PAN database. Further, there was no intimation from the assessee regarding any change of address till the date of finalization of the assessment order and furthermore in the PAN database, even today the same address exists on which notice u/s 148 was issued.

3. On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) has grossly erred on relying upon the assessee's submission that assessee has separately filed a case in Economic Offence Wing in respect of alleged fraud in his case, despite the fact that the matter has not been finalized by the EOW till date.

4. On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) has grossly erred in holding that the amount of Rs.4,29,50,000/- does not pertain to the assessee despite the fact that the as per AIR database received during the course of assessment proceedings, the entire amount is reflecting in the name, address & PAN of the assessee.

5. On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) has grossly erred in accepting the reconciliation statement furnished by the assessee before him during the appellate proceedings and allowing relief thereon, without verifying the contents of such reconciliation statement by himself or getting it verified by the AO.

6. On the facts and in the circumstances of the case and in law, the Ld. CIT (Appeals) has grossly erred in accepting the reconciliation of investment submitted by the assessee to the Ld. CIT (A) on the ground of a complaint filed by the assessee to the Economic Offence Wing against his investment advisor despite the fact that the complaint before the EOW is still pending for adjudication.

7. The appellant craves, leave to add, alter or amend any of the grounds of appeal before or during the course of hearing of the appeal.”

*“1. On the facts and in the circumstances of the case and in law, the Ed. CIT(Appeals) has grossly erred in allowing the appeal of the assessee and in deleting the penalty u/s 271(1)(c) imposed in the case of the assessee of Rs. 2,18,15,618/-.*

*2. On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) has grossly erred in deleting the penalty u/s 271(1)(c) of Rs.2,18,15,618/- on the basis of erroneous quashing of assessment proceedings u/s 147 r.w.s 144 vide order dated: 19.03.2019 in appeal number 10572/2016-17 despite the fact that an appeal has been authorized u/s 253(2) against the quantum assessment order.*

*3. The appellant craves, leave to add, alter or amend any of the grounds of appeal before or during the course of hearing of the appeal.”*

2. Although, there are seven grounds of appeal taken by the Revenue but the main issue relates to the action of the Ld. CIT(A) in deleting the addition made by the AO for the assessment order on the basis that since proceedings initiated u/s 147 was vitiated as notice was not served upon the appellant, therefore, the Ld. CIT(A) held that the assessment made by the Assessing Officer and additions made therein do not survive as the assessment was held to be invalid.

3. During the proceedings before us, the Ld. Counsel of the assessee submitted that the Ld. CIT(A) in his order has given his finding on this issue as under:

*“6.1.6 ...It is clearly evident that there is force in the submissions of the appellant that the statutory notices issued by the Assessing Officer, including the Notice u/s 148 have remained un-served. Further, the veracity of the addition made by the Assessing Officer also remained doubtful in view of the complaint filed by the appellant against Mr. Kapoor and M/s IL&FS, mentioned supra, which is pending before the O/o EOW. It is further noticed that the correct address of the appellant is 1-04, RIICO Industrial Area, Neemrana NH-2, Neemrana, Rajasthan-301705 where he is residing since Jan. 2015 as affirmed in Affidavit.*

6.1.7 Considering the above factual position of the case, it is pertinent to mention below the judicial pronouncement of the Hon'ble Delhi High Court in the case CIT(Central)-1, Vs. Chetan Gupta in ITA 72 of 2014 dated 15th September, 2015, wherein the question of law was-

"Question of law

2. Admit.

The question of law framed for consideration is:

Whether the ITAT was correct in holding that since notice under Section 148 of the Income Tax Act (the Act) was not served on the Assessee in accordance with law, the re-assessment made consequent thereto was without jurisdiction and liable to be quashed?

While adjudicating the above question of law, the Hon'ble Court has held as under:

47. On the facts of the present case, the Court finds that the ITAT was right in its conclusion that since no proper service of notice had been effected under Section 148 (1) of the Act on the Assessee, the reassessment proceedings were liable to be quashed. Consequently, the question framed is answered in the affirmative, i.e., in favour of the Assessee and against the Revenue.

6.1.8 Further, the detailed facts of the case and observation of the Hon'ble High Court is as under:

"Service of notice a jurisdictional requirement

24. The Court first would like to deal with the question whether notice under Section 148 of the Act is a jurisdictional requirement. The relevant portion of Section 148 (1) reads as under: "148. Issue of notice where income has escaped assessment - (1) Before making the assessment, reassessment or precomputation under Section 147, the Income-tax Officer shall serve on the Assessee a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of Section 139; and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that subsection."

4. Per contra, the Ld. DR has filed a copy of the notice issued u/s 147 dated 30.03.2015 sent by speed post. On this notice the address was the same which was given by the assessee on its PAN data while applying for the PAN but the Ld. Counsel of the assessee said that the

assessee applied the PAN a long back ago while he was in service, but after retirement he was residing on the address 104, RIICO Industrial Area, Neermana NH-2, Neemrana, Rajasthan-301705.

5. We have considered the findings given by the AO and Ld. CIT(A) on this issue, we find that the notice was issued by the AO by speed post on 30.03.2015 but it was not received by the assessee. The Ld. CIT(A) has clearly held discussing various case laws brought on record that if the notice issued u/s 147 is not properly served upon the assessee, the assessment made u/s 148 becomes void ab initio/invalid. In this case, whatever may be the situation, fact is that notices issued by the Assessing Officer u/s 147 were never served upon the assessee, therefore, keeping in view different case laws brought on record by the assessee, we are of the considered view that finding given by the Ld. CIT(A) on this issue is logical and legal one, therefore, we are not inclined to make any interference in it. As a result, the Revenue's appeal on this issue is dismissed.

6. Since, the assessment order is being quashed on this legal/technical issue, we do not find any further reason to give our findings on the merits of the case. Accordingly, Revenue's appeal is dismissed.

ITA No.4657/Del/2019 for Assessment Year 2008-09

7. Appeal in this case has been filed against the order dated 30.03.2019 passed by the Ld. Commissioner of Income Tax (Appeals)-

19, New Delhi [‘the Ld. CIT(A) for short] for Asst. Year 2008-09.

Grounds of appeal are as under:

“1. On the facts and in the circumstances of the case and in law, the Ed. CIT(Appeals) has grossly erred in allowing the appeal of the assessee and in deleting the penalty u/s 271(1)(c) imposed in the case of the assessee of Rs. 2,18,15,618/-.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) has grossly erred in deleting the penalty u/s 271(1)(c) of Rs.2,18,15,618/- on the basis of erroneous quashing of assessment proceedings u/s 147 r.w.s 144 vide order dated: 19.03.2019 in appeal number 10572/2016-17 despite the fact that an appeal has been authorized u/s 253(2) against the quantum assessment order.

3. The appellant craves, leave to add, alter or amend any of the grounds of appeal before or during the course of hearing of the appeal.”

8. The Ld. CIT(A) in his appeal order has given his finding on this issue as under:

“In the present case, quantum appeal was pending before the undersigned impugning the additions made by the Assessing Officer amounting to Rs.4,29,50,000/-u/s 69 of the Act. The above appeal has been adjudicated by the undersigned in appeal No. 10572/2016-17 dated 19.03.2019 wherein the reassessment proceedings u/s 147 initiated by the appellant have been held to be vitiated, void ab initio and bad in law and have been quashed.

6.1.1 Considering the factual matrix of the case, it is evident and can be inferred that in order that the penalty proceedings should survive, the assessment proceedings should be live. Where an order of assessment and reassessment proceedings on the basis of which penalty has been levied, has itself finally been held to be quashed and additions have been deleted, penalty cannot stand by itself and the same is liable to be cancelled. Therefore, in the light of the above facts and discussion, penalty u/s. 271(1)(c) becomes infructuous. As a result, penalty of Rs.2,18,15,618/- is deleted.”

9. Per contra, the Ld. DR relied upon the order of the Ld. AO.

10. We have perused the order of the AO as well as appellate order by the Ld. CIT(A) in this case. We have also heard the arguments made by the Ld. Counsel of the assessee as well as by Ld. DR, we find that the Ld. CIT(A) has given a very clear and categorical finding that the assessment order passed in this case was quashed by him as assessment order made u/s 148 was quashed by him as notice issued by the AO u/s 147 was never served upon the assessee. Since, the assessment order itself was held to be *void ab initio*, therefore, no addition made therein would survive, accordingly, any penalty on the additions made in void ab initio assessment would naturally not survive. We find that the findings given by the Ld. CIT(A) on this issue is very clear, therefore, there is no reason for as to interfere in the findings given by the Ld. CIT(A). Accordingly, Revenue's appeal in this case is dismissed.

11. In the final result, both the appeals filed by the Revenue are dismissed.

Order pronounced in the open Court 25.08.2025.

Sd/-  
**(ANUBHAV SHARMA)**  
**JUDICIAL MEMBER**

Sd/-  
**(KRINWANT SAHAY)**  
**ACCOUNTANT MEMBER**

Dated: 25.08.2025

PK/Ps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)

5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT DEHRADUN