

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

**BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.4831/Del/2024
(ASSESSMENT YEAR 2015-16)

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| Dy. CIT, Delhi. | Vs. | Suncity Infrastructures Pvt. Ltd., LGF-10, Vasant Square Mall, Vasant Kunj, New Delhi-110070. PAN-AAICS7928N |
| (Appellant) | | (Respondent) |

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| Assessee by | Shri Ved Jain, Advocate and Shri Pawan Garg, CA |
| Department by | Shri Mahesh Kumar, CIT-DR |
| Date of Hearing | 01/07/2025 |
| Date of Pronouncement | 26/09/2025 |

ORDER

PER MANISH AGARWAL, AM:

This appeal is filed by the Revenue against the order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 20.08.2024 in Appeal No. NFAC/2014-15/10115325 arising out of the order passed u/s 147 r.w.s.144B dated 29.03.2021 for Assessment Year 2015-16.

2. Brief facts of the case are that the assessee is a company engaged in the business of Real State. The return of income of the year under appeal was filed on 30.09.2015 declaring total income of Rs.2,93,54,930/- and the same was assessee u/s 143(3) of the Act vide order dated 24.11.2017 wherein the income declared was accepted by the AO. Thereafter, based on the information that the assessee has

allotted preference shares to one Shri Tarun Agarwal, at 16546/- per which were not commensurate with the financials of the company, and after obtaining the approval from the competent authority notice was issued u/s 148 dated 31.03.2021 which was served upon the assessee on 01.04.2021. Thereafter, reassessment order was passed u/s 147 r.w.s. 144B of the Act wherein addition of Rs.11,00,00,000/- was made on account of share premium treated as unexplained u/s 68 of the Act r.w.s 115BBE of the Act.

3. Against the said order, assessee filed an appeal before the Ld. CIT(A) wherein assessee has challenged the reassessment order on the ground of validity of reopening as well as on the merits. The Ld. CIT(A) vide impugned order dated 20.08.2024 allowed the appeal of the assessee wherein the legal issue taken by the assessee was dismissed, however, additions were deleted after considering the merits of the case.

4. Against the said order, the Revenue is in appeal before the Tribunal by taking the following grounds of appeal:

“1. Whether in facts and circumstances of the case, Ld. CIT(A) was right in allowing appeal of the assessee.

2. Whether in facts and circumstances of the case Ld. CIT(A) has erred in deleting the addition in this respect of Rs.11,00,00,000/- being un-explained cash credit u/s 68.

3. The appellant craves to add and alter any fresh ground(s) of appeal and or delete or amend any grounds of appeal.”

5. Before us, the Ld. AR of the assessee submits that assessee has not filed the appeal against the order of Ld. CIT(A) as the additions were deleted on merits, however, since, the Revenue is in appeal, therefore, a prayer is made under Rule 27 of the ITAT Rules and it is requested to decide the legal issues challenged before the Ld. CIT(A) which was decided against the assessee. After considering the

submissions of the assessee, we find that legal issues taken by assessee were dismissed and now the same are challenged under Rule 27 of ITAT Rules. Since these grounds are emanated from the order of Ld. CIT(A), they are taken first and decides as below.

6. Before us, Ld. AR of the assessee submits that notice u/s 148 was issued on 31.03.2021 and digitally signed on the same date however, this notice was served upon the assessee through mail on 1st April, 2021. In this regard our attention is invited to the paper book page 49 which is the mail received by the assessee alongwith notice us/ 148 of the Act on 01.04.2021. In the said mail it is clearly appearing that said mail contained notice u/s 148 and the same is sent on 1st April, 2021 at 7.48 A.M., therefore, the notice issued dated 31.03.2021 u/s 148 is served upon the assessee on 1st April, 2021. With effect from 01.04.2021, provisions of section 148A and 148 were amended vide Finance Act, 2021 according to which first notice is to be given u/s 148A(a) and after providing the information u/s 148A(b), assessee could file objections u/s 148A(c) and order u/s 148A(d) has to be passed disposing the objections raised by the assessee and thereafter notice u/s 148 could be issued.

7. The Ld. AR further submits that in terms of the order of Hon'ble Supreme Court in the case of Union of India & Ors. Vs. Ashish Agarwal [2022] 444 ITR 1 (SC), hon'ble Supreme Court held that all the notices issued u/s 148 during the period from 1st April, 2021 to 30th June, 2021 be treated as notices issued u/s 148A(b) of the Act and, thereafter, the AO has to complete the proceedings u/s 148A by passing the order u/s 148A(d) of the Act and, thereafter the notice u/s 148 could be issued. As per ld. AR since in the instant case, notice u/s 148 was received/served upon the assessee on 01.04.2021 therefore, the procedure as provided u/s 148A of

the Act should be followed before the issue of notice u/s 148 which has not been done. Therefore, according to ld. AR, consequent reassessment proceedings based on such invalid notice deserves to be held bad in law and liable to quashed. Reliance is also placed on the judgment of the Hon'ble Supreme Court in the case of Union of India vs. Rajiv Bansal [2024] 469 ITR 46 (SC). Further reliance is placed on the judgment of the Hon'ble jurisdictional high Court in the case of Suman Jeet Agarwal and Ors. vs. ITO & Ors. [2022] 449 ITR 517 (Del.) and in the case of Makemytrip India Private Limited vs. DCIT & Anors. Reported in [2025] 4 TMI 46 (Delhi).

The assessee further filed details written submissions wherein the assessee has relied upon various other judgments also on this issue. The written submission is reproduced as under:

"1. The present appeal filed by the Revenue pertains to AY 2015-16. In the application filed by the assessee under rule 27 of the Appellate Tribunal Rule, 1963, it has raised ground that assessment order passed by the assessing officer following old procedure in the law as applicable prior to the amendment by the Finance Act, 2021, is bad in law and liable to be quashed in view of the judgment of Hon'ble Supreme Court in the case of UNION OF INDIA & ORS. VERSUS RAJEEV BANSAL 2024 (10) TMI 264-SUPREME COURT (LB), Dated-October 3, 2024

2. In this case, it is an admitted fact that assessing officer has originally issued notice under section 148 of the Act, dated 31.03.2021 and the said notice was emailed to assessee only on 01.04.2021 as is admitted by Assessing officer in the order disposing objection raised by assessee, dated 02.03.2022 (PB Page 76-94, relevant Pg. 80).

3. In this regards, it is submitted that as per the judgment of Hon'ble Delhi High Court in the case of SUMAN JEET AGARWAL AND OTHER VERSUS INCOME TAX OFFICER, WARD 61 (1), & ORS, 2022 (9) TMI 1364-DELHI HIGH COURT, Dated September 27, 2022, it was held that notice which has been sent by email after 12:00 am on 31.03.2021, it will be considered to have been issued only on 01.04.2021 and the assessing officer was duty bound to follow the new law as has become applicate from 01 April 2021. The relevant para of Delhi High Court judgement reads as under-

"31. For the reasons and principles that we have to down, we dispose of these Writ Petitions with the following directions:

31.1. Category 'A': The Notices following under the category 'A' which were digitally signed on or after 1st of April, 2021, are held to bear the date on which the said Notices were digitally signed and not 31st March 2021. The said petitions are disposed of with the

direction that the Said Notices are to be considered as show-cause-notices under Section 148A (b) of the Act as per the directions of the apex Court in the Ashish Agarwal (Supra) judgment.

31.2. Category 'B': The Notices falling under category 'B' which were sent through the registered e-mail ID of the respective JAOS, though not digitally signed are held to be valid. The said petitions are disposed of with the direction to the JAOS to verify and determine the date and time of its despatch as recorded in the ITBA portal in accordance with the law laid down in this judgment as the date of issuance. If the date and time of dispatch recorded is on or after 1st of April, 2021, the Notices are to be considered as show-cause-notices under Section 148A (b) as per the directions of the apex Court in the Ashish Agarwal (Supra) judgment

31.3. Category 'C': The petitions challenging Notices falling under category 'C' which were digitally signed on 31st of March 2021, are disposed of with the direction to the JAOS to verify and determine the date and time of dispatch as recorded in the ITBA portal in accordance with the law laid down in this judgment as the date of issuance. If the date and time of dispatch recorded is on or after 1st of April, 2021, the Notices are to be considered as show cause notices under Section 148A (b) as per the directions of the apex Court in the Ashish Agarwal (Supra) Judgment.

31.4. Category D. The petitions challenging Notices falling under category 'D' which were only uploaded in the E-Filing portal of the assesses without any real time alert, are disposed of with the direction to the JAOS to determine the date and time when the assessee viewed the Notices in the E-filing portal, as recorded in the ITBA portal and conclude such date as the date of issuance in accordance with the law laid down in this judgment if such date of issuance is determined to be on or after 1st of April 2021, the Notices will be construed as issued under Section 148A (b) of the Act of 1961 as per the Ashish Agarwal (Supra) judgment.

31.5 Category E The petitions challenging Notices falling under category E which were manually dispatched, are disposed of with the direction to the JAOS to determine in accordance with the law laid down in this judgment, the date and time when the Notices were delivered to the post office for dispatch and consider the same as date of issuance. If the date and time of dispatch recorded is on or after 1st of April, 2021, the Notices are to be construed as show-cause-notices under Section 148A (b) as per the directions of the apex Court in the Ashish Agarwal (Supra) judgment."

4. The above view has been endorsed by the Supreme Court in the case of UNION OF INDIA & ORS. VERSUS RAJEEV BANSAL, 2024 (10) TMI 264 SUPREME COURT (LB), Dated.-October 3, 2024, where Supreme Court has held that notices issued on or after 01.04.2021 irrespective of the fact whether such notices were challenged by way of Writ Petition or not, the new law as has become applicable from 01 April 2021 has to be followed. The relevant para of the Hon'ble Supreme Court Judgement read as under-

“91. Ashish Agarwal (supra) was primarily concerned with the validity of the reassessment notices issued between 1 April 2021 and 30 June 2021 under the old regime. The scope of the directions in Ashish Agarwal (supra) applied PAN INDIA, including all the ninety thousand reassessment notices issued under the old regime during the period 1 April 2021 and 30 June 2021, as is evident from the following observation of this Court:

*"26. There is a broad consensus on the aforesaid aspects amongst the learned ASG appearing on behalf of the Revenue and the learned Senior Advocates/learned counsel appearing on behalf of the respective assesseees. We are also of the opinion that if the aforesaid order is passed, it will strike a balance between the rights of the Revenue as well as the respective assesseees as because of a bona fide belief of the officers of the Revenue in issuing approximately 90,000 such notices, the Revenue may not suffer as ultimately it is the public exchequer which would suffer."
(emphasis supplied)*

92. This Court specifically mentioned that its directions would also apply to three categories: (i) the judgment and order passed by the High Court of Judicature at Allahabad; (ii) all judgments and orders passed by the different High Court on the issue where notices issued under Section 148 of the old regime after 1 April 2021 were set aside; and (iii) writ petitions pending before various High Courts in which notices under Section 148 of the old regime issued after 1 April 2021 are under challenge. 152 The Court mentioned the above three categories to clarify that the general nature of its directions will also give a quietus to the matters that have already been adjudicated or are pending adjudication before judicial forums. The operation of the directions cannot be limited to the above three categories, especially when this Court has specifically held that "the present order shall be applicable PAN INDIA."

5. In the present case, admittedly the assessing officer has not followed the new law and has completed the assessment under old law as is evident from assessment order and the order rejecting the objection raised by assessee. Accordingly, assessment framed by the assessing officer is bad in law and liable to be quashed.

6. In addition to the above, it is further submitted that AY 2015-16 is otherwise barred by limitation in view of the order of the Supreme Court in the case of UNION OF INDIA & ORS. VERSUS RAJEEV BANSAL 2024 (10) TMI 264-SUPREME COURT (LB), Dated. October 3, 2024, where the Supreme Court has taken note of the argument of Ld. ASG and the concession was made to the effect that notices issued on or after 01.04.2021 for AY 2015-16 will not survive even after complying TOLA. The above judgment has been applied by the jurisdictional High Court in the case of MAKEMYTRIP INDIA PRIVATE LIMITED VERSUS DEPUTY COMMISSIONER OF INCOME TAX CIRCLE 16 (1) DELHI & ANR., 2025 (4) TMI 46-DELHI HIGH COURT, Dated: - 24-3-2025, The relevant para of this judgment reads as under-

“8. In a subsequent decision in *Union of India and Others v. Rajeev Bansal: 2024 INSC 754*, the Supreme Court considered the manner of applicability of the provisions of *Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 [TOLA]* During the said proceedings & was conceded on behalf of the Revenue that TOLA was not applicable for reopening the assessments for AY 2015-16. The said concession was recorded in paragraph 19 (1) of the said decision. Paragraphs 19 (e) and 19 (f) of the said decision are relevant and are set out below:

(e) The Finance Act 2021 substituted the old regime for re-assessment with a new regime. The first proviso to Section 149 does not expressly bar the application of TOLA Section 3 of the TOLA applies to the entire Income Tax Act, including Sections 149 and 151 of the new regime. Once the first proviso to Section 149 (1) (b) is read with TOLA, then all the notices issued between 1 April 2021 and 30 June 2021 pertaining to the assessment years 2013-2014, 2014-2015, 2015-2016, 2016-2017, and 2017-2018 will be within the period of limitation as explained in the tabulation below:

| Assessment Year (1) | Within 3 Years | Expiry Limitation read with TOLA for (2) (3) | Within Six Years (4) | Expiry of Limitation read with TOLA for (4)(5) |
|---------------------|----------------|--|----------------------|--|
| 2013-2014 | 31.03.2017 | TOLA not applicable | 31.03.2020 | 30.06.2021 |
| 2014-2015 | 31.03.2018 | TOLA not applicable | 31.03.2021 | 30.06.2021 |
| 2015-2016 | 31.03.2019 | TOLA not applicable | 31.03.2022 | 30.06.2021 |
| 2016-2017 | 31.03.2020 | 30.06.2021 | 31.03.2023 | TOLA not applicable |
| 2017-2018 | 31.03.2021 | 30.06.2021 | 31.03.2024 | TOLA not applicable |

(f) The Revenue concedes that for the assessment year 2015-2016, all notices issued on or after 1 April 2021 will have to be dropped as they will not fall for completion during the period prescribed under the TOLA.

9. Following the aforesaid concession, this court in *Ibibo Group Private Limited v Assistant Commissioner of Income Tax Circle 10-1, & Anr.: W.P.(C) 17639/2022* decided on 13.12.2024 allowed the petition challenging a similar notice for AY 2015-16 which was issued beyond the period of limitation as concededly TOLA was not applicable. Similar orders has also been passed by other courts as well.

10. In *The Income Tax Officer Ward 1(2) Jaipur v R.K. Build Creations Pvt. Ltd: Special Leave Petition (Civil) Diary No. 59625/2024* the Supreme Court dismissed the SLP arising

from a similar decision rendered by the Hon'ble Rajasthan High Court in DB CWP No. 14414/2022 The said order is set out below:

"Delay condoned.

Having regard to the concession made by the petitioner-Department in the case of Union of India vs. Rajeev Bansal, Civil Appeal no.8629 of 2024 on 03.10.2024 (2024 SCC ONLINE 754), this Special Leave Petition would not survive for further consideration

*Hence, the Special Leave Petition is dismissed.
Pending application(s), if any, shall stand disposed of."*

11. In the present case the impugned notice was issued on 27.07.2022, which was admittedly beyond the period of limitation as prescribed under Section 149 (1) of the Act. Since TOLA was not applicable in respect of the said notices under Section 148 of the Act for AY 2015-16 as conceded by the Revenue in the case of Union of India v. Rajeev Bansal: 2024 INSC 754 (supra), the impugned notice is liable to be set aside

7. It is also submitted that the case of the assessee is similar to the judgement of the Hon'ble High Court of Bombay in the matter of Shah Nanji Nagasi Exports Private Limited Versus DCIT/ACIT, Circle 4, Nagpur, Income Tax Officer, Ward No. 5 (1), Nagpur, Assessment Unit, Income Tax Department, New Delhi, The Principal Commissioner of Income Tax-1, Nagpur, The Union of India 2025 (6) TMI 1770 dated 05.05.2025 wherein it was held that

".....

6. We are, therefore, unable to agree with Mr. Mohata, learned counsel for the respondents that the notice dated 31.3.2021, was sent on the same date, which is in the teeth of the screen shot provided by the department which states that the sent time stamp is dated 01.04.2021 at 3:58:33 AM. It is also necessary to note, that it is not the case of the respondents that the same was due to traffic congestion and had it been a case, nothing prevented it from placing on record the exact time at which the concerned officer had put the email in the system so that the presumption under Section 13(1) of the Act could have been attracted

17. The result of the aforesaid discussion is, that the petition will have to be allowed by quashing the notice dated 31.3.2021 under Section 148 of the Income Tax Act, as a result of which, the consequent assessment orders would not survive. The petition is allowed. No costs.

18. Though request is made by the learned counsel for the respondents for staying of the present judgment, however since we find that the notice under Section 148 of the IT Act has not been issued within the time frame as indicated by the provisions of Section 149(1) of the Income Tax Act R/w Section 13(1) of the Information Technology Act, we do not see any reason to do so. The request is declined.

...."

When there is no fresh tangible due material distinct from what was very much available, the re-opening in such circumstance is impermissible and Assessment proceedings cannot be initiated on basis of mere change in opinion

8. Your Honor, in this regard it is pertinent to mention that the assessee has already been scrutinized under section 143(3) of the act wherein the Id. AO has assessed the income of the assessee at the returned income of Rs. 2,93,54,930/-

9. During the course of assessment proceedings u/s 143(3) of the Act, the assessee company was specifically asked to provide the details of shareholders and valuation of share capital raised during the year. All the details of shareholder along with the valuation report was submitted by the assessee in response to the notice issued to the assessee company and thereafter the assessment was completed u/s 143(3) of the Act at the returned income of Rs. 2,93,54,930/- vide order dated 24.11.2017.

10. Thus, the initiation of proceedings u/s 147 constitutes change of opinion which is not permissible under the law and therefore, the reopening of the assessment proceedings is invalid, illegal and without jurisdiction. The issue is covered by the recent judgement of the Hon'ble Jurisdictional High court in the case of Ratnagiri Gas and Power Private Limited vs Assistant Commissioner of Income Tax W.P. (C) No. 221/2023 dated 02.05.2025.

11. Reliance can also be placed on the following judgements:

- In the case of JOHAR HASAN ZOJWALLA v. ACIT, CIRCLE-3, MUMBAI, 2024 (10) TMI 471-ITAT MUMBAI, Dated: 16-9-2024.
- In the case of PRADEEP KUMAR AGRAWAL v. ITO, WARD- DHAMTARI, 2024 (11) TMI 228-ITAT RAIPUR, Dated: 21-10-2024.
- In the case of SH. PARDEEP KAPOOR, v. ITO WARD1 (2), JAMMU, 2024 (6) TMI 565 -ITAT AMRITSAR, Dated: -7-5-2024.
- In the case of ASHOK KUMAR KOLLA v. DCIT, CIRCLE 6 (1) HYDERABAD, 2024 (11) TMI 770 ITAT HYDERABAD, Dated: 14-11-2024.

Thus, in view of the above legal grounds, the present assessment order has to be quashed and the appeal of the Revenue has to be dismissed.

8. On the other hand, the Ld. CIT-DR relied upon the orders of Ld. AO and submits that this issue is discussed by CIT(A) at length while dismissing the grounds taken by assessee. He, therefore, prayed that the order of Ld. CIT(A) on this score deserves to be upheld.

9. Heard both the parties and perused the materials available on record. It is seen from the perusal of the page 49 of the PB which is the copy of the mail alongwith which the notice u/s 148 was served upon the assessee on 1st April, 2021. The relevant extract to the mail is reproduced as under:

Dinesh Gupta

From: DELHLITO24,1@INCOMETAX.GOV.IN

Sent: 01 April 2021 07:28

To: dineshgupta@suncityprojects.com

Subject: (ITBA) Notice under section 148 of the Income Tax Act, 1961

Attachments: AAICS7928N_Notice us 148 1032078041(1) 31032021.pdf

Dear SUNCITY INFRASTRUCTURES PRIVATE LIMITED

Please find attached the Notice u/s 148 for PAN: AAICS7928N and AY:2015-16.

Please quote your PAN in all future correspondences.

Note:

-This communication is computer generated and may not contain signature. This communication may be treated as compliant with the requirements of Income Tax Rules 127 and 127A.

-Signed copy may be sent separately if not already digitally signed.

-Please quote your PAN in all communications.

- Income Tax Department does not seek any taxpayer information like user name, password, details of ATM, credit cards, etc. Taxpayers are advised not to part with such information on the basis of emails.

10. The fact of receipt of notice u/s 148 by the assessee on 01.04.2021 is further accepted by the AO in the order passed u/s 148A(d) disposing the objections raised by the assessee, wherein the AO has made following observations:

“First of all, it is submitted that the assessee has filed its objection on 09.02.2021 whereas notice u/s.142(1) of the Act was issued on 07.12.2021 seeking specific details in connection with its assessment proceedings.

*As far as contention raised by the assessee at point no.8 is concerned, the same is not acceptable in view of the fact **that the notice u/s 148 was generated and duly digital signed by the then AO on the very same day ie. 31.03.2021 at 5:51 PM as clear from the plain reading of the said notice. Due to some technical reasons it was sent and served on 01.04 2021 by the ITBA system.** However, as far as question of discharging the onus to issue of the notice is concerned, the then AO had discharged his onus to issue the notice by generating it on 31.03.2021 at 5:51 PM. The notice is generated by the AO means notice has been issued and sent to the assessee, In other words, it implies that notice has been e-mailed to assessee through ITBA system to the assessee's e-filing account for service. When the AO generates a notice his work is accomplished. Now the role of ITBA system is started and accordingly, the notice is sent to the assessee by the system. Further on plain reading*

*of DIN and Notice No. of the same notice [DIN & Notice No: ITBA/AST/S/148/2020-21/1032078041(1)]. It is apparent that the notice is issued in FY.2020-21. **Therefore, date of notice should be treated as date of issuance of such notice.** In view of the above contention raised by the assessee at point no.3, 5, 6,7,8 and 9 are not acceptable.”*

11. From the perusal of the above, it could be seen that it is an admitted position that notice u/s 148 was served upon the assessee on 1st April, 2021, therefore, the reassessment proceedings must be initiated only after following the amended provisions as provided in amended section 148 and u/s 148A of the Act as inserted by the Finance Act, 2021. The Hon’ble Supreme Court in the case of Union of India vs. Ashish Agarwal (supra) held that all the notices issued between period from 01.04.2021 to 30.06.2021 be treated as notice issued u/s 148A(b) of the Act and directions were given to the AO’s to follow the procedure as prescribed u/s 148A before issue of notice u/s 148 of the Act.

12. In the instant case, the assessee vide letter dated 09.02.2022 raised this objection before the AO and AO was well within his knowledge that notice issued u/s 148 dated 31.03.2021, was served upon the assessee on 01.04.2021 therefore, he was under the obligation to treat the said notice as issued u/s 148A(b) of the Act and due procedure as prescribed u/s 148A must be followed which has not been done in the instant case. The Hon’ble Jurisdictional High Court in the case of Suman Jeet Agarwal and Ors. vs. ITO & Ors. [2022] 449 ITR 517 (Del.) under identical circumstances has held that the notice issued u/s 148 prior to amendment and was served upon the assessee after the amendment, therefore, the same has to be treated as notice u/s 148A(b) and if the said procedure is not followed, the same is liable to be quashed. The relevant extract of the Hon’ble Jurisdictional High Court has contained in para 31 are as under:

“31. For the reason and principles that we have laid down, we dispose of these Writ Petitions with the following directions.

31.1 Category 'A': The Notices falling under category 'A', which were digitally signed on or after 14 of Apr, 2021 are held to bear the date on which Notices were digitally signed and not 31st March 2021. The said petitions are disposed of with the direction that the said Notices are to be considered as show cause-notices under Section 148A (h) of the Act as per the directions of the apex Court in the Ashish Agarwal (Supra) judgment.

31.2 Category 'B': The Notices falling under category 'B' which were sent through the registered e-mal ID of the respective JAOs. Though not digitally signed are held to be valid. The said petitions are disposed of with the direction to the JAOs to verify and determine the date and time of its despatch as recorded in the ITBA portal in acceptance with the law laid down in this judgment as the date of issuance. If the date and time of despatch recorded is on or after of 2021 the Notices are to be considered as show-cause-notices under Section 148A (b) as per the directions of the apex Court in the Ashish Agarwal (Supra) judgment.

3. Category 'C': The petitions challenging Notices falling under category. C' which were digitally signed on 31st of March 2021 to the JAOs to verify and determine the date and time of despatch as recorded in the ITBA portal in accordance with the law laid down in the of issuance. If the date and time of despatch recorded is on or before 1st of April, 2021, the Notices are to be considered as show cause notes under Section 1464 (b) as per the directions of the apex Court in the Ashish Agarwal (Supra) judgment.

31.4. Category 'D': The petitions challenging Notices falling under category D' which were only uploaded in the E-filing portal of the assesses without any re alert, are disposed of with the direction to the JAOs to determine the date and time when the assessee viewed the Notices in the E-filing portal, as recorded in the ITBA portal and conclude such date as the date of issuance in accordance with the law laid down in this judgment. If such date of issuance is determined to be on or after 1st of April 2021, the Notices will be construed as issued under Section 1484 (b) of the Act of 1961 as per the Ashish Agarwal (Supra) judgment.

31.5 Category 'E': The petitions challenging Notices falling under category which manually despatched. disposed of with the direction to the JAD determine in accordance with the law laid down in this judgment, the date and time when the Notices were delivered to the post office for despatch and consider the date and time of despatch recorded is on or after. 1st of April, 2021, the Notices are to be construed as show-cause-notices under Section 148A (b) as per the directions of the apex Court in the Ashish Agarwal (Supra) judgment.

31.6. Notices sent to unrelated e-mail addresses. The petitions challenging Notices which were sent to unrelated e-mail addresses are disposed of with the direction the JAOs to verify the date on which the Notice was first viewed by the assessee on the E-filing portal and consider the same as the date of issuance. If such date of Issuance is determined to be on or after 01st April, 2021, the Notices will be construed issued under Section 148A (b) of the Act of 1981 as per judgment in Ashish Agarwal (Supra)

31.7. We may note that in the writ petitions, the petitioners have raised additional defenses to challenge the impugned Notices. Such additional defenses have not been considered by this Court and the petitioners shall be at liberty to raise all such additional defenses as available in law

31.8. We are conscious that the time granted by the Supreme Court in Ashish Agarwal to the Department has since expired on 3rd June, 2022 however, the proceedings in the present writ petitions were stayed on 24th March, 2022 until the pronouncement of this judgment. Therefore, we grant the JACs in the instance eight (8) weeks time from today to determine the date of issuance of the Notices as per the law laid down in this judgment.

31.9. The Notices which in accordance with the law laid down in this judgment has been verified by the JAOs to have been issued on or after 01st April 2021 and until 30th June, 2021 shall be deemed to have been issued under Section 148A of the Act of 1961 as substituted by the Finance Act, 2021 and construed to be show-cause notices in terms of Section 148A(b) as per the judgment of the apex Court in Ashish Agarwal (Supra) and the JAOs shall thereafter follow the procedure set down by the Supreme Court in the said judgment which reads as follows:

“26 view of the above and for the reasons stated above, the present Appeals are ALLOWED IN PART. The impugned common judgments and orders passed by the High Court of Judicature at Allahabad in WT. No. 624/2021 and other allied tax appeals/petitions, is/are hereby modified and substituted as under:-

(1) The impugned section 148 notices issued to the respective assesseees which were issued under unamended section 148 of the IT Act, which the subject matter of writ petitions before the various respective High Courts shall be deemed to have been issued under section 148A of the IT Act as substituted by the Finance Act, 2021 and construed or treated to be show cause notices in terms of section 148A(b) The assessing officer that within thirty days from today provide to the respective assesseees information and material relied upon by the Revenue, so that the assesseees can reply to the show-cause notices within two weeks thereafter;

(ii) The requirement of conducting any enquiry, if required, with the prior approval of specified authority under section 148A(a) is hereby dispensed with as a one-time measure vis-à-vis those notices which have been issued under section 148 of the unamended Act from 1-4-2021 till date, including those which have been quashed by the High Courts. Even otherwise as observed hereinabove holding any enquiry with the prior approval of specified authority is not mandatory but it is for the concerned Assessing Officer to hold any enquiry, if required.

(iii) The assessing officer shall thereafter pass orders in terms of section 148A(d) in respect of each of the concerned assesseees; Thereafter, after following the procedure required under section 148A may issue notice under section 148 (as substituted);

(iv) All defences which may be available to the assesseees including those available under section 149 of the IT Act and all rights and contentions which may be available to the concerned assesseees and Revenue under the Finance Act, 2021 and in law shall continue to be available.”

13. This view is also expressed by the Hon'ble jurisdictional High Court in the case of Makemytrip India Private Limited (supra).

14. In view of the above facts, in our considered opinion, in the instant case, the order passed u/s 147 of the Act based on the notice issued u/s 148 dated 31.03.2021 which was served upon the assessee on 1st April, 2021 is bad in law as the same was issued without following the due procedure as provided under the amendment section 148 and 148A of the Act and the consequent reassessment order passed is hereby quashed.

15. Since, we have allowed the assessee's prayer under Rule 27 of ITAT Rule, 1962, by allowing the legal grounds of appeal, therefore, grounds of appeal taken by the Revenue become academic and not adjudicated.

16. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 26.09.2025.

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Sd/-
(MANISH AGARWAL)
ACCOUNTANT MEMBER

Dated: 26.09.2025

PK/Sr. Ps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI