

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक

**IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK
(THROUGH VIRTUAL HEARING)**

श्री जार्ज माथन, न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष ।

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND**

SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

आयकर अपील सं/ITA No.458/CTK/2025

आयकर अपील सं/ITA No.459/CTK/2025

(निर्धारण वर्ष / Assessment Year : 2018-2019)

Jitendra Patra Zone-A, S-3/9, Mancheswar Industrial Estate, Bhubaneswar, 751010	Vs	DCIT, Circle-1(1), Bhubaneswar
PAN No. : AASPP 9357 M		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से / Assessee by	:	Shri S.K.Sarangi, CA
राजस्व की ओर से / Revenue by	:	Shri Vijay Singh, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	25/09/2025
घोषणा की तारीख/Date of Pronouncement	:	25/09/2025

आदेश / O R D E R

Per Bench :

ITA No.458/CTK/2025 being the quantum appeal filed by the assessee against the order of the Ld.CIT(A), National Faceless Appeal Centre (NFAC), Delhi dated 28/05/2024 in Appeal No. NFAC2017-18/10294324 for A.Y.2018-2019 and ITA No.459//CTK/2025 being the penalty appeal filed against the order dated 04/06/2024 passed in Appeal No. NFAC/2017-18/10295007 for the assessment year 2018-2019 arising out of the penalty levied u/s.270A of the Act.


2. At the outset, it is found that the quantum appeal being ITA No.458/CTK/2025 of the assessee is barred by 397 days and the penalty appeal being ITA No.459/CTK/2025 is barred by 366 days In this regard, the assessee has filed an affidavit stating sufficient reasons for condonation of delay, which are plausible and not found to be false. Ld.Sr.

DR also did not raise any serious objection to condone the delay. Accordingly, the delay of 397 days in quantum appeal and 366 days in penalty appeal are condoned and both appeals of the assessee are admitted for hearing.

3. It was submitted by the Id. AR that notice u/s.148A(b) has been issued by the AO and the date for response has been given on 16.03.22.

The copy of the notice u/s.148A(b) reads as follows :-

Annexure - I



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE DEPUTY
COMMISSIONER OF INCOME TAX
DCIT, CIRCLE 1(1), BHUBANESWAR

To, JITENDRA PATRA PLOT NO. S-3/9 MANCHESWAR INDL ESTATE, MANCHESWAR BHUBANESWAR 751010, Orissa India			
PAN: AASPP9357M	A.Y: 2018-19	Dated: 09/03/2022	DIN & Notice No: ITBA/AST/F/148A(SCN)/2021- 22/1040522114(1)

Notice under clause(b) of section 148A of the Income-tax Act, 1961

Sir/Madam/M/s

Whereas I have information which suggests that income chargeable to tax for the Assessment Year 2018-19 has escaped assessment within the meaning of section 147 of the Income-tax Act, 1961. The details of the information and enquiry, if conducted, are enclosed with this notice in Annexure A.

2. You are required to show-cause as to why, in view of the details contained in Annexure A, a notice section 148 of the Income tax Act, 1961 should not be issued.
3. You may, to the extent technologically feasible, submit your response with supporting documents (if any) on the above mentioned issues electronically in 'e-proceeding' facility through your account in e-filing portal at your convenience on or before 16/03/2022.
4. This notice is being issued after obtaining the prior approval of the PCIT, Bhubaneshwar-1 accorded on date 09/03/2022 vide Reference No. 10000028890758.

DURGA PRASAD MOHAPATRA
DCIT, CIRCLE 1(1), BHUBANESWAR

Note: If digitally signed, the date of digital signature may be taken as date of document.
 AAYAKAR BHAWAN, RAJASWA VIHAR, BHUBANESWAR, Orissa, 751007
 Email: BHUBANESWAR.DCIT1.1@INCOMETAX.GOV.IN,

Note:- The website address of the e-filing portal has been changed from www.incometaxindiaefiling.gov.in to www.incometax.gov.in.
 * DIN- Document identification No.

4. It was the submission that as seven clear days has not been granted to the assessee, in view of the decision of the Hon'ble Jharkhand High Court in the case of Satish Kumar in W.P.(T) No.2640 of 2023, dated 28.08.2023, the clear seven days having not been given to the assessee, the notice is liable to be treated as invalid. It was the submission that said decision of the Hon'ble Jharkhand High Court has also been followed by the ITAT Ranchi Bench of the Tribunal in the case of Mantosh Kumar, passed in ITA No.80/Ran/2024, dated 18.08.2025, wherein the coordinate bench of the Tribunal has held in paras 3 to 7 as follows :-

3. It was submitted by Id AR that the assessee is challenging the notice u/s.148A(b) of the Act dated 14.3.2022, wherein, the assessee has been asked to file his response by 21.3.2022. It was the submission that this order is invalid insofar as the assessee has not been given seven days time as required under the provisions of section 148A(b) of the Act. The notice u/s.148A(b) of the Act is as follows:

"Notice under clause (b) of Section 148A of the Income Tax Act, 1961. Sir/Madam/M.s Whereas I have information which suggests that income chargeable to tax for the assessment year 2018-19 has escaped assessment within the meaning of section 147 of the Income tax Act, 1961. The details of the information and enquiry, if conducted, are enclosed with this notice in Annexure-A.

2. You are requested to show cause as to why, in view of the details contained in Annexure-A, a notice u/s.148 of the Income tax Act, 1961 should not be issued.

3. You may, to the extent technologically, feasible, submit your response with supporting documents (if any) on the above mentioned issues electronically in e-proceedings facility through your account in-e-filing portal at your convenience on or before 21.3.2022.

4. This notice is being issued after obtaining the prior approval of the PCIT, Dhanbad, accorded on date 11.3.2022 vide reference No.100000029037826."

4. It was the submission that the Co-ordinate Bench of this Tribunal in the case of Imran Ahmad vs ITO, Giridih in ITA No.357/Ran/2024

order dated 18.12.2024 relying upon the decision of Hon'ble Jurisdictional High Court in the case of Satish Kumar vs Pr. CIT passed I n W.P.(T) No.2640 of 2023 dated 28.8.2023, held as follows:

"5. The entire periphery and ambit of the legal ground is confined to the interpretation of expression "being not less than 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 das ie. 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 I n W.P.(T) No.2640 of 2023 dated 28.8.2023. 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 Muncipal Council, Nagercoil reported in AIR 1967 sc 684, wherein at paragraph 8 & 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.

6. Considering the aforesaid 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 principles 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.”

5. It was the submission that as in this notice seven days time excluding the date of issue of notice and the date of response has not been provided to the assessee, the notice u/s.148A (b) is liable to be quashed. 6. In reply, Id Sr DR vehemently supported the order of the Assessing Officer.

7. We have considered the rival submissions. As it is noticed that the notice issued u/s.148A(b) of the Act has not been provided to the assessee the clear seven days time for responding the said notice, respectfully following the decision of the Co-ordinate Bench in the case of Imran Ahmad (supra), wherein, the Bench has followed the judgment of Hon’ble Jurisdictional High Court in the case of Satish Kumar(supra), the notice issued u/s.148A(b) of the Act stands quashed. Consequently, the assessment order passed u/s 147 r.w.s 144 of the Act stands quashed

5. It was the submission that the notice u/s.148A(b) of the Act is liable to be quashed and the consequential assessment order is also liable to be quashed. It was the further submission that ITA No.459/CTK/2025 being the appeal against the penalty levied u/s.270A of the Act is also liable to

be allowed, insofar as the assessment order is liable to be quashed on account of the defect in the notice issued u/s.148A(b) of the Act

6. In reply, Id. Sr. DR vehemently supported the order of the AO and Id. CIT(A). It was the submission that the assessment is an ex-parte assessment before the AO. It was the further submission by the Id. Sr. DR that the notice was issued on 09.03.2022 and the date for compliance was given at 16.03.2022, thus, 7 days time has been given. It was the submission that notice u/s.148A(b) is also liable to be upheld.

7. We have considered the rival submissions. The facts in the present case clearly shows that clear seven days has not been given to the assessee in the notice issued u/s.148A(b) of the Act. The clear seven days having not been granted to the assessee, obviously the decision of the Hon'ble Jharkhand High Court, wherein reliance has been placed on the decision of the Hon'ble Supreme Court in the case of Pioneer Motors (Private) Limited Vs. Municipal Council, Nagercoil, reported in AIR 1967 SC 684, would squarely apply to the facts of the present case. In these circumstances, respectfully following the decision of the coordinate bench of the Tribunal in the case of Mantosh Kumar, referred to supra, as also the decision of the Hon'ble Jharkhand High Court in the case of Satish Kumar, referred to supra, as also following the principle laid down by the Hon'ble Supreme court in the case of Pioneer Motors (Private) Ltd., referred to supra, the notice issued u/s.148A(b) of the Act stands quashed. Consequently, the assessment order passed u/s.147 r.w.s144B

of the Act in the case of the assessee dated 02.03.2023, also stands quashed.

8. As we have already quashed the assessment order on the ground of invalid notice issued u/s.148A(b) of the Act, therefore, the legs in the penalty levied u/s.270A of the Act, no more survives and consequently the same also stands quashed.

9. In the result, both appeals of the assessee are allowed.

Order dictated and pronounced in the open court on 25/09/2025.

Sd/-

(राजेश कुमार)

(RAJESH KUMAR)

लेखा सदस्य/ ACCOUNTANT MEMBER

Sd/-

(जार्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य / JUDICIAL MEMBER

दिनांक Dated 25/09/2025

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant- Jitnedra Patra
Zone-A, S-3/9, Mancheswar Industrial Estate,
Bhubaneswar, 751010
2. प्रत्यर्थी / The Respondent- DCIT, Circle-1(1),
Bhubaneswar
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT,
Cuttack
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

(Assistant Registrar)

आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack