

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM "DIVISION" BENCH, VISAKHAPATNAM**

**श्री रवीश सूद ,न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI RAVISH SOOD, HON'BLE JUDICIAL MEMBER**

&

SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

**आयकर अपीलसं./I.T.A.No.428/VIZ/2024
(निर्धारणवर्ष/ Assessment Year: 2017-18)**

Dy. CIT – Circle – 3(1) 35, 50-92-35, Sankara Matam Road Opposite Reliance Fresh Beside Reliance Fresh, Near By main Road Madhuranagar, Dwaraka nagar Visakhapatnam – 530016 Andhra Pradesh (अपीलधर्ती/Appellant)	Vs.	M/s. Vizag Re-Bars Private Limited Plot No. 1 IDA, Edulapaka Bonangi, Parawada Mandal – 531021 Andhra Pradesh [PAN:AABCV2581M] (प्रत्यर्ती/Respondent)
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**सी.ओ सं. / C.O. No. 16/VIZ/2024
[आयकरअपीलसं.से उत्पन्न/I.T.A.No.428/VIZ/2024
(निर्धारण वर्ष/ Assessment Year: 2017-18)]**

M/s. Vizag Re-Bars Private Limited Plot No. 1, IDA, Edulapaka Bonangi, Parawada Mandal – 531021 Andhra Pradesh [PAN:AABCV2581M] (अपीलधर्ती/Appellant)	Vs.	Dy. CIT – Circle – 3(1) 35, 50-92-35, Sankara Matam Road Opposite Reliance Fresh Beside Reliance Fresh, Near byMain Road Madhuranagar, Dwaraka nagar Visakhapatnam – 530016 Andhra Pradesh (प्रत्यर्ती/Respondent)
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करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri GVN Hari, Advocate
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr. Aparna Villuri,Sr.AR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	04.09.2025
घोषणा की तारीख/Date of Pronouncement	:	08.10.2025

आदेश / O R D E R

PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:

1. This appeal is filed by the revenue against the order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal centre, Delhi [hereinafter in short “Ld.CIT(A)”] vide DIN & Order No. ITBA/NFAC/S/250/2024-25/1067688229(1) dated 16.08.2024 for the A.Y.2017-18 arising out of order passed under section 147 r.w.s. 144 of Income Tax Act, 1961 (in short ‘Act’) dated 23.05.2023. Cross objection is filed by the assessee.

2. Brief facts of the case are that, assessee is a Private Limited Company, engaged in trading in Iron & Steel and filed its return of income for the A.Y.2017-18 on 14.10.2017 admitting Nil income and claiming current year loss at Rs.16,69,92,160/- with deemed income u/s 115JB at Rs (-)137741114 /-. Subsequently, the case was selected for complete scrutiny under CASS and order u/s 143(3) was passed on 27-12-2019 reducing net loss to (-)Rs.16,55,52,257/- and by making certain additions to an extent of Rs.14,39,903/- based on disallowance of certain expenses. A Search and Survey action was conducted on a syndicate of persons led by Shri Naresh Jain on 19.03.2019 by DDIT(Inv), Unit-7(1) & 7(3) Mumbai. Shri Naresh Jain and his associates were involved in providing accommodation entries in the form of Long term Capital Gains / Losses in several scrips to various beneficiaries

across the country. On analysis of data found during the course of search/survey operation, the investigation wing identified the case of the assessee i.e. M/s. Vizag Re-Bars Pvt. Ltd. as one of beneficiaries in claiming bogus Long Term Capital Gain.

3. Ld. Assessing Officer [hereinafter in short "Ld. AO"] issued notice u/s.148A(b) of the Act on 31.05.2022 based on the information received in the "Insight Portal under the category High Risk CRIU/VRU Information" on 26.03.2021, regarding Naresh Jain and Others who were provided by the Investigation wing during the A.Y.2017-18. On the analysis of the above information, it was noticed by the Ld. AO that the quantum of incomes which has escaped assessment is Rs.8,64,48,472/-. In response to the notice u/s.148A(b), the assessee has filed a reply on 14.06.2022 explaining the facts relating to LTCG claimed on sale of shares of SEIL during the AY 2017-18. However, the Assessing Officer passed order u/s. 148A(d) of the Act on 28.07.2022 issued notice u/s 148 of the Act by rejecting the submissions of the Assessee for the reasons that the information passed on to the Ld. AO from Investigation Wing was specific and the same was not discussed in the assessment order U/s 143(3) dated 27.12.2019.

4. The Assessee has declared a long term capital gain of Rs. 2,98,48,472/- u/s 10(38) of the Act by selling the entire holdings allotted to the assessee

pursuant to merger of the GSAL India Limited with Steel Exchange India Limited (in short “SEIL”). These shares of SEIL were sold during September/October- 2016 by the assessee for a consideration of Rs.8,64,48,472/-. The assessee claimed the cost of acquisition for Rs.5,66,00,000/- paid as an advance to Krishnarama Industrial Investments Ltd (hereinafter referred as KRIL) during the F.Y. 2007-08.

5. After considering the submissions of the assessee, the Ld. AO rejected the assessee contentions by observing that the assessee has not furnished any documentary evidences with respect to the Long-Term Capital Gains claimed by the assessee. The Assessing Officer therefore completed the assessment by disallowing the exemption claimed u/s 10(38) of Rs.2,98,17,250/- on the ground that the assessee had failed to establish genuine ownership of shares it has sold and therefore, conditions for obtaining exemption u/s 10(38) is not fulfilled.

6. On being aggrieved by the order of the Ld. AO, the assessee carried the matter before the Ld. CIT(A). The Ld. CIT(A) after considering the submissions and relying on various judicial pronouncements, partly allowed the appeal of the assessee.

7. On being aggrieved by the order of the Ld. CIT(A), revenue is in appeal before us and assessee filed a cross objection. Firstly, we proceed to adjudicate the cross objection filed by the assessee.

8. Assessee has raised following grounds of appeal in cross objection: -

“1. The learned Commissioner of Income-Tax (Appeals) is justified in quashing the notice issued u/s 148 by the jurisdictional Assessing officer contrary to the provisions of 'E-Assessment of Income Escaping Assessment Scheme' which stipulates that a notice u/s 148 can be issued after 29.03.2022 only by the Faceless Assessing officer.

2. The learned Commissioner of Income-Tax (Appeals) is justified in deleting the addition of Rs.2,98,17,250 made by the assessing officer u/s 69 of the Act by disallowing the exemption claimed u/s 10(38) of the Act in respect of Long-Term Capital Gains on sale of shares.

3. The learned Commissioner of Income-Tax (Appeals) ought to have quashed the notice u/s 148 even on the ground that:

- a) The notice issued was not based on the facts stated in the return of income.
- b) The notice issued u/s 148A(b) is void ab initio as the grounds mentioned therein were based on conjectures and surmises.
- c) The order passed u/s 148A(d) is invalid in as much as the assessing officer did not follow the procedure specified/mandated by the Hon'ble Supreme Court in the case of Ashish Agarwal.
- d) The reasons specified in the notice suffer from self-contradiction.
- e) The assessing officer issuing the notice u/s 148 did not have jurisdiction.
- f) The notice u/s 148 was issued without approval from the specified authority in terms of S.151 of the Act as amended by the Finance Act,2021.

4. Any other grounds of Cross-Objection that may be raised at the time of hearing.”

9. At the outset, Ld. Authorised Representative [hereinafter “Ld.AR”] submitted that the Ld. AO had grossly erred in law and on facts of the case in assuming jurisdiction and framing the impugned assessment vide his order

passed under section 147 r.w.s. 144B of the Act, dated 23.05.2023. Elaborating on his contention, the Ld.AR submitted that, as notice under section 148 of the Act, dated 28.07.2022 for the year under consideration i.e. A.Y. 2017-18 had been issued by the Ld. AO beyond a period of three years from the end of the relevant assessment year, therefore, as per the mandate of Section 151 of the Act, as was made available on the statute by the Finance Act, 2021 w.e.f. 01.04.2021 and was applicable at the time of issuing of the notice, the said notice could have been issued only after obtaining the prior approval of the authorities contemplated in sub-section (ii), viz. Principal Chief Commissioner/Principal Director General/ Chief Commissioner/Director General. The Ld. AR, to fortify his contention, has drawn our attention to the notice under section 148 of the Act, dated 28.07.2022, which revealed that the same was issued after obtaining the prior approval of Pr.CIT-1, Vijayawada accorded on 26.07.2022 vide reference No.F.NO. PR.CIT/VJA/148A(d)/Approval/2022-23. Carrying his contention further, the Ld. AR submitted that as the impugned notice under section 148 of the Act, dated 28.07.2022 had been issued by the Ld. AO without obtaining the approval of the specified authority, therefore the said notice and the consequential assessment framed by him vide his order passed u/s 147 r.w.s 144 r.w.s 144B of the Act, dated 23.05.2023 cannot be sustained and is liable to be quashed on the said count itself.

10. Per contra, Ld. Departmental Representative [hereinafter in short “Ld.DR”] on being confronted with the aforesaid factual position as was canvassed before us, failed to rebut the same. However, the Ld. DR submitted that as the Ld. AO after validly assuming jurisdiction had issued notice under section 148 of the Act, dated 28.07.2022, therefore, no infirmity emanates from the assessment order passed by him.

11. We have heard both the sides and perused the material available on record as well as considered the judicial pronouncements. As the Ld. AR has assailed the validity of the jurisdiction assumed by the Ld. AO for issuance of notice under section 148 dated 28.07.2022, i.e., without obtaining any approval from any of the authorities specified u/s 151 of the Act (as was applicable at the relevant point of time), therefore, we shall first deal with the same.

12. Admittedly, it is a matter of fact discernible from the record that the notice under section 148 of the Act, dated 28.07.2022, had been issued by the Dy. CIT, Circle-1(1), Vijayawada after obtaining the prior approval of the Pr.CIT-1, Vijayawada, dated 26.07.2022 dated 27.07.2022 vide reference No. F.NO. PR.CIT/VJA/148A(d)/Approval/2022-23. For the sake of clarity, we deem it fit to cull out the notice u/s 148 dated 28.07.2022.



OFFICE OF THE DY.COMMISSIONER OF INCOME TAX,
Circle-1(1), Second Floor, Central Revenue Building,
M.G.Road, Vijayawada

Phone No.0866-2571204, Email: vijayawada.dcit1.1@incometax.gov.in

To M/s. Vizag Re-Bars Private Limited., Plot No. 1, I.D.A., Edulapaka Bonangi, Parawada Mandal, Visakhapatnam.	
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PAN: AABCV2581M	AY: 2017-18	Dated: 28.07.2022	DIN & Notice No:
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Notice under section 148 of the Income-tax Act, 1961

Sir / Madam / M/s.

1. (A) I have the following information in your case or in the case of the person in respect of which you are assessable under the Income Tax Act, 1961 (hereinafter referred to as "the Act") for Assessment Year 2017-18:-

- Information flagged by the risk management strategy formulated in this regard;
- ~~Final objection has been raised by the Comptroller and Auditor General of India to the effect that the assessment has not been made in accordance with the provisions of Act;~~
- ~~A survey was conducted under section 133A of the Act, other than under section 133A(2A) or section 133A(5) of the Act,~~
- Information which requires action in consequence of the judgement of the Hon'ble Supreme Court in the case Union of India Vs. Ashish Agarwal, Civil Appeal 3005/2022, dated 4th May, 2022.

Suggesting that income chargeable to tax has escaped assessment within the meaning of section 147 of the Act. Order under sub-section (d) of section 148A of the Act has been passed in such case vide DIN ITBA/COM/F/17/2022-23/1044202232(1) dated 28.07.2022 and annexed herewith for reference,

- (B) I have information that a search was initiated under section 132 of the Act in your case or in the case of the person in respect of which you are assessable under the Act on the date _____.

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(C) I have information that books of accounts, other documents or any assets have been requisitioned under section 132A of the Act in your case or in the case of the person in respect of which you are assessable under the Act.

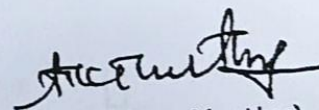
(D) I am satisfied, with the approval of Principal Commissioner or Commissioner, that money, bullion, jewellery or other valuable article or thing, seized or requisitioned under section 132 or section 132A of the Act in case of _____ relate to you or the person in respect of which you are assessable under the Act.

(E) I am satisfied, with the approval of Principal Commissioner or Commissioner, that books of accounts or documents, seized or requisitioned under section 132 or section 132A of the Act in case of _____ pertains or pertain to, or any information contained therein, relate to you or the person in respect of which you are assessable under the Act.

2. I, therefore, propose to ~~assess or~~ re-assess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for the Assessment Year 2017-18 and I, hereby, require you to furnish, within 30 days from the service of this notice, a return in the prescribed form for the Assessment Year 2017-18.

3. This notice is being issued after obtaining the prior approval of the Pr. Commissioner of Income Tax, VIJAYAWADA accorded vide reference No. F.No.Pr.CIT/VJA/148A(d)/Approval/2022-23 dated 26-07-2022.




(A. Thandava Krishna Murthy)
Dy. Commissioner of Income Tax,
Circle-1(1), Vijayawada.

13. At this stage, we may herein observe that nothing has been placed on our record by the Ld.DR to rebut the aforesaid factual position as has been brought to our notice.

14. We find merit in the argument of the Ld. AR regarding the validity of the jurisdiction assumed by the Ld.AO for initiating proceedings under section 147 of the Act, i.e., without obtaining the approval of the specified authority under section 151(ii) of the Act and we find substance in the same. Admittedly, the reassessment proceedings under section 147 of the Act has been amended by the Finance Act, 2021 w.e.f. 01.04.2021. The substituted Sections 147 to 159 and Section 151 of the Act applicable w.e.f. 01.04.2021 are culled out as under:

“Income escaping assessment-

147. If any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year, the Assessing Officer may, subject to the provisions of sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for such assessment year (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year).

Explanation.—For the purposes of assessment or reassessment or recomputation under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, irrespective of the fact that the provisions of section 148A have not been complied with.”.

Issue of notice where income has escaped assessment

148. Before making the assessment, reassessment or recomputation under section 147, and subject to the provisions of section 148A, the Assessing Officer shall serve on the assessee a notice, along with a copy of the order passed, if required, under clause (d) of section 148A, requiring him to furnish within such period, as may be specified in such notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and

verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139:

Provided that no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority to issue such notice.

Explanation 1.—For the purposes of this section and section 148A, the information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means,—

(i) any information flagged in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time;

(ii) any final objection raised by the Comptroller and Auditor General of India to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act.

Explanation 2.—For the purposes of this section, where,—

(i) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A, on or after the 1st day of April, 2021, in the case of the assessee; or

(ii) a survey is conducted under section 133A, other than under subsection (2A) or subsection (5) of that section, on or after the 1st day of April, 2021, in the case of the assessee; or

(iii) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner, that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned under section 132 or under section 132A in case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or

*(iv) the Assessing Officer is satisfied, with the prior approval of Principal Commissioner or Commissioner, that any books of account or documents, seized or requisitioned under section 132 or section 132A in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee, the Assessing Officer shall be deemed to have information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the three assessment years immediately preceding the assessment year relevant to the previous year in which the search is initiated or books of account, other documents or any assets are requisitioned or survey is conducted in the case of the assessee or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person. *Explanation 3.—For the purposes of this section, specified authority means the specified authority referred to in section 151.**

Conducting inquiry, providing opportunity before issue of notice under section 148-

“148A. The Assessing Officer shall, before issuing any notice under section 148,—

(a) conduct any enquiry, if required, with the prior approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;

(b) provide an opportunity of being heard to the assessee, with the prior approval of specified authority, 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);

(c) consider the reply of assessee furnished, if any, in response to the showcause notice referred to in clause (b);

(d) decide, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under section 148, by passing an order, with the prior approval of specified authority, within one month from the end of the month in which the reply referred to in clause (c) is received by him, or where no such reply is furnished, within one month from the end of the month in which time or extended time allowed to furnish a reply as per clause (b) expires:

Provided that the provisions of this section shall not apply in a case where,—

(a) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A in the case of the assessee on or after the 1st day of April, 2021; or

(b) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any money, bullion, jewellery or other valuable article or thing, seized in a search under section 132 or requisitioned under section 132A, in the case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or

(c) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any books of account or documents, seized in a search under section 132 or requisitioned under section 132A, in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee.

Explanation.—For the purposes of this section, specified authority means the specified authority referred to in section 151. ”

Time limit for notice-

“149. (1) No notice under section 148 shall be issued for the relevant assessment year,—

(a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);

(b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year:

Provided that no notice under section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if such notice could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of subsection (1) of this section, as they stood immediately before the commencement of the Finance Act, 2021:

Provided further that the provisions of this subsection shall not apply in a case, where a notice under section 153A, or section 153C read with section 153A, is required to be issued in relation to a search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, on or before the 31st day of March, 2021:

Provided also that for the purposes of computing the period of limitation as per this section, the time or extended time allowed to the assessee, as per showcause notice issued under clause (b) of section 148A or the period during which the proceeding under section 148A is stayed by an order or injunction of any court, shall be excluded:

Provided also that where immediately after the exclusion of the period referred to in the immediately preceding proviso, the period of limitation available to the Assessing Officer for passing an order under clause (d) of section 148A is less than seven days, such remaining period shall be extended to seven days and the period of limitation under this subsection shall be deemed to be extended accordingly.

Explanation.—For the purposes of clause (b) of this subsection, “asset” shall include immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account.

(2) The provisions of subsection (1) as to the issue of notice shall be subject to the provisions of section 151.’

Sanction for issue of notice-

“151. Specified authority for the purposes of section 148 and section 148A shall be—

(i) Principal Commissioner or Principal Director or Commissioner or Director, if three years or less than three years have elapsed from the end of the relevant assessment year;

(ii) Principal Chief Commissioner or Principal Director General or where there is no Principal Chief Commissioner or Principal Director General, Chief Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year.”

15. The Hon'ble Apex Court in the case of Union of India & Ors. v. Ashish Agrawal, Civil Appeal No.3005/2022, dated 04.05.2022, after deliberating at length on the aforesaid amended provisions had, inter alia, observed as under:

“5 We have heard Shri N. Venkataraman, learned ASG appearing on behalf of the Revenue and Shri C.A. Sundaram and Shri S. Ganesh, learned Senior Advocates and other learned counsel appearing on behalf of the respective assessee.

6. It cannot be disputed that by substitution of sections 147 to 151 of the Income Tax Act (IT Act) by the Finance Act, 2021, radical and reformative changes are made governing the procedure for reassessment proceedings. Amended sections 147 to 149 and section 151 of the IT Act prescribe the procedure governing initiation of reassessment proceedings. However, for several reasons, the same gave rise to numerous litigations and the reopening were challenged inter alia, on the grounds such as (1) no valid “reason to believe” (2) no tangible/reliable material /information in possession of the assessing officer leading to formation of belief that income has escaped assessment, (3) no enquiry being conducted by the assessing officer prior to the issuance of notice; and reopening is based on change of opinion of the assessing officer and (4) lastly the mandatory procedure laid down by this Court in the case of GKN Driveshafts (India) Ltd. Vs. Income Tax Officer and ors; (2003) 1 SCC 72, has not been followed.

6.1 Further pre Finance Act, 2021, the reopening was permissible for a maximum period up to six years and in some cases beyond even six years leading to uncertainty for a considerable time. Therefore, Parliament thought it fit to amend the Income Tax Act to simplify the tax administration, ease compliances and reduce litigation. Therefore, with a view to achieve the said object, by the Finance Act, 2021, sections 147 to 149 and section 151 have been substituted.

6.2 Under the substituted provisions of the IT Act vide Finance Act, 2021, no notice under section 148 of the IT Act can be issued without following the procedure prescribed under section 148A of the IT Act. Along with the notice under section 148 of the IT Act, the assessing officer (AO) is required to serve the order passed under section 148A of the IT Act. section 148A of the IT Act is a new provision which is in the nature of a condition precedent. Introduction of section 148A of the IT Act can thus be said to be a game changer with an aim to

achieve the ultimate object of simplifying the tax administration, ease compliance and reduce litigation.

6.3 *But prior to pre-Finance Act, 2021, while reopening an assessment, the procedure of giving the reasons for reopening and an opportunity to the assessee and the decision of the objectives were required to be followed as per the judgment of this Court in the case of GKN Driveshafts (India) Ltd. (supra).*

6.4 *However, by way of section 148A, the procedure has now been streamlined and simplified. It provides that before issuing any notice under section 148, the assessing officer shall (i) conduct any enquiry, if required, with the approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment; (ii) provide an opportunity of being heard to the assessee, with the prior approval of specified authority; (iii) consider the reply of the assessee furnished, if any, in response to the showcause notice referred to in clause (b); and (iv) decide, on the basis of material available on record including reply of the assessee, as to whether or not it is a fit case to issue a notice under section 148 of the IT Act and (v) the AO is required to pass a specific order within the time stipulated.*

6.5 *Therefore, all safeguards are provided before notice under section 148 of the IT Act is issued. At every stage, the prior approval of the specified authority is required, even for conducting the enquiry as per section 148A(a). Only in a case where, the assessing officer is of the opinion that before any notice is issued under section 148A(b) and an opportunity is to be given to the assessee, there is a requirement of conducting any enquiry, the assessing officer may do so and conduct any enquiry. Thus if the assessing officer is of the opinion that any enquiry is required, the assessing officer can do so, however, with the prior approval of the specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment.*

6.6 *Substituted section 149 is the provision governing the time limit for issuance of notice under section 148 of the IT Act. The substituted section 149 of the IT Act has reduced the permissible time limit for issuance of such a notice to three years and only in exceptional cases ten years. It also provides further additional safeguards which were absent under the earlier regime preFinance Act, 2021.*

7. *Thus, the new provisions substituted by the Finance Act, 2021 being remedial and benevolent in nature and substituted with a specific aim and object to protect the rights and interest of the assessee as well as and the same being in public interest, the respective High Courts have rightly held that the benefit of new provisions shall be made available even in respect of the proceedings relating to past assessment years, provided section 148 notice has been issued on or after 1st April, 2021. We are in complete agreement with the view taken by the various High Courts in holding so.*

8. *However, at the same time, the judgments of the several High Courts would result in no reassessment proceedings at all, even if the same are permissible under the Finance Act, 2021 and as per substituted sections 147 to 151 of the IT Act. The Revenue cannot be made remediless and the object and purpose of reassessment proceedings cannot be frustrated. It is true that due to a bonafide mistake and in view of subsequent extension of time vide various*

notifications, the Revenue issued the impugned notices under section 148 after the amendment was enforced w.e.f.01.04.2021, under the unamended section 148. In our view the same ought not to have been issued under the unamended Act and ought to have been issued under the substituted provisions of sections 147 to 151 of the IT Act as per the Finance Act, 2021. There appears to be genuine nonapplication of the amendments as the officers of the Revenue may have been under a bonafide belief that the amendments may not yet have been enforced. Therefore, we are of the opinion that some leeway must be shown in that regard which the High Courts could have done so. Therefore, instead of quashing and setting aside the reassessment notices issued under the unamended provision of IT Act, the High Courts ought to have passed an order construing the notices issued under unamended Act/unamended provision of the IT Act as those deemed to have been issued under section 148A of the IT Act as per the new provision section 148A and the Revenue ought to have been permitted to proceed further with the reassessment proceedings as per the substituted provisions of sections 147 to 151 of the IT Act as per the Finance Act, 2021, subject to compliance of all the procedural requirements and the defences, which may be available to the assessee under the substituted provisions of sections 147 to 151 of the IT Act and which may be available under the Finance Act, 2021 and in law. Therefore, we propose to modify the judgments and orders passed by the respective High Courts as under:

- (i) The respective impugned section 148 notices issued to the respective assesseees shall be deemed to have been issued under section 148A of the IT Act as substituted by the Finance Act, 2021 and treated to be showcause notices in terms of section 148A(b). The respective assessing officers shall within thirty days from today provide to the assesseees the information and material relied upon by the Revenue so that the assesseees can reply to the notices within two weeks thereafter;*

- (ii) The requirement of conducting any enquiry with the prior approval of the specified authority under section 148A(a) be dispensed with as a onetime measure visàvis those notices which have been issued under Section 148 of the unamended Act from 01.04.2021 till date, including those which have been quashed by the High Courts;*

- (iii) The assessing officers shall thereafter pass an order in terms of section 148A(d) after following the due procedure as required under section 148A(b) in respect of each of the concerned assesseees;*

- (iv) All the defences which may be available to the assessee under section 149 and/or which may be available under the Finance Act, 2021 and in law and whatever rights are available to theAssessing Officer under the Finance Act, 2021 are kept open and/or shall continue to be available and;*

- (v) The present order shall substitute/modify respective judgments and orders passed by the respective High Courts quashing the similar notices issued under unamended section 148 of the IT Act irrespective of whether they have been assailed before this Court or not.*

9. *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 assessees.*

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 assesses as because of a bonafide belief of the officers of the Revenue in issuing approximately 90000 such notices, the Revenue may not suffer as ultimately it is the public exchequer which would suffer.

Therefore, we have proposed to pass the present order with a view avoiding filing of further appeals before this Court and burden this Court with approximately 9000 appeals against the similar judgments and orders passed by the various High Courts, the particulars of some of which are referred to hereinabove. We have also proposed to pass the aforesaid order in exercise of our powers under Article 142 of the Constitution of India by holding that the present order shall govern, not only the impugned judgments and orders passed by the High Court of Judicature at Allahabad, but shall also be made applicable in respect of the similar judgments and orders passed by various High Courts across the country and therefore the present order shall be applicable to PAN INDIA.

10. *In 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 W.T. No. 524/2021 and other allied tax appeals/petitions, is/are hereby modified and substituted as under:*

(i) The impugned section 148 notices issued to the respective assessees which were issued under unamended section 148 of the IT Act, which were 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 showcause notices in terms of section 148A(b). The assessing officer shall, within thirty days from today provide to the respective assessees information and material relied upon by the Revenue, so that the assessee can reply to the showcause 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 onetime measure vis-à-vis those notices which have been issued under section 148 of the unamended Act from 01.04.2021 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 Officers to hold any enquiry, if required;

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

(iv) All defences which may be available to the assesses 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.

11. The present order shall be applicable PAN INDIA and all judgments and orders passed by different High Courts on the issue and under which similar notices which were issued after 01.04.2021 issued under section 148 of the Act are set aside and shall be governed by the present order and shall stand modified to the aforesaid extent. The present order is passed in exercise of powers under Article 142 of the Constitution of India so as to avoid any further appeals by the Revenue on the very issue by challenging similar judgments and orders, with a view not to burden this Court with approximately 9000 appeals. We also observe that present order shall also govern the pending writ petitions, pending before various High Courts in which similar notices under Section 148 of the Act issued after 01.04.2021 are under challenge.

12. The impugned common judgments and orders passed by the High Court of Allahabad and the similar judgments and orders passed by various High Courts, more particularly, the respective judgments and orders passed by the various High Courts particulars of which are mentioned hereinabove, shall stand modified/substituted to the aforesaid extent only.

All these appeals are accordingly partly allowed to the aforesaid extent.

In the facts of the case, there shall be no order as to costs.”

16. Apart from that, we find that the CBDT vide Instruction No.01/2022 while directing implementation of the judgment of the Hon’ble Supreme Court in the case of Union of India & Ors v. Ashish Agrawal, Civil Appeal No.3005/2022, dated 04.05.2022, while laying down the procedure that is required to be followed by the jurisdictional Assessing Officers/Assessing Officer had, inter alia, held, that if it is a fit case to issue notice under section 148 of the Act, the Assessing Officer shall serve on the assessee a notice under section 148 after obtaining approval of the specified authority u/s. 151 as per the amended provisions of law.

17. We, thus, in terms of our aforesaid observation, concur with the Ld. AR that in the present case before us for A.Y. 2017-18, wherein notice under section 148 of the Act was issued on 28.07.2022, i.e. beyond a period of three years from the end of the assessment year, the Ld. AO was statutorily obligated to have obtained the approval from either of the authorities specified under section 151(ii) of the extant law, viz. Principal Chief Commissioner or Principal Director General or where there is no Principal Chief Commissioner or Principal Director General, Chief Commissioner or Director General. However, as the Ld. AO had obtained the approval from the Pr. Commissioner of Income Tax, i.e. an authority who was not vested with any jurisdiction as per the amended mandate of Section 151 of the Act (as made available on the statute w.e.f 01.04.2021), therefore, the assessment so framed by him under section 147 r.w.s. 144 r.w.s. 144B of the Act, dated 23.05.2023 being devoid and bereft of valid assumption of jurisdiction, is liable to be quashed. Accordingly, we quash the assessment framed by the Ld. AO under Section 147 r.w.s. 144 r.w.s. 144B of the Act, dated 23.05.2023 in terms of our aforesaid observations.

18. Since the legal grounds are adjudicated in favour of the assessee by quashing the assessment order the other grounds raised by the assessee on merits are not adjudicated.

19. In the result, the cross objection filed by the assessee is allowed.

ITA No. 428/VIZ/2024 (A.Y. 2017-18)

20. With respect to grounds raised by the revenue in the ITA No. 428/VIZ/2024, since we quash the assessment framed by the Ld. AO under Section 147 r.w.s. 144 r.w.s. 144B of the Act, dated 23.05.2023 in the aforesaid paragraphs while adjudicating the cross objection filed by the assessee, the grounds raised by the revenue in its appeal are dismissed.

21. In the result, appeal of the revenue is dismissed.

22. To sum-up, appeal of the revenue is dismissed and cross objection filed by the assessee is allowed.

Order pronounced in the open court on 08th October, 2025.

Sd/-

(रवीश सूद)

(RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

Dated: 08.10.2025
Giridhar, Sr.PS

Sd/-

(एसबालाकृष्णन)

(S. BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee : M/s. Vizag Re-Bars Private Limited
Plot No. 1 IDA, EdulapakaBonangi,
Parawada Mandal – 531021
Andhra Pradesh
2. राजस्व/ The Revenue : **Dy. CIT – Circle – 3(1)**
35, 50-92-35, Sankara Matam Road
Opposite Reliance Fresh
Beside Reliance Fresh, Near By main Road
Madhuranagar, Dwaraka nagar
Visakhapatnam – 530016
Andhra Pradesh
3. The Principal Commissioner of Income Tax
4. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR,ITAT, Visakhapatnam
5. The Commissioner of Income Tax
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam