आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री **एस. आर. रघुनाथा,** लेखा सदस्य **के समक्ष**

BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI S.R.RAGHUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.2987/Chny/2024**
निर्धारण वर्ष**/Assessment Year: 2015-16**

Thomas Victor, B-4, Old No.3A, New No.5A, Karunanidhi, 1st Street, Kottur, Kotturpuram S.O., Kotturpuram, Chennai-600 085.	**v.**	The ITO, Non-Corporate Ward-19(6), Chennai.
[**PAN: ADYPV 3711 E**]		
(अपीलार्थी**/Appellant)**		**(**प्रत्यर्थी**/Respondent)**

अपीलार्थी की ओर से/ Appellant by	:	Mr.R. Venkata Raman, CA
प्रत्यर्थी की ओर से /Respondent by	:	Ms. R. Kavitha, Addl.CIT
सुनवाईकीतारीख/Date of Hearing	:	09.09.2025
घोषणाकीतारीख /Date of Pronouncement	:	28.10.2025

आदेश **/ O R D E R**

PER ABY T. VARKEY, JM:

The present appeal has been preferred by the assessee against the appellate order passed by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter referred to as the "Ld.CIT(A)"], dated 11.10.2024, whereby the Ld.CIT(A) confirmed the levy of penalty amounting to ₹67,01,050/- u/s.271D of the Income Tax Act, 1961 [hereinafter referred to as "the Act"].

2. At the outset, it is noted that assessee has raised, *inter alia*, legal issue challenging the levy of penalty, which reads as under:

> *"That the notice issued u/s. 148 of the Income-tax Act, 1961 ("Act"), dated 31.03.2022, by the Income Tax Officer, Non-Corporate Ward–19(6), Chennai ("JAO"), is in contravention of the Faceless Assessment Scheme notified by the Central Government on 29.03.2022 pursuant to Section 151A of the Act, hence the same is invalid and bad in law. Consequently, the assessment order dated 28.03.2023 passed u/s.147 of the Act is null and void in the eyes of law and therefore the impugned penalty order dated 29.09.2023 passed u/s.271D of the Act, levying a penalty of Rs. 67,01,050/-, is invalid and bad in law."*

3. The additional ground raised is noted to be legal issue which if found to be valid, then it would affect the jurisdiction of the Income Tax Authority, to levy the penalty. In this context, the Ld.AR brought to our notice that the impugned notice has been issued u/s. 148 of the Income-tax Act, 1961 ("Act"), dated 31.03.2022, by the Income Tax Officer, Non-Corporate Ward–19(6), Chennai ("JAO"), which according to him is in contravention of the Faceless Assessment Scheme notified by the Central Government on 29.03.2022 pursuant to Section 151A of the Act. Hence according to him, the reopening notice u/s.148 is invalid and bad in law. Consequently, it was contented that the assessment framed by order dated 28.03.2023 passed u/s.147 of the Act is null in the eyes of law. Therefore, according to the Ld.AR, since there is no assessment order of 28.03.2023 in the eyes of law, and the penalty proceedings is pursuant to assessment order, there can't be any penal action. Hence, according to him, the impugned penalty order dated 29.09.2023 passed u/s.271D of the Act, levying penalty of ₹67,01,050/-, is invalid and bad in law.

4. Brief facts relevant for adjudicating the legal issue are that the assessee, an individual, was employed with M/s. Oceanic Tropical Fruits Private Limited during the assessment year under consideration. The assessee didn't file his return of income u/s.139 of the Act for the relevant assessment year under consideration. Based on information flagged under the Risk Management Strategy of the Central Board of Direct Taxes, the Income Tax Officer, Non-Corporate Ward 19(6), Chennai i.e. Jurisdictional Assessing Officer [hereinafter referred to as the "JAO"] Shri S. Nagarajan issued a notice u/s.148A(b) of the Act on 17.03.2022, requiring the assessee to show cause as to why a notice u/s.148 of the Act should not be issued. On 31.03.2022 the JAO passed order u/s.148A(d) of the Act, holding the case of the assessee as fit for issuing notice u/s.148 of the Act. Accordingly, on 31.03.2022, notice u/s.148 of the Act was issued by the same JAO (Shri S. Nagarajan) proposing to assess the assessee's income after reopening under the provisions of section 147 of the Act. In response to the notice u/s.148 of the Act, the assessee is noted to have filed his return of income electronically on 29.04.2022 declaring a total income of ₹4,59,630/-. The case of the assessee was subsequently assigned to the National Faceless Assessment Centre [hereinafter referred to as the "NaFAC"] for assessment. During the course of assessment proceedings, the Faceless Assessing Officer

(FAO) observed that the assessee had deposited cash aggregating to ₹67,01,050/- in his bank accounts maintained with M/s. Indian Overseas Bank and M/s. Axis Bank. The assessee was accordingly called upon to explain the source for the ibid cash deposits. In response, the assessee explained the source as under with relevant documentary evidence: -

S. No	Particulars	Amount (₹)	Documentary evidence furnished before the NaFAC
I	**Cash gifts received from the following relatives**		
	Shri K. Arockiasamy, Father	21,00,000	Declaration of gift (page 2 of the PB)
	Shri S. Thomas, Father in law	14,99,000	Declaration of gift (page 3 of the PB)
	Smt Vimala Joseb, Sister in law	5,10,000	Declaration of gift (page 4 of the PB)
	Smt Kalaimani Thomas, Wife	1,12,000	Copy of the bank account statements of the spouse evidencing withdrawals of cash
	Total of cash gifts	**42,21,000**	
II	**Cash loans from friends**		
	S. Francis Susai	8,80,000	Loan confirmation letter
	A. Arul Prabhakar	5,35,050	Loan confirmation letter
	C. Saminathan	5,00,000	Loan confirmation letter
	Total of cash loans	**19,15,050**	
III	**Redeposit of previous cash withdrawals from the bank accounts**	**5,65,000**	
IV	**Total (I + II + III)**	**67,01,050**	

5. Upon examination of the evidences furnished, the FAO is noted to have accepted the assessee's explanation and didn't make any addition on account of the cash deposits. Assessment was accordingly completed u/s.147 of the Act on 28.03.2023, accepting the returned income. Since

the returned income was accepted, the assessee didn't prefer appeal against the assessment order. In the course of the said assessment order, however, NaFAC recorded that the assessee had accepted certain amounts in cash in contravention to the provisions of section 269SS of the Act and, accordingly, directed initiation of penalty proceedings u/s.271D of the Act.

6. The NaFAC is noted to have held that the following amounts received by the assessee constituted "loans" in violation of section 269SS of the Act and were therefore liable to penalty u/s.271D of the Act: -

S. No	Name of the person from whom amount was received	Amount received (₹)
1	S. Thomas	14,99,000
2	K. Arockiasamy	21,00,000
3	S. Francis Susai	8,80,000
4	Arul Prabhakar	5,35,050
5	C. Saminathan	5,00,000
6	Vimala Joseb	5,10,000
Total		**60,24,050**

7. Thus, out of total cash deposits of ₹67,01,050/-, NaFAC concluded that the receipts amounting to ₹60,24,050/- as tabulated supra were in violation of section 269SS of the Act. Consequently, a show cause notice u/s.274 r.w.s 271D of the Act was issued on 28.03.2023, calling upon the assessee to explain why penalty u/s.271D of the Act shouldn't be imposed. Pursuant to the notice, the assessee filed his reply that sum of ₹42,21,000/- was received by way of cash gifts from relatives and therefore, this amount doesn't fall within the ambit of receipts

contemplated u/s.269SS of the Act. Consequently, it was contended that no penalty is exigible u/s.271D of the Act in respect of the said amount of ₹42,21,000/- and requested dropping of the proposed penalty. However, the Income Tax Authority not convinced, levied penalty of ₹67,01,050/- u/s.271D of the Act.

8. Aggrieved by the order levying penalty u/s.271D of the Act, the assessee preferred appeal before the Ld.CIT(A), who was pleased to dismiss the same.

9. Aggrieved by the aforesaid action of the Ld.CIT(A) confirming the levy of penalty of ₹67,01,050/- u/s.271D of the Act, the assessee is in appeal before us and has raised the legal issue which is again reproduced as under:

> *"That the notice issued u/s. 148 of the Income-tax Act, 1961 ("Act"), dated 31.03.2022, by the Income Tax Officer, Non-Corporate Ward–19(6), Chennai ("JAO"), is in contravention of the Faceless Assessment Scheme notified by the Central Government on 29.03.2022 pursuant to Section 151A of the Act, hence the same is invalid and bad in law. Consequently, the assessment order dated 28.03.2023 passed u/s.147 of the Act is null and void in the eyes of law and therefore the impugned penalty order dated 29.09.2023 passed u/s.271D of the Act, levying a penalty of Rs. 67,01,050/-, is invalid and bad in law."*

10. The Ld.AR pointed out that the Jurisdictional Assessing Officer (JAO) had reopened the original assessment for AY 2015-16 by issuing notice u/s.148 of the Act on 31.03.2022 without adhering to the binding provisions of Sec.151A read with CBDT Scheme Notification No.18/2022/F.No.370142/16/2022-TPL dated 29.03.2022, which

according to him vitiates the notice u/s 148 and consequent actions are bad in law including the impugned penalty order.

11. According to Ld. A.R., when the very event of reopening of the assessment by the AO for the assessment year 2015-16 was itself invalid for want of jurisdiction, consequent action of the AO are vitiated and the assessment order is a nullity. Therefore, according to him, such an invalid order of the AO couldn't have been the foundation for the Income Tax Authority to levy the impugned penalty [by order dated 29.09.2023]. Hence, impugned penalty order also is null in eyes of law. In other words, since the re-assessment order of the FAO dated 28.03.2023 is non-est in the eyes of law, the Income Tax Authority couldn't have levied penalty u/s.271D of the Act, so the impugned penalty order u/s.271D of the Act is also a nullity or non-est in the eyes of law.

12. Per contra, the Ld.DR vehemently opposed the contention of the Ld. AR, submitted that if the AO's reopening proceedings was bad in law, then the assessee should have challenged the same before the First Appellate Authority and not in this penalty appellate proceedings. According to Ld.DR, the assessee having kept quiet on the reassessment order of AO cannot be allowed to agitate in this proceedings about AO's action while assailing the penalty action of the Addl.CIT (Faceless Authority). According to the Ld.DR, the Addl.CIT rightly levied penalty u/s.271D of

the Act, which penalty order doesn't call for any interference from our side.

13. In his rejoinder, the Ld. AR submitted that the assessee has raised the legal issue which assessee is entitled to do because it is settled law that the jurisdiction can be challenged at any stage/proceedings and even that it can be raised before the Hon'ble Apex Court for the first time. And according to Ld. A.R, in this case, the primary proceedings is the AO's action of re-opening the assessment by issuance of notice u/s.148 of the Act which was an action taken by the JAO, who undisputedly didn't have the jurisdiction to issue notice after 31.03.2022 (supra), thereby, invalidating the assessment order passed u/s 147 on 28.03.2023. Hence, according to him, such an illegal action of the AO can be challenged in collateral proceedings u/s.271D of the Act as held by the Pune Tribunal in M/s.Karia Brothers v. ITO in ITA No.2401/Pune/2024 dated 23.07.2025 wherein several decisions of the Hon'ble Supreme Court has been cited. The Ld AR referred to other decisions of this Tribunal which are also noted as under:

a) Supersonic Technologies (P) Ltd. vs. PCIT in ITA No. 2269/D/2017 dated 10.12.2018 (ITAT, Delhi Bench) ITA. No.3009 to 3012/DEL/2017

> "6.1.....It is well settled Law that assessee can challenge the validity of the reassessment proceedings in the collateral proceedings (relating to examination of validity of Order passed) under section 263 of the I.T. Act. We rely upon the Order of ITAT, Mumbai Bench in the case of Westlife Development Ltd., vs. PCIT 49 ITR (Tribu.) 406 in which it was held "allowing the appeal (i) that jurisdiction aspect of the Order passed in the primary proceedings can be examined in collateral proceedings also. Thus, the assessee could be permitted to challenge

> the validity of the Order passed under section 263 on the ground that the assessment order was non-est." Since the reassessment order itself is bad in law, therefore, Learned Counsel for the Assessee, rightly contended that the same cannot be revised under section 263 of the I.T. Act. Only valid re-assessment order can be revised under section 263 of the I.T. Act. On this ground itself the proceedings under section 263 of the I.T. Act are bad in law and liable to be quashed. We, accordingly, set aside the Order of Ld. Pr. CIT passed under section 263 of the I.T. Act and quash the same."

b) M/s CharbhujaMarmo (India) (P) Ltd. vs. PCIT in ITA No. 4749/D/2019 dated 31.12.2019 (ITAT, Delhi)

> "6. We have considered the rival submissions. It is well settled Law that since reassessment proceedings are invalid and bad in law, therefore, such proceedings could not be revised under section 263 of the I.T. Act. It is also well settled Law that validity of the re-assessment proceedings are to be judged on the basis of the reasons recorded for reopening of the assessment."

14. He further placed reliance upon the following decision: -

c) M/s Westlife Development Ltd. vs. PCIT in ITA No. 688/Mum/2016 dated24.06.2016 (ITAT, Mumbai)

d) Krishna Kumar Saraf vs. CIT in ITA No. 4562/Del/2011 dated 24.09.2015 (ITAT, Delhi)

e) M/s Classic Flour & Food Processing (P) Ltd. vs. CIT in ITA No. 764 to 766/Kol/2014 dated 05.04.2017 (ITAT, Kolkata)"

15. In the light of the aforesaid averments, and other decisions discussed infra, the Ld AR wants us to adjudicate this legal issue.

16. Having heard both parties, the first aspect which needs to be examined is whether in the present proceedings wherein assessee has challenged the levy of penalty, the assessee is entitled to challenge the validity of initiation of reopening proceedings as well as the validity of the assessment order framed pursuant thereto u/s 147 of the Act. The Ld.AR for the assessee submitted before us that it is open to an assessee in an appeal against the penalty order u/s. 271D of the Act, to challenge the

validity of the order passed u/s.147 of the Act as well as initiation of proceedings u/s.147 of the Act. In this regard other than the case laws cited supra, the Ld.AR for the assessee placed before us two decisions one rendered by Lucknow Bench of Tribunal in the case of Inder Kumar Bachani (HUF) vs ITO 99 ITD 621 (Luck) and the Mumbai Tribunal ' G ' Bench in the case of M/s. Westlife Development Ltd. Vs Principal C.I.T. in ITA No.688/Mum/2016. In both the decisions a view has been taken by the Tribunal that when an Assessment order passed u/s 147 of the Act was without jurisdiction, the Ld. PCIT cannot invoke the jurisdiction u/s 263 of the Act against such void or non-est order. In the second decision cited, the Mumbai bench of the Tribunal has specifically framed the following questions :-

> " 1. Whether the assessee can challenge the validity of an assessment order during the appellate proceedings pertaining to examination of validity of order passed u/s 263?
>
> 2. Whether the impugned assessment order passed u/s 143(3) dated 24-10-2013 was valid in the eyes of law or a nullity as has been claimed by the assessee?
>
> 3. If the impugned assessment order passed u/s 143(3) was illegal or nullity in the eyes of law, then, whether the CIT had a valid jurisdiction to pass the impugned order u/s.263 to revise the non est assessment order?"

17. On question no. 1 and 3 which is relevant to the present case the Mumbai bench of the Tribunal in the aforesaid case of M/s Westlife Development Ltd. (supra) has taken the view that when the original assessment proceedings are null and void in the eyes of law for want of

assumption of jurisdiction, then such validity can be challenged even in collateral proceedings. We note that the Mumbai bench took the view that the proceedings before AO u/s.147 of the Act are primary proceedings and proceedings before Ld.PCIT u/s.263 of the Act are collateral proceedings and in such collateral proceedings, the validity of initiation of the re-opening u/s 147 of the Act can be challenged. The Mumbai bench of the Tribunal in this regard has placed reliance on several decisions, the main decision being that of the Hon'ble Supreme Court in the case of Kiran Singh & Ors. V. Chaman Paswan & Ors. [1955] 1 SCR 117 wherein the Hon'ble Supreme Court observed as follows (relevant portion):-

> " It is a fundamental principle well-established that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree and such a defect cannot be cured even by consent of parties."

18. The Mumbai bench of this Tribunal made a reference to another decision of the Hon'ble Supreme Court in the case of Sushil Kumar Mehta v. Gobind Ram Bohra, (1990) 1 SCC 193 and the decisions in the case of Indian Bank v. Manilal Govindji Khona (2015) 3 SCC 712. The Mumbai bench also held that if order of assessment passed u/s 147 of the Act was nullity in the eyes of law then that order cannot be revised by invoking powers u/s 263 of the Act by CIT. The Mumbai Bench has in this regard placed reliance on the decision of Delhi bench of the Tribunal in the case

of Krishna Kumar Saraf v. CIT in ITA NO.4562/Del/2007 order dated 24.09.2015 wherein it was held as follows (relevant portion):-

> " 17. There is no quarrel with the proposition advanced by Id. DR that the proceedings u/s 263 are for the benefit of revenue and not for assessee.
>
> 18. However, u/s 263 the Id. Commissioner cannot revise a non est order in the eye of law. Since the assessment order was passed in pursuance to the notice U/S 143(2), which was beyond time, therefore, the assessment order passed in pursuance to the barred notice had no legs to stand as the same was non est in the eyes of law. All proceedings subsequent to the said notice are of no consequence. Further, the decision of Hon'ble Madras High Court in the case of CIT Vs. Gitsons Engineering Co. 370 ITR 87 (Mad) clearly holds that the objection in relation to non service of notice could be raised for the first time before the Tribunal as the same was legal, which went to the root of the matter.
>
> 19. While exercising powers u/s 263 Id. Commissioner cannot revise an assessment order which is non est in the eye of law because it would prejudice the right of assessee which has accrued in favour of assessee on account of its income being determined. If Id. Commissioner revises such an assessment order, then it would imply extending/ granting fresh limitation for passing fresh assessment order. It is settled law that by the action of the authorities the limitation cannot be extended. Because the provisions of limitation are provided in the same 20. In view of above discussion ground no.3 is allowed and revision order passed u/s 263 is quashed."

19. The Lucknow Bench of the Tribunal in DCIT v. B.J.D. Paper Products [2012] 20 taxmann.com 314 (Lucknow) has held as under (relevant portion): -

> *"8.6 We have already discussed hereinabove that the decision of Hon'ble Rajasthan High Court in the case of Deep Chand Kothari v. CIT (supra) is also in favour of the assessee and therefore* ***we are of the view that the validity of assessment proceedings can be looked into during the penalty proceedings even though the assessment itself has not been challenged by the assessee.*** *In that view of the matter, we do not see any merit in this submission of the learned Departmental Representative that validity of assessment order cannot be challenged in appeal against the order of penalty."*

20. The Pune Bench of the Tribunal in Tushar R. Jagtap v. ACIT [ITA Nos.725 to 725/Pun/2015 dated 09.02.2018] has held as under (relevant portion): -

> *"25. However, in view of the ratio laid down by the jurisdictional High Court in CIT Vs. Lalitkumar Bardia (supra) in turn, relying on the ratio laid down by the Apex Court in Kanwar Singh Saini Vs. High Court of Delhi (supra), wherein it has been held that conferment of jurisdiction was a legislative function and the same neither conferred with the consent of parties nor by superior court and where the Court passes an order / decree having no jurisdiction over the matter, it would amount to nullity as the same goes to the roots of the issue. Applying the said principle, we hold that the assessee can challenge the jurisdiction of Assessing Officer in passing the assessment order while challenging levy of penalty under section 271(1)(c) of the Act. In case the re-assessment proceedings have been completed without proper jurisdiction entrusted upon the Assessing Officer, then the consequent penalty proceedings are also affected as basic issue of conferment of jurisdiction upon the Assessing Officer is under challenge. Accordingly, we hold so."*

21. In the context of appeal against penalty order passed u/s.271D of the Act, it is noted that Pune Bench of this Tribunal in M/s.Karia Brothers v. ITO in ITA No.2401/Pun/2024 dated 23.07.2025 held as under (relevant portion):-

> *"29. Since the assessee can always challenge the validity of assessment proceedings during the penalty proceedings as per the decision of Hon'ble Bombay High Court in the case of B.R. Bamasi vs. CIT (supra) and the decision of the Hon'ble Gujarat High Court in the case of P.V. Doshi vs. CIT (supra) and the various other decisions relied on by the Ld. Counsel for the assessee in the paper book and since we have already held that the re-assessment proceedings are not in accordance with law on account of not obtaining the approval from the competent authority as per the provisions of section 151 of the Act, therefore, the penalty proceedings initiated u/s 271D of the Act do not survive. In view of the above discussion, the penalty proceedings initiated by the Assessing Officer and sustained by the Ld. CIT(A) / NFAC are not in accordance with law and are liable to be quashed. We, therefore, hold that the penalty levied by the Assessing Officer and sustained by the Ld. CIT(A) / NFAC being not in accordance with law is liable to be deleted. We accordingly direct the Assessing Officer to cancel the penalty levied u/s 271D of the Act. The original grounds and the additional grounds raised by the assessee are accordingly allowed."*

22. After having considered the judicial precedent on the issue, we are of the view that the validity of the 147 order passed by the AO can be assailed before us, even if for any reason, the assessee didn't challenge the validity of proceedings u/s.147 of the Act by filing appeal [i.e. against the order framed u/s.147 of the Act], it can be challenged in the collateral

proceedings, i.e. even in an appeal against penalty order passed u/s.271D of the Act. As noted this issue has been analyzed by the Mumbai Bench of the Tribunal in the case of M/s.Westlife Development Ltd. (supra) wherein the Tribunal has equated the reopening assessment u/s.147 to primary proceedings and the subsequent proceedings by Ld. PCIT u/s.263 passed to be collateral proceedings. In this order the Tribunal has taken note of several ratio's of the Hon'ble Supreme Court wherein the Hon'ble Supreme Court held that if the primary proceedings are non-est in law or void on the ground of lack of jurisdiction, then the validity of such proceedings can be challenged even in an appeal arising out of collateral proceedings. Since we have already set out the ratio/operating portions of these decisions we do not wish to repeat the same for the sake of brevity. In the light of the aforesaid discussion we are of the view that the invalidity of the primary proceedings for lack of jurisdiction can be challenged even in appellate proceedings arising out of a collateral proceeding. In view of the aforesaid legal position we will now examine the legal issue. For doing that first of all we have to examine whether the Jurisdictional Assessing Officer [JAO] in the present case, could have reopened the assessment of the assessee by issuance of notice dated 31.03.2022 u/s.148 of the Act (which ultimately resulted in Faceless Assessing Officer [FAO] passing the assessment order u/s.147 of the Act dated 28.03.2023).

23. In the present case, we note that the JAO, Shri S. Nagarajan, Non-Corporate Ward-19(6), Chennai, has issued statutory reopening notice u/s.148 of the Act on 31.03.2022 and thereafter reassessment order was passed by the Faceless Assessing Officer (FAO) by order dated 28.03.2023 which action we find is not in consonance with Sec.151/151A of the Act read with the faceless Scheme notified by CBDT on 29 March 2022 for assessment, reassessment or re-computation u/s.147/issuance of notice u/s.148 of the Act or for conducting of inquiry or issuance of show cause notice or passing of order u/s.148A of the Act or sanction for issuance of notice under section 151 of the Act. The CBDT, in exercise of the powers conferred u/s.151A of the Act, is noted to have issued the notification dated 29.03.2022 [after laying the same before each House of Parliament] and formulated a Scheme called "the e-Assessment of Income Escaping Assessment Scheme, 2022" (herein after 'the Scheme'). And that the Scheme provides that (a) the assessment, reassessment or re-computation u/s.147 of the Act and (b) the issuance of notice u/s.148 of the Act shall be through automated allocation, in accordance with risk management strategy formulated by the Board as referred to in Section 148 of the Act for issuance of notice and in a faceless manner, to the extent provided in Section 144B of the Act with reference to making assessment or reassessment of total income or loss of assessee. Therefore, the impugned notice u/s 148 dated 31.03.2022 is noted to

have been issued by JAO and not by the FAO, NFAC, which action is in contravention of the provisions of the Act, thus violating the principles of Rule of Law, which vitiates the reopening of the assessment; as held by the jurisdictional High Court & other Hon'ble High Courts as noted infra: -

Sl.No.	Date	Citation
1	24.06.2025	Mark Studio India (P.) Ltd. v. Income-tax Officer - High Court of Madras [DB] - WA No. 781 OF 2025, order dated 24.06.2025
2	14.09.2023	Kankanala Ravindra Reddy v. Income-tax Officer High Court of Telangana - 156 taxmann.com 178
3	03.05.2024	Hexaware Technologies Ltd. v. Assistant Commissioner of Income-tax High Court of Bombay - 464 ITR 430
4	20.05.2024	Ram Narayan Sah v. Union of India - High Court of Gauhati 163 taxmann.com 478
5	02.07.2024	Sushila Sureshbabu Malge v. Income-tax Officer - High Court of Bombay - 468 ITR 624
6	19.07.2024	Jatinder Singh Bhangu v. Union of India High Court of Punjab & Haryana - 466 ITR 474
7	24.07.2024	Sri Venkataramana Reddy Patloola v. Deputy Commissioner of Income Tax, Circle 1(1), Hyderabad and Others High Court of Telangana - 468 ITR 181 [W.P.No.13353, 16141 & 16877 of 2024]
8	29.07.2024	Jasjit Singh v. Union of India - High Court of Punjab & Haryana - 467 ITR 52
9	05.08.2024	Samp Furniture Pvt. Ltd. v. Income Tax Officer, Ward 3(3)-Thane & Ors High Court of Bombay - 165 taxmann.com 581
10	05.08.2024	Kairos Properties Private Limited v. ACIT, Circle-15(1)(2), Mumbai & Ors - High Court of Bombay-468 ITR 168
11	29.08.2024	W.P.No.23573/2024 in the Case of ADIT(Int Taxn), Hyderabad v. Deepanjan Roy followed the decision in W.P.No.13353 of 2024 dated 24.07.2024 [Sri Venkataramana Reddy Patloola (supra)]
12	05.02.2025	Sappahire Educational & Charitable Trust v. The ITO, Exemptions Ward, Trichy. - Income Tax Appellate Tribunal, Chennai - ITA Nos.2416 & 2417/CHNY/2024
13	24.04.2025	Tecumseh Products India (P.) Ltd. v. Deputy Commissioner of Income-tax High Court of Telangana - 174 taxmann.com 1203

24. Even though, the Ld.DR supporting the action of the JAO issuing notice u/s.148 of the Act submitted that both the NFAC & JAO have got concurrent jurisdiction and therefore, notice is valid and also submitted that there was no prejudice caused to the assessee. Therefore, she asserted that the action of the JAO issuing notice is valid and doesn't

want us to interfere with the action of AO and instead, wants us to dismiss the legal issue and she cited the decision of the Hon'ble Delhi High Court & Hon'ble Calcutta High Court as well as the Hon'ble Single Bench of Madras High Court in favor of the Revenue and cited the following orders:

- Triton Overseas (P) Ltd. v. Union of India – Calcutta High Court – 156 Taxmann.com 318
- T.K.S. Builders (P) Ltd. v. ITO – Delhi High Court – 469 ITR 657
- Mark Studio India (P.) Ltd. v. Income-tax Officer, High Court of Madras 169 taxmann.com 542, order dated 20.12.2024

25. We have heard both the parties and perused the material available on record. The brief facts are that the assessee is noted to be an individual and didn't file his Income Tax Return (ITR) for AY 2015-16 u/s.139 of the Act. Later, the case was reopened by the Jurisdictional Assessing Officer (JAO) u/s.147 of the Act by issuing notice u/s.148 of the Act dated 31.03.2022, pursuant to it, the assessee filed ITR declaring taxable income at ₹4.59,630/-. And thereafter, Faceless Assessing Officer (FAO) framed the assessment u/s.147 r.w.s.144B of the Act on 28.03.2023 accepting the returned income. Later on, the Income Tax Authority/NFAC has exercised his jurisdiction u/s.271D of the Act by issuing Show Cause Notice (SCN) on 28.03.2023 and pursuant to it, assessee filed his reply dated 06.07.2023. Not satisfied with the reply of assessee, the Income Tax Authority/NFAC levied penalty u/s.271D of the Act to the tune of ₹67,01,050/-. The aforesaid action of the NFAC has

been challenged on the ground that the very re-assessment order [28.03.2023 u/s.147 r.w.s.144B of the Act] is non-est in the eyes of law [since the JAO erroneously issued notice u/s.148 of the Act, therefore, the re-opening of assessment itself was bad in law and non-est in the eyes of law being a nullity] and therefore, the action of the NFAC to levy penalty u/s.271D of the Act dated 29.09.2023 is a nullity/null in the eyes of law. For the proposition, that the JAO doesn't have jurisdiction to issue notice u/s.148 of the Act on or after 29.03.2022, he relied on the binding decision of the Hon'ble Madras High Court in the case of Mark Studio India Pvt. Ltd. (supra), wherein their Lordships have held that it is mandatory for the FAO to issue the notice u/s.148 of the Act on or after 29.03.2022 and if it has been issued by the JAO then such notice u/s.148 of the Act would be invalid [i.e. the notice issued by the JAO will be invalid]. For such a proposition, the Hon'ble Madras High Court is noted to have followed the decision of the Hon'ble Bombay High Court in the case of Hexaware Technologies Limited v ACIT & Ors. [2024] 464 ITR 430 (Bom). The Hon'ble Madras High Court has held in Mark Studio India Pvt. Ltd. as under:

> All these petitions got listed in view of difference of opinion between two learned Single Judges.
>
> 2. Learned Single Judge in order dated 20.12.2024 in WP Nos.25223 of 2024 held that it does not matter if the Jurisdictional Assessing Officer (JAO) issues the notice and it is not mandatory that it should be issued by the Faceless Assessment Officer (FAO). Another learned Single Judge in order dated 21.04.2025 in WP No.22402 of 2024 and batch cases, followed what was held by the Bombay High Court in Hexaware

Technologies Ltd vs. Assistant Commissioner of Income Tax'; and opined that it was mandatory for the FAO to issue notice and issuance of notice by JAO would make the notice invalid.

3. Learned Single Judge thereafter directed the matter to be placed before the Chief Justice for constituting a Division Bench to consider the divergent views. It is, therefore, all these matters were listed before us today.

4. We follow the law as laid down in Hexaware Technologies Ltd (supra), the said judgment was authored by one of us (Chief Justice), that it is mandatory for the FAO to issue the concerned notices and issuance thereof by the JAO would make the notice invalid.

5. Counsels for assessees are ad idem that the law as laid down in Hexaware Technologies Ltd (supra) will apply. Learned Additional Solicitor-General, however, submits that the Revenue does not accept the law as laid down in Hexaware Technologies Ltd (supra); and that there is a special leave petition filed against the order and judgment in Hexaware Technologies Ltd (supra) and the same is expected to be taken up after the Supreme Court reopens.

6. Admittedly, learned Additional Solicitor-General, in fairness, states that there is no stay. Therefore, the law as laid down by Hexaware Technologies Ltd (supra) applies.

7. It is clarified that if the Apex Court reverses the judgment of Hexaware Technologies Ltd (supra), parties will be governed by the decision of the Apex Court.

8. Keeping open all rights and contentions of parties, including liberty to apply to this Court, in case the Revenue succeeds before the Apex Court, for revival of these petitions, the notices issued in these petitions are quashed and set aside.

9. In these petitions, apart from the issue of notices issued by JAO instead of FAO, all or many of the issues which were considered in Hexaware Technologies Ltd (supra) are involved.

10. To the extent the issues raised in Hexaware Technologies Ltd (supra) are not covered, those are kept open to be raised at the appropriate stage.

11. With the liberty as noted above, all petitions stand disposed of holding in favour of assessees. There will be no order as to costs. Consequently, the interim applications also stand disposed of.

26. Applying the ratio laid down by the jurisdictional High Court, we find that in the present case, the JAO, Shri S. Nagarajan, NCW-19(6) Chennai had issued notice u/s.148A(b) to the assessee on 17.03.2022, and

thereafter the JAO, passed order under Clause (d) of Section 148A of the Act on 31.03.2022 holding that it was a fit case for issuance of notice u/s.148 of the Act. And pursuant thereto, assessment/re-assessment was completed on 28.03.2023 by the FAO. Thereafter, the NFAC had initiated the penalty u/s.271D of the Act dated 28.03.2023 and the penalty u/s.271D of the Act was imposed on the assessee vide order dated 29.09.2023. Such an impugned action of the NFAC has been challenged by the assessee by raising additional ground which challenges the legal validity of the notice issued u/s.148 of the Act by the JAO [S. Nagarajan] on 31.03.2022. We find merit in the legal issue raised by the assessee and find that notice u/s.148 of the Act issued on 31.03.2022, violative of the binding Circular of CBDT and therefore invalid in the eyes of law.

27. Having held that the assessment order dated 28.03.2023 in the assessee case for AY 2015-16 as void in the eyes of law, the impugned action of the Addl.CIT/NFAC to initiate & levy penalty by order dated 29.09.2023 is also null in the eyes of law. For such a proposition, we rely on the legal maxim "*sublato Fundmento Credit opus*" meaning in case a foundation is removed, the super-structure falls. In Badarinath v. Tamil Nadu AIR 2000 SC 3243, wherein the Hon'ble Supreme Court held that once the basis of proceedings is gone, all consequential orders & acts would fall on the ground automatically which is applicable to judicial and

quasi judicial proceedings. Therefore, it is held that the impugned order of NFAC passed u/s.271D dated 29.09.2023 is also null/non-est in the eyes of law. Therefore, we quash the impugned order of penalty u/s.271D of the Act.

28. In the result, appeal filed by the assessee is allowed.

Order pronounced on the 28th day of October, 2025, in Chennai.

Sd/-	**Sd/-**
(एस. आर. रघुनाथा)	**(एबी टी. वर्की)**
(S.R.RAGHUNATHA)	**(ABY T. VARKEY)**
लेखा सदस्य**/ACCOUNTANT MEMBER**	न्यायिक सदस्य**/JUDICIAL MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: 28th October, 2025.
TLN

आदेश की प्रतिलिपि अग्रेषित**/Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF