

IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH (PHYSICAL), AMRITSAR

BEFORE DR. MITHA LALMEENA, HON'BLE ACCOUNTANT MEMBER
AND SHRI UDAYAN DAS GUPTA, HON'BLE JUDICIAL MEMBER

ITA No. 236/ASR/2025
(Assessment Year 2017-18)

Khurshid Ahmad Dar Nully Poshwari Turkawangam, Shopia, 192305, Jammu and Kashmir, India.PIN 192305. PAN No. AWMPD5664K	Vs.	ITO, Ward, Udhampur
Assessee by	Shri Rohit Kapoor, Adv. & Shri V.S. Aggarwal, ITP.	
Revenue by	Mrs. Roshanta Kumari Meena, CIT DR.	
Date of Hearing	23.09.2025.	
Date of Pronouncement	10.11.2025.	

ORDER

DR. MITHA LAL MEENA, A.M.:

This appeal is preferred by the assessee against the order passed by Id. Commissioner of Income Tax (Appeal), NFAC, Delhi, dated 31.07.2024 which emanates from the order of the NFAC, Delhi u/s 144 r.w.s. 147 of the Act dated 10.11.2016 with respect to the Assessment Year 2017-18.

2. The assessee has raised the following grounds of appeal:

1. That the order passed under Section 250(6) of the Income Tax Act, 1961, by the Learned Commissioner of Income Tax (Appeals), is contrary to law and facts, and the Ld. CIT(A) has erred in upholding the action of the Learned Assessing Officer in making an addition of Rs.3,02,35,000/- in

respect of cash deposited in current account, under Section 69A of the Income Tax Act, 1961.

2. That the assessment framed under section 147 is bad in law as the notice under section 148 was issued on 13.04.2021 without adhering to the new procedure applicable from 01.04.2021, specifically without complying with the provisions of section 148A.

3. That the CIT(E) has erred in upholding the addition made by the AO without appreciating the fact that the impugned notice u/s 148 was issued only on the online income tax portal and was never served on the assessee on the registered email id as required by the provisions of Section 282.

4. That the CIT(E) erred in not considering that the failure to serve the notice u/s 148 on the registered email ID deprived the assessee of a fair opportunity to respond and defend themselves, thereby violating the principles of natural justice

5. That on the facts and in the circumstances of the case, the CIT(A) failed to appreciate that the reopening under section 148 was initiated solely based on Information available in AIMS module of ITBA Portal, without any independent application of mind by the Assessing Officer.

6. That on the facts and in the circumstances of the case and in law, the Ld AO erred in making addition to the tune of Rs 30235000/- by passing the order u/s 147 r.wis 1448. That that assumption of jurisdiction u/s 148 by the Ld AO is in violation of mandatory jurisdictional conditions as stipulated under the Act.

7. That the order passed u/s 147 is bad in law as the approval taken u/s 151 was not from the appropriate authority as mentioned in section 151(1). Therefore, the assessment proceedings initiated u/s 148 is without jurisdiction as notice u/s 148 was issued after the expiry of three years with the approval joint commissioner/ additional commissioner of Income Tax.

8. That the appellant craves leave to add, amend and alter the grounds of appeal.

3. The Ld. AR explained that there was bonafide reason for the delay of 171 days in filing this appeal before the Tribunal as the impugned order passed under section 250 of the Act, by the commissioner of income tax appeals for the assessment year 2017-18 the was with CA Kapil Agarwal and due to the unfortunate passing of CA Kapil Agarwal, the appellant was unaware of the order u/s 250 of the act, as the document and information regarding the order were not promptly transferred to him. Further he explained that as soon as the assessee became aware of the situation, he appointed Mr Virsain Agrawal and advocate Rohit Kapoor as new council to take over and handle the proceeding of the present case and the present councils have filled the appeal with delay 171 days on change of council and requested that unfortunate demise of the previous council constitute bonafide reason on the part of the assessee and this facts has been supported with affidavit notarized. No objection raised by the Ld. DR to the request of the appellant in view of the bonafide reasons. Thus, the demise of the previous council who was having the relevant documents, the impugned u/s 250 of the CIT, is bonafide reasons for the delay of 171 days. We, accordingly, condone the delay of 171 days and admit the appeal on merits.

4. The assessee has raised additional legal grounds which were also raised in main grounds. One of the legal issue raised by the assessee is that the assessment framed under section 147 is bad in law as the notice under section 148 was issued on 13.04.2021 without adhering to the new procedure applicable from 01.04.2021, specifically without complying with the provisions of section 148A.

5. We have heard both the sides and perused the material on record. We find that the notice u/s 148 dated 28.03.2021, was issued on 13.04.2021, as contended by the Ld. AR without adhering to new procedure applicable from 01.04.2021 in complying with the provisions of sec 148A, as no notice u/s 148A(b) and order u/s 148A(d) was issued to the appellant. It is noted that admittedly the notice u/s 148 does not have the signature of the AO, affixed on the notice. Meaning thereby that in the absence of affixation of signature of the A.O., either manually or digitally on the notice u/s. 148 voids the entire reassessment.

6. It is also noted that the notice u/s 148 and notices u/s 142(1) dated 04.10.2021 and 29.11.2021 were not served on the registered email ID i.e. 'zeeshankhurshidll@gmail.com' of the appellant. In our view, the service of notice is an essential condition to complete the act of issuance which has been complied with on 13.04.2021 i.e. after the introduction of new provisions of

income tax act, 1961. Thus, the notice u/s 148 was without complying with the procedure as per the amended act as substituted by Finance Act, 2021 which requires the issuance of show cause notice u/s 148A(b) and thereafter passing the order u/s 148A(d). Such an exercise has not been done by the AO and assessment was completed without following a statutory procedure is bad in law.

7. We understand that the provisions of section 282 and 282A along with the provisions of section 13 of Information Technology Act, 2000 and meaning of the word 'Issue', it is mandatory for the AO to firstly sign the notice and then it has to be issued either in paper form or be communicated in electronic form by delivering or transmitting the copy thereof to the person therein named by the modes provided by section 282 which includes transmitting in the form of electronic record. Section 13(1) of the Information Technology Act, 2000 provides that unless and otherwise agreed, the dispatch of the electronic record occurs when it enters into the computer resources and outside the control of the originator. Therefore, mere digitally signing of the notice is also not enough and requirement is issuance of notice. In the present case the notice has been served on 13.04.2021 and thus, the amended law not been followed by the AO.

8. In the case of Sharad Garg vs. Income-tax Officer [2022] 136 taxmann.com 360 [287 Taxman 207] (Delhi), head note reads as follows:

Section 148, read with section 149, of the Income-tax Act, 1961 - Income escaping assessment - Issue of notice for (Validity of E-notices) - Petitioners challenged validity of e-notices issued under section 148 which were received by petitioners on or after 1-4-2021 - Said notices were dated 31-3-2021 or before and were also digitally signed on or before 31-3-2021 - It was noted that Allahabad High Court in case Daujee Abhushan Bhandar (P.) Ltd v. UOI [2022] 136 taxmann.com 246, held that point of time when a digitally signed notice in form of electronic record would be entered in computer resources outside control of originator i.e. Assessing Officer, that shall be date and time of issuance of notice under section 148 read with section 149 - Whether, therefore, following said judgment mere digitally signing of notice would not be issuance of notice and impugned notices would be said to be digitally issued on date when same were emailed to petitioner.

9) The Hon'ble Allahabad High Court in Daujee Abhushan Bhandar v. UOI [2022] 136 taxmann.com 246/286 Taxman 623/444 1TR 41 observed as under:

It was earliest to hold that drawing up a Notice on 31-3-2021, and digitally signing the same, in the absence of dispatch, does not amount to issuance of Notice within the meaning of section 149. The High Court after elaborately discussing the provisions of sections 282 and 282A, and the provisions of section 13 of the Act of 2000, held that since the impugned Notice therein though dated

31.03.2021 was issued through e-mail on 6-4-2021 the same was time barred and therefore liable to be quashed.

10. Suman Jeet Agarwal vs. Income-tax Officer [2022] 143 taxmann.com 11 (Delhi)/[2023] 290 Taxman 493(Delhi) [2022] 449 ITR 517 [27.09.2022] Head note reads as follows:

Section 149, read with section 148, of the Income-tax Act, 1961 and section 13 of the Information Technology Act, 2000 Income escaping assessment - Time limit for issuance of notice (Validity of notice) - Assessment years 2013-14 to 2017-18 - Sections 147, 148, 149 and 151 were amended vide Finance Act of 2021, with effect from 1-4-2021 - Since there was a regime change with respect to law of limitation coming into effect from 1-4-2021, which curtailed time limit for reopening of assessment from 6 years to 3 years, revenue, with a view to avail limitation prescribed under unamended section 149, generated reassessment notices under section 148 dated 31-3-2021, but same were dispatched on or after 1-4-2021 Assessee challenged validity of notices issued under section 148 - Whether function of generation of notice on ITBA portal and digital signing of notice is executed by Assessing Officer while function of drafting of e-mail to which notice is attached and triggering e-mail to assessee is performed by I TBA e-mail software system - Held, yes - Whether thus mere generation of notice under section 148 on I TBA software cannot in fact or in law

constitute issue of notice. it is only upon due dispatch that notice can be said to have been 'issued' - Held, yes - Whether 'dispatch' as per section 13 of Act of 2000 is sine qua non for issuance of Notice through electronic mail for purpose of section 149 - Held, yes - Whether in case of paper form, notice must be dispatched by post on or before 31-3-2021 and for communication in electronic form e-mail should have been dispatched on or before 31-3-2021 - Held, yes - Whether since in instant case, dispatch of notice by post and e-mail was carried out on or after 1-4-2021, it was to be held that, impugned notices dated 31-3-2021 would not meet test of 'issued' under section 149 and would be time barred - Held. yes [Paras 25.12 , 25.13, 25.23 and 26] [Partly in favour of assessee

11. In the case of R.K. Upadhyaya v. Shanabhai P. Patel [1987] 3 SCC 96, Hon'ble Supreme Court held that the service of notice is not a condition precedent for satisfying the condition of 'issued'. The date of dispatch of the notice was taken into consideration by the Supreme Court as the relevant date for determining that the notice has been validly issued for the purpose of section 149. The Ld. DR failed to controvert the contention of the Ld. AR on the legal issue or produce contrary Judgement.

12. In the present case, the notice u/s 148 dated 28.03.2021, was issued on 13.04.2021, without adhering to new procedure applicable from 01.04.2021 in complying with the provisions of sec 148A, as no notice u/s 148A(b) and order

u/s 148A(d) was to be issued to the appellant. In our view, primarily the very absence of affixation of signature of the A.O., either manually or digitally on the notice u/s. 148 voids the entire reassessment and violation of the procedure of reassessment u/s 148 as per amended law and service of notice beyond due date i.e. after 31.03.2021 would render the assessment time barred.

13. Considering the factual matrix, and judicial precedent, we hold the assessment order passed by the AO as bad in law and as such it is quashed.

14. In the result, the appeal of the assessee is allowed.

Order pronounced on 10/11/2025 under Rules 34(4) of
Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-

(UDAYAN DAS GUPTA)
JUDICIAL MEMBER

Sd/-

(DR. MITHA LAL MEENA)
ACCOUNTANT MEMBER

Dated : 10/11/2025

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Copies to :

- (1) The appellant.
- (2) The respondent.
- (3) CIT
- (4) CIT(A)
- (5) Departmental Representative
- (6) Guard File

By Oder
Assistant Registrar,
Income Tax Appellate Tribunal,
Amritsar Bench,
Amritsar.