

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**GUWAHATI BENCH, GUWAHATI**  
**(VIRTUAL HEARING AT KOLKATA)**

**SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**  
**SHRI MANOMOHAN DAS, JUDICIAL MEMBER**

**I.T.A. No. 201/GTY/2025**  
**Assessment Year: 2018-19**

**North East Hire Purchase Company (India)**  
**Pvt. Ltd.,**

C/o Priya Market, Kalapahar,  
Guwahati - 781018

[PAN: AABCN6038P]

.....**Appellant**

**vs.**

**ITO, Ward-1(2),**  
**Guwahati,**

Aayakar Bhawan, Christian Basti,

G.S. Road, Guwahati - 781005 ..... **Respondent**

**Appearances by:**

Assessee represented by : Manoj Kataruka, AR

Department represented by : Kausik Ray, JCIT

Date of concluding the hearing : 18.09.2025

Date of pronouncing the order :. 21.11.2025

**ORDER**

**Per Rajesh Kumar, AM**

The present appeal arises from order dated 17.03.2022 passed u/s 250 of the Income Tax Act, 1961 (hereafter referred to as “the Act”) by the Ld. Commissioner of Income Tax (Appeals), [hereafter referred to as “the Ld. CIT(A)].

2. At the time of hearing, the Ld. Counsel for the assessee challenged the legality of notice issued u/s 148 of the Act on the ground that the same has been issued on wrong facts and without application of mind by the AO and therefore, the same is bad in law and so is the assessment framed consequently.

3. The facts in brief are that the assessee filed its return of income on 06.08.2018 declaring total income of Rs. 11,860/-. The case of the assessee was reopened u/s 147 read with section 148A of the Act on the basis information on insight portal that the assessee received Rs. 10,50,000/- during the year from M/s Rangoli Plaza Pvt. Ltd. which is shell company. Accordingly, the case of the assessee was reopened by the issuing notice u/s 148 of the Act dated 30.03.2022 which was complied by the AO filing return of income on 14.04.2022 declaring the same income. Finally, the AO on the basis of information furnished by the assessee noted that the assessee has received Rs. 10,50,000/- in City Union Bank from Kishnapriya Infradev LLP/Nilanchal Grih Nirman Ltd. and M/s Rangoli Plaza Pvt. Ltd. and accordingly, during the course of assessment proceedings assessee was specifically asked to provide confirmed copies of accounts and details of business relations with the said entities. However, the assessee submitted the required information stating that it has not entered into any transaction with M/s Rangoli Plaza Pvt. Ltd. Finally, the AO issued show cause notice issued to the assessee on 28.02.2023 which was replied by the assessee vide written submission dated 04.03.2023 submitting that the assessee has received Rs. 10,50,000/- from sale of shares to Bacha Ram Sharma for which Rs. 10,50,000/- was received while the assessee has not entered into any transaction with Sh. Krishnapriya Infradev and Nilanchal Grih Nirman Ltd. The assessee has submitted that the case of the assessee has been reopened on the ground that the assessee received Rs. 10,50,000/- from M/s Rangoli Plaza Pvt. Ltd. Finally, the AO added the said amount to the income of the assessee as unexplained cash credit u/s 68 of the Act. In the appellate proceedings, the addition was confirmed by the CIT(A).

4. After hearing the rival contentions and perusing the material available on record, we find that in this case the notice u/s 148A(b) of the Act was issued on 17.03.2022 mentioning therein that as per information available with the department the assessee has received an amount of Rs.

10,50,000/- during financial year 2017-18 relevant to AY 2018-19 from M/s Rangoli Plaza Pvt. Ltd. which was listed as shell company. We note that the assessee replied the said notice vide letter dated 29.03.2023 submitting that the assessee has never received money from the said party during the impugned assessment year and therefore, the information has received from the insight portal is incorrect. Thereafter, the AO has passed order u/s 148A(d) on 30.03.2022 noting the same facts that the assessee received Rs. 10,50,000/- from M/s Rangoli Plaza Pvt. Ltd. Which has escaped assessment. Finally, notice u/s 148 of the Act on 30.03.2022. Considering the facts of the case in totality, we find that the notice issued u/s 148 of the Act is based on the incorrect facts as the amount of Rs. 10,50,000/- has been received from Rangoli Plaza Pvt. Ltd. whereas the fact of the matter is that the assessee has received Rs. 10,50,000/- from sale of shares from M/s Bacharam Sharma. The notice u/s 148 of the Act has been issued despite the assessee specifically submitting before the AO in response to notice/s 148A(b) of the Act that the assessee has never received any money from the said party. In our opinion the case of the assessee has been reopened by the AO without any application of mind and without conducting any enquiry and on wrong facts. Therefore, reopening of the case is bad in law . The case is squarely covered by the jurisdictional High Court in the case of Excel Commodity & Derivative (P) Ltd. vs. Union of India and Others (2024) 468 ITR 21 (Cal).The said decision of the Hon'ble Kolkata High Court has been followed by the coordinate Bench of Kolkata in the case of Vivog Commercial Limited vs. DCIT 5(1), ITA No. 1630 & 1631/Kol/2024, dated 27.11.2024, wherein the said order has been followed. The operative part of the decision as under:

*"09. After hearing the rival contentions and perusing the information available on record, including the notice issued u/s 148A(b) of the Act dated 29.05.2022, we note that the Id. AO has wrongly stated in para 3 of the notice issued u/s 148A(b) that the assessee has transacted in commodity transfer through Pace Commodity Brokers Pvt. Ltd. As a matter of fact the commodities transactions were carried out through Anand Rathis Commodities Ltd. We note that the information available with the assessee, copy of which is attached from page no.3 to 9 of the Paper Book, which states that the assessee has made a fictitious profit in trade. We note*

that the assessee replied the said notices vide letter dated 11.06.2022, wherein the assessee specifically stated that it is not transacted any transaction through broker Pace Commodity Brokers Pvt. Ltd. and will be filed an affidavit duly signed by Director. However, the Id. AO without considering these information's passed the order u/s 148A(d) dated 27.07.2022 and also issued notices u/s 148 of the Act on 27.07.2022 by justifying that the income amounting to ₹93,53,400/- is chargeable to tax which is escaped assessments and accordingly, in his opinion it is fit case to issue notice u/s 148 of the Act. Having considered these facts and the transactions carried out by the assessee through Anand Rathis Commodities Ltd. the details whereof are available in the paper book at page no.62., we note that the assessee has fully disclosed the income in the profit and loss account and the profit of the assessee during the year was 2,07,59,841/- from all sources including profit on commodity transactions which were offered to tax at maximum marginal rate tax. Under these circumstances, we are unable to understand as to how the income has been held to have escaped the assessment. In our opinion it is classical case of non-application of mind by the Id. AO to the information available with the Id. Assessing Officer. We note that despite the assessee being filing reply denying the information as condoned in notice issued u/s 148A(b) of the Act on 29.05.2022, the Id. AO simply ignoring the facts, proceeded to pass the order u/s 148A(d) of the Act dated 27.07.2022 and accordingly, issued notice u/s 148 of the Act on the same date. In our opinion there was blatant non application of mind by the AO to the information available before him as he has not conducted any independent enquiry on the veracity of the information despite the assessee categorical denial of absolutely not having done any transactions in commodity through the alleged broker .i.e. M/S Pace Brokers Pvt Ltd. Therefore, in our opinion the re-opening of assessment without any independent application of mind and independent enquiry is bad in law. The case of the assessee is squarely covered by the decision of the Calcutta High Court in the case of Excel Commodity and Derivative (P.) Ltd. (supra), wherein Hon'ble court held as under: -

"3. We have elaborately heard Mr. Subash Agarwal, learned counsel for the appellant and Mr. Tilak Mitra, learned standing counsel appearing for the respondent/revenue. So far as the first portion of the order passed by the learned Single Bench is concerned, the appellant/assessee has no quarrel as the order impugned in the writ petition has been quashed. The assessee is only aggrieved by the direction issued by the learned Single Bench remanding the matter back to the assessing officer. The issue is whether in the facts and circumstances of the case, such an order of remand was justified and called for.

4. The appellant/assessee was issued notice under section 148A(b) of the Act dated 22nd March, 2022. The sum and substance of the allegation in the notice was that the appellant/assessee has done fictitious derivative transactions with M/s. Blueview Tradecom Pvt. Ltd. The assessee submitted their detailed reply to the said notice enclosing all relevant documents in support of their claim to justify that they have not indulged in any fictitious derivative transaction. The procedure contemplated under section 148A requires the assessing officer to consider the reply and thereafter pass a reasoned order, if in opinion of the assessing officer, the information furnished by the assessee in their reply is satisfactory, then nothing more requires to be done. On the other hand, if the assessing officer is of the view that the reply furnished by the assessee is not acceptable, then he is to pass a speaking order in terms of clause (d) of Section 148A of the Act. In the instant case, the assessing officer has passed the order under section 148A(d) dated 7th April, 2022. On a reading of the said order, we find that the assessing officer has Indirectly accepted the explanation given by the appellant/assessee that they have not indulged in fictitious derivative transaction. We say so because in the order dated 7th April, 2022 in paragraph 4 therein, the assessing officer alleges that prima facie the appellant/assessee has taken accommodation entry

by way of fund transfer from M/s. Brightmoon Suppliers Pvt. Ltd. which is a different company. Thus, the order passed under clause (d) of Section 148A of the Act is not based on the reason for which notice dated 22nd March, 2022 was issued under section 148A(b) of the Act. Therefore, the order dated 7th April, 2022 is illegal and has to be held to be wholly unsustainable. In such factual position, the necessity to remand the matter back to the assessing officer does not arise.

5. Further, we take note of the Circular issued by the Central Board of Direct Taxes (CBDT) dated 22nd August, 2022 giving instruction to the departmental officers with regard to the uploading of data on functionality/portal of the

Income-tax Department. This circular emphasises the earlier circular dated 1st August, 2022 and in paragraph 3 therein, it has been stated as follows:

"(3). Further, it is re-emphasized that –

- (i) Before initiating proceedings under section 148/147 of the Act, any information available on data-base/portal of the Income-tax Department shall be verified before drawing any adverse inference against the taxpayers. It is not out of place to mention here that the information made available/data uploaded by the reporting entities may not be fully accurate due to inter alia, error of human nature technical nature, etc. Therefore, due verification may be carried out and opportunity of being heard be given to the taxpayer before initiating proceedings under section 148/147 of the Act.
- (ii) The supervisory authorities are hereby advised to keep an effective supervision so as to ensure that all extant Instructions/Guidelines/Circulars/SOPs are duly followed by the Assessing Officers in their charge."

6. From the above it is clear that it has come to the notice of CBDT that in several cases information made available/data uploaded by the reporting entries are not fully accurate due to error of human nature, technical nature etc. Therefore, the department was advised to effect due verification and opportunity of being heard given to the tax payers before initiating proceedings under section 148/147 of the Act. Thus, in the preceding paragraph we have pointed out the factual position in the case on hand and it appears that proper verification was not done on the information which was available with the assessing officer at the time of issuance of notice under section 148A(b) of the Act which has led to an erroneous order dated 7th April, 2022 being passed. 7. In *Divya Capital One (P.) Ltd. v. Asstt. CIT [2022] 139 taxmann.com 461/445 ITR 436 (Delhi)*, the Court had considered the new re-assessment claim and held as follows:

"7. This Court is of the view that the new re-assessment scheme (vide amended sections 147 to 151 of the Act) was introduced by the Finance Act, 2021 with the intent of reducing litigation and to promote ease of doing business. In fact, the legislature brought in safeguards in the amended re-assessment scheme in accordance with the judgment of the Supreme Court in *GKN Driveshafts (India) Ltd. v. ITO [2002] 125 Taxman 963/[2003] 259 ITR 19* before any exercise of jurisdiction to initiate re-assessment proceedings under section 148 of the Act.

8. This Court is further of the view that under the amended provisions, the term "information" in Explanation 1 to section 148 cannot be lightly resorted to so as to re-open assessment. This information cannot be a ground to give unbridled powers to the Revenue. Whether it is "information to suggest" under amended law or "reason to believe" under erstwhile law the benchmark of "escapement of income chargeable to tax" still remains the primary condition to be satisfied before invoking powers under section 147 of the Act. Merely because the Revenue-respondent classifies a fact already on record as "information" may vest it with the

power to issue a notice of re-assessment under section 148A(b) but would certainly not vest it with the power to issue a re-assessment notice under section 148 post an order under section 148A(d)."

8. As pointed out in the aforesaid mentioned decision, the term "information" in Explanation-1 under section 148 cannot be lightly resorted to so as to reopen assessment and this information cannot be a ground to give unbridled power to the revenue. In fact, in the case on hand, the information has been lightly used which resulted in issuance of notice. As pointed out earlier, the assessee had submitted the explanation to the notice along with documents in support of their claim. The assessing officer has given up the said allegation which formed the basis of the notice and proceeded on a fresh ground for alleging that the transaction with some other company was an accommodation entry. Therefore, on that score also the order dated 7th April, 2022 is liable to be set aside in its entirety without giving any opportunity to reopen the matter on a different issue.

9. For the above reasons, the appeal filed by the assessee (APOT/132/2022) is allowed and the order dated 7th April, 2022 under section 148A of the Act is set aside and the direction issued by the learned Single Bench remanding the matter to the assessing officer is also set aside. Consequently, no further action can be taken by the department against the appellant/assessee on the subject issue.

10. In the result, the connected application for stay (IA No. GA/1/2022) also stands disposed of.

010. The facts of the instant case are materially same and therefore respectfully following the above decision and considering the facts and circumstances, we quash the re-opening of assessment. The appeal of the assessee in ITA No. 1630/KOL/2024 for A.Y. 2013-14 is allowed on technical and legal ground.

011. As far as appeal in ITA no. 1631/KOL/2024 for A.Y. 2014-15 is concerned, since the issue raised and facts are verbatim, except the change in figures and this fact being not controverted by the learned Departmental Representative, we apply our decision of ITA No. 1630/KOL/2024 mutatis mutandis in ITA no. 1631/KOL/2024 for A.Y. 2014-15 and allow the appeal of the assessee by quashing the reopening of assessment.

012. In the result, the appeals of the assessee are allowed on legal issue.

Similarly, Hon'ble Delhi High Court decision in the case of ATS Infrastructure Ltd. Vs. ACIT and Others reported in (2025) 473 ITR 595 (Del), it has been held as under:

"Faced with the disclosures which were made by the assessee, the respondents sought to ascertain the source of funds on the basis of which repayments were made and those loans serviced. That was clearly not the edifice on which the s. 148A(b) notice was based. It becomes pertinent to observe that the validity of the proceedings initiated upon a notice under s. 148 would have to be adjudged from the stand point of the reasons which formed the basis for the formation of opinion with respect to escapement of income. That opinion cannot be one of changing hues or sought to be shored upon fresh reasoning or a felt need to make further enquiries or undertake an exercise of verification. Ultimately, the Court would be primarily concerned with whether the reasons which formed the bedrock for formation of the requisite opinion are tenable and sufficient to warrant invocation of s. 148. The AO must record all reasons in support of assumption of jurisdiction

*and cannot be permitted to record additional reasons in support of that action subsequently. The proviso to s. 148 again ties the initiation of action to the existence of information which already exists or is in the possession of the AO and on the basis of which are Court to form the opinion that income liable to tax has escaped assessment. The provision thus fortifies the view that the foundational material alone would be relevant for the purposes of evaluating whether reassessment powers were justifiably invoked. Accordingly, and for all the aforesaid reasons the Court is unable to sustain the impugned reassessment action. CIT vs. Living Media India Ltd. (20130 89 DTR (Del) 81, Northern Exim (P) Ltd. Vs. Dy. CIT (20120 74 DTR (Del) 333 and Catchy Prop-Build (P) Ltd. Vs. Asstt. CIT & ors. 2022 SCC Online Del 3457 followed; Indivest Pte Ltd. Vs. Addl. Director of IT & Ors. (2012) 250 CTR (Bom) 15; (2012) 69 DTR (Bom) 369 concurred with.”*

Therefore, we respectfully following the same, quash the reopening of assessment as well as consequent assessment framed by the AO.

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

Order pronounced on 21.11.2025

**Sd/-**  
**(Manomohan Das)**  
**Judicial Member**

**Sd/-**  
**(Rajesh Kumar)**  
**Accountant Member**

Dated: 21.11.2025  
AK, Sr. P.S.

*Copy of the order forwarded to:*

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches