

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B" NEW DELHI**

**BEFORE SHRIMHAVIR SINGH, HON'BLE VICE PRESIDENT
AND
SHRISANJAY AWASTHI, ACCOUNTANT MEMBER**

**आ.अ.सं./I.T.A No.2683/Del/2025
निर्धारणवर्ष/Assessment Year:2013-14**

RUCHIE MITTAL, Plot No.10-11, 2 nd Floor, Nelson Mandela Marg, Vasant Kunj, Delhi. PAN No.ADDPG0409P	<u>बनाम</u> Vs.	DCIT Central Circle-1, Faridabad, Haryana.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

Assessee by	Shri Gaurav Jain, Advocate & Shri Tarun Chanana, Advocate
Revenue by	Shri Sabyasachi Roy, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	16.12.2025
उद्घोषणाकीतारीख/Pronouncement on	16.12.2025

आदेश /O R D E R

PER SANJAY AWASTHI, ACCOUNTANT MEMBER:

1. This appeal arises from order u/s 250 of the Income Tax Act, 1961 (hereafter as "the Act"), dated 24.02.2025, passed by Ld. CIT(A)-3, Gurgaon. In this case, the AO passed an assessment after making Rs.42,40,000/- as alleged bogus capital gains u/s 69 of the Act and a further addition of Rs.48,07,934/- as unexplained money u/s 69A of the Act.

1.1 Aggrieved with this action of Ld. AO, the assessee approached the CIT(A) where also he could not succeed on the basis of main fundings

given on pages 41 to 44 of the impugned order. In brief, the claim of capital gains on account of trading in penny stocks and the loan taken by the assessee have been treated as allegedly being bogus.

1.2 Aggrieved with this the assessee has approached the ITAT with the following grounds: -

“1. That on the facts and circumstances of the case, the CIT(A) erred on facts and in law in not quashing the underlying assessment order passed under section 147 of the Act, on the ground of being beyond jurisdiction, bad in law and void ab initio.

2. That on the facts and in the circumstances of the case, the CIT(A) erred in law in not quashing the impugned order passed u/s 147, since the same was passed pursuant to an invalid notice dated 31.03.2021 issued u/s 148 of the Act.

2.1 That on the facts and circumstances of the case the CIT(A) erred on facts and in law in not quashing the impugned order passed u/s 147, since the said re-assessment proceeding were initiated without following the mandatory procedure prescribed u/s 148A of the Act.

2.2 That on the facts and circumstances of the case, the CIT(A) erred in law in not quashing the impugned notice issued u/s 148 since the same was based on invalid “reasons to believe” recorded by the AO, without any independent application of mind.

3. That on the facts and circumstances of the case, the impugned order passed u/s 147 deserves to be quashed since the same was undated and did not carry a valid DIN rendering the said order to be illegal in the eyes of law.”

The Ld. AR also filed an additional ground: -

“1. The captioned matter is listed for hearing before the Hon'ble ‘B’ Bench, New Delhi on 11.12.2025. Vide this application, the Appellant seeks to file additional grounds of appeal challenging the validity of the assessment order passed under Section 143(3) read with Section 147 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), dated 24.03.2022, in this matter, as detailed in the annexure attached.

2. *The additional grounds raised are jurisdictional in nature, purely legal, and arise from the facts available on record and the order passed by the Assessing Officer. Therefore, they are admissible in view of the decision of the Hon'ble Supreme Court in National Thermal Power Company Limited vs. CIT, 229 ITR 383 (SC), wherein it was held that legal grounds of appeal or questions of law can be raised at any stage of the proceedings.*

3. *Further, it is submitted that legal/jurisdictional issues can be raised at any stage of the appellate proceedings, including for the first time before the Hon'ble Tribunal, if the foundational facts are already on record. Reliance in this regard is placed in the following case laws:*

- *CIT vs. Sinhgad Technical Education Society [(2017) 397 ITR 344 (SC)],*
- *PCIT vs. Silver Line [2016] 383 ITR 455 (Delhi HC),*
- *Zakir Hussain v. CIT [2006] 202 CTR (Raj.) 40*

4. *Accordingly, the Appellant prays for the admission of the additional grounds, as detailed in the annexure attached, in view of Rule 11 of the Income Tax (Appellate Tribunal) Rules, 1963, which enables an appellant to raise grounds of appeal not mentioned in the Memorandum of Appeal (Form 36).”*

2. Before us, the Ld. AR requested that the jurisdictional grounds 1 to 3 may be taken up first and only if required then the case should be dealt with on merits also. The Ld. AR placed before us a chart of dates, which deserves to be extracted as under: -

S. No.	Date	Particulars	Page No.
1.	31.03.2021	Last date for issuance of notice under Section 148 of the Act for AY 2013-14, which stood extended up to 30.06.2021 by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (TOLA).	-
2.	01.04.2021	With effect from 01.04.2021 , the reassessment provisions were substituted by the Finance Act, 2021 , mandating that any notice under Section 148 issued on or after this date, including notices covered by TOLA extension upto 30.06.2021, could be issued only after following the procedure prescribed under Section 148A of the Act.	
3.	01.04.2021	Notice dated 31.03.2021 under Section 148 of the Act was issued by the AO on 01.04.2021 under the erstwhile reassessment regime , without following the procedure prescribed under Section 148A introduced by the Finance Act, 2021.	1 of the PB
4.	01.04.2021	Email regarding issuance of notice under Section 148 was received by the Appellant.	2 of the PE
5.	01.04.2021	Notice under Section 148 was uploaded on the ITBA portal. Reliance in this regard is placed on the following judgments: <ul style="list-style-type: none"> • <i>Suman Jeet Agarwal [2022] 449 ITR 517 (Delhi HC)</i>; • <i>Mukesh Kharana [2025] 173 taxmann.com 223 (Delhi trib)</i> • <i>SGA Infotech P. Ltd. - ITA No. 5844/Del/24 (Delhi Trib)</i>; • <i>R V Commodities P. Ltd. - ITA No. 2365/Del/25 (Delhi Trib)</i>; • <i>Aseem Sehgal - ITA No. 154/Del/25 - (Delhi trib)</i> 	3 of the PB
6.	18.01.2022	Objections were filed by the Appellant contending that the reassessment proceedings were vitiated as the mandatory procedure under Section 148A was not followed, despite the extension granted under TOLA and the law laid down by the Hon'ble Supreme Court in <i>Ashish Agarwal [2022] 138 taxmann.com 64 (SC)</i> .	4 of the PB
7.	24.03.2022	The Assessing Officer, however, proceeded to pass the assessment order without issuing a valid show-cause notice under Section 148A(b) or passing an order under Section 148A(d), thereby acting in violation of the amended reassessment framework.	-
8.	-	The reassessment proceedings in the present case are squarely covered and rendered invalid in view of the subsequent judgment of the Hon'ble Supreme Court in <i>Rajeev Bansal [2024] 167 taxmann.com 70 (SC)</i> .	-

It was pointed out that the notice dated 31.03.2021 (placed at page 1 of the Paper Book) was clearly issued only on 01.04.2021. The Ld. AR has pointed out the ITBA screenshot at page 3 of the Paper Book, which

clearly depicts that the notice/communication reference ID: 100033614430 clearly shows: **“issue on: 01-Apr-2021”**. It was the further submission that the moment a notice u/s 148 was issued on 01.04.2021 then the new procedure introduced by the Finance Act, 2021 would come in the picture. It was argued that the Ld. AO has persisted with the old system and has thereafter passed his order. However, the Ld. AR also pointed out that no notice u/s 143(2) was issued and on this aspect he requested that the additional grounds of appeal may be admitted for adjudication. Thereafter the Ld. AR took us through the various provisions of the new procedure to illustrate the point that the Ld. AO has persisted with the old procedure in spite of the notice being issued on 01.04.2021. The Ld. AR read out from various portions of the case of **Suman Jeet Agarwal** reported in 449 ITR 517 (Del). The Ld. AR emphasized the point that the date of issue in the ITBAPortal was the material date and this view was supported by the case of **Suman Jeet Agarwal** (supra).

2.1 Since the fact regarding the date of issue of notice goes to the root of the matter, hence, it was decided to adjudicate this first.

2.2 The Ld. DR relied on the orders of the authorities below and stated that as per the paper book filed by the assessee it was clearly visible that the notice had been signed for issue on 31.03.2021 at 3.40 pm. It was

stated that at times there is a gap between the issue of the notice by the AO and its eventual reflection on the ITBA portal.

3. We have carefully considered the rival submissions and have perused the orders of the authorities below, as well as the paper books filed by the assessee. Right at the outset, it deserves to be mentioned that it is clear from the Suman Jeet Agarwal case (supra) that it would be the date of issue on the ITBA Portal that would be relevant for considering service of the same. The relevant head notes may be extracted as under:

“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 un-amended 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 Assess ” Officer while function of drafting of e-mail to which notice is attached and triggering e-mail to assessee is performed by ITBA e-mail software system - Held, yes - Whether thus, mere generation of notice under section 148 on ITBA 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 b} 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, ye; [Paras 25.12 , 25.13, 25.23 and 26] [Partly in favour of assessee]

Section 148, read with section 149, of the Income-tax Act, 1961 - Income escaping assessment - Issue of notice for (Date of notice) - Whether while issuing notice under section 148, date of issue of notice is not important, it is date of signing notice which is important - Held, yes - Whether where notice was dated 31-3-2021 but had been digitally signed on 1-4-2021, date of notice will be 1-4-2021 - Held yes [Paras 25.5 and 31.1] [Partly in favour of assessee]

Section 282, read with sections 148 and 149. of the Income-tax Act, 1961 - Service of notice - Genera (Validity of) - Whether where notices under section 148 are sent through registered e-mail ID o respective Assessing Officers, though not digitally signed, it will be held to be valid service of notice - Held, yes - Whether however, date and time of dispatch as recorded in ITBA portal will be taken a; date of issuance of notice in this regard - Held, yes [Para 31.2] [Partly in favour of assessee]

Section 282, read with sections 148 and 149, of the Income-tax Act, 1961 - Service of notice - Genera (Validity of) - Whether where notices under section 148 were only uploaded in E-filing portal o assesseees without any real time alert, date and time when assesseees viewed notices in E-filing portal, as recorded in ITBA portal will be construed as date of service of notice - Held, yes [Para 31.4] [Partly in favour of assessee]

It is evident that the notice u/s 148 was issued only on 01.04.2021 and hence the new procedure introduced by the Finance Act, 2021 had to be necessarily adopted. Since this was not done by the Ld. AO hence the assessment order passed by him deserves to be struck down.

4. Since the assessment order itself has been struck down, no other grounds are being adjudicated.

5. In the result, the appeal is allowed.

Order pronounced in the open court on 16.12.2025

**Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT**

**Sd/-
(SANJAY AWASTHI)
ACCOUNTANT MEMBER**

Dated: 19.12.2025

**Kavita Arora, Sr. P.S.*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**