

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, DELHI**

**BEFORE SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER &
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.2760/Del/2025
(Assessment Year:2018-19)**

Ravindra Kumar Gupta C/o CA Vaibhav Goel 75 Navyug Market 1 st Floor, Ghaziabad Uttar Pradesh – 201002	Vs.	DCIT, Circle 5(3)(1) GB Nagar Aaykar Bhavan, A-2D, Sector – 24 Noida, UP- 201307
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AHMPG9176E		
Appellant	..	Respondent

Appellant by :	Sh. Vaibhav Goel, CA
Respondent by :	Sh. Rajesh Kumar Dhanesta, Sr. DR

Date of Hearing	10.11.2025
Date of Pronouncement	09.01.2026

ORDER

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the assessee against the order dated 24.02.2025 of the Ld. National Faceless Appeal Centre (NFAC) (hereinafter referred as Ld. First Appellate Authority or in short Ld. ‘FAA’) in DIN

&Order No : ITBA/NFAC/S/250/2024-25/1073629645(1) arising out of the assessment order dated 27.03.2023 u/s 147/144B of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') passed by the NFAC, Delhi for AY: 2018-19.

2. Heard and perused the records. The assessee is an individual and the return of income was filed declaring income of Rs.1,10,90,564/- and during the assessment proceeding the case was picked up for scrutiny and the scrutiny assessment was completed at returned income. Subsequently the case of the assessee was reopened for the reason that assessee has taken unsecured loans from dummy entities. The assessee has replied and order u/s 144A(d) of the Act was passed and notice u/s 148 of the Act was issued. Assessee filed return in response to notice u/s 148 of the Act on 03.05.2022. During the reassessment the assessee filed replies, however, an addition of Rs. 50,00,000/- as unexplained cash credit u/s 68 r.w.s 115BBE was made which has been sustained by Id. CIT(A) for which assessee is in appeal before this Tribunal and what Id. Counsel contended primarily was that assessment has been completed u/s 147 r.w.s 144 of the Act and new intangible fresh material was not supplied to the assessee at the time of reopening. In this

regard, decision of the Coordinate Bench in ITO Vs. BC Enterprises in ITA No. 4972/Del/2024 was relied wherein relying the decision of Hon'ble Supreme Court in the case of Ashish Aggrawal (2022) (5) TME 240 (SC) the Coordinate Bench has held that failure of Assessing Officer to supply material relied upon for initiating proceeding u/s 148A of the Act is fatal.

3. Though Id. DR has defended the issue before us and contended that no such issue has been raised before the Ld. CIT(A), we find that assessee had raised ground No. 1 broadly covering the objections. Even otherwise ground Nos. 2 & 4 as raised before us are legal in nature and can be decided on admitted facts.

4. Now, what we find from the copy of show cause notice issued u/s 148A(b) of the Act, dated 12.03.2022, available at page No. 4-6 of the paper book and that very broadly allegations have been made that a search and seizure action u/s 132 of the Income-tax Act, 1961 was conducted by the department on M/s K K Spun India Ltd. on 23.03.2021. During further enquiry, it was found that the assessee has received unsecured loans from various dummy companies giving accommodative entries which were linked with the above-mentioned company.

5, It comes up from this notice absolutely no details with regard to amount of unsecured loans and the details of alleged dummy companies is mentioned. The reopening merely mentions that a search was conducted on M/s KK Spun India Ltd. on 23.03.2021 and assessee was found to have received unsecured loans from various dummy companies and there is no allegation of any information available suggesting income chargeable to tax escaping assessment. Assessee has provided copy of reply dated 19.03.2022 available at page No. 7-44 wherein in response to show cause notice dated 12.03.2022 assessee had provided details of entity providing unsecured loans including from ledger account, confirmation, bank account and ITR. It comes up from this reply that assessee had mentioned that most of the loans taken by the assessee during Financial Year 2017-18 have been repaid by the assessee in the Financial Year 2019-20 and assessee had claimed that it has no transaction with M/s KK Spun India Ltd. Assessee specifically mentioned that no new information is available in the notice u/s 148A of the Act.

6. Then at page No. 54-55 the copy of order u/s 148A(d) of the Act has been dated 30.03.2022 is provided which show that only draft order was enclosed and forwarded and there is no mention of approval u/s 151 being

also sent. This order dated 30.03.2022 mentions of the response of the assessee being received in consequence to notice u/s 148A(b) of the Act but without pointing out any discrepancy or suspicion from the submissions of the assessee merely relying the investigation report, this order seems to be passed. The Coordinate Bench in the case of **BC Enterprise (supra)** in similar facts and circumstances has held as follow:

“12. From the perusal of the provisions of section 148A, it is clearly provided in sub-section (a) that before issue of notice u/s 148, AO should conduct enquiry with the prior to approval of the specified authority with respect to information suggest the income chargeable has escaped assessment. In the instant case, from the perusal of the notice issued u/s 148A(b) it appears that though the said notice was issued with the prior approval of the PCIT, Delhi-20, however, no material whatsoever was supplied nor the results of the enquiries, if any, conducted were confronted to the assessee and it is merely stated that based on the information received through insight portal it was found that assessee was having accommodation entry in the shape of bogus purchases. It is also seen that assessee in reply to the said notice had filed a detailed reply on 24th March, 2020 which was sent through email to the AO, however, such reply was not considered and the order was passed u/s 148A(d) recording the satisfaction that it is a fit case for issue of notice u/s 148 of the Act.

13. Further from the perusal of the order passed u/s 148A(d), we observed that the AO in para 3 of the order observed that the information was self-sufficient and it was considered that further enquiries u/s 148A(a) of the Act are not required. However, when we see the information as provided to assessee along with notice u/s 148A(a) as “Annexure” and reproduced herein above, we find that such information did not speak about the real transactions. It is simply stated that assessee has made bogus purchases in the form of accommodation entries provided by Ashok Kumar Gupta and other entities operated and controlled by him. It is also stated that such information was received through insight portal. However, nowhere it is stated as to how department was having such information, who is Ashok Kumar Gupta, what is the nexus between assessee and Ashok Kumar Gupta, which are the entities managed and controlled by him and which of such entities had sold good to assessee alleged as accommodation entry. Further the

details of purchases made, date of transactions, item, value of each individual transaction of purchases etc. were never brought on record as provided in subsection (a) to section 148A of the Act. Further, AO has never provided the statements of such Ashok Kumar Gupta and the other relied upon material based on which of transactions were alleged as accommodation entry of purchases alongwith the notice u/s 148A(b) of the Act. It appears that the AO simply proceeded to reopen the case of the assessee based on the information available on the insight portal which is uploaded under Risk Management Strategy formulated by CBDT and no independent application of mind by AO before using such information against the assessee nor any enquiry was made as provided in section 148A(a) of the Act. This action of AO is highly arbitrary as he failed to appreciate the intent of the legislation behind introduction of provisions of section 148A before issue of notice u/s 148 of the Act. The AO not only proceeded to issue notice u/s 148A(a) without making verification of the vague and insufficient information available with him to satisfy himself that income chargeable to tax has escaped assessment but at the same time also failed to provide the material relied upon to the assessee along with notice u/s 148A(b) of the Act. The Hon'ble Supreme Court in the case of Ashish Agarwal (supra) has held that AO should supply the relied upon material to the assessee so as to enable him to respond the show cause notice issued by AO. We also observed that Id. CIT(A) while dismissing this plea of the assessee in para 5.4.3 of the order has observed that department was in possession of the material which also include the statement of Shri Ashok Kumar Gupta. However, at no stage of proceedings u/s 148A of the Act, such statements were supplied to the assessee for rebuttal.

14. Further, from the perusal of the assessment order, it is seen that the Assessing officer has relied upon the statements of Sh. Ashok Gupta and also referred the results of the enquiry conducted u/s 133(6) of the Act from the respective parties, however, despite of request made by the assessee for cross examination of all such parties, no such opportunity was provided to assessee. It is settled proposition of law that if the Revenue is using the statement of third parties, the assessee should have been allowed an opportunity to cross examine those witnesses as has been held by the Hon'ble Supreme Court in the case of Adman Timber Products reported in 281 CTR 241. The relevant observations of the Hon'ble Court as under:

"6. According to us, not allowing the assessee to cross-examine the witnesses by the adjudicating authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when

the assessee disputed the correctness of the statements and wanted to cross-examine, the adjudicating authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the adjudicating authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the adjudicating authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their exfactory prices remain static. It was not for the Tribunal to have guesswork as to for what purposes the appellant wanted to cross examine those dealers and what extraction the appellant wanted from them." [Emphasis supplied]"

15. The Co-ordinate Bench of Tribunal in the case of Best City Infrastructure Ltd. vide order dated 31.05.2016 has held that not providing opportunity of cross examination makes the addition invalid. This order is upheld by Hon'ble Delhi High Court as reported in 397 ITR 82. Similar view is expressed by Hon'ble High Courts in following cases:

- PCIT vs. PavitraRealcomPvt. Ltd. in ITA No.579/2018 (Delhi)*
- PCIT vs. Esspal International Pvt. Ltd. in ITA No.25/2024 (Rajasthan)*
- Dr. M. Malliya vs. ACIT in TCA No.284/11 (Madras).*

Therefore, not providing the opportunity to cross examine the witness whose statements are relied upon by the Revenue is gross violation of principal of natural justice. Moreover, the AO has failed to consider the reply filed by the assessee in response to notice issued u/s 148A(b) of the Act. Hon'ble Rajasthan High Court in the case of R.K. Build creations (Pvt.) Ltd. vs. ITO reported in [2024] 462 ITR 478 (Raj) has held as under:

"It is mandatory for the AO to pass speaking order, taking into consideration not only the material on record but also the reply filed. The additional reply dt. 14.06.2022 was not considered, consequently there was no occasions to deal with the objections raised therein. The impugned order is not as per the procedure prescribed u/s 148A of the Act and cannot stand judicial scrutiny."

Thus, non-consideration of the reply filed by the assessee also render the reassessment order passed as invalid.

16. After considering the above discussion, we are of the view that the Assessing Officer has failed to comply with the direction given by the Hon'ble Supreme

Court in the case of Rajiv Bansal (supra) and also the assessee Ashish Agarwal (supra) wherein it is held that AO should provide all the information and relied upon material available with him to the assessee alongwith notice u/s 148A(b) of the Act. Nor the reply of the assessee was considered before passing order u/s 148A(a) of the Act. Accordingly, in our considered view notice u/s 148 is bad in law and thus, the entire reassessment proceedings is held as invalid and is hereby quashed. The cross objections of the assessee taken in ground of appeal no.1 to 5 of the assessee C.O. are allowed.”

7. In the light of the aforesaid discussion of facts and the law we are of the considered view that assessee succeed to establish the ground No. 2 &3 consequently the appeal of the assessee is allowed and the impugned reassessment order is quashed.

Order pronounced in the open court on 09.01.2026

Sd/-
(S Rifaur Rahman)
ACCOUNTANT MEMBER

Sd/-
(Anubhav Sharma)
JUDICIAL MEMBER

Dated 09.01.2026

Rohit, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI