

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

**BEFORE SH. S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SH. SUDHIR KUMAR, JUDICIAL MEMBER**

ITA No.3875/Del/2025
Assessment Year: 2016-17

NIKITA KAPOOR, C/O RAJ KUMAR & ASSOCIATES, L-7A (LGF) SOUTH EXTENSION, PARTI-II, NEW DELHI – 110 049 PAN: CGBPK7762C (APPELLANT)	Vs	ITO, NFAC, DELHI / ITO, WARD 54(1), NEW DELHI (RESPONDENT)
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Appellant by	Shri Raj Kumar, CA & Shri J.P. Sharma, Adv.
Respondent by	Ms. Harpreet Kaur Hansra, Sr. DR.

Date of hearing:	06/01/2026
Date of Pronouncement:	14/01/2026

ORDER

PER SUDHIR KUMAR, JM:

This appeal by the assessee is directed against the order of Ld. NFAC, Delhi, vide order dated 10.6.2025 pertaining to A.Y. 2016-17 arising out of the assessment order dated 29-03-2022 passed by the Assessing Officer under Section 147/144B of the

Income Tax Act, 1961 [hereinafter referred as 'the Act'] on the following grounds:-

1. That under the facts and circumstances of the case and in law, assessment made u/s. 47 rws 144B Dt. 29.03.22 is invalid in the absence of issuance of mandatory notice U/s. 143(2) after filing return of income on 19.07.21 i.e. prior to Completion of asstt. in response to notice U/s.148 Dtd.31.03.21, more so reasstt. made in the absence of notice U/s. 143(2) is invalid and illegal for want of a valid assumption of jurisdiction, hence liable to be quashed.
2. That under the facts and circumstances, reasstt. framed U/s.144 assuming that no valid ITR has been filed is illegal and unsustainable since the ITR in response to notice U/s.148 stood filed on 19.07.21 i.e. much before the completion of asst. order Dtd.29.03.22.
3. That under the facts and circumstances, the initiation of reasstt. Proceedings u/s. 147/148, being mechanical, initiated on wrong facts on borrowed satisfaction and without application of mind etc. is unsustainable in law as well as on merits.
4. That approval u/s. 151 being mechanical, without application of mind and on borrowed satisfaction etc. hence not valid for initiation of reasstt. proceedings.
5. That in the absence of disposing of all the objections against initiation of reasstt. proceedings, as required in law, the impugned asstt. needs to be quashed.
6. That under the facts and circumstances, disallowance of claim of exempted LTCG of Rs.4,04,27,532/- U/s.10(38) on sale of shares of Yamini Investment Co. Ltd. and consequential addition of Rs.4,04,27,532/- U/s. 68 is illegal and unjustified in law as well as on merits and also in the absence of providing adverse material, statements and cross-examinations etc. in spite of repeated request.
7. That under the facts and circumstances, the estimated addition of Rs.20,21,377/- U/s.69C as alleged 5% unexplained expenditure for obtaining LTCG on shares is

illegal and unjustified in law as well as on merits, more so in the absence of any such material being found.

8. That in the absence of providing V.C. Hearing in spite of specific requests, the Ld. CIT(A) erred in law in rejecting the appeal.

3. The brief facts of the case are that in this case, the return of income was filed on 30.7.2016 declaring total income at Rs. 5,89,560/-. Subsequently, information in this case has been received from insight portal as high risk profile case regarding fictitious profits in equity / derivative trading. The assessment was reopened after obtaining the prior approval from the Appropriate Authority for the AY 2016-17. Thereafter, notice u/s. 148 was issued on 31.3.2021 and the same was duly served upon the assessee. In response to the said notice, the assessee has filed return of income on 19.7.2021, declaring total income at Rs. 5,69,860/-. AO noted that the said return has been filed much later than the time permitted for doing so. The assessee was required to file the return of income latest by 30.4.2021. Having failed to do so, AO noted that there is no option but to treat the said return as no-return and proceed with passing the order as contemplated in section 144 of the Act. The assessee earned exempted LTCG of Rs. 4,04,237,535/- (4,14,27,535 - 1000000) on sale of shares of Yamini Investment Company Limited. AO by assuming the script as penny stock, the AO disallowed the claim of LTCG read with section 10(38) added the LTCG of Rs. 4,04,27,535/- u/s. 68 of

the Act and the other addition made for alleged unexplained commission expenditure @5% of LTCG i.e. Rs. 20,21,377/-, which has been added u/s. 69C of the Act.

4. Aggrieved by the order of the AO the assessee filed the appeal before the Ld.CIT(A), who dismissed the appeal against which the assessee is in appeal before the Tribunal.

5. The Ld. AR has submitted that no notice u/s. 143(2) issued although belated income tax return in response to 148 notice was filed by the assessee and assessment was made without jurisdiction. He also submitted that there is a mandate that the income tax return should be filed within time, in compliance of the notice issued u/s. 148 of the Act. In support of this contention, Ld. AR relied upon the following decisions:-

- PCIT vs Kamla Devi Sharma 96 Taxmann.com 659 (Rajasthan) dated 10.7.2024.
- Bhaval Synthetics (India) Ltd. Vs. DCIT {2020} 122 taxmann.com 310 (Jaipur-Trib) dated 28.10.2020.
- Balbir Singh Vs. ACIT {2025} 171 taxmann.com 572 (Raipur Trib).
- PCIT vs. Silver Line [2016] 65 taxmann.com 137 (Delhi) dated 4.11.2015.
- PCIT vs. Shri Jai Shiv Shankar Traders P Ltd. (2015) 64 taxmann.com 220 (DHC) dated 14.10.2015.

5. Per contra, Ld. DR relied upon the orders of the authorities below.

6. We have heard the rival contentions and perused the records. We find considerable cogency in the contention of the Ld. AR that no notice u/s. 143(2) issued although belated income tax return in response to notice u/s. 148 was filed and assessment was made without issuing notice u/s. 143(2) which is without jurisdiction. In this case notice u/s. 148 of the Act dated 31.3.2021 allowing time of 30 days to file the ITR i.e. upto 30.4.2021 and assessee in response to notice u/s. 148 filed on 19.7.2021. The AO treated return as nonest for being filed belatedly. It is noted that the assessment framed was without issuing any notice u/s. 143(2) on 29.3.2022. We noted that as per reasons mentioned in the assessment order of not issuing notice u/s. 143(2) is that *“The assessee was required to file the return of income latest by 30.4.2021. Having failed to do so, there is no option but to treat the said return as nonest and proceed with passing the order as contemplated in Section 144 of the Act.”* It is further noted that the income tax return was filed much before the completion of assessment. Hence, the action of the AO in treating the return as nonest is not sustainable in the eyes of law. Since no notice u/s. 143(2) issued although belated income tax return in response to notice u/s. 148 notice filed, re-assessment without issuing notice u/s. 143(2) is without jurisdiction and deserve to be quashed. We hold and direct accordingly. Our decision, is fortified by the following case laws:-

- **PCIT vs. Shri Jai Shiv Shankar Traders P Ltd.**
[2015] 64 taxmann.com 220 (Delhi High Court)
dated 14.10.2015 wherein, it has been held:

“Held yes, Assessing Officer picked up assessee’s return for scrutiny assessment and issued notice on assessee under section 148 – assessee informed AO that return originally filed should be treated as return filed pursuant to notice u/s. 148. Thereafter Assessing officer without issuing notice under section 143(2) to assessee passed reassessment order. – Whether failure by Assessing Officer to issue notice under section 143(2) was fatal to order of reassessment.”...

- **Alpine Electronics Asia Pte. Ltd. vs. DGIT WP (Civil) No. 7932 of 2010 – (2012) 18 taxmann.com 246 (DHC) dated 24.1.2012. (Head Note)**

“Section 148 of the Income Tax Act 1961 – Income escaping assessment – Notice for – Assessment years 2003-04 to 2006-07 – whether in respect of returns filed pursuant to notice under section 148 after 1.10.2015, it is mandatory to serve notice under section 143(2) within stipulated time limit - Held, yes [in favour of assessee]. “

- **PCIT vs. Kamla Devi Sharma 96 Taxmann.com 659 (Rajasthan) dated 10.7.2024** wherein, it has been held that even if belated return u/s.

148 is filed, 143(2) notice is necessary to assume jurisdiction for framing assessment.

- **Balbir Singh Vs. ACIT {2025} 171 taxmann.com 572 (Raipur Trib)** wherein, it has been held that without issuing any notice u/s. 143(2), such assessment was liable to be quashed.

6.1 Since we have quashed the reassessment order, the remaining grounds have become academic and need not be adjudicated.

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

Order pronounced in the open court on 14.01.2026.

Sd/-

**(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

SR Bhatanagar

Date:- 14.01.2026

Copy forwarded to:

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

Sd/-

**(SUDHIR KUMAR)
JUDICIAL MEMBER**

ASSISTANT REGISTRAR
ITAT NEW DELHI