

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

**BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER
&
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

**ITA No.4617/Del/2025
(ASSESSMENT YEAR 2015-16)**

<p>Innus Infrastructure Pvt. Ltd. [Formerly known as M/s. EMU Realcon (P.) Ltd. before amalgamated with M/s. Inuus Infrastructure (P) Ltd.] 875, Sector 17B, Gurugram PAN-AADCE7392R</p>	Vs.	<p>DCIT Circle-10(1), New Delhi</p>
(Appellant)		(Respondent)

Assessee by	Shri Lalit Mohan, CA & Shri Ankit Kumar, Adv
Department by	Ms. Pooja Swaroop, CIT (DR)
Date of Hearing	19.01.2026
Date of Pronouncement	23.01.2026

ORDER

PER MANISH AGARWAL, AM:

The present appeal is filed by assessee against the order dated 05.06.2025 passed by Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre ("NFAC"), Delhi ["Ld. CIT(A)"] in Appeal No. NFAC/2014-15/10259380 u/s 250 of the Income Tax Act, 1961 ["the Act"] arising out of assessment order dated 29.05.2023 passed u/s 147 r.w.s. 144B of the Act

pertaining to Assessment Year 2015-16.

2. The assessee has challenged the appellate order on the following grounds of appeal:

- “1. That the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi has grossly erred both in law and, on facts in upholding the determination of income made by the learned Assessment Unit, Income Tax Department of the appellant company at Rs. 66,00,00,000/-as against declared Nil income in an order of assessment dated 29.5.2023 u/s 147 read with section 144B of the Act.*
- 2. That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that assessment framed u/s 147/144B of the Act is barred by limitation and therefore, deserve to be quashes as such.*
- 3. That the learned Commissioner of Income Tax (Appeals) has erred both in law in upholding the initiation of proceedings under section 147 of the Act and, completion of assessment under section 147/144B of the Act without appreciating that the same were without jurisdiction and hence deserved to be quashed as such.*
- 3.1. That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that the notice issued u/s 148A(b) of the Act, under section 148 of the Act order u/s 148A(d) of the Act were also illegal, invalid and without jurisdiction and deserve to be quashed as such.*
- 3.2. That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that there was no tangible material on record in the form of specified information to suggest that income of the appellant had escaped assessment and in view thereof the proceedings initiated were illegal, untenable and therefore unsustainable.*
- 3.3. That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that non supply of information in accordance with clause (i) of Explanation I to section 148 of the Act even otherwise vitiated the notice u/s 148A(b) of the Act and order u/s 148A(d) of the Act.*

- 3.4. *That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that initiation of proceedings was mechanical and without any application of mind much less independent application of mind, therefore the notices issued u/s 148A(b) of the Act; and u/s 148 of the Act were invalid notice; and also order u/s 148A(d) of the Act was an invalid order and thus assumption u/s 147 of the Act was without jurisdiction.*
- 3.5. *That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that notice issued u/s 148 of the Act after three years have elapsed from the end of the relevant assessment year in absence of possession of books of account or other documents or evidence which reveal that the income chargeable to tax represent in the form of 'asset', which has escaped assessment amounting to or is likely to amount to fifty lakh rupees or more for that year in view of provisions of section 149(1)(b) of the Act.*
- 3.6. *That notice u/s 148A(b) of the Act was issued based on factually incorrect assumptions and presumptions and therefore such a notice being highly cryptic vague could not legally and logically be made a basis for assumption of jurisdiction and therefore deserves to be quashed as such.*
- 3.7. *That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that notice u/s 148A(b) of the Act and, notice dated 30.7.2022 u/s 148 of the Act issued without validly complying section 151 of the Act were also without jurisdiction.*
- 3.8. *That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that notice u/s 148A(b) of the Act and order u/s 148A(d) of the Act were contrary to section 151A of the Act; and therefore the assumption of jurisdiction was not in accordance with law.*
- 3.9. *That the learned Commissioner of Income Tax (Appeals) has also failed to appreciate that the notice dated 30.7.2022 u/s 148 of the Act is null and void as the same is in violation of CBDT Circular No. 19/2019 requiring mandatory DIN and therefore not in accordance with law.*

4. That the learned Commissioner of Income Tax (Appeals) has also erred both in law and on facts in sustaining an addition of Rs. 66,00,00,000/- representing alleged sum received by issue of redeemable preference shares from following entities and erroneously held as unexplained cash credit u/s 68 read with section 115BBE of the Act:

Sr. No.	Name of entity	Amount (Rs.)
i)	M/s Cotys Buildcon (P) Ltd.	22,00,00,000
ii)	M/s Malayeka Builders (P) Ltd.	22,00,00,000
iii)	M/s Naja Builders & Developers (P) Ltd.	22,00,00,000
	Total	66,00,00,000

- 4.1. That while confirming the above addition, the learned Commissioner of Income Tax (Appeals) has failed to appreciate that the factual substratum of the case, statutory provisions of law and as such, addition so sustained is highly misconceived, totally arbitrary, wholly unjustified and therefore, unsustainable.
- 4.2. That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in recording various adverse inferences which are contrary to the facts on record, material placed on record and, are otherwise unsustainable in law and therefore, addition so sustained is absolutely unwarranted.
- 4.3. That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that sum of Rs. 66,00,00,000/- received by the appellant company had been fully substantiated by documentary evidence placed on record in the course of appellate/assessment proceedings and, therefore such sum could not in law or on fact be held to be unexplained cash credit u/s 68 of the Act.
- 4.4. That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that in absence of any source of income of the appellant or any evidence to show that money originated from the coffers of the appellant addition made and sustained by invoking section 68 of the Act is apparently untenable,
- 4.5. That the learned Commissioner of Income Tax (Appeals) has

failed to appreciate that sum of Rs. 66,00,00,000/- had been received through banking channels from independent parties and as such, addition so sustained is not in accordance with law and untenable.

- 4.6. *That the learned Commissioner of Income Tax (Appeals) has also erred in upholding the addition by assumption and presumption and thereby failing to appreciate that surmise, conjecture and suspicion can neither in law and nor on fact can be made a valid basis to sustain an addition under section 68 of the Act.*
5. *That without prejudice to the above and in the alternative, even otherwise, the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in holding that sum received by the appellant company is taxable as income under section 68 of the Act and thereafter computed the demand in accordance with the rates specified in section 115BBE of the Act as amended by Taxation Laws (Second Amendment) Act, 2016.*
6. *That the learned Commissioner of Income Tax (Appeals) has also erred both in law and on facts in upholding the levy of interest of Rs. 21,98,47,320/-u/s 234B which is not leviable on the facts of the appellant.*

Prayer:- It is therefore, prayed that, it be held that assessment made by the learned Assessing Officer and sustained by the learned Commissioner of Income Tax (Appeals) be quashed. It be further held that addition made and sustained by the learned Commissioner of Income Tax (Appeals) alongwith interest levied be deleted and appeal of the appellant be allowed.

3. In **Ground of appeal No.1**, is general in nature and requires no adjudication.

4. In **Ground of appeal No.2**, the assessee has challenged the reopening on the ground that the notice issued u/s 148 is barred by limitation.

5. We have heard the rival submissions and perused the materials available on record. It is an admitted fact that case of the assessee was reopened by issue of notice u/s 148 on 28.06.2021. Thereafter in terms of order of Hon'ble Supreme Court in the case of **Union of India vs. Ashish Agarwal** reported in **(2022) 444 ITR 1(SC)**, the notice issued u/s 148 was treated as the notice u/s 148A(b) of the Act and assessee was asked to file reply on the information available which were supplied to it. After considering the submissions made, order u/s 148A(d) of the Act was passed on 30.07.2022 and fresh notice u/s 148 was issued on 30.07.2022. At this juncture, we observed that in the case of **Union of India & Ors. vs. Rajiv Bansal in Civil Appeal No.8629 of 2024**, the Learned Additional Solicitor General of India, Mr. N. Venkataraman has made the statement at Bar that Revenue will drop all the notices issued u/s 148 on or after 1st April, 2021 related to Assessment Year 2015-16. It is, thus, claimed by Ld. AR that in the instant case first notice u/s 148 was issued for Asst. Year 2015-16 on 28.06.2021 i.e. after 1st April, 2021, therefore, subsequent notice issued u/s 148 on 30.7.2022 is invalid and deserves to be dropped.

6. In the present case though there was categorical admission of the Ld. Additional Solicitor General of India

in the case of Rajiv Bansal (supra) before the Hon'ble Supreme Court that all the notices issued u/s 148 for Asst. Year 2015-16 on or after 1st April 2021 will be dropped, however, the AO proceeded to complete the proceedings under amended provisions of section 148A and passed the order u/s 148A(d) of the Act and thereafter issued fresh notice u/s 148 of the Act on 30/07/2022. The relevant extract of the assertion made by Ld. Additional Solicitor General of India before the Hon'ble Supreme Court in para 19(f) of the said order is reproduced as under:

“19. *Mr. N. Venkataraman, learned Additional Solicitor General of India, made the following submissions on behalf of the Revenue:*

- a. Parliament enacted TOLA as a free-standing legislation to provide relief and relaxation to both the assesses and the Revenue during the time of COVID-19. TOLA seeks to relax actions and proceedings that could not be completed or complied with within the original time limits specified under the Income Tax Act;*
- b. Section 149 of the new regime provides three crucial benefits to the assesses: (i) the four-year time limit for all situations has been reduced to three years; (ii) the first proviso to Section 149 ensures that re-assessment for previous assessment years cannot be undertaken beyond six years; and (iii) the monetary threshold of Rupees fifty lakhs will apply to the re-assessment for previous assessment years;*
- c. The relaxations provided under Section 3(1) of TOLA apply "notwithstanding anything contained in the specified Act." Section 3(1), therefore, overrides the time limits for issuing a notice under Section 148*

read with Section 149 of the Income Tax Act;

- d. TOLA does not extend the life of the old regime. It merely provides a relaxation for the completion or compliance of actions following the procedure laid down under the new regime;
- e. The Finance Act 2021 substituted the old regime for re-assessment with a new regime. The first proviso to Section 149 does not expressly bar the application of TOLA. Section 3 of TOLA applies to the entire Income Tax Act, including Sections 149 and 151 of the new regime. Once the first proviso to Section 149(1)(b) is read with TOLA, then all the notices issued between 1 April 2021 and 30 June 2021 pertaining to assessment years 2013-2014, 2014-2015, 2015-2016, 2016-2017, and 2017-2018 will be within the period of limitation as explained in the tabulation below:

Assessment year (1)	Within 3 Years (2)	Expiry of Limitation read with TOLA for (2) (3)	Within six Years (4)	Expiry of Limitation read with TOLA for (4) (5)
2013-2014	31.03.2017	TOLA not applicable	31.03.2020	30.06.2021
2014-2015	31.03.2018	TOLA not applicable	31.03.2021	30.06.2021
2015-2016	31.03.2019	TOLA not applicable	31.03.2022	TOLA not applicable
2016-2017	31.03.2020	30.06.2021	31.03.2023	TOLA not applicable
2017-2018	31.03.2021	30.06.2021	31.03.2024	TOLA not applicable

- f. **The Revenue concedes that for the assessment year 2015-16, all notices issued on or after 1 April 2021 will have to be dropped as they will not fall for completion during the period prescribed under TOLA;**
- g. Section 2 of TOLA defines "specified Act" to mean and include the Income Tax Act. The new regime, which came into effect on 1 April 2021, is now part of the

Income Tax Act. Therefore, TOLA continues to apply to the Income Tax Act even after 1 April 2021; and

- h. Ashish Agarwal (supra) treated Section 148 notices issued by the Revenue between 1 April 2021 and 30 June 2021 as show-cause notices in terms of Section 148A(b). Thereafter, the Revenue issued notices under Section 148 of the new regime between July and August 2022. Invalidation of the Section 148 notices issued under the new regime on the ground that they were issued beyond the time limit specified under the Income Tax Act read with TOLA will completely frustrate the judicial exercise undertaken by this Court in Ashish Agarwal (supra).”*

7. In view of above facts and by respectfully following the judgement of hon’ble Supreme court in the case of Rajeev Bansal (supra), in our considered opinion, since the assessment year before us is AY 2015-16 and, first notice u/s 148 was issued on 28.06.2021 which is after 1st April, 2021, therefore, the subsequent notice issued on 30.7.2022 deserves to be dropped in view of the admission made by the Revenue before the Hon’ble Supreme Court. Further, for Assessment Year 2015-16, no notice u/s 148 of the Act could be issued after the expiring of six years from the end of the relevant assessment year which limitations expired on 31st March, 2022. The Hon’ble Supreme Court in the case of Rajiv Bansal (supra) further observed that Tola is not applicable for AY 2015-16, and time limit for issue of notice u/s 148 expired on 31.3.2022 therefore, even otherwise as per pre-amended section 149 of the Act, the notice issued u/s 148 of the Act for AY 2015-16 on 30.7.2022 is barred by limitation. In view of these facts,

the notice issued u/s 148 of the Act dt. 30.7.2022 is invalid and consequent order passed u/s 147 dt. 13.4.2023 based on such invalid notice is quashed. Accordingly, legal ground of appeal No. 2 taken by the assessee is allowed.

8. Since, the legal ground taken by the assessee is allowed, other grounds of appeal become academic.

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

Order pronounced in the open Court on 23.01.2026.

Sd/-

(ANUBHAV SHARMA)
Judicial Member

Sd/-

(MANISH AGARWAL)
Accountant Member

Dated: 23.01.2026

*Mittali/Amit Kumar, Sr. PS

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