

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES 'E': NEW DELHI.**

**BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER**

**ITA No. 5124/ DEL/2025
(Assessment Year : 2012-13)**

Rohit Manchanda
C/o M/s Raj Kumar & Associates
L-7A (LGF), South Extension Part II,
New Delhi 110049

Vs.

ITO
Ward 5(3)(2)
Gautam Budh Nagar
Uttar Pradesh

(PAN: AGRPM4551B)

ASSESSEE BY : Sh. Raj Kumar, CA &
Sh. J. P. Sharma, CA
REVENUE BY : Ms. Ankush Kalra, Sr.DR

Date of Hearing : 11.12.2025
Date of Order : 12.02.2026

ORDER

PER S. RIFAUR RAHMAN, ACCOUNTANT MEMBER :

1. This appeal is filed by the assessee against the order of Ld. Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred to 'ld. CIT(A)') dated 18.08.2025 for AY 2012-13.
2. Brief facts of the case are, the Assessing Officer issued notice u/s 148 of the Income Tax Act, 1961 (in short 'Act') on the basis of information available with him that assessee had sold an immovable property for total

consideration of Rs.1.83 crores during the financial year 2011-12 related to assessment year 2012-13 on the basis of Non-PAN based AIR information.

3. On the basis of above, verification notice was issued to the assessee on 02.01.2019 but no compliance was made by the assessee. Since assessee has not replied to the query letter, notice u/s 148 was issued on 28.03.2019 and sent to the assessee through speed post. Further, notice u/s 142(1) was issued and since there was no compliance, finally a show cause notice was issued u/s 144 of the Act. Since there was no compliance the Assessing Officer completed the assessment u/s 144 r.w.s. 147 of the Act by considering the sale consideration as per the sale deed u/s 50c of the Act of Rs.1.83 crores and he estimated the index cost of acquisition of Rs.54.90 lakhs and proceeded to make the addition 50% of the above Long Term Capital Gain by earned the assessee at Rs. 64.05 lakhs.
4. Aggrieved with the above order assessee preferred an appeal before NFAC, Delhi and filed detailed submissions and raised several issues on maintenance and reopening of the assessment and further filed additional evidences before the Ld. CIT(A). A remand report was called from the Assessing Officer. The Assessing Officer objected to the acceptance of additional evidence at this stage and in response of above remand report assessee filed a detailed submissions which is reproduced at para 5.2 of the appellate order. After considering the same Ld. CIT(A) dismissed all the

grounds raised by the assessee.

5. Aggrieved with the above order assessee is in appeal before us raising

following grounds of appeal:-

1. That in the absence of service of notice U/s. 148, complete proceedings are illegal and without jurisdiction.

2. That under the facts and circumstances the initiation of proceedings u/s. 147 are illegal, mechanical, without application of mind, on wrong facts and contrary to law, hence liable to be quashed.

3. That under the facts and circumstances, approval u/s. 151 is illegal, mechanical, without application of mind, on wrong facts and contrary to law, hence not legally capable to provide approval for valid reopening.

4. That under the facts and circumstances, the complete proceedings being initiated and completed by the A.O. having no legally valid jurisdiction, makes the whole proceedings illegal and unsustainable in law.

5. That the impugned asstt. framed without taking into consideration the return filed u/s. 139 is illegal and unsustainable in law.

6. That under the facts and circumstances Ld. A.O. grossly erred in law as well as on merits in wrongly estimating the total cost of acquisition of complete property at Rs.54,90,000/- being 30% of circle rate at the time of sale being Rs.1,83,00,000/- and further erred in not giving the indexation benefit, thus erred in calculating LTCG at Rs.1,28,10,000/- against claimed at Nil (share of assessee is 50%).

7. That under the facts and circumstances, the assessee should be allowed exemption U/s.54 for Rs. 1,05,00,000/- invested in purchase of new property on 07.10.2011 within statutory time period.

8. That in the absence of service of any notice during asstt., the impugned asstt. U/s. 144 is liable to be annulled.

6. At the time of hearing, Ld. AR submitted as under:-

G.No.1

No services of notice u/s 148-Asstt. Without jurisdiction

- In this Yr assessee sold Flat No.B-267 Sector-50, Noida for Rs.91.5 Lacs

[50% of total sale consideration of Rs.1.83 Crores]. (13-62)

- As per reasons, assessee did not disclosed capital gain on sale of property. (63)

- Hence notice U/s.148 Dtd.28.03.19 issued by alleged speed post at Flat No.B-267 Sector-50, Noida.

(1) (Para-1 of A.0.)

- This notice never recd./served on assessee which is evident from following facts:-

- The proceedings initiated on the basis of Non-PAN Air Information. (115)
- Notice physically signed and sent allegedly by speed post in 2019 at Flat No. B-267 Sector-50, Noida, which property stood sold in 2011.
- The Deptt. was in the knowledge that B-267... was not in possession of the assessee in 2019 since on the basis of sale deed of B-267... Dtd.2011, the impugned 148 proceedings stood started. (13-62)
- Even as per the reasons recorded on 20.03.19, the proceedings were initiated for taxing capital gain on sale of property No.B-267... (63)
- The notice U/s.148 issued without PAN No. (1)
- The last return (prior to 28.03.19 i.e. the date of 148 notice) was filed for A.Y.18-19 at "H-901 JMD Garden Sohna Road Sector-33 Gurgaon" on 20.07.18, hence this address was in the knowledge of Deptt. (5)
- Assessee at that time was residing at H-901 JMD... which is also evident from the rent agreement Dtd.17.02.17. (7-12)
- PAN No. was mentioned on the sale deed also as "AGRPM4551B". (13)
- In PAN profile available on I.T. Portal the address as H-901JMD... [address in 2019 is available). (now filed)

- The address of sold property on which notice U/s.148 has been issued is not there on I.T. Portal at the time of issuance of 148 notice.
(now filed)
- Hence from the PAN No. also, the address of the assessee could had been known.
- There is no evidence of service of notice U/s.148.
- Further A.O. did not make any effort, apart from allegedly sending notice by speed post, to trace out the present address of the assessee.
- Service of notice U/s.148 is a mandatory condition for assuming jurisdiction to frame asstt.
- Onus of proving the service is on Revenue, in which Revenue failed.
- Hence in the absence of service of notice U/s.148 the impugned proceedings are without jurisdiction.
- In the absence of service/knowledge of notice U/s, 148, no return could be filed and no participation in asstt. proceedings could be made.
- Since no 148 notice was ever recd./in the knowledge of the assessee, hence there was no question for filing any ITR in response to 148 notice.

(115)

CASE LAWS Absence Of Service Of Notice U/s.148 Makes Asstt. Without Jurisdiction

CIT VS. ESHAAN HOLDING PVT. LTD. 344 ITR 541-(DHC)

Sec. 148 of the Income-tax Act, 1961 Income escaping assessment Issue of notice for A.Y 2003-04-Service of notice issued U/s.148 at old address of assessee, though return of income filed before issue of notice showed new address, was not valid
(In favour of assessee)

CIT VS. CHETAN GUPTA (2015) 126 DTR 401 (DEL)

Held service of notice Us. 148 on assessee is a jurisdictional requirement and must be mandatorily complied with.

Also held the service of notice U/s. 148 on the assessee should be in accordance with Sec. 282 (1) of the Act r/w. Order V Rule 12 CPC and Order III Rule 6 CPC.

Further held -onus is on the revenue to show that proper service of notice has been affected on the assessee or an agent duly empowered by him to accept the notices.

RACHNA GUPTA VS. ITO (ITA NO. 5527/DEL/2012, order Dtd. 05.07.2013)

"5.3 We have considered the submissions of both the parties and have perused the record of the case. It is not disputed by the Department that notice dated 30 March, 2010 u/s 148 was issued at BE-63, Hari Nagar, New Delhi address. From the copy of returns filed for assessment years 2003-04, 2004-05 and 2005-06 prior to 30th March, 2010, it is evident that the address of Assessee was BK-22, Shalimar Bagh, Delhi 110 052 which was available with the Department and, therefore, admittedly the notice was issued at wrong address Six year period from the end of the assessment year expired on 31" March, 2010. Therefore, in view of the decision of Hon'ble Delhi High Court in the case of Eshaan Holding Pvt. Ltd., it cannot be said that valid notice was issued u/s 148 to assessee. "In favour of assessee

G.No.2

Initiation of the asstt. On wrong facts - Mechanical - Without application of mind

Reasons Factually Incorrect

- The A.O. assumed that the assessee do not have any PAN No. (13)(64)
- Further he reed. a Non-PAN AIR information. (113)
- Hence A.O. assumed that no ITR has been filed and the capital gain has not been disclosed, being the only reason for initiating 148 proceedings. (63)

Contention

- Assessee has been regularly filing ITR at PAN No. AGRPM45518.
- The ITR U/s.139 of impugned A.Y.12-13 filed on 18.12.12. (89)
- In ITR, sale of this property stood duly declared, capital gain declared at Nil after claiming exemption U/s.54, (93) (98, 100)

- In remand report, A.O. admits that as per data available the ITR for A.Y.12-13 was filed on income of Rs.22,89,400/-. (116/2 Para)
- In R/R the A.O. has even abstracted the ITR form wherein the capital gain stood declared at Zero after claiming deduction U/s.54. (116/Last Para)
- Hence, the reason of reopening that the assessee did not disclose capital gain on sale of said property is factually incorrect.
- In crux the reason recorded is nonest.
- The factually incorrect and nonest reasons cannot provide for valid 147/148 proceedings.

CASE LAWS ON Factually incorrect reasons

M/s KLA Foods (India) Ltd. & Ors. ITA No.2846/Del/2015 Dtd.08.04.19

Held-that condition precedent for issue of notice for reassessment is that the reasons to believe that income has escaped assessment must be based on correct facts.

PCIT VS. RMG Polyvinyl (1) Ltd. 396 ITR 5 (Del.)

"In this case, as per reasons, the return was not filed as per database of L.T. Deptt., consequently has not offered any income for taxation. The second glaring error in reason was that the same entries have been repeated 06 times. It has been held that information recd. from Inv. Wing per se not tangible material-conditions not satisfied-reassmt. invalid."

Vijay Haishchandra Patel Vs. ITO 400 ITR 167 (Guj.)

Notice issued on ground no return filed for year in question assessee in objections pointing out return filed and income in question disclosed formation of belief on factually incorrect premise-re-assmt. not sustainable

- Further, issuing 148 notice without PAN, simply on the basis of Non-PAN Air Information, although PAN is available in sale deed, on the basis of which proceedings U/s.148 have been initiated shows that the initiation is purely, mechanically, without application of mind and without verification and without making any independent enquiries, which makes the initiation unsustainable.

Relevant Case Laws On Mechanical And Without Application Of Mind Initiation

PR. CIT V. G AND G PHARMA INDIA LTD. 384 ITR (2016) (Delhi) 147

Reassessment condition precedent application of mind by assessing officer to materials prior to forming reason to believe income has escaped assessment- No independent application of mind to information received from Directorate of Investigation and no prima facie opinion formed-reassessment order invalid.

SARTHAK SECURITIES CO. (P) LTD. 329 ITR 110 (DEL.)

No independent application of mind by the Assessing officer but acting under information from Inv. Wing-Notice U/s. 147 to be quashed.

G.No.3**Approval U/s.151 Mechanical Without application of mind - Borrowed one****A. Without application of mind**

- Approval order U/s.151 at Pg. No.64 of P/B. (64)

- It is as under:-

"I am satisfied that this case is fit for issue of notice under section 148" (64)

- From the approval it is not coming out that CIT(A), examined anything before granting the approval.

- Further, the approval order is more or less same/similar as to the satisfaction of JCIT as recorded in Item No.12 of order U/s.151. (64)

- Such mechanical and borrowed approval, without application of mind and without referring to relevant material is not valid in law.

CASE LAWS ON - Approval**UNITED ELECTRICAL COMPANY (P) LTD VS. CIT & ORS 258 ITR 317 (DEL)**

In this case, approval by Addl CIT U/s. 151 was given in following terms:-

Yes, I am satisfied that it is a fit case for issue of notice w/s, 148 of the Income Tax Act.

The Hon'ble DHC has held that above approval is not sufficient for reassstt. Proceedings.

G.No.4

Reopg. as well as asstt. framed by. A.O. not having jurisdiction

- Notice U/s 148 has been issued by ITO Ward-3(2), G.B. Nagar, Noida and impugned asstt. has been framed by ITO Ward-5(3)(2) G.B. Nagar, Noida. (1)

- Notice U/s. 148 was issued on 28.03.19. (1)

- At that time the jurisdiction was with AC Circle-5(3)(1), G.B. Nagar, Noida, as per ITR of A.Y.18-19 filed on 20.07.18. (5)

- Hence the correct jurisdiction for issuance of notice U/s 148 as well as for framing the asstt. was only with Circle-5(3)(1), G.B. Nagar, Noida.

- Since the notice U/s:148 as well as impugned asstt. is also by A.O. having no jurisdiction, therefore the complete proceedings are illegal and without jurisdiction.

G.No.5**Asstt. framed assuming no regular ITR filed and by not considering the regular ITR filed Invalid in law**

- The regular ITR U/s.139(1) stood filed in time. (89) (90-97) (98-100)

- In R/R of A.O. also admits that regular return filed. (116)

- The regular ITR was filed declaring income of Rs.22,89,400/- (116)

- However the impugned asstt. framed assuming that no regular ITR has been filed.

- The impugned asstt. also do not include in assessed income, the self declared income of Rs.22,89,400/-.

- The asstt. framed without taking into consideration the regular ITR and by assuming that no regular ITR has been filed cannot be sustained.

G.No.6 & 7 On Merits

- The share of the assessee in the property is 50%, the total sale consideration is Rs.1.83 Cr. and the share of the assessee is 50% i.e. Rs.91.50 Lacs.

-The A.O. calculated short term capital gain by

- By adopting declared sale consideration at Rs.1.83 Cr.
- Reducing 30% adhoc there from ie. Rs.54.90 Lacs as assumed cost of acquisition,
- Differential Rs.1,28,10,000/- calculated as STCG,
- 50% share of assessee calculated at Rs 64,05,000/-

- CIT(A) confirmed the findings of A.O.

(CIT-A Pg.24/25)

Contentions

- The assessee declared the sale of property in regular ITR U/s.139. (100)
 - In ITR U/s. 139, LTCG declared at 'Zero' after claiming indexed cost of improvement at Rs.55,26,495/- and by claiming exemption U/s.54 at Rs.2,41,005/(100)

- In R/R,

- A.O. has admitted that he has verified the cost of acquisition as declared, (117)(65-85)
- He denied for benefit of indexed cost of acquisition in the absence of documentary evidence. (117)
- He also admitted for purchase of new property for Rs.1.05 Cr. which is eligible U/s 54, however he mentioned that. Sec.54 benefit can be allowed only of Rs.2,41,005/- as claimed by the assessee in regular ITR. (117)(86-88)

- Hence declared cost of acquisition, declared sale price and the eligibility of claim U/s.54 stands admitted by the A.O. in R/R

- Now, in ITR U/s.139, exemption U/s 54 was claimed for purchase of new property for Rs. 1.05 Cr. out of which, since by taking only Rs.2,41,005/-, the LTCG stood calculated Nil, hence in ITR it was claimed at Rs.2,41,005/-

- Now, even if we ignore the indexed cost of improvement at Rs.55,26,495/-, then, the exemption U/s.54 needs to be allowed for Rs.57,67,510/- (Rs.55,26,495 Rs.2,41,005). after which, again, LTCG will calculate at Nil.

- It is not a case where claim U/s 54 has not been made in the ITR, but it is a case where claim has been made, only the figure of claim gets changed on account of disallowance of claim of indexed cost of improvement.

- Simply on the ground that claim has been made for a lesser amt. [which lesser amt. is claimed since only to that extent required), in case of change in calculations, the resultant figure of exemption U/s 54 also needs to be revised.

- Hence, in crux, since the capital gain already stands declared and assessed on the basis of ITR U/s.139 which is still alive, therefore, the impugned asstt. needs to be quashed or in the alternative, complete addition needs to be deleted.

7. On the other hand, Ld. DR heavily relied on the detailed findings of the lower authorities.

8. Considered the rival submissions and material placed on record, we observed that the Assessing Officer has initiated the proceedings based on the information available in AIR for the sale of property by the assessee during the assessment year under consideration, and he observed that the assessee is the non-PAN holder who has failed to file his return of income. Based on the above information, Assessing Officer has issued a verification notice at the address as per the registered sale deed. We observed that the assessee has sold the exact same assets during the year under consideration and subsequently assessee was filing his return of income by quoting the rental premises while filing his return of income. Since no compliance from the assessee, the Assessing Officer has proceeded to issue the notice u/s 148 of the Act to the address as per the registered sale deed and completed the assessment u/s 144 of the Act. It is fact on record that u/s 148 notice was never served on the assessee and there is no record to show that Assessing Officer has taken some initiative to serve the notice. Apart from, that we

further noticed that assessee has filed his return of income for assessment year under consideration on 18.12.2012 declaring the above said transaction of transfer of house property in his return of income, the relevant details are disclosed at schedule of capital gains and declared the cost of acquisition and cost of improvement in the original ROI and finally declared net Long Term Capital Gain of Rs.2,41,005/- and claimed the same as exempt u/s 54 of the Act, that being the factual matrix available on record, we noticed that in remand report Assessing Officer has acknowledged the above facts on record and he was of the view that assessee has not substantiated the indexed cost of acquisition and indexed cost of improvement and also investment in new property in which assessee has claimed deduction u/s 54 of the Act. That being the fact available on record, we observed that the assessee has not changed his PAN Number, therefore, the information provided by the assessee is found to be true and genuine, merely on the basis of technicalities the submissions of the assessee was rejected by the Ld. CIT(A). On the issue of non-service of notice u/s 148 of the Act which is statutory notice which determines the actual jurisdiction of the Assessing Officer to complete the assessment. However, after considering the factual matrix available on record, in our considered view, the Assessing Officer has not served the notice u/s 148 which itself is without jurisdiction. Apart from that, we observed that, Assessing Officer has come across the sale deed/transaction

related to assessment year 2012-13 on 02.01.2019 that is beyond 6 years of the relevant assessment years. From the record, we observed that Assessing Officer has merely tried to initiate rowing inquiries and without verifying the profile of the assessee. Therefore, since there is no change in the PAN details referred in the registered document nor subsequent filing of return of income by the assessee. The same PAN was applied by the Assessing Officer to initiate the proceedings without making proper verification, initiated the proceedings as well as not taken initiative to serve the notice at the existing address. The whole process of initiating of u/s 148 is not proper and void ab initio.

9. In the result, we are inclined to allow the grounds raised by the assessee on the basis of the original ROI that there is no escapement of income in the case of assessee to proceedings u/s 148 that too were initiated beyond 6 years.

10. In the result, appeal filed by the assessee is **allowed**.

11. **Order pronounced in the open court on this day of 12th February, 2026.**

Sd/-

**(RAJ KUMAR CHAUHAN)
JUDICIAL MEMBER**

Sd/-

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

Dated: 12.02.2026

*Mitali Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI