

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

**BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER**

**ITA No.5090/Del/2025  
Assessment Year 2011-12**

<b>Asok Kumar S/o sher Singh 24, Nagli, Azamabad Meerut -250001 PAN No.BLAPK3060J</b>	<b>Vs.</b>	<b>ITO Ward -1 (1) Meerut</b>
Appellant		Respondent

Appellant	Sh. Manish Kumar, Advocate
Respondent	Sh. Manoj Kumar, Sr. DR

<b>Date of Hearing</b>	<b>12.01.2026</b>
<b>Date of Pronouncement</b>	<b>17.02.2026</b>

**ORDER**

**PER C.N. PRASAD, JM,**

This appeal is filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)/NFAC, Delhi dated 02.06.2025 for A.Y. 2011-12 in sustaining the addition of Rs.4,80,8000/- towards unexplained income in respect of purchase of property.

2. The assessee has raised following grounds of appeal :-

*“1. The Authority below in the facts and circumstances of the case erred in not appreciating that if no notice under section 148 is issued or if the notice issued is shown to be invalid then the proceedings taken by the assessing officer would be illegal and void ab initio.*

2. *The authority below in the facts and circumstances of the case and on the basis of material on record erred in not appreciating that the instant case concerns with A.Y 2011-12 for which end of the relevant assessment year was 31 March 2012 and six years therefrom expires on 31 March 2018 and the issuance date of foundational notice under section 148 itself showing 19th August 2018 on the registered e-portal of the assessee which is apparently time barred and consequently the impugned assessment order is void ab initio for want of jurisdiction.*

3. *That in the facts and circumstances of the case and on the basis of material on record the authority below erred in not appreciating that the impugned assessment order is based on alleged foundational notices u/s 148 dated 23.03.2018 which is nonest as the same has been issued without quoting the PAN of the assessee despite the fact that on the alleged date of issuance PAN Number of assessee was available on record and consequently the impugned assessment order deserves to be quashed as it is void ab initio and it has no legs to stand in the eyes of law.*

4. *The authority below in the facts and circumstances of the case and on the basis of material on record even erred in not appreciating that once an alleged foundational notice under section 148 dated 23.03.2018 (Without PAN) as mentioned in the impugned assessment order is issued for any particular assessment year in respect of a particular issue then for the same assessment year and on the same issue second foundational notice (also without PAN) cannot be issued on the same date unless the first one is withdrawn by specific order and on this count the consequent assessment order is void ab initio and deserves to be quashed as there cannot be two foundational notice concerning the same issue of escapement for same assessment year.*

5. *The authority below in the facts and circumstances of the case and on the basis of material on record qua the alleged foundational notice u/s 148 dated 23.03.2018*

*(without PAN) erred in not appreciating that a notice of reopening which is once issued would remain in operation unless it is specifically withdrawn or quashed or gets time barred.*

*6. That authority below in the facts and circumstances of the case and on the basis of material on record erred in not appreciating that even in the impugned assessment order the assessing officer is totally silent and not discussed anything about the mode of issuance of alleged 148 notice dated 23.03.2018 (without PAN) whereas the Assessing Officer has very categorically and unequivocally discussed about issuance and service of another notice under section 142 (1) in the impugned assessment order itself.*

*7. The authority below in the facts and circumstances of the case and on the basis of material on record erred in not appreciating that whether the impugned assessment order dated 18.12.2018 is based on foundational notice u/s 148 (without PAN) dated 23.03.2018 (F.No I.T.O-1(1)/MRT/2017-18/6200 or another notice u/s 148 (without PAN) dated 23.03.2018 (F.NO.ITO-1(1)/MRT/ 2017-18/6358 because the same assessment order cannot be based on two foundational notice under section 148 & on this count the impugned assessment order deserves to be quashed.*

*8. That in the facts and circumstances of the case and on the basis of material on record the authority below erred in not appreciating that impugned assessment order is void ab initio as the same is based on alleged foundational notice under section 148 dated 23.03.2018 (without PAN) which has been issued without procuring the mandatory sanction of the specified authority as the Assessing Officer in the impugned assessment order is totally silent and not discussed anything whether the proper sanction in accordance with the provision of law was procured in respect of each alleged foundational notice under section 148 dated 23.03.2018.*

*9. That in the facts and circumstances of the case and on the basis of material on record the authority below*

*erred in not appreciating that in the instant case even the alleged foundational notice under section 148 dated 23.03.2018 (without PAN) has not been issued in the desired format containing the reasons along with details concerning sanction of the specified authority as per the mandate of the Hon'ble Delhi High Court vide the case of Sabh Infrastructure Ltd.*

*10. That in the facts and circumstances of the case the authority below erred in not appreciating that in the instant proceedings the satisfaction of the A.O recorded before issuance of alleged notice u/s 148 is totally based on borrowed satisfaction on account of the fact that for A.Y 2011-12 no proceedings was pending concerning the assessee and therefore, for the purpose of enquiry notice under section 133(6) dated 29.01.2018 (even without PAN) was issued without obtaining the approval of the prescribed authority as required under law and as a result thereof, the reason to believe is totally based on AIR information only without making any Inquiry or application of mind and consequently the reason recorded is in fact a reason to suspect and not reason to believe.*

*Grounds Concerning Opportunity:*

*11. The authority below in the facts and circumstances of the case and on the basis of material on record erred in not appreciating that the assessee was denied opportunity both at the assessment level as well as before the first appellate authority due to reason beyond his control and as such the impugned orders have been passed against the basic principle of natural justice,*

*Grounds Concerning Merits of Addition:*

*12. That in the facts and circumstances of the case and on the basis of material on record the authority below erred in not appreciating that even the impugned addition of Rs 48,08,000/-under the deeming provision of section 69 of the Act is not sustainable as the same is*

*purely based on assumptions, suspicion, surmises and conjectures as no connecting material has been brought on record by the A.O to substantiate that the assessee has made 50% of the investment out of the total investment.*

*13. That in the facts and circumstances of the case and on the basis of material on record the impugned addition for Rs 48,08,000/- is not sustainable in the eyes of law as the same is totally based on suspicion and surmises and suspicion how so ever strong cannot partake the character of evidence as per the settled legal position.*

*14. That in the facts and circumstances of the case and on the basis of material on record the authority below erred in not appreciating that even the best judgement ex-prate assessment cannot arbitrarily be passed on the basis of whim and fancy of the A.O as in the instant case the A.O did not make any inquiry to ascertain the extent of investment by the assessee once it is a case of joint investment and apart from the assessee there are another investor as well as two independent witnesses already available on record.*

*General Ground:*

*15. The assessee craves leave of the Hon'ble Tribunal to add, delete or amend any ground during the course of hearing.”*

3. The Counsel for the assessee referring to ground No.1 and 2 of grounds of appeal submitted that notice issued u/s.148 of the Act is barred by limitation and consequently the assessment framed pursuant to such notice is bad in law and void ab initio. The Ld. Counsel for the assessee submitted that the AO in the impugned assessment order though refer to

the notice dated 23.03.2018 u/s.148, received notice u/s.148 only on 19.08.2018 which is apparently time barred.

4. The Ld. Counsel submitted that in the instant case as per the impugned assessment order the alleged figure of escapement is more than 1 lac and, therefore, as per the provisions of section 149(1)(b) of the Act the foundational u/s.148 of the Act was liable to be issued within the maximum period of six years from the end of the relevant assessment year. Thus, for the A.Y. 2011-12 the last date for issuance of notice u/s.148 was dated 31.03.2018 and as per registered E-portal of the assessee the issuance date of foundational notice is 19.08.2018 which is apparently time barred. Therefore, the Ld. Counsel submits that notice u/s.148 of the Act could not be issued within the period of limitation. The impugned assessment order framed has legal validity as the condition precedent for issuance of notice u/s.148 of the Act within the stipulated time of limitation has not been complied with the instant case and consequently assessment order framed based on such notice has no legs to stand. Copy of E-proceedings for concerning assessee for A.Y.2011-12 downloaded from the registered E-portal evidencing issuance of notice u/s.148 on 19.09.2018 is placed on record. The Ld. Counsel for the assessee placed reliance on the decision of the Hon'ble Delhi High Court in the case of Nestle India Ltd. Vs. DCIT 384 ITR 334 in support of the above contention.

5. The Ld. Counsel for the assessee further referring to page-8 and page-9 of the paper book submitted that two

manual notices u/s. 148 both dated 23.03.2018 were issued for the A.Y.2011-12 by Income Tax Officer, Ward-1 (1), Meerut. The Ld. Counsel for the assessee further submitted that assessee filed additional legal grounds of appeal that the reopening of assessment is bad in law as mandatory requirement of section 151 of the Act concerning procurement of sanction has not been complied with as per mandate of section 151 before issuance of notice u/s.148 of the Act. Placing reliance on the decision of Hon'ble Supreme Court in the case of Jute Corporation of India Vs. CIT 187 ITR 688 and National Thermal Power Company Ltd. Vs. CIT 229 ITR 383 submitted that since the additional ground is purely legal ground and no investigation of new facts are required the same may be adjudication for admitted for adjudication.

6. Heard rival submissions on the additional ground as per the assessee. We find that the assessee raised the following ground it is observe that the above ground is purely legal which is going to the roots of the mater and the very jurisdiction of the AO in framing the assessment and, therefore, the same is admitted following the decision of Hon'ble Supreme refer to above:-

*"That in the facts and circumstances of the case the Ld. CIT(A) and the Assessing Officer failed to appreciate that the reopening of assessment is bad in law as mandatory requirement of Section 151 of the Income Tax Act concerning procurement of sanction has not been complied with as per mandate of Section 151 before issue of notice under section 148 of the Act."*

7. Coming to the merits of the additional ground the Ld. Counsel for the assessee referring to form for recording the reasons for initiating proceedings u/s.148 of the Act for obtaining the approval of the Additional/ PCIT submitted that the approval was obtained from both the authorities i.e. Addl. CIT as well as the PCIT u/s.151 of the Act placing reliance on the decision of the Hon'ble Delhi High Court in the case of CIT Vs. SLP's Siddhartha Ltd. reported in 345 ITR 223. The Ld. Counsel submitted that the Hon'ble High Court held that when sanction of Joint Commissioner is required obtaining sanction from Commissioner is valid. The Ld. Counsel submitted that the Hon'ble High Court held that satisfaction of one authority cannot be substitute by satisfaction another authority. The Ld. Counsel for the assessee also placed reliance on the decision of the Mumbai Bench of the Tribunal in the case of ACIT Vs. Bharti Axa Life Insurance Company Ltd. 189 ITD 450.

8. Heard rival submissions perused the orders of the authorities below. Coming to the additional grounds raised by the assessee we find that sanction u/s.151 was granted by both Addl. Commissioner of Income Tax as well as PCIT which is as under :-

**Form for recording the reasons for initiating proceedings under section 148 of the I.T. Act for obtaining the approval of the Addl. Commissioner of Income-tax / Pr. Commissioner of Income tax or of C.B.D.T.**

- |    |                                                                                                                                                                                                                                             |   |                                                                                          |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|------------------------------------------------------------------------------------------|
| 1  | Name & address of the assessee                                                                                                                                                                                                              | : | Sh. Smt./M/s ASHOK KUMAR S/O SHER SINGH<br>MEERUT, VILLAGE NAGLI AZAMABAD, MEERUT-250001 |
| 2  | PAN/GIR No.                                                                                                                                                                                                                                 | : | -                                                                                        |
| 3  | Status                                                                                                                                                                                                                                      | : | Individual                                                                               |
| 4  | District /Circle/ Range                                                                                                                                                                                                                     | : | Ward-1(1), Meerut                                                                        |
| 5  | Ass. Year                                                                                                                                                                                                                                   | : | 2011-12.                                                                                 |
| 6  | The quantum of income which have escaped assessment                                                                                                                                                                                         | : | Rs. 9158000/-                                                                            |
| 7  | Whether the provisions of section 147(a) or 147(b) are applicable or both.                                                                                                                                                                  | : | Section 147(a) is applicable                                                             |
| 8  | Whether the assessment is proposed to be made for the first time, if yes please state                                                                                                                                                       | : | Yes                                                                                      |
|    | a) Whether any voluntary return has been filed and if so.                                                                                                                                                                                   | : | No                                                                                       |
|    | b) The date of filing of return.                                                                                                                                                                                                            | : | N.A.                                                                                     |
| 9  | If the answer to 8 is in negative please state:                                                                                                                                                                                             |   |                                                                                          |
|    | a) The total income originally assessed.                                                                                                                                                                                                    | : | As above                                                                                 |
|    | b) Whether it is a case of under assessment asstt. at too low a rate asstt. which has been subject to excessive relief or allowing excessive depreciation or loss.                                                                          | : | As above                                                                                 |
| 10 | Whether the provisions of sec. 150(1) are applicable. If yes, the relevant facts may be stated in item no. 11 and it may also be brought out that the provisions of sec. 150(2) will not stand in the way of initiated proceedings u/s 147. | : | Not Applicable                                                                           |
| 11 | Reasons for the belief that income has escaped assessment                                                                                                                                                                                   | : | As per annexure 'A' enclosed                                                             |

Dated: 12.03.2018

(Ashish Kumar Singh)

Income Tax Officer, Ward 1(1), Meerut

- |    |                                                                                                                                                        |   |                                                                                                                       |
|----|--------------------------------------------------------------------------------------------------------------------------------------------------------|---|-----------------------------------------------------------------------------------------------------------------------|
| 12 | Whether the Addl. Commissioner is satisfied on the reasons recorded by the A.O. that it is a fit case for issuing notice under section 148 of the Act. | : | I am satisfied / <del>not satisfied</del> on the reasons recorded by the AO that it is a fit case for notice u/s 148. |
|----|--------------------------------------------------------------------------------------------------------------------------------------------------------|---|-----------------------------------------------------------------------------------------------------------------------|

(Sanjay Kumar Sinha)

Addl. Commissioner of Income Tax, Range-1, Meerut

- |    |                                                                                                                                                      |   |                                                                                                    |
|----|------------------------------------------------------------------------------------------------------------------------------------------------------|---|----------------------------------------------------------------------------------------------------|
| 13 | Whether the Pr. Commissioner is satisfied on the reasons recorded by the A.O. that it is a fit case for issuing notice under section 148 of the Act. | : | हाँ, मैं विश्वास करता हूँ कि उक्त कारणों से यह केस धारा 148 के अन्तर्गत नोटिस जारी करने के लिए है। |
|----|------------------------------------------------------------------------------------------------------------------------------------------------------|---|----------------------------------------------------------------------------------------------------|

Pr. Commissioner of Income Tax, Meerut  
प्रधान आयकर अधिकारी, मेरठ

CERTIFIED

(ASHISH SAXENA)  
Income Tax Officer

Dt. 21/03/2018

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9. It is the contention of the assessee that both the authorities as well as PICT granted sanction, therefore, such sanction is against the provisions of u/s.151 of the Act. It is

observed that identical came up for consideration before the Mumbai Bench of the Tribunal in the case of ACIT Vs. Bharti AXA Life Insurance Company Ltd. (supra) wherein the Tribunal following the decisions of Hon'ble Bombay High Court in the case of Ghanshyam K. Khabrani Vs. ACIT and the decision in the case of CIT Vs. Aquatic Remedies Pvt. Ltd. 406 ITR 545 of Bombay Special Bench SLP of receiving was also dismissed by the Hon'ble Supreme Court in CIT Vs. Aquatic Remedies Pvt. Ltd. 269 ITR 195 wherein the coordinate Bench held as under :-

*“4.9.2. We further find that the sanction obtained in terms of section 151 of the Act was not provided to the assessee along with the reasons recorded despite assessee asking the the same in writing before the Id. AO. This, in our considered opinion, is against the settled principles of natural justice as reopening of an assessment is an extraordinary power available to the Id. AO and it should not be done in a cavalier manner. That is why the legislature in its wisdom had put lot of restrictions by imposing conditions for seeking approval and sanction from a superior officer in terms of section 151 of the Act. Hence the said approval obtained from competent authority ought to have been furnished by the id. AO along with the reasons recorded for reopening the assessment to the assessee. Moreover, in the instant case, the approval of both Additional CIT as well as Id. PCIT had been obtained by the Id. AO in terms of section 151 of the Act as is evident in the statutory proforma enclosed by the Id. DR before us. Since the reopening in the instant case had been done beyond 4 years from the end of the relevant assessment year, approval and sanction ought to have been granted only by Id. PCIT alone. Hence this is a case where satisfaction of Id Additional CIT is also obtained in addition to the approval of Id. PCIT, the said approval becomes invalid in terms of section 151 of the Act. It is trite law that if the law requires an act to be done in a particular manner, more particularly acts conferring jurisdiction like the present one, then, such act has to be done in that manner alone and the same cannot be compromised in any manner whatsoever. On perusal of*

*the standard proforma for seeking approval in terms of section 151 of the Act, 4.9.2. We further find that the sanction obtained in terms of section 151 of the Act was not provided to the assessee along with the reasons recorded despite assessee asking the same in writing before the Id. AO. This, in our considered opinion, is against the settled principles of natural justice as reopening of an assessment is an extraordinary power available to the Id. AO and it should not be done in a cavalier manner. That is why the legislature in its wisdom had put lot of restrictions by imposing conditions for seeking approval and sanction from a superior officer in terms of section 151 of the Act. Hence the said approval obtained from competent authority ought to have been furnished by the id. AO along with the reasons recorded for reopening the assessment to the assessee. Moreover, in the instant case, the approval of both Additional CIT as well as Id. PCIT had been obtained by the Id. AO in terms of section 151 of the Act as is evident in the statutory proforma enclosed by the Id. DR before us. Since the reopening in the instant case had been done beyond 4 years from the end of the relevant assessment year, approval and sanction ought to have been granted only by Id. PCIT alone. Hence this is a case where satisfaction of Id Additional CIT is also obtained in addition to the approval of Id. PCIT, the said approval becomes invalid in terms of section 151 of the Act. It is trite law that if the law requires an act to be done in a particular manner, more particularly acts conferring jurisdiction like the present one, then, such act has to be done in that manner alone and the same cannot be compromised in any manner whatsoever. On perusal of the standard proforma for seeking approval in terms of section 151 of the Act, the legislature in its wisdom had prescribed such proforma, clearly demarcating and defining the circumstances under which the approval had to be granted by id Additional CIT and circumstances under which the approval had to be granted by the Id. PCIT. The said defined circumstances cannot be rendered otlose by obtaining approval from both Additional CIT as well as Id PCIT by the Id. AO, as was done in the present case before us.”*

10. We further find that the jurisdictional High Court in the case of CIT Vs. SLP's Siddhartha Ltd. (supra) held as under :-

*“When a statute requires a thing to be done in a certain manner, it shall be done in that manner alone and the court would not expect its being done in some other manner. Section 116 of the Income-tax Act, 1961, defines the Income-tax authorities as different and distinct authorities. Such different and distinct authorities have to exercise their powers in accordance with law as per the powers given to them in specified circumstances. If a statutory authority has been vested with jurisdiction, he has to exercise it according to its own discretion. If discretion is exercised under the direction or in compliance with some higher authorities instruction, then it will be a case of failure to exercise discretion altogether.*

*Held, that under section 151 of the Act, it was only the Joint Commissioner or Additional Commissioner, who could grant the approval for issue of notice under section 148. The approval was not granted by the Joint Commissioner. Instead, it was taken from the Commissioner of Income-tax. This was not an irregularity curable under section 2928. The notice was not valid.”*

11. Respectfully following the above decision we hold that the approval granted u/s.151 of the Act by both the ACIT as well as PCIT are not in accordance with the provision u/s.151 of the Act and consequently the notice issued u/s.148 and the assessment framed u/s.143(3) r.w. 147 based on such invalid notice is bad in law and void ab initio. Thus, the assessment framed by the AO is quashed. Since as the assessment is quashed on additional legal ground all other grounds on merit need not be adjudicated as they become only academic in nature and therefore, they are left open.

12. In the result, the appeal of the assessee is partly allowed as indicated above.

Order pronounced in the open court on 17.02.2026.

**Sd/-**  
**[C.N. PRASAD]**  
**JUDICIAL MEMBER**

**Dated:** 17.02.2026

*NEHA, Sr. P.O. \**

Copy forwarded to:

1. Appellant
2. Respondent
3. PCIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi