

**IN THE INCOME TAX APPELLATE TRIBUNAL  
LUCKNOW 'A' BENCH, LUCKNOW  
BEFORE SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER  
AND  
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA No.642/LKW/2025  
A.Y. 2018-19

Surya Pratap Singh Chauhan, 68/422, Gandhi Nagar, Lucknow- 226001	vs.	The Income Tax Officer, Ward- 2(1), Lucknow-New
<b>PAN: AWGPC6261P</b>		
(Appellant)		(Respondent)

Assessee by:	Sh. Rakesh Garg, Adv
Revenue by:	Smt. Sonal Singh, JCIT DR
Date of hearing:	01.12.2025
Date of pronouncement:	13.02.2026

**ORDER**

**PER NIKHIL CHOUDHARY, A.M.:**

This is an appeal filed by the assessee against the orders of the Id. CIT(A), NFAC, dated 7.07.2025 wherein the Id. CIT(A) has dismissed the appeals of the assessee that were filed against the assessment order passed by the Assessment Unit for the A.Y. 2018-19 under section 147 r.w.s. 144 on 3.03.2023. The grounds of appeal are as under:-

*"01. Because the notice issued under section 148 has been issued by the JAO, which is contrary to the provisions of section 151A of the Act, the entire assessment framed is bad in law be quashed.*

*02. Because the notice under section 148 having been issued on 23.03.2022, beyond the period of three years and the total investment in Bit coin trading is of Rs.9,63,000/-, there being no profit on the same on the contrary being loss, the entire reopening of the assessment is without proper verification of facts, based on wrong facts the addition of Rs.88,55,128/- made by the AO and upheld by the CIT(A) be deleted.*

*03. Because the CIT(A), NFAC, has failed to appreciate the facts and circumstances of the case and has arbitrarily upheld the addition of Rs.88,55,128/- under section 69 of the Income-tax Act, 1961 being unexplained investment in purchase and sale of Bitcoins, which addition is contrary to facts, bad in law, the addition made be deleted.*

*04. Because on a proper consideration of facts and circumstances of the case, it would be found that the total investment made by the assessee towards and trading in Bitcoins being Rs.9,63,000/- and not Rs.88,55,128/- as inferred by the authorities below and upheld by the CIT(A), the addition made is bad in law be deleted.*

*05. Because on a proper consideration of facts and circumstances of the case on appreciation of the material on record, it would be found that the manner in which the Bitcoins trading is done through wallet system wherein both purchase and sale is regularly carried out and investment, if any, is made only through bank account, the entire trading done cannot be and is not investment in Bitcoins trading, being a case of roll over of the transactions failure on the part of the authorities below, to appreciate the nature of business in the manner in which it is conducted, the addition made and upheld is contrary to facts be deleted.*

*06. Because in any case and in all circumstances of the case, the order passed by the CIT(A) is bad in law upholding the addition, the addition made be deleted.”*

2. Subsequently, the assessee has also filed two legal grounds and prayed that the same may be admitted as additional ground which are as under:-

*“1. Because the entire proceedings initiated under section 148 are without jurisdiction therefore, the re-assessment framed thereon is bad in law and be quashed.*

*2. Because the notice dated 20.10.2022 issued under section 143(2) is not in accordance to the instructions issued by the CBDT vide F No.225/157/2017/ITA.2 dated 23.06.2017, the assessment framed is without jurisdiction and the same is liable to be quashed.”*

The ld. AR prayed that these are purely legal grounds and he sought admission of the same in view of the decision of the Hon’ble Supreme Court in the case of NTPC Limited vs. CIT 229 ITR 383, the Hon’ble Guahati High Court in the case of Assam Co. India Limited 256 ITR 423 and All Cargo Global Logistics vs. DCIT 30 SOT 374 (Mumbai).

3. The facts of the case are that the Assessing Officer received information from the insight Portal that the assessee had undertaken/was involved in huge bitcoin trading in the F.Y. 2017-18 amounting to Rs. 83,78,124/-. Accordingly, after giving due opportunity of being heard under section 148A(b) of the Act, an order under section 148A(d) of the Act was passed on 29.03.2022 and subsequently notice under section 148 was issued on 30.03.2022. In response, the assessee filed a return in which it disclosed a loss of Rs. 3,34,473/- in Schedule-CG of ITR form, in which cost of acquisition without indexation was shown at Rs. 88,14,708/- and full value of consideration was shown at Rs. 84,80,234/- from the investment in

bitcoin. The Id. AO noted that no such investment in bitcoin was shown in the original return filed under section 139 on 16.07.2018 and consequently no such loss had been claimed in that return. Subsequently, after notice under section 143(2) and 142(1), the Id. AO records that some submissions were filed by the assessee. He noted that as per the submissions made by the assessee and the transaction statements obtained by him from Coin Secure Exchange and Zebpay Stock Exchange, the assessee had made investment in purchase of bitcoins totaling to Rs. 88,55,128/- but had not furnished the sources of investment in such purchase. Accordingly, the assessee was asked to furnish the sources of investment alongwith supporting documents/ledger account with the broker and contract notes. The assessee furnished his crypto currency transaction statement but did not furnish any evidences with regard to the source of investment in purchase of bitcoins amounting to Rs. 88,55,128/-. Thus, in the view of the AO, the assessee failed to substantiate that the investment in the purchase of bitcoins was made from his income earned from disclosed sources and offered in the return. He accordingly asked the assessee to show cause as to why the said additions should not be made. He also observed that the assessee had not disclosed income from other sources of Rs. 5,120/- (income from other sources, Rs. 4,500/- income from tuition and Rs. 620/- interest income). In his original return filed under section 139(1) on 16.07.2018. He, therefore, propose to initiate penalty on this account.

4. In response to the show cause notice issued by the AO, the assessee submitted that he had only invested Rs. 9,63,500/- in bitcoins but the AO did not believe this because he stated that the assessee had himself shown the cost of acquisition without indexation in the Schedule CG of his ITR dated 27.04.2022 at Rs. 88,14,708/-. The assessee sought to explain that figure as the accumulated figure of total purchases of bitcoins but did not give any details of the investment, corresponding bank entry or the source of investment. He claimed to have received a gift from his grand-mother amounting to Rs. 6,50,000/- on 1.12.2017 and Rs. 2,50,000/- on 13.12.2017, which he had invested in bitcoins, but the AO noted that he was making the investments from the beginning of April, 2017

onwards continuously. Therefore, he rejected the explanation furnished by the assessee and made an addition of Rs. 88,55,128/-.

5. The assessee was aggrieved at this addition made by the AO and he therefore, filed an appeal before the NFAC. The Id. CIT(A), who was allotted the case, recorded the submissions of the assessee that the assessee had only made an investment of Rs. 9,60,500/- (from his own savings and on account of gift from his grand-mother) and the high figures were only the effect of repeated transactions. The amounts of purchases of Rs. 87,74,708/- was not a single purchase but on account of repeated transactions. The Id. AO had failed to consider the total sales of Rs. 83,78,123/- and only considered the purchase of bitcoins while computing the income of the assessee. It was submitted that the assessee had provided the bank statement for the F.Y. 2017-18, where all the transactions (including the investments made in the crypto exchange) made in the year were clearly reflected but the Id. AO had failed to appreciate the same. In fact, the assessee submitted that the total income of assessee was a loss of Rs. 3,96,595/- and it was for this reason that the assessee had not furnished the same in his original income tax return for the A.Y. 2018-19. The assessee, thereafter, submitted the details of how trading in crypto currency was done and pointed out that the mode of entry and the mode of exit in crypto currency trading was the same i.e. through the bank account. The money could only be transferred from the bank account and the money could only be transferred back to a bank account. The bank statement had been presented but had not been looked into. There was no other information present with the Department to suggest that the assessee had purchased crypto currency of Rs. 88,55,128/- from any other bank account of the assessee and therefore, this order passed by the Department was simply based on speculations and presumptions. The Id. AO had therefore, erred in considering total transactions as undisclosed investment and taxing them as per the provisions of section 115BBE of the Act. Besides the bank statement, which reflected all the transactions, the assessee had also furnished the email communication as well as the trade summary as provided by Coin Secure Exchange which clearly showed

that the figures were that of total sales and total purchases and not a single investment. As per the procedure of crypto currency, all the amounts had been deposited to the crypto exchange for purchase of crypto currency from the amount available in the assessee's e-wallet. Further, out of such purchases made, some crypto currencies had been sold and the money was again automatically deposited in the same e-wallet account. This process had been repeated again and again and this had resulted in high cumulative sales and purchases. The assessee further submitted that coin secure had shut down its operations in 2018 and they were not able to provide a detailed statement of sale and purchase. The assessee had sent numerous emails to coin secure to provide the statement of transaction but had received a response that they did not have any other information stored with them. It was requested that the Department may call for the information under section 133(6) of the Act to verify these facts. The Id. AO had failed to appreciate that the crypto currency transaction statements of Coin Secure Exchange and Zebpay Stock Exchange mentioned that the sale and purchase was, "total trade data" therefore, this substantiated the claim that the impugned order was passed in haste and in a vague manner.

6. The Id. CIT(A) afforded an opportunity of video conferencing to the assessee and after recounting the submissions made by the assessee, he held that the issue under consideration was the source of investment and not the profit or loss earned by the assessee on bitcoin trading. Secondly, bank account statement submitted by the assessee had been perused and it was seen that the bank account statement did not include transactions that would total upto Rs. 87,74,708/- or Rs. 83,78,123/-. The total of all debit and credit entries stood at Rs. 34,56,345/-. From this, the Id. CIT(A) concluded that the bank account submitted was not the only bank account that was being used for the transaction with the bitcoin platform. He held that the cumulative purchase and selling summary could not be more than the total debit and credit entries as appearing in the bank statement. The submission was incomplete and did not reveal the whole bitcoin trading undertaken during the relevant F.Y. 2017-118. He concluded that no complete re-

consideration had been done by the assessee between the bank entries and the purchase / selling summary and therefore, the statement of the assessee was not acceptable. As regards, the issue of investment, he rejected the submission of the assessee that the total amount of investment should be restricted to Rs. 9,63,500/- on the grounds that the bank statement was contained incomplete information and it could not be discerned from the same as to which transactions had been made in the nature of investment of investment into crypto currency. For all these reasons, he concluded that the information submitted was not reliable and the AO was not wrong in assessing the source of purchases and bringing the unexplained purchases under the ambit of tax. Accordingly, he dismissed the appeal of the assessee.

7. The assessee is aggrieved at the orders of the ld. CIT(A) and has accordingly, filed this appeal. As already narrated earlier, the assessee had preferred additional grounds of appeal contesting the validity of the reopening and Sh. Rakesh Garg, Advocate (hereinafter referred to as ld. AR) pointed out that the order under section 148A(d) was itself wrong because the assessee had filed a reply before ITO-2(1) on 31.03.2022 in response to the notice under section 148A(b) of the Act which had not been considered in the order passed under section 148A(d). Since the order under section 148A(d) did not contain awareness of the reply of the assessee, it made the proceedings nonest in the eyes of law and therefore, deserves to be quashed and the proceeding was vitiated in the eyes of law. The ld. AR further argued that the notice under section 148A(b) had been issued on 25.03.2022 and the assessee had been asked to file a response to the same alongwith supporting documents on or before 31.03.2022. Our attention was invited to page A-1 of his paper book which contained the said notice. It was submitted that in response to the said notice, a reply had been filed on or before the due date and the details of that reply were placed on from pages A-3 to A-6 of the paper book. As proof of the same, our attention was invited to the e-proceedings response acknowledgment bearing Acknowledgment No. 439989171260322. The ld. AR submitted that the last six digits of the

acknowledgment number contained the date of the response. Despite this fact, the order under section 148A(d) was passed on 29.03.2022 in which the AO had held that no explanation / submission was furnished by the assessee nor any adjournment was sought and therefore, the assessee had not been heard on the matter. The ld. AR submitted that it was mentioned in the order itself and it was evident from the notice also, that the assessee had been given time upto 31.03.2022 to respond to the notice under section 148A(b) but without waiting for the notice period to expire, the order had been passed. This in itself was a violation of the terms of the notice and rendered the subsequent order as void. Be that as it may, the assessee had actually filed its response as evidenced by the e-proceedings response acknowledgment before the passing of this order, and the said order had not taken it into account. Therefore, also the order was vitiated in the eyes of law as it did not consider the response of the assessee. The ld. AR therefore, submitted that since the very initiation of the proceedings by way of issue of notice under section 148 was vitiated on this account, the assessment proceedings were *void ab initio* and therefore deserving of being quashed. The ld. AR drew our attention to the decision of the ITAT 'A' Bench at Delhi in the case of ITO vs. B.C. Enterprises (ITA Nos. 4972/Del/2024 and CO No. 08/Del/2025) wherein in similar circumstances, the ITAT had held that where the AO had failed to consider the reply filed by the assessee in response to the notice under section 148A(b), it was a violation of the principles of natural justice and the non-consideration of the reply rendered the subsequent re-assessment order passed as invalid. For this proposition, the ITAT Delhi Bench had relied upon the decision of the Hon'ble Rajasthan High Court in the case of R.K. Buildcreations (P.) Ltd. vs. ITO (2024) 462 ITR 478 (Rajasthan) wherein the Hon'ble High Court had held that where an additional reply filed by the assessee was not considered, there was no occasion to deal with the objection raised therein and therefore, since the impugned order was not as per the procedure prescribed under section 148A, it could not stand judicial scrutiny. The ld. AR also pointed out that in the present case, the notice under section 148A(b) did not contain any statement of account

or materials on the basis of which the AO had come to the conclusion that the assessee had done bitcoin trading of Rs. 83,78,124/-. The AO had merely placed the information available on the insight Portal by way of proof. The Id. AR pointed out that in the case of B.C. Enterprises (supra), the Delhi Bench had held that where the AO simply proceeded to reopen the case of the assessee based on information available on the insight Portal, which was uploaded under the Risk Management Strategy formulated by the CBDT and there was no independent application of mind by the AO before using such information against the assessee, the subsequent orders were vitiated in the eyes of law. Accordingly, it was prayed that in view of the facts of the case, the re-assessment proceedings were deserving of being quashed.

8. On the other hand, Smt. Sonal Singh, JCIT DR opposed the admission of these additional grounds. She submitted that it was a new ground being raised for the first time and the AO assessee had not thought it fit to raise this ground at any earlier stage. What was clear was that the assessee had not disclosed the bitcoin transactions in his original return and the Department had collected information that the assessee was trading in bitcoins, which was proven to be correct during the assessment proceedings. The Id. DR submitted that it was possible that the reply filed by the assessee may not have been visible to the AO prior to the date of passing of the order but the fact was that the assessee had failed to explain the transactions in the assessment proceedings by way of furnishing of any evidence in support thereof. Accordingly, she prayed that the additional ground should not be entertained and the case should be decided on its merits.

9. We have duly considered the facts and circumstances of the case. We note that in the case of ITO vs. B.C. Enterprises (supra), the Delhi Bench of the ITAT has pointed out that there is a proper procedure for issuing a notice under section 148 and in paragraph 11 of their order, the Hon'ble ITAT has reproduced section 148A which lays down the said procedure. Clause b of the said procedure provides that the AO will provide an opportunity of being heard to the assessee, by serving upon him a notice to show cause within such time as may be specified in the notice being

not less than 7 days but not exceeding 30 days, or such time as may be extended by him on the basis of an application as to why the notice under section 148 should not be issued. Clause c of the said section states that he must consider the reply furnished by the assessee, if any, in response to the show cause notice referred to in Clause b. We note that in the instant case, not only did the notice dated 25.03.2022 not provide the assessee with the statutory 7day time period as laid down under the Act, but thereafter the order under section 148A(d) was passed on 29.03.2022 i.e. before the time allowed to the assessee for submitting the reply to the said notice. Thus, it stood in clear violation of the terms of section 148A(b). Furthermore, it is evident that the assessee furnished a reply to the said notice dated 25.03.2022 on 26.03.2022, but the said reply was not considered by the AO while passing the order under section 148A(d). This failure to consider the reply constitutes a violation of section 148A(c). In view of the fact that the assessee was not provided sufficient time as laid down in the statute and thereafter, in view of the fact that the said order under section 148A(d) was passed before the expiry of the time so provided and that too without considering the reply of the assessee which had been filed by that date, the consequent order under section 148A(d) is vitiated in the eyes of law. Accordingly, it cannot be the basis for the issuance of a notice under section 148. Since, the initiation of the proceeding is itself vitiated in the eyes of law, the consequent re-assessment proceedings are held to be *void ab initio*. Accordingly, additional ground no. 1 of the assessee's appeal is allowed. All other grounds are rendered infructuous in view of the same and are accordingly dismissed as such.

10. In the result, the appeal of the assessee is partly allowed.

Order pronounced on 13.02.2026 in the Open Court.

**Sd/-**  
**[SUDHANSHU SRIVASTAVA]**  
**JUDICIAL MEMBER**

DATED: 13/02/2026

sh

**Sd/-**  
**[NIKHIL CHOUDHARY]**  
**ACCOUNTANT MEMBER**

Copy forwarded to:

1. Appellant –
2. Respondent –
3. CIT DR , ITAT,
4. CIT,
5. The CIT(A)

By order  
Sr. P.S.