

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“B”BENCH: BANGALORE****BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER  
AND  
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.1920/Bang/2024
Assessment Year: 2015-16

E. Ashwath Narayan No.7, Kanasu Nilaya, Bhageeratha Layout Kengeri Satellite Town Bangalore 560 060  <b>PAN NO : AVUPA6213E</b>	<b>Vs.</b>	ITO Ward-5(3)(1) Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Sri S. Satish, A.R.
<b>Respondent by</b>	:	Ms. Neha Sahay, D.R.

<b>Date of Hearing</b>	:	20.01.2025
<b>Date of Pronouncement</b>	:	17.04.2025

**O R D E R****PER KESHAV DUBEY, JUDICIAL MEMBER:**

This appeal at the instance of the assessee is directed against the order of the ld. CIT(A)/NFAC dated 02.08.2024 vide DIN & Order No. ITBA/NFAC/S/250/2024-25/1067258511(1) passed u/s 250 of the Income Tax Act, 1961 (in short “the Act”) for the assessment year 2015-16.

**2. The assessee has raised the following grounds of appeal:**

1. The order of the learned CIT(A) is opposed to the established legal principles on the subject, the underlying provisions of the Income tax act, the principles of natural justice and facts and circumstances of the case.
2. There is violation of principles of natural justice by the learned CIT(A) in not giving sufficient and enough opportunity to upload the written submissions and supporting documents for the grounds of appeal.

3. The appeal order was passed in haste on 02.08.2024 after issuing only a deficiency letter dated 04.07.2024 about delay in filing the appeal. No show cause notice was issued about the proposed rejection of grounds of appeal filed by the appellant regarding deposits in the joint bank account and determination of the sale consideration of Rs.90 Lakhs itself as capital gains without granting deduction for indexed cost of acquisition. Also, the various principles of passing ex-parte order laid down by Tribunals and Courts have not been followed.
4. The learned CIT(A) erred in overlooking the fact that the learned AO's order u/s 148A(d) was blank and was devoid of any contents, thus violating the basic ingredients of income escaping assessment u/s 147/148 and thus rendering the proceedings void ab initio and illegal.
5. The learned CIT(A) erred in ignoring the fact that the Assessing officer, by issuing notice u/s 148A(b) dated 23.03.2022 granted time only to 29.03.2022, which is less than mandatory time period of 7 days as per the section and subsequently, passed the order u/s 148A(d) dated 31.03.2022 within a short period by issuing notice u/s 148A(b) on 23.03.2022, thus not giving proper and enough opportunity to the appellant and also without proper application of mind. Further, the AO has not issued to the assessee, the mandatory show cause notice providing an opportunity of being heard as mandated in section 148A(b), thus rendering the whole proceedings null and void.
6. The learned CIT(A) erred in confirming the order of the assessing officer u/s 147 in which the officer has overlooked the fact that the bank account, which the assessing officer obtained from the bank u/s 133(6), containing the alleged credits JOINTLY belonged to the appellant and two brothers and the entire credits cannot be attributed to the appellant. **The fact that the bank account is a JOINT ACCOUNT is apparent and evident from the face of the bank statement itself.** Further, the credits in the joint bank account of around Rs.90 lakhs (less TDS Of Rs.90,000/-) represented the sale consideration of property which is again assessed separately as long-term capital gains without granting the benefit of indexed cost of acquisition. The serial number and amounts demand drafts for sale consideration mentioned in the sale deed are the same as are credited in the JOINT bank account.

7. The learned CIT(A) erred in confirming the assessment of the sale consideration of Rs.90 lakhs as long-term capital gains without granting deduction of indexed cost of acquisition, in the hands of the assessee overlooking the fact that the property was purchased and sold by three brothers jointly and thus, only 1/3rd of the long-term capital gains, if any, is attributable to the appellant.
8. The learned CIT(A) erred in overlooking the fact that, the learned AO has not uploaded in the income tax portal, the mandatory approval obtained u/s 151. It is merely stated in the notice u/s 148 dated 31.03.2022, that prior approval of PCCIT has been accorded on 31.03.2022.

**PRAYER:**

In view of the above and other grounds that may be urged at the time of hearing it is prayed that the Hon'ble Tribunal may be pleased to set aside the order passed by the CIT(A) in the interest of justice.

**3.** Brief facts of the case are that the assessee had not filed the return of income for the A.Y 2015-16. The AO had information within the meaning of the provision of explanation 1(i) of section 147 of the Act which suggests that the assessee during the F.Y. 2014-15 had sold an immovable property and deposited cash being excess of Rs.50,00,000/- which was represented in the form of an asset i.e. immovable property being land or building or both as per the explanation to section 149(1) of the Act. On examination of the information available on records, it has been seen that the assessee had sold an immovable property for a sale consideration of Rs. 90,00,000/- to Shri Dhandapani Narayan. Further the assessee has deposited cash of Rs.39,23,000/- in Canara bank and did not disclose the nature & source thereof. The assessee had also earned salary income of Rs. 70,581/- from the Senior Post Master. The AO found that the assessee failed to file the return of income for the A.Y 2015-16 and failed to disclose the salary Income & capital gain. Based on the above information the AO noted that there is an

income chargeable to tax that has escaped assessment for the A.Y 2015-16 & accordingly issued show cause notice u/s 148A(b) of the Act on 23/03/2022 by directing to submit the response with supporting documents on or before 29/03/2022. The AO passed a blank order u/s 148A(d) of the Act on 31/03/2022. Thereafter the AO issued notice u/s 148 of the Act on 31/03/2022 requiring the assessee to furnish the return within 30 days from service of the notice. However during the course of the assessment proceedings, the assessee neither responded to any of the notices issued u/s 148 & u/s 142(1) of the Act nor in response to show cause notices u/s 144 of the Act. The AO completed the assessment u/s 147 r.w.s. 144 of the Act on 04/03/2023 on a total income of Rs.2,24,25,743/- by making the following additions-

- i) Salary/Pension received from the office of the senior postmaster amounting to Rs.70,581/- treated as income from undisclosed salary.
- ii) The value of all credits including cash deposits reflecting in Canara bank accounts of the assessee amounting to Rs.1,33,55,162/- deemed as unexplained money u/s 69A of the Act.
- iii) Entire consideration received from the sale of immovable property amounting to Rs. 90,00,000/- assessed as undisclosed LTCG by treating the cost of acquisition deemed to be NIL.

**4.** Aggrieved by the assessment order passed u/s 147 r.w.s 144 of the Act, the assessee preferred an appeal on 30.05.2024 before the Commissioner of income tax (appeals)/NFAC. The delay in filing the appeal was condoned by the learned CIT(A) based on application for condonation delay dated 08.07.2024.



5. However, the learned CIT(A)/NFAC passed the order u/s 250 of the Act dated 02.08.2024 by **not allowing the appeal** as the assessee had not filed any documents/ explanations/evidences in support of his contentions & therefore the ld. CIT(A)/NFAC is of the view that the assessee is not willing to co-operate & accordingly the assessee has grossly failed in discharging the onus cast upon him for providing the documents/ explanations/evidences and thus the ld. CIT(A)/NFAC held that the additions made by the AO are found to be correct and thus upheld.

6. Aggrieved by the order of the ld CIT(A)/NFAC dated 02.08.2024, the assessee has filed the present appeal before this Tribunal. The assessee has also filed the paper book comprising 69 pages containing therein Written submission and relied case laws, Copies of the notice u/s 148A(b), order u/s 148A(d), notice u/s 148 of the Act, Copy of the Bank Statement as well as copy of copy of the Sale deed executed by the three joint owners.

7. Before us, the ld. AR of the assessee vehemently argued on the legal grounds by submitting that the AO by issuing notice u/s 148A(b) of the Act dated 23/03/2022 by granting time only up to 29/03/2022, which is less than the mandatory minimum time period of 7 days vitiated the entire proceedings. Further AR of the assessee submitted that the AO's order u/s 148A(d) of the Act was completely blank and devoid of any contents, & thus violating the basic ingredients of income escaping assessment & thus rendering the entire proceedings void-ab-initio and illegal. Lastly the AR of the assessee submitted that the CIT(A) gross erred in overlooking the fact that the AO had not uploaded the mandatory approval obtained u/s 151 of the Act in the income tax portal.

**8.** The Id. DR on the other hand supported the order of the authorities below & submitted that the assessee is a non filer and had not submitted any documents/information/evidences before any of the Authorities below. Further the Id. DR submitted that the AO had information within the meaning of the provision of explanation 1(i) of section 147 of the Act which suggests that the assessee during the F.Y. 2014-15 had sold an immovable property amounting to Rs. 90,00,000/- and deposited cash being excess of Rs.50,00,000/- which was represented in the form of an asset. Further the assessee had also Salary Income which was not disclosed by the assessee & therefore the AO had rightly assessed on a total Income of Rs.2,24,25,740/-

**9.** We have heard the rival submissions & perused the material available on record. It is an undisputed fact that the assessee had not filed his return of Income for the Assessment year 2015-16 either voluntarily u/s 139 of the Act or in response to notice u/s 148 of the Act. Further, we also take a note of the fact that, during the course of the assessment proceedings, the assessee neither responded to any of the notices issued u/s 142(1) of the Act nor in response to show cause notices u/s 144 of the Act. The AO completed the assessment u/s 147 r.w.s. 144 of the Act on 04/03/2023 on a total income of Rs.2,24,25,743/- by making the following additions-

- i) Salary/Pension received from the office of the senior postmaster amounting to Rs.70,581/-treated as income from undisclosed salary.
- ii) The value of all credits including cash deposits reflecting in Canara bank accounts of the assessee

amounting to Rs.1,33,55,162/- deemed as unexplained money u/s 69A of the Act.

- iii) Entire consideration received from the sale of immovable property amounting to Rs. 90,00,000/- assessed as undisclosed LTCG by treating the cost of acquisition deemed to be NIL.


**9.1** Further, on going through the order of Id. CIT(A)/NFAC dated 04/03/2023, we also take a note of the fact that the assessee had also not filed any documents/ explanations/evidences in support of his contentions & therefore the Id. CIT(A)/NFAC is of the view that the assessee is not willing to co-operate & accordingly the assessee has grossly failed in discharging the onus cast upon him for providing the documents/ explanations/evidences and thus the Id. CIT(A)/NFAC held that the additions made by the AO are found to be correct and thus upheld.

**9.2** Before us, the assessee has raised mainly two legal grounds along with the grounds on merits for the addition of Rs.90,00,000/- as LTCG only. Since the legal grounds which is raised before us for the first time goes to the root of the case, we deem it fit to take the legal grounds first for adjudication & if necessary so desires, we will adjudicate the grounds on merit also.

**9.3** Now the first legal ground as raised by the assessee is that the AO by issuing notice u/s 148A(b) of the Act dated 23/03/2022 by granting time only up to 29/03/2022, which is less than the mandatory minimum time period of 7 days vitiated the entire proceedings as this is clear gross violation of principles of natural justice. Further the second legal ground as raised by the assessee is that the AO's order u/s 148A(d) of the Act was completely blank and devoid of any contents, & thus violating the basic ingredients of

income escaping assessment & thus rendering the entire proceedings void-ab-initio and illegal. We will take up both the legal grounds ad seriatim.

**9.4** Before us, the Id.AR of the Assessee submitted that the show cause notice u/s 148A(b) of the Act dated 23/03/2022 granting just 6 (six) days to submit response vitiated the entire reassessment proceedings. The notice issued u/s 148A(b) of the act are reproduced below for the sake of convenience & reference –

		<p>GOVERNMENT OF INDIA MINISTRY OF FINANCE INCOME TAX DEPARTMENT OFFICE OF THE INCOME TAX OFFICER WARD 5(3)(1), BANGALORE/</p>	
<p>To, ESHWARRAO ASHWATHNARAYAN # 44 2ND BLOCK SEENA , RAJAJINAGAR BANGALORE 560010 , Karnataka India</p>			
<p>PAN: AVUPA6213E</p>	<p>A.Y: 2015-16</p>	<p>Dated: 23/03/2022</p>	<p>DIN &amp; Notice No: ITBA/AST/F/148A(SCN)/2021- 22/1041332182(1)</p>

**Notice under clause(b) of section 148A of the Income-tax Act,1961**

Sir/Madam/M/s

Whereas I have information which suggests that income chargeable to tax for the Assessment Year **2015-16** has escaped assessment within the meaning of section 147 of the Income-tax Act, 1961. The details of the information and enquiry, if conducted, are enclosed with this notice in Annexure A.

2. You are required to show-cause as to why, in view of the details contained in Annexure A, a notice section 148 of the Income tax Act, 1961 should not be issued.

3. You may, to the extent technologically feasible, submit your response with supporting documents (if any) on the above mentioned issues electronically in 'e-proceeding' facility through your account in e-filing portal at your convenience on or before 29/03/2022.

4. This notice is being issued after obtaining the prior approval of the **PCCIT, KARNATAKA & GOA** accorded on date **22/03/2022** vide Reference No. **100000029838995**.

KAUSHAL KISHOR PRASAD SRIVASTAVA  
WARD 5(3)(1), BANGALORE/



**9.5** On going through the above notice issued u/s 148A(b) of the Act, we find that the notice dated 23/03/2022 was issued for the assessment year 2015-16 requiring the assessee to show cause as to why in view of the details contained in Annexure A, a notice u/s 148 of the Act should not be issued. Further we also take a note of the fact that the AO had directed the assessee to submit his response on or before 29/03/2022. Therefore, it is not in dispute that the AO has granted only 6 (six) days' time to submit the response to the show cause notice which is less than the mandatory minimum time period of 7 days.

**9.6** Now before proceeding further, it is appropriate to take note of section 148A of the Act for the purposes of adjudicating both the legal issues as raised by the assessee which reads as under-

<sup>22</sup>[Conducting inquiry, providing opportunity before issue of notice under [section 148](#).

**148A.** The Assessing Officer shall, before issuing any notice under [section 148](#),—

- (a) conduct any enquiry, if required, with the prior approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;
- (b) provide an opportunity of being heard to the assessee, <sup>23</sup>[\*\*\*] by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days and but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under [section 148](#) should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a);
- (c) consider the reply of assessee furnished, if any, in response to the show-cause notice referred to in clause (b);
- (d) decide, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under [section 148](#), by passing an order, with the prior approval of specified authority, within one month from the end of the month in which the reply referred to in clause (c) is received by him, or where no such reply is furnished, within one month

*from the end of the month in which time or extended time allowed to furnish a reply as per clause (b) expires:*

***Provided*** that the provisions of this section shall not apply in a case where,—

- (a) a search is initiated under [section 132](#) or books of account, other documents or any assets are requisitioned under [section 132A](#) in the case of the assessee on or after the 1st day of April, 2021; or*
- (b) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any money, bullion, jewellery or other valuable article or thing, seized in a search under [section 132](#) or requisitioned under [section 132A](#), in the case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or*
- (c) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any books of account or documents, seized in a search under [section 132](#) or requisitioned under [section 132A](#), in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, <sup>24</sup>[relate to, the assessee; or*
- (d) the Assessing Officer has received any information under the scheme notified under [section 135A](#) pertaining to income chargeable to tax escaping assessment for any assessment year in the case of the assessee.]*

*Explanation.—For the purposes of this section, specified authority means the specified authority referred to in [section 151](#).]*

**9.7** On plain reading of the above provision of the section 148A(b) of the Act, the AO shall, before issuing any notice under section 148, 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 seven days but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a). Undoubtedly, as per the mandate of Section 148A(b) of the Act, it is obligatory on the part of the AO to grant to the assessee a time period of not less than 7 days from the date of issue of the notice to explain as to why based on the

information shared with him a notice u/s.148 of the Act shall not be issued to him.

**9.8** We have also taken a note that even the guidelines for issuance of notice u/s 148 of the Act issued by the CBDT vide F.No.299/10/2022-Dir(Invt.III)/611 Dated: 01/08/2022 also provide that if the result of an enquiry/information available suggests that income chargeable to tax has escaped assessment, the AO shall provide an opportunity of being heard by issuing the show cause notice and the notice shall provide between **seven to thirty days** time for the assessee to submit their reply. The relevant para are reproduced below for ease of reference & convenience-

*“vii. If the result of enquiry/information available suggests that the income chargeable to tax has escaped assessment, the AO shall provide an opportunity of being heard to the assessee by issuing a show cause notice u/s 148A(b) of the Act. The said notice shall provide between 7 to 30 days’ time to the assessee for submitting the reply. A template of show cause notice is enclosed at Annexure-A1”*

**9.9** However, in the present case, the A.O vide notice u/s 148A(b) of the Act, dated 23.03.2022 by calling upon the assessee to show cause on or before 29.03.2022 had effectively allowed a time period of only 6 days to file his explanation which we not found to be in conformity with the mandate of law. Further we are of the opinion that there is a clear violation of the principles of natural justice by providing inadequate opportunity of being heard to the assessee. We are also of the considered opinion that minimum statutory requirement of 7 days to submit the response to show cause is not merely a procedural formality but an essential aspect of due process. It ensures the legal process remains fair & just. Further the Court have held that while computing 7 days period to give response to show cause notice, the date of receiving the notice and the holidays are to be excluded. In view of the above, as the minimum seven days requirement are mandatory requirement and

failure to comply with would render a notice itself invalid. Therefore, on this ground alone, the notice would be vitiated resulting in quashment of not only the notice but also the subsequent assessment orders, penalty orders etc.

**9.10** Further, in holding so, we also take a guidance & support from the judgment of Hon'ble jurisdictional High Court of Karnataka in the case of Panjos Builders (P) Ltd. V. Income Tax Officer [2024] 161 taxmann.com 573 (Karnataka) wherein the Hon'ble High Court following the judgment of the Hon'ble High Court of Bombay in the case of Mukesh J. Ruparel v. ITO [2023] 153 taxmann.com 70/ 295 Taxman 475 [ W.P. No. 15268 of 2023 dated 25/07/2023 held that if notice under section 148A(b) of the Act prescribes a period lesser than a period of seven days as contemplated in the said provision, the said notice would be vitiated resulting in quashment of not only the notice but also the subsequent assessment orders, penalty notices, orders etc. The relevant paragraph of the judgment is reproduced below for ease of reference & convenience-

*"7. So also, having regard to the minimum period of seven days prescribed under section 148A(b) of the IT Act as held by the High Court of Bombay in the case of Mukesh J. Ruparel v. ITO [2023] [153 taxmann.com 70/295 Taxman 475](#) [W.P.No.15268 of 2023 dated 25-7-2023], that if notice under section 148A(b) prescribes a period lesser than a period of seven days as contemplated in the said provision, the said notice would be vitiated resulting in quashment of not only the notice but also the subsequent assessment orders, penalty notices, orders, etc. In the aforesaid judgment of the Bombay High Court, it is held as under:*

*"Petitioner is impugning a notice dated 15th March 2023 issued under section 148A(b) of the Income-tax Act, 1961 (the Act), the order dated 31st March 2023 passed under section 148-A(d) of the Act and notice dated 31st March 2023 issued under section 148 of the Act.*

*2. Petitioner is an individual who did not file return of income for Assessment Year 2016-17 because his income was less than taxable limit.*

*3. Petitioner received a notice dated 15th March 2023 under clause 148A(b) of the Act from Respondent No. 1, stating that Respondent No. 1 has information which suggests that income chargeable to tax for Assessment Year 2016-17 has escaped*



assessment within the meaning of Section 147 of the Act. Petitioner was provided with information/enquiry on which reliance was placed in the form of annexure to the notice and Petitioner was called upon to show cause on or before 28th March 2023 as to why a notice under section 148 of the Act should not be issued. The information which suggested that there has been an escapement of income from assessment provided details of a property that Petitioner had purchased. Petitioner was directed to provide head-wise computation of income, details of purchase of immovable property during Financial Year 2015-16 supported with copy of registered agreement with annexure II, details of payment made and source of acquisition of said immovable property.

4. Petitioner submitted an elaborate reply on 18th March 2023 and also raised certain objections. The main objection raised was that under the provision of Section 148A(b) of the Act, the assessee should be provided an opportunity of being heard by serving upon the assessee a notice to show cause within such time as may be specified in the notice being not less than seven days but not exceeding thirty days from the date on which said notice has been issued. Since the notice dated 15th March 2023 provides only for five days when the law requires minimum seven days to be given, the notice itself was bad-in-law.

5. Along with reply, Petitioner also provided a photo copy of the notarised affidavit of Petitioner's brother affirmed on 18th March 2023, in which the brother has confirmed of giving gift of Rs. 75 lakhs to Petitioner on 26th March 2019, which is much beyond the relevant Assessment Year.

6. Respondent No. 1 has passed the impugned order dated 31st March 2023 under clause D of Section 148A of the Act. In the order, Respondent No. 1 states that from the statement issued by HDFC Bank for the period 1st April 2018 to 31st March 2019 of the brother, it is seen that there is a credit entry of Rs. 1 Crore on 19th March 2019, out of which Rs. 75 lakhs has been paid to Petitioner on 26th March 2019. Respondent No. 1 also states that the gift deed submitted by Petitioner from the brother has not been notarised.

7. Moreover, Respondent No. 1 states that income chargeable to tax has escaped assessment without mentioning what is the amount of income that has escaped assessment. Further, the approval under section 151 of the Act which is annexed to the impugned order is of one Poonam Vijay Chhabria whose PAN number is also entirely different from the PAN number of Petitioner. Respondent No.1 is totally silent about the objections raised by Petitioner of minimum seven days notice required. Mr. Gandhi states that on each of these grounds not only the impugned order dated 31st March 2023 but also the notice dated 31st March 2023 itself should be quashed and set aside.

8. No reply has been filed though Petition was served more than a month ago. We have, therefore, decided to go ahead and consider the matter and dispose it since we were, prima facie, satisfied that there was merit in Petitioner's submissions.

Section 148-A(B) of the Act reads as under:-

"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 seven days and but not exceeding thirty days from the date on which such

*notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a)."*

*9. The notice dated 15th March 2023 gives time only up to 20th March 2023 to show cause. We have to note that even the guidelines dated 1st August 2022 for issuing of notice under section 148 of the Act also provide that if the result of an enquiry/information available suggests that income chargeable to tax has escaped assessment, the Assessing Officer shall provide an opportunity of being heard by assessee by issuing the show cause notice under section 148A(b) of the Act and the notice shall provide between seven to thirty days time for the assessee to submit their reply. A template of the show cause notice is also annexed to the guidelines. Therefore, in view of the guidelines, we would also read that the minimum seven days required to be made as a mandatory requirement and failure to comply with would render a notice itself invalid. Therefore, on this ground alone, the notice requires to be quashed and set aside.*

*Perhaps, being aware of this position, Respondent No. 1 has chosen not to deal with these objections raised by Petitioner in the reply to the show cause notice.*

*10. We also found in the said guidelines a provision that the order under section 148A(d) of the Act shall be sent to assessee along with the approval of the specified authority for such order under section 148A(d) of the Act. In the case at hand, the approval that has been sent is of some other assessee and not Petitioner. This also indicates non-application of mind by Respondent No. 1. On this ground also, the order dated 31st March 2023 impugned in the Petition is required to be quashed and set aside.*

*11. Further, in the guidelines to which is annexed a template of the order to be passed under section 148A(d) of the Act provides for mentioning of amount escaped based on the information and how this amount is represented in the form of assets. It also provides that the Assessing Officer will specify the quantum of income/assets/expenditure/entry which has escaped assessment. This not stated in the order under clause D of Section 148 of the Act. On this ground also, the said order dated 31st March 2023 is required to be quashed and set aside.*

*12. Further, there is a factually incorrect statement made in the order that the affidavit of Petitioner's brother that was submitted was not notarised when it was factually a notarised affidavit.*

*13. Further, in the impugned order, it is stated that the HDFC statement/document do not substantiate the credit worthiness and genuineness of the lender of the gift, i.e., brother of Petitioner.*

*Mr. Gandhi states that if only Petitioner was called upon to submit, Petitioner would have submitted evidence towards credit worthiness of the brother because in the show cause notice issued, Petitioner was only directed to call upon to disclose the source from which he got money to pay for the flat.*

*In over view, therefore,, on this ground also, the impugned order dated 31st March 2023 is required to be quashed and set aside.*

*14. Accordingly, we hereby quash and set aside the notice dated 15th March 2023 issued under clause (b) of Section 148-A of the Act, the impugned order dated 31st March 2023 issued under clause (d) of Section 148A of the Act and consequent notice dated 31st March 2023 issued under section 148 of the Act.*


*15. Petition disposed. There shall be no order as to costs."*

*8. In the instant case, it is an undisputed fact that the Notice at Annexure - A dated 21-3-2022 is not signed either physically or digitally but the impugned notice also prescribes a period of six days, which is lesser than the minimum prescribed period of seven days as contemplated under section 148A(b) of the IT Act. Under these circumstances, in the light of the judgment of this Court in Begur's case and the judgment of the Bombay High Court in Mukesh's case supra, I am of the considered opinion that the impugned notice at Annexure - A and also consequential proceedings, orders, notices, etc., deserves to be quashed by reserving liberty in favour of the respondents to take recourse to such remedies as available in law."*

**9.11** Now coming to the second legal ground as raised by the assessee that the AO's order u/s 148A(d) of the Act was completely blank and devoid of any contents & thus the entire proceedings is void-ab-initio and illegal. On plain reading of the provisions contained in section 148A(d) of the Act as above, the AO shall within one month as specified decide based on the material available on record including the reply of the assessee whether or not it is a fit case to issue a notice u/s 148 of the Act.

**9.12** Before us, the AR of the assessee submitted that the AO's order u/s 148A(d) of the Act was completely blank and devoid of any contents which violates the basic ingredients of income escaping assessment & thus rendering the entire proceedings void-ab-initio and illegal. The order passed u/s 148A(d) of the act are reproduced below for the sake of convenience & reference –



 <p>GOVERNMENT OF INDIA MINISTRY OF FINANCE INCOME TAX DEPARTMENT OFFICE OF THE INCOME TAX OFFICER WARD 5(3)(1), BANGALORE/</p>			
To, ESHWARRAO ASHWATHNARAYAN # 44 2ND BLOCK SEENA , RAJAJINAGAR BANGALORE 560010 , Karnataka India			
PAN: AVUPA6213E	A.Y: 2015-16	Dated: 31/03/2022	DIN & Notice No: ITBA/AST/F/148A/2021-22/1042302893(1)
Name of the assessee		ESHWARRAO ASHWATHNARAYAN	
Address of the assessee		# 44 2ND BLOCK SEENA , RAJAJINAGAR BANGALORE 560010 , Karnataka India	
Resident/ Not Ordinarily Resident/ Non-Resident			
Date of order		31/03/2022	
Specified authority approval		Name PCCIT, KARNATAKA & GOA Reference No. 100000029838995 Date 31/03/2022	
<p align="center"><b>Order under clause (d) of section 148A of the Income-tax Act,1961</b></p>			
<p align="right">KAUSHAL KISHOR PRASAD SRIVASTAVA WARD 5(3)(1), BANGALORE/</p>			
<p align="right">(In case the document is digitally signed please refer Digital Signature at the bottom of the page)</p>			
<p><small>Note: If digitally signed, the date of digital signature may be taken as date of document. HMT BHAWAN, NO. 59, BELLARY ROAD, GANGANAGAR, BENGALURU, Karnataka, 560032 Email: BANGALORE.IT05.3.1@INCOMETAX.GOV.IN. Note:- The website address of the e-filing portal has been changed from <a href="http://www.incometaxindiaefiling.gov.in">www.incometaxindiaefiling.gov.in</a> to <a href="http://www.incometax.gov.in">www.incometax.gov.in</a>. * DIN-Document Identification No.</small></p>			
		<p align="right">This document is digitally signed Signer: KAUSHAL KISHOR PRASAD SRIVASTAVA Date: 31 March 2022 16:37 Location: KARNATAKA &amp; GOA, India</p>	

**9.13** On going through the above, we find that the contention of the AR of the assessee is acceptable as the order passed u/s 148A(d) of the Act are completely blank and devoid of any contents. The AO has decided nothing while passing order u/s 148A(d) of the



Act. The provision of section 148A(d) of the Act uses the word “Decide”. In a legal context, "decide" means to make a final judgment or determination, often by a court or other legal body, regarding a legal matter or issue. It implies settling a dispute or controversy through a formal process, leading to a resolution. The “Decide” can be synonymous with “adjudicate,” which means to make a formal judgment about a case or dispute.

**9.14** Thus, we are of the considered opinion that the Order u/s 148A(d) of the Act would have all the trappings of reasons recorded, objections raised by the assessee and disposal of such objections through the speaking order which is required to be enclosed with the notice u/s 148 of the Act. The High Court of Delhi in the case of Divya Capital One (P) Ltd v. Asstt. CIT [W.P.(C) No. 7406 (Delhi) of 2022, dated 12-05-2022] had taken note of the new re-assessment scheme introduced by the finance Act, 2021 and pointed out that the safeguards were brought in the amended re-assessment scheme in accordance with the judgment of the Hon’ble Supreme Court in GKN Driveshafts (India) Ltd. V. ITO [2002] 125 Taxman 963 before any exercise of jurisdiction to initiate reassessment proceedings under section 148 of the Act. In the present case the AO should have passed a speaking Order U/s 148A(d) of the Act before directly jumped into the issuing of the notice u/s 148 of the Act. The clause (d) of section 148A of the Act requires the AO to decide on the basis of material available on record including the reply of the assessee as to whether **it is a fit case for issue of notice u/s 148** of the Act. The AO has to pass a speaking Order. He has to decide whether there is fit case, or not a fit case for issue of notice u/s 148 of the Act. The AO has to consider the material on record (including information which prompted to conducting inquiries u/s 148A(a) of the Act and the reply of the assessee received u/s 148A(b) of the Act and the

reasoning adopted by the AO for his decision. Speaking Order is the one which on mere perusal reveals the thinking process which went into the making of the Order. It should be self-explanatory, clear cut. The Order u/s 148A(d) of the Act is in fact an **interlocutory order** and confers jurisdiction for assessment only when it declares that it is a fit case for the issue of notice u/s 148 of the Act. In the present case the order passed U/s 148A(d) is completely blank & devoid of any content and thus illegal & void-ab-initio.

**9.15** Thus we have no hesitation to hold that the assessing officer acted in great haste in completing the assessment by allowing only 6 days' time to submit the response by the assessee & also uploaded the order u/s 148A(d) of the Act without deciding/adjudicating anything. The AO virtually condensed the procedure under the amended provision to a nullity. This clearly defeats the very purposes of new re-assessment scheme.

**9.16** Under these circumstances, we hereby quash & set aside the notice dated 23/03/2022 issued under clause(b) of section 148A of the Act, the order dated 31/03/2022 passed under clause (d) of Section 148A of the Act as well as consequent Assessment order dated 04/03/2023 passed u/s 147 r.w.s 144 of the Act. We make it clear that since we have adjudicated the case on legal issues, the grounds raised on merit of the case are kept open.

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

Order pronounced in the open court on 17<sup>th</sup> Apr, 2025

**Sd/-**  
**(Waseem Ahmed)**  
**Accountant Member**

**Sd/-**  
**(Keshav Dubey)**  
**Judicial Member**

Bangalore,  
Dated 17<sup>th</sup> Apr, 2025.  
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
- 5 Guard file

By order

**Asst. Registrar,  
ITAT, Bangalore.**