

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “J(SMC)”, MUMBAI

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

ITA No.868/Mum/2026
(Assessment year: 2019-20)

Amit Pahuja 6 Roopam Nagar, Near Manik Bagh Over Bridge, Indore, Madhya Pradesh-452013 PAN: ATSP4469M	vs	DCIT, Circle-1, Thane Office of DCIT, Ashar IT Park, 6 th floor, Road No.16Z, Wagle Industrial Estate, Thane-400604
APPELLANT		RESPONDENT

Assessee by : Shri Jaideep Jain Adv. & Shri Ashish Goyal Adv. (Virtually appeared)
Revenue by : Shri Mukesh Thakwani (Sr.DR)

Date of hearing : 17/06/2026
Date of pronouncement : 23/06/2026

ORDER

Per:Anikesh Banerjee (JM):

The instant appeal of the assessee filed against the order of the NFAC, Delhi [for brevity the “Ld. CIT(A)”], order passed under section 250 of the Income Tax Act 1961 (for brevity ‘the Act’) for Assessment Year 2019-20, date of order 16.01.2026. The impugned order emanated from the order of the Assessment Unit Income Tax Department (for brevity the ‘Ld. AO’) order passed under section 147 r.w.s. 144B of the Act date of order 13.01.2025.

2. The assessee has taken the additional grounds which are as below:

“The following may kindly be admitted as additional grounds: -

3. That, the proceeding initiated by Id.AO u/s 148 are illegal, invalid, without jurisdiction, void-ab-initio, non est, barred by limitation.

4. That, the reopening of assessment beyond three years is bad in law, as the conditions prescribed under section 149(1)(b) have not been satisfied.

5. That, the approval was taken from Pr. CIT instead of Pr. CCIT/CCIT as mandated under section 151 in case notice u/s 148 issued beyond 3 years.”

3. The brief facts of the case are that the assessee filed its return of income on 11.08.2019 under section 139(1) of the Act, declaring a total income of Rs. 8,56,340/-. Subsequently, a search and seizure action under section 132 of the Act was conducted on 07.09.2022 in the case of Rashtriya Samajwadi Party (Secular) [RSP(S)]. Based on information received through the Risk Management Strategy (RMS) system, the Ld. AO issued a notice under section 148A(b) on 29.03.2023. In response, the assessee filed its reply on 15.04.2023. After considering the reply, the Ld. AO passed an order under section 148A(d) on 21.04.2023 and, on the same date, issued a notice under section 148 of the Act. The reopening was initiated on the allegation that the assessee had claimed a deduction of Rs. 2,00,000/- under section 80GGC in respect of a donation made to RSP(S), which, according to the revenue, was a bogus transaction. The Ld.AO alleged that the donation claimed by the assessee was not genuine and constituted a colourable device adopted to evade taxes, based on the information gathered during the proceedings relating to RSP(S). Consequently, the deduction claimed under section 80GGC was disallowed and an addition of Rs. 2,00,000/- was made to the total income of the assessee. Aggrieved by the assessment order, the assessee

preferred an appeal before the Ld. CIT(A). The Ld. CIT(A), however, upheld the action of the Ld.AO and confirmed the disallowance. Being further aggrieved, the assessee has preferred the present appeal before us.

4. The Ld. AR advanced his submissions and filed a **paper book** comprising **pages 1 to 68**, which has been taken on record. The Ld. AR also raised an additional ground and relied upon the judgment of the Hon'ble Supreme Court in the case of **National Thermal Power Company Ltd. v. CIT**, reported in **229 ITR 338 (SC)**, wherein it was held that a pure question of law arising from facts already available on record can be raised for the first time before the appellate authority. The Ld. AR primarily addressed his arguments on the additional ground and contended that a search and seizure action under section 132 of the Act was conducted in the case of RSP(S). Based on the information allegedly emanating from such search proceedings, a notice under section 148A(b) of the Act was issued to the assessee on 29.03.2023. The Ld. AR submitted that the initiation of proceedings under section 148A is bad in law, as the case originates from a search conducted under section 132 in the case of a third party, namely a political party. According to the Ld. AR, such cases fall within the exception carved out under the proviso to section 148A of the Act. It was argued that a plain reading of the said proviso makes it abundantly clear that where information emanates from a search conducted under section 132 of the Act, the procedure prescribed under section 148A is not applicable. The relevant provision is reproduced below:

“[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, ²[****], 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, ³[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.]"

[Emphasis Supplied]

5. The Ld. AR further argued that the Ld.AO had wrongly assumed jurisdiction by issuing a notice under section 148A of the Act, despite the fact that such a course of action was not permissible in view of the provisions governing reassessment proceedings arising from a search conducted under section 132. It was contended that once the case allegedly emanated from information obtained during a search, the issuance of a notice under section 148A was itself without jurisdiction and contrary to law. The Ld. AR therefore submitted that the subsequent notice issued under section 148 of the Act on 19.05.2023 was invalid and barred by limitation for AY 2019-20. It was further contended that the alleged escapement of income in the assessee's case was only Rs. 2,00,000/-, which was admittedly below the threshold limit of Rs. 50,00,000/- prescribed under section 149(1)(b) of the Act for invoking the extended period of limitation. The relevant provision is reproduced as below:-

"149(1)(b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year"

Accordingly, the Ld. AR argued that, since the alleged escaped income was less than Rs. 50,00,000/-, the reassessment proceedings could not have been initiated beyond the period of three years from the end of the relevant assessment year. Therefore, the notice issued under section 148 of the Act was without authority of law, barred by limitation, and liable to be quashed.

6. The Ld. DR strongly opposed the admission as well as the merits of the additional ground raised by the assessee. It was contended that the reassessment proceedings were validly initiated on the basis of credible information received through the Risk Management Strategy (RMS) system indicating that the assessee had claimed a bogus deduction under section 80GGC in respect of a donation made to RSP(S). The Ld. DR submitted that the issuance of notice under section 148A was in conformity with the statutory procedure and, in fact, provided an additional opportunity of hearing to the assessee. Merely because the information had its genesis in a search conducted in the case of a third party would not render the proceedings invalid. It was further argued that the Ld.AO had duly considered the assessee's reply, passed an order under section 148A(d), and thereafter issued a notice under section 148 after obtaining the requisite approvals. The Ld. DR further contended that the assessee had claimed a deduction on the basis of a non-genuine donation and, therefore, income chargeable to tax had escaped assessment. Accordingly, the reassessment proceedings were validly initiated and the disallowance made by the Ld. AO was rightly sustained by the Ld. CIT(A). The Ld. DR, therefore, prayed that the additional ground as well as the grounds on merits be rejected.

7. We have heard the rival submissions and perused the material available on record. At the outset, we find that the additional ground raised by the assessee involves a pure question of law relating to the validity of the assumption of jurisdiction under sections 148A and 148 of the Act. Since the issue arises from facts already available on record and does not require any further investigation of facts, the additional ground is admitted for adjudication in view of the ratio laid down by the Hon'ble Supreme Court in the case of **National Thermal Power Company Ltd.** (supra).

8. Upon a careful consideration of the facts and the statutory provisions, it is evident that the reopening of the assessment was initiated on the basis of information allegedly emanating from a search and seizure action conducted under section 132 of the Act in the case of RSP(S) on 07.09.2022. The Ld. AO himself has recorded that the information regarding the alleged bogus donation claimed by the assessee under section 80GGC was received pursuant to the said search proceedings. The proviso to section 148A specifically excludes from its ambit cases where the Assessing Officer is satisfied that any books of account, documents, or information found during a search conducted in the case of another person relate to the assessee. Therefore, once the revenue seeks to rely upon information emanating from a search conducted under section 132 in the case of a third party, the case falls within the exception carved out under clauses (b) and (c) of the proviso to section 148A. Consequently, the procedure prescribed under section 148A is not applicable to such cases. In the present case, however, the Ld. AO proceeded to issue a notice under section 148A(b), passed an order under section 148A(d), and thereafter issued a notice under section 148

on dated 21/04/2023. The revenue cannot derive any advantage or immunity from the proceedings initiated under section 148A of the Act when the statute itself excludes the applicability of such proceedings. Once the case falls within the exceptions provided in the proviso to section 148A, the issuance of a notice under section 148A(b) and the passing of an order under section 148A(d) become wholly unnecessary and without the authority of law. Therefore, the Ld. AO cannot seek to validate the reassessment proceedings or overcome the bar of limitation merely on the ground that proceedings under section 148A were undertaken. An action which is not contemplated or required under the Act cannot confer jurisdiction upon the Ld. AO nor can it cure the inherent defect in the assumption of jurisdiction. Thus, the very assumption of jurisdiction under section 148A was contrary to the statutory framework and suffers from a fundamental jurisdictional defect.

9. Even otherwise, the alleged escapement of income in the present case is only Rs. 2,00,000/-, being the deduction claimed under section 80GGC. The said amount is admittedly far below the threshold limit of Rs. 50,00,000 prescribed under section 149(1)(b) of the Act for invoking the extended period of limitation beyond three years. For AY 2019-20, the period of three years had already expired on the date of issuance of notice under section 148. Therefore, in the absence of escapement of income represented in the form of an asset amounting to Rs. 50,00,000 or more, the reassessment proceedings could not have been validly initiated beyond the prescribed period of limitation.

Accordingly, we hold that the notice issued under section 148 and the consequential reassessment proceedings are without jurisdiction, barred by

limitation, and liable to be quashed. The additional ground raised by the assessee is therefore allowed.

Since we have quashed the reassessment proceedings on the preliminary legal issue, the other grounds raised by the assessee on the merits of the addition become purely academic in nature and, therefore, do not call for separate adjudication. The same are left open.

10. In the result, the appeal of the assessee bearing **ITA No.868/Mum/2026** is allowed.

Order pronounced in the open court on 23rd day of June 2026.

Sd/-

(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 23/06/2026
SAUMYASr.PS

Sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्डफाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar), ITAT, MUMBAI