

(Appeals)-24 (for short, "CIT(A)"), New Delhi's as many orders dated 06.11.2025 passed in order nos. 24/10139/2020-21, 24/10043/2021-22, 24/10029/2022-23 (A.Y: 2021-22 to 2023-24) and its above director Shri Archit Jain's solitary appeal ITA No. 8535/Del/2025 for assessment year 2023-24 is directed against CIT(A)'s order dated 17.11.2025 passed in order no. 24/10028/2022-23, involving proceedings u/s 147 & 143(3) of the Income Tax Act, 1961; hereinafter referred to as, "the Act"; respectively.

Heard both the parties. Case files perused.

2. We proceed "assessee wise" for the sake of convenience and brevity.

3. M/s RNT Metals Private Limited- A.Y-2021-22 (ITA No. 8528/Del/2025)

We notice at the outset, that the assessee/appellant company before us raises its first and foremost legal ground challenging validity of the impugned reopening itself. Learned counsel invites our attention to the Assessing Officer's section 148 notice issued on 25.07.2023 asking it to furnish the return within thirty days from the service thereof. His case accordingly is that going by the relevant statutory provision ie. Section 148; as it stood at the relevant point of time, the same ought to have been granted a minimum time period of ninety days, as held in ITA No. 707/RPR/2025 in DCIT vs Anand Kumar Agarwal, decided on 05.08.2026; reading as under:

7. He however, did not press ground of appeal No.1 and 3 above for which the Ld. DR has no objection. Therefore, the first ground and third ground of the application under Rule 27 are dismissed as not pressed. So far as ground of appeal

No.2 of the application is concerned, the Ld. Counsel for the assessee submitted that as per notice issued u/s 148 dated 28.03.2024 the Assessing Officer has given 90 days time to file the return of income from the date of issue of notice dated 28.03.2024. Referring to the provisions of section 148 stood at the relevant time, he drew the attention of the Bench to the same which read as under:

"Issue of notice where income has escaped assessment.

148. Before making the assessment, reassessment or recomputation under section 147, and subject to the provisions of section 148A, the Assessing Officer shall serve on the assessee a notice, along with a copy of the order passed, if required, under clause (d) of section 148A, requiring him to furnish within a period of three months from the end of the month in which such notice is issued, or such further period as may be allowed by the Assessing Officer on the basis of an application made in this regard by the assessee, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139"

8. He submitted that as per the above provision the assessee is required to furnish his return of income within a period of 3 months from the end of the month in which such notice is issued and therefore the due date in the instant case is 30.06.2024. However, the Assessing Officer in the instant case has directed the assessee to file the return within 90 days from issue of the notice dated 28.03.2024 meaning thereby he has given a shorter period. Referring to the decision of the Hon'ble Bombay High Court in the case of CIT vs. Ramsukh Motilal reported in (1955) 27 ITR 54 (Bom), he submitted that the Hon'ble High Court in the matter of sections 34 and 22 of the Income Tax Act, 1922, which relates to the re-assessment proceedings, has held that for initiating re-assessment proceedings, if the Assessing Officer gives a notice, allowing the assessee a lesser time period for

furnishing his income tax return, than what is allowed in the provision of law, in such a case, it shall not be merely a procedural defect which can be waived, but it shall be a jurisdictional defect which cannot be waived.

9. Referring to the decision of the Hon'ble Gauhati High Court in the case of M/s. Tansukhrai Bodulal vs. ITO reported in (1962) 46 ITR 325 (Gauhati), he submitted that the Hon'ble High Court, following the decision of the Hon'ble Bombay High Court in the case of CIT vs. Ramsukh Motilal (supra) has also taken a similar view. He submitted that in the instant case the Assessing Officer instead of giving 3 months clear notice from the end of March, 2024 has given 90 days from the issue of notice dated 28.03.2024, which is a lesser period, therefore, it is a jurisdictional defect which cannot be waived. He submitted that the issuance of a valid notice u/s 148 is a mandatory condition precedent for assumption of jurisdiction and not a procedural provision. Therefore, the Assessing Officer cannot assume jurisdiction if the notice issued u/s 148 is not a valid notice. He accordingly submitted that since the notice issued u/s 148 is not a valid notice, the subsequent proceedings on the basis of such invalid notice are liable to be quashed being null and void.

10. The Ld. DR on the other hand submitted that the assessee has never challenged the validity of such notice before the lower authorities. He accordingly submitted that he has no objection if the matter is restored to the file of the Ld. CIT(A) / NFAC for adjudication of this legal ground.

11. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and the Ld. CIT(A) / NFAC and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the Assessing Officer in the instant case, on the basis of information obtained that the assessee has paid cash of Rs.1,56,00,000/- for purchase of 1200 sq.ft. land at Naharpara, Raipur during the year under consideration, reopened the assessment by recording reasons and issued notice u/s 148 of the Act dated 28.03.2024 which reads as under:

 GOVERNMENT OF INDIA MINISTRY OF FINANCE INCOME TAX DEPARTMENT OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 1(1), RAIPUR			
To: ANAND KUMAR AGARWAL SHOP NO. 6 ARIHANT COMPLEX, STATION ROAD RAIPUR 492001, Chhattisgarh India			
PAN: ACJPA4528L	A.Y. 2019-20	Dated: 28/03/2024	DN & Notice No: ITRA/AST/8-148_1/2023-24/1063526550(1)
Notice under section 148 of the Income-tax Act, 1961			
Sir/Madam/ Ws.,			
- I have information that a search was initiated under section 132 of the Act in your case or in the case of the person in respect of which you are assessable under the Act on the date 06/01/2023. - I am satisfied, with the approval of Principal Commissioner or Commissioner, that books of accounts or documents, seized or requisitioned under section 132 or section 132A of the Act in case of Swastik Developers pertains or pertain to, or any information contained therein, relate to you or the person in respect of which you are assessable under the Act. - I am satisfied, with the approval of Principal Commissioner or Commissioner, that books of accounts or documents, seized or requisitioned under section 132 or section 132A of the Act in case of Swastik Developers pertains or pertain to, or any information contained therein, relate to you or the person in respect of which you are assessable under the Act. This notice is being issued after obtaining the prior approval of the CCIT, RAIPUR accorded on date 27-MAR-24 vide Reference No. 100060048756836.			
2. I, therefore, propose to assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for the Assessment Year 2019-20 and I, hereby, require you to furnish, within 90 days from the issue of this notice, a return in the prescribed form for the Assessment Year 2019-20.			
TAPAN KUMAR CHATTERJEE CIRCLE 1(1), RAIPUR			
			
(In case the document is digitally signed please verify Digital Signature at the bottom of the page)			
Note: If digitally signed, the date of digital signature may be taken as date of document. CENTRAL REVENUE BUILDING, RAJ2, RAJ3, RAJ4, RAIPUR, Chhattisgarh, 492001 Email: RAIPUR/CCIT 1@INDORETAX.GOV.IN This document is digitally signed Digitally signed by TAPAN KUMAR CHATTERJEE Date: Tuesday, Mar 26, 2024 9:32 PM Location: RAIPUR, IN			

12. A perusal of the above shows that the Assessing Officer has given 90 days time from the date of notice i.e. 28.03.2024 for filing of the return. We find the provisions of section 148 as stood at the relevant time read as under:

"Issue of notice where income has escaped assessment.

148. Before making the assessment, reassessment or recomputation under section 147, and subject to the provisions of section 148A, the Assessing Officer shall serve on the assessee a notice, along with a copy of the order passed, if required, under clause (d) of section 148A, requiring him to furnish within a period of three months from the end of the month in which such notice is issued, or such further period as may be allowed by the Assessing Officer on the basis of an application made in this regard by the assessee, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139"

13. A perusal of the above provisions shows that the Assessing Officer is required to give a period of 3 months time from the end of the month in which such notice was issued. However, the Assessing Officer in the instant case has given 90 days time from the date of issue of notice. Thus, the mandate of section 148 has not been fulfilled since the Assessing Officer has given lesser time to file the return of income.

14. We find the Hon'ble Bombay High Court in the case of CIT vs. Ramsukh Motilal (supra) while quashing the notice issued u/s 34 of the Income Tax Act, 1922 giving the assessee to comply with its requirement within a period of less than 30 days is invalid and the illegality cannot be waived by the assessee since a defect in its was not procedural but a condition precedent to the assumption of jurisdiction. The relevant observations of the Hon'ble High Court read as under:

"9. Therefore, it is clear that the learned Chief Justice in that case takes the view that a notice under s. 34 is a condition precedent to the commencement of proceedings in exercise of jurisdiction. But having held that a proper notice under s. 34 is a condition precedent to the assumption of jurisdiction the learned Chief Justice goes on to consider the question of waiver and on the facts of the case he holds there is no waiver. With very great respect to the learned Chief Justice, it is difficult to understand how there can be a waiver of the condition precedent, compliance with which alone can confer jurisdiction upon an authority or a Tribunal. It is well settled that no consent can confer jurisdiction upon a Court if the Court has no jurisdiction, and if we take the view that the ITO can have jurisdiction only provided he complies with the conditions laid down in s. 34, then no consent by the assessee or no waiver on his part can confer jurisdiction upon the ITO. Therefore, while agreeing with the Calcutta High Court that the notice provided for in s. 34 is a condition precedent to the assumption of jurisdiction, with respect we are unable to accept the view that a defect in a notice given under s. 34 or a failure to give notice under s. 34 can be waived by the assessee."

15. Although the above decision was rendered under the Income Tax Act, 1922, still the ratio laid down in the aforementioned decision in our opinion, holds good, for the Income Tax Act, 1961. Since the Assessing Officer in the instant case has admittedly given a period of 90 days from the date of notice i.e. 28.03.2024 instead of giving 3 months clear time from the end of relevant month, therefore, such notice issued u/s 148 of the Act is invalid and therefore, all proceedings based on such invalid notice are liable to be quashed being null and void. We, therefore, quash the re-assessment proceedings and the 2nd ground raised by the assessee in the application under Rule 27 of the Income Tax (Appellate Tribunal) Rules, 1963 is allowed.

16. Since the assessee succeeds on this legal ground, the other grounds raised by the assessee in the CO are not being adjudicated being academic in nature. Since, the re-assessment proceedings are quashed, the appeal filed by the Revenue becomes infructuous and accordingly the same is dismissed.

4. The Revenue could hardly dispute that the learned Assessing Officer section 148 notice dated 25.07.2023 granting 90 days time herein had indeed fallen well short of affording the above statutory time period to the assessee for the purpose of filing its response thereto. We thus adopt the foregoing detailed reasoning *mutatis mutandis* to quash the impugned reopening itself in very terms.

All other remaining pleadings between the parties stand rendered academic. The assessee's instant first and foremost appeal ITA No. 8528/Del/2025 succeeds therefore.

ITA No. 8529/Del/2025 for AY: 2022-23

5. The assessee/appellant herein also raises its first and foremost legal ground/argument challenging validity of the Assessing Officer's section 143(3) regular assessment framed on 31.03.2024 in its case for want of initiation of proceedings u/s 148 of the Act. This is for the precise reason that even the learned Assessing Officer observes very fairly in the impugned assessment order that the assessee was duly covered in the departmental section 132 search action at its premises on 12.12.2022. This clinching factual position has gone un rebutted from the Revenue side. We conclude in this factual backdrop that the Tribunal's recent order in (2026) 182 taxmann.com 11 (Del) Montage Enterprises (P) Ltd. vs DCIT holds that the learned Assessing Officer's action framing such a regular assessment post section 132 search action, as a *non-est* one in the eyes of law, as under:
2026) 182 taxmann.com 11 (Del) Montage Enterprises (P) Ltd. vs DCIT.

"2. We notice at the outset that there arises the first and foremost issue of validity of the impugned section 143(3)