आयकर अपीलीय अधिकरण, **'सी' न्यायपीठ, चेन्नई।**

**IN THE INCOME TAX APPELLATE TRIBUNAL**
**'C' BENCH: CHENNAI**

**श्री एबी टी. वर्की, न्यायिक सदस्य एवं**

**श्री एस. आर.रघुनाथा, लेखा सदस्य के समक्ष**

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND**
**SHRI S. R. RAGHUNATHA, ACCOUNTANT MEMBER**

**ITA. No. 2435/Chny/2026**
**निर्धारणवर्ष/Assessment Year: 2016-17**

| | | |
|---|---|---|
| **Usha,**<br>30, C, Ramkarishnapuram North,<br>Karur – 639 001.<br><br>[**PAN: ABFPU 5227 K**] | ***VS*** | **ITO,**<br>Ward – 1,<br>Karur |
| **(अपीलार्थी/Appellant)** | | **(प्रत्यर्थी/Respondent)** |
| | | |
| अपीलार्थी की ओर से/ Appellant by | : | Mr. Vishwa Padmanabhan CA |
| प्रत्यर्थी की ओर से /Respondent by | : | Mr. Biplab Gangopadhyay, JCIT |
| सुनवाईकीतारीख/Date of Hearing | : | 15.09.2026 |
| घोषणाकीतारीख /Date of Pronouncement | : | 16.10.2026 |

## आदेश / O R D E R

**PER ABY T. VARKEY, JM:**

This is an appeal preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeal)/NFAC, (hereinafter referred to as 'Ld. CIT(A)'), Delhi, dated 24.02.2026 for the Assessment Year (hereinafter referred to as 'AY') 2016-17, u/s.250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

**2.** Brief facts of the case it that assessee is an individual. The AO received information that assessee had paid consideration for purchase of immovable property to the tune of Rs.58,50,000/- and didn't file return of

income u/s.139(1) of the Act, hence, he reopened the assessment of the assessee by issuance of notice u/s.148 of the Act on 30.03.2023 pursuant to which assessee filed the return of income on 27.04.2023 declaring total income of Rs.1,80,790/-. The AO noted that assessee has purchased an immovable property on 08.12.2015 at Karuru and made payment of Rs.63,19,510/- in cash (cost of purchase of Rs.58.50 lakhs *Plus* registration and other charges Rs.4,68,510/-). The AO asked the assessee to prove the nature and source of the purchased consideration and assessee has given the details which has been captured by the AO at Page 10 of the assessment order. However, the AO is noted to have not accepted the reply of the assessee wherein the assessee has claimed the source of cash of Rs.63,18,510/- as received from various persons including her husband, mother-in-law, father, mother, brother and close relatives. According to the AO the reply of the assessee is not tenable as the assessee couldn't explain the source of investment made in immovable property by submitting any documentary evidences. Hence, he treated the purchase consideration totally of Rs.63,18,510/- as unexplained investment and added it u/s.69 of the Act by passing the impugned order on 19.03.2024. Which action of the AO has been confirmed by the Ld. CIT(A).

**3.** Aggrieved by the aforesaid action of the Ld. CIT(A) confirming the action of AO, the assessee is in appeal before us and has raised following grounds of appeal which are reproduced as under:-

> GROUNDS OF APPEAL
>
> The Learned Commissioner of Income Tax (Appeals), NFAC, Delhi (hereinafter referred to as "the Ld. CIT(A)") erred in confirming the addition of Rs.63,18,510/- made by the Assessing Officer by treating the purchase of immovable property as unexplained investment under Section 69 of the Act, without properly appreciating the facts and explanations furnished by the appellant.

**4.** The assessee is noted to have moved an application for admission additional grounds of appeal wherein the assessee is noted to have raised two (2) legal issues i) the notice u/s.148A(b) did not provide seven (7) clear days for the assessee to respond to the same, which omission on the part of the AO vitiates the subsequent action of the AO issuing notice u/s.148 and framing of assessment and ii) the notice u/s,148 ought to have been issued by the Faceless Assessing Officer (FAO) and not by the Jurisdictional Assessing Officer (JAO) in terms of section 151(1) of the Act. The additional grounds of appeal are reproduced as under:-

> 1. For that Commissioner of Income Tax (Appeals) ought to have noted that vide notice u/s.148A(b) dated 10.03.2023, the Assessing Officer did not provide seven clear days for the appellant to respond to the same.
>
> 2. For that the Commissioner of Income Tax (Appeals) ought to have appreciated that since the notice issued u/s.148A(b) does not comply with the statutory provisions and hence is bad in law and vitiates subsequent proceedings.
>
> 3. For that Commissioner of Income Tax (Appeals) ought to have noted that vide notice u/s.148A dated 22.03.2022, the Assessing Officer did not provide seven clear days for the appellant to respond to the same.

4. For that Commissioner of Income Tax (Appeals) ought to have noted that the order u/s.148A(d) as well as the notice u/s.148 ought to have been issued by the Faceless Assessing Officer (FAO) and not by the Jurisdictional Assessing Officer (JAO) in terms of the provisions of Section 151A of the Act.

**5.** Since, the assessee has raised legal issue which challenges the jurisdiction of the AO to validly reopen the assessment, we will examine legal issue first because if the said ground is found to be legally tenable, then it will go to the root of the jurisdiction of the AO to successfully reopen the assessment and then frame valid assessment order, hence we admit the legal issues and we first of all we will examine the legal issue, gist of which is reproduced as under:-

> The reopening of the assessment is invalid as the Assessing Officer did not grant clear seven days while issuing the notice u/s 148A(b) of the Act dated 10.03.2023, and hence, the subsequent action of issuance of notice u/s 148 dated 30.03.2023 is invalid and the consequent assessment order dated 19.03.2023 is invalid and null and void ab initio.

**6.** The legal issue, according to the assessee, is that the impugned action of AO to reopen the assessment is bad in law, for non-adherence of mandatory procedure to reopen the same. In this regard, according to the assessee, notice u/s.148A(b) of the Act, which was issued by the AO did not provide '*seven clear days*' to the assessee, as mandated under the said provision for responding to the said notice. Instead, in the present case, the AO gave only five (5) clear days to the assessee for furnishing the response to the said notice which is in contravention of section 148(A)(b) of the Act. The assessee accordingly submits that the notice u/s.148A(b) of the Act, dated 10.03.2023 is legally bad in law, and hence

the notice of reopening u/s.148 of the Act was issued without proper authority of law, and hence, the consequent assessment order dated 19.03.2024 is null in the eyes of law.

**7.** Explaining the legal issue, the Ld. AR submitted that the impugned issuance of statutory notice on 30.03.2023 for AY 2016-17, u/s.148 of the Act, by the AO/ITO Ward-1 Karur, which impugned notice, according to him is non-est in eyes of law because, the notice issued by the AO prior to issuance of notice u/s.148 of the act, i.e. notice u/s.148A(b) of the Act dated 10.03.2023, itself was bad in law. According to the Ld. AR the notice u/s.148A(b) of the Act, which was issued by the AO did not provide 'seven' clear days as mandated under the said provision for responding to the said notice. The assessee pointed out that only five (5) clear days was granted to the assessee for furnishing the response to the said notice which is in contravention of section 148(A)(b) of the Act. The assessee accordingly submits that the notice u/s.148A(b) of the Act, dated 10.03.2023, consequent notice u/s.148 of the Act is bad in law, and hence, the subsequent action of framing assessment order on 19.03.2024 is null in the eyes of law.

**8.** Per contra, the Ld. DR vehemently supports the impugned action of the Ld. CIT(A) confirming the action of AO reopening the assessment and passing the assessment order dated 19.03.2024. According to Ld DR, the

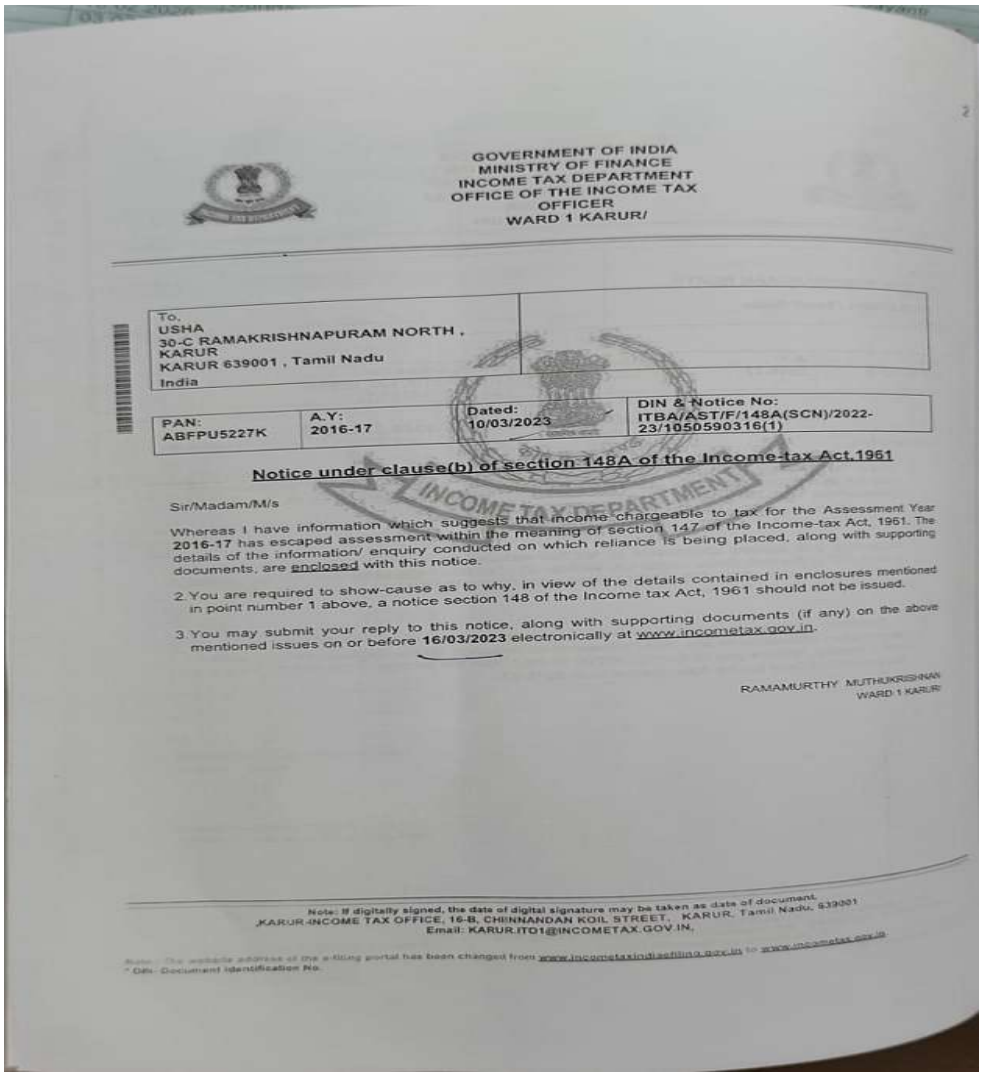
assessee hasn't raised the legal issue before AO or Ld CIT(A), hence he shouldn't be allowed to raise it before this Tribunal for the first time, hence he wants us to dismiss the legal issue.

**9.** In his rejoinder, the Ld. AR submitted that the assessee has raised the legal issue which assessee is entitled to do because it is settled law that the jurisdiction can be challenged at any stage/proceedings and even that it can be raised before the Hon'ble Apex Court for the first time. And according to Ld. A.R, in this case, the primary proceedings is the AO's action of re-opening the assessment by issuance of notice u/s.148 of the Act, which action is invalid since the first step of reopening is by issuing notice of u/s.148A(b) of the Act, wherein he is bound by law to give at least seven "7" days' time for assessee to respond. But, in this case, the AO failed to give "7" days' time, in contravention of specific mandate of law. Hence, the AO's action is vitiated and he couldn't have issued notice u/s.148 of the Act on 30.03.2023, thereby, invalidating the assessment order passed u/s 147 on 19.03.2024. Hence, according to him, such an illegal action of the AO can be challenged at any stage, even before the Tribunal for the first time, and relied inter alia on the decision of Hon'ble Madras High Court in the case of CIT Vs. Gitsons Engineering Co. 370 ITR 87 (Mad) clearly holds that the objection in relation to non service of notice could be raised for the first time before the Tribunal as the same

was legal, which went to the root of the matter. In the light of the aforesaid averments, and other decisions discussed infra, the Ld AR wants us to adjudicate this legal issue.

**10.** Heard both parties and perused the records. Since the assessee has raised legal issues challenging the jurisdiction of the AO to validly reopen the assessment for AY 2016-17, we will examine the same. For which we rely on the decision of the Hon'ble Supreme Court in the case of NTPC Ltd. Vs. CIT reported in [1998] 229 ITR 383 (SC) wherein the Hon'ble Supreme Court has held that if the issue raised is purely legal and adjudication of the said ground doesn't require any fresh investigation into the facts and the same essentially is a question of law, then the Tribunal has the power to consider the question of law arising from assessment proceedings, although, not raised earlier. Hence, we are inclined to examine the same. For doing that first of all we have to examine whether the AO in the present case could have validly reopened the assessment of the assessee by issuance of notice dated 10.03.2023 u/s.148A(b) of the Act which resulted in issuance of notice u/s.148 of the Act on 10.03.2023 and thereafter, framed assessment u/s.147/143(3) on 19.03.2024.

**11.** In assessee's case the notice under section 148A(b) was issued on 10.03.2023, the relevant extract of the notice u/s. 148 is as under:



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE INCOME TAX OFFICER
WARD 1 KARUR/

To,
USHA
30-C RAMAKRISHNAPURAM NORTH ,
KARUR
KARUR 639001 , Tamil Nadu
India

| PAN: | A.Y: | Dated: | DIN & Notice No: |
|---|---|---|---|
| ABFPU5227K | 2016-17 | 10/03/2023 | ITBA/AST/F/148A(SCN)/2022-23/1050590316(1) |

**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 **2016-17** has escaped assessment within the meaning of section 147 of the Income-tax Act, 1961. The details of the information/ enquiry conducted on which reliance is being placed, along with supporting documents, are enclosed with this notice.

2.You are required to show-cause as to why, in view of the details contained in enclosures mentioned in point number 1 above, a notice section 148 of the Income tax Act, 1961 should not be issued.

3.You may submit your reply to this notice, along with supporting documents (if any) on the above mentioned issues on or before **16/03/2023** electronically at www.incometax.gov.in.

RAMAMURTHY MUTHUKRISHNAN
WARD 1 KARUR/

Note: If digitally signed, the date of digital signature may be taken as date of document.
,KARUR-INCOME TAX OFFICE, 16-B, CHINNANDAN KOIL STREET, KARUR, Tamil Nadu, 639001
Email: KARUR.ITO1@INCOMETAX.GOV.IN,

Note: The website address of the e-filing portal has been changed from www.incometaxindiaefiling.gov.in to www.incometax.gov.in
* DIN- Document Identification No.

**12**. From a perusal of notice issued u/s.148A(b) of the Act, it is clear that, the AO afforded only five (5) clear days to assessee to respond, which is not in consonance with the mandate given in Section 148A(b) of the Act. According to assessee, Section 148A(b) of the Act mandates seven (7) clear days to assessee to respond to such a notice.

**13.** As noted, we find that the AO had issued the statutory reopening notice u/s.148 of the Act on 30.03.2023 after issuance of notice u/s.148A(b) dated 10.03.2023. The notice u/s.148A(b) of the Act is noted to have given only five (5) days time to respond, which omission on the part of AO not to have offered seven "7" days time to assessee to reopened vitiates the action of AO to reopen the assessment itself. In this regard, it would be gainful to refer to Section 148B(b) of the Act, which reads as under:-

**Section 148A(b) of the I.T. Act.**

> "148A (b) 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);" *[Emphasis supplied]*.

**14.** From bare perusal of Section 148A(b) it appears that minimum 7 days is required to be given to the Assessee for filing reply. This 7 day is to be calculated by ignoring the date of issue and the last date of submission. In other words, minimum 7 clear days has to be provided to the Assessee for filing reply.

**15.** At this juncture, reference may be made to the case of Pioneer Motors (Private) Ltd. Vs. Municipal Council, Nagercoil reported in AIR

1967 SC 684 wherein at paragraph 8 and 9, the Hon'ble Apex Court has deliberated the issue with regard to counting of dates.

> 8. The words "not being less than one month" do imply that clear one month's notice was necessary to be given, that is, both the first day and the last day of the month had to be excluded……..
> "When..... 'not less than' so many days are to intervene, both the terminal days are excluded from the computation"
> ……
> 9……In every case the words have to be construed in the context taking into consideration the language used and the object to be achieved. As we have said above, the use of the words "not being less than one month" implies the giving of a clear month excluding both the first and the last day of the month
> ……
> *[Emphasis supplied]*.

**16.** Thus, we see that the law is no more res-integra, inasmuch as, the words '*not be less than 7 days'* implies that clear seven days is obligatory to be given to the Assessee. Applying the principle, in this case, the AO by issuing notices, u/s.148A(b) of the Act dated 10.03.2023, has directed the assessee to respond to his notice by 16.03.2023, meaning the assessee was given only five (5) clear days for responding to the notice of AO, which impugned action we find is not in consonance with the Section 148A(b) of the Act [refer decision of Hon'ble the High Court of Jharkhand at Ranchi in W.P.(T) No. 2640 of 2023 dated 28.08.2023; & Hon'ble the High Court of Karnataka in the case of ITO vs Venkatal Iyyappa Rajanna [2025] 178 taxmann.com 410].

**17.** In the case of ITO vs Venkatal Iyyappa Rajanna (supra), the Hon'ble Division Bench of the High Court of Karnataka upholding the action of the Hon'ble single Judge held as under (relevant portion only):-

> 1. The Revenue has filed the present appeal impugning an order dated 04.06.2024 passed by the learned Single Judge of this Court in Writ Petition No. 12618 of 2024 [TIT] captioned Venkatala Iyyappa Rajanna Vs. The Income Tax Officer and others
>
> 2. The respondent [Assessee] had filed the said petition, inter alia, impugning a notice dated 20.03.2022 issued under Section 148A (b) of the Income Tax Act, 1961 [Act] for the assessment year [AY] 2015-16 on the ground that the said notice did not provide sufficient time for the Assessee to file a response to show cause calling upon him to show cause why it was not a fit case for issuance of a notice under Section 148 of the Act.
>
> 3. The learned Single Judge has found merit in the aforesaid contention and accordingly, set aside the impugned notice as well as the notice dated 31.03.2022 issued under Section 148A (d) of the Act and further reassessment proceedings that were initiated pursuant to the said notice.
>
> 4. Before proceeding further, it would be relevant to refer to Section 148A of the Act, as was in force at the material time. The same is set out as below:
>
> > "148A. Conducting inquiry, providing opportunity before issue of notice under section 148.
> > 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, 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, 2[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.]

5. It is clear from the plain reading of Clause (b) of Section 148A of the Act, that a notice under Section 148A(b) of the Act is required to provide an opportunity to the assessee to respond to the information which may suggests that the assessee's income has escaped assessment. The minimum period of such notice is stipulated as "not less than seven days". In the present case, the impugned notice was issued on 20.03.2022 and the Assessee was called upon to furnish a reply on or before 25.03.2022. Indisputably, the impugned notice did not comply with the requirement of providing a minimum period of seven days to respond to the said notice.

6. The impugned notice is contrary to law as rightly pointed out by the learned Single Judge.

7…….
8……...
……..

12. In view of the above, the present appeal is dismissed. We find no grounds to interfere with the conclusion of the learned Single Judge.

**18.** As noted, in this captioned case, since the impugned notice u/s.148A(b) of the Act has been issued by the AO, in contravention to Section 148A(b) of the Act, the notice u/s.148 dated 30.03.2023 is invalid and hence assessment completed on 19.03.2024 based on the invalid notice u/s 148A(b) of the Act is held to be non-est in the eyes of law, so it is a nullity. Hence, consequent action of the AO framing the assessment

dated 19.03.2024 is also null in the eyes of law and therefore, additions made is untenable and directed to be deleted.

**19.** In the light of our above action, all other legal issues and on merits are academic and hence not adjudicated.

**20**. In the result, appeal filed by the assessee is allowed.

Order pronounced on the 16TH day of October, 2026, in Chennai.

**Sd/-**

**(एस. आर.रघुनाथा)**
**(S. R. RAGHUNATHA)**
लेखा सदस्य/**ACCOUNTANT MEMBER**

**Sd/-**

**(एबी टी. वर्की)**
**(ABY T. VARKEY)**
न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: 16TH October, 2026.
***YS***

आदेश की प्रतिलिपि अग्रेषित/**Copy to**:
1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF