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. 4052 & 4053Chny/2026
निर्धारणवर्ष**/Assessment Year: 2018-19**

Thirunavukkarasu Raajeswari. New No. 8. Old No. 43, Balaji Nagar, Kolathur, Chennai – 600 009. [**PAN: BEMPR 4538 H**]	***VS***	**The ITO,** Non-Corporate Ward 10(3), Chennai.
(अपीलार्थी**/Appellant)**		**(**प्रत्यर्थी**/Respondent)**
अपीलार्थी की ओर से/ Appellant by	:	Mr. Viswa Padmanabhan, C.A.
प्रत्यर्थी की ओर से /Respondent by	:	Mr. Beesam Narasing Rao, JCIT
सुनवाईकीतारीख/Date of Hearing	:	23.09.2026
घोषणाकीतारीख /Date of Pronouncement	:	16.10.2026

आदेश **/ O R D E R**

PER ABY T. VARKEY, JM:

ITA No.4052/Chny/2026 is an appeal preferred by the assessee against the action of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter referred to as 'Ld. CIT(A)'), Delhi, dated 21.05.2026 for Assessment Year (hereinafter referred to as 'AY') 2018-19 passed u/s.250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') confirming the quantum addition made by the Assessing Officer (AO); and ITA No.4053/Chny/2026 is an appeal preferred against the

action of the Ld. CIT(A) dated 21.05.2026 confirming the penalty levied by AO u/s.271AAC(1) of the Act for AY 2018-19.

2. Assessee has raised various grounds of appeal including legal issues Additional Ground No.1 & 2 are noted as under;-

> 1. For that Commissioner of Income Tax (Appeals) ought to have noted that vide notice u/s.148A(b) dated 15.03.2022, 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, the said notice is bad in law and vitiates subsequent proceedings.

3. Legal issue as per the assessee is re-framed as under:-

> The reopening of the assessment is invalid as the Assessing Officer did not grant clear seven days while issuing the notice dated 15.03.2022 u/s 148A(b) of the Act, and hence, the reopening of assessment is invalid and the consequent assessment order dated 23.03.2023 is invalid being ab initio void.

4. The legal issue, according to the assessee, is that the assessment order dated 23.03.2023 is bad in law, since the very action of AO reopening the assessment itself is without jurisdiction, 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 15.03.2022 is legally bad in law, and hence the statutory notice of reopening dated 31.03.2022 u/s.148 of the Act was issued without proper authority of law, and hence, the consequent assessment order dated 23.03.2023 is null in the eyes of law.

5. Explaining the legal issue, the Ld. AR submitted that the impugned notice issued on 31.03.2022 u/s.148 of the Act, by the AO/ITO Mahadevamangalam Kachapeswran Sivakumar Non Corp Ward 10(3) Chennai, 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 15.03.2022, 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 15.03.2022, consequent notice u/s.148 of the Act is bad in law, and hence, the subsequent action of framing assessment order on 23.03.2023 is null in the eyes of law.

6. Thus, according to Ld. AR, when the very event of reopening of the assessment by the AO for the AY 2018-19 itself was invalid for want of jurisdiction, consequent action of the AO is vitiated and the assessment order is a nullity in eyes of law.

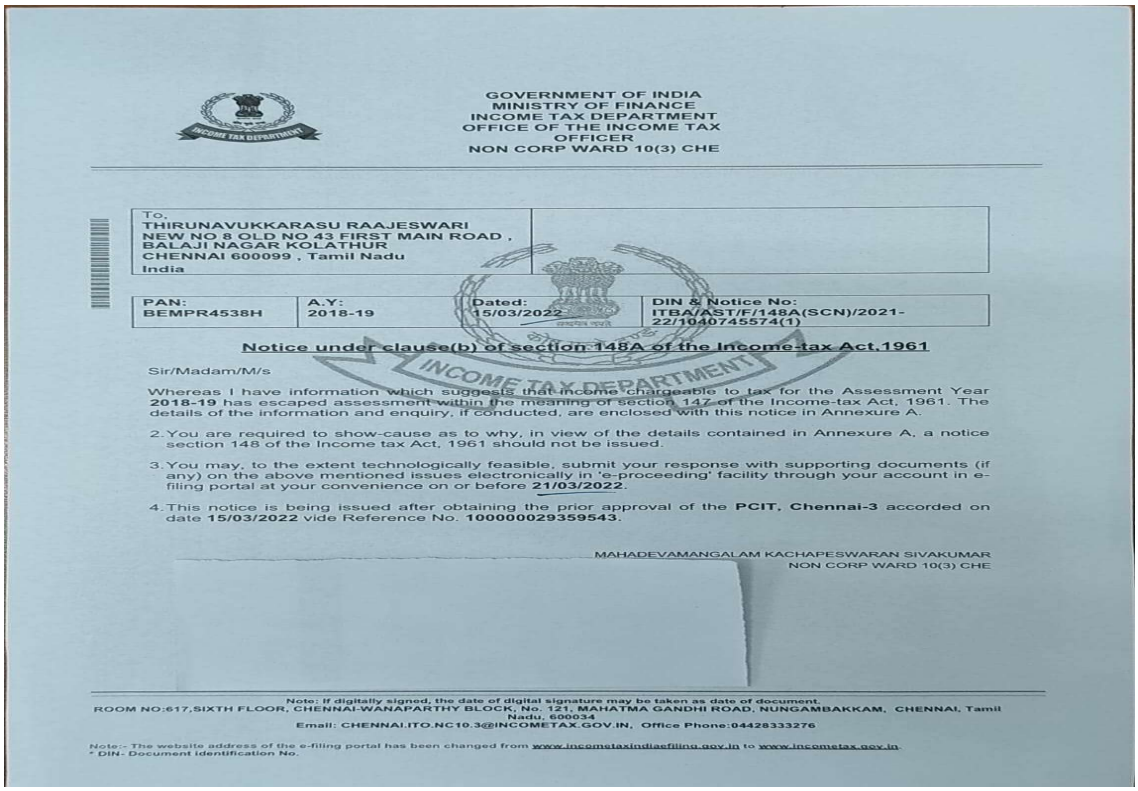
7. Per contra, the Ld. DR vehemently supports the impugned action of the Ld. CIT(A) and pointed out that no prejudice was caused to the assessee since assessee didn't bother to participate in the assessment proceedings. And, Ld CIT(A), didn't admit the appeal being filed belatedly. Hence he wants us to dismiss the legal issue.

8. 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 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 reopening notice u/s.148 of the Act on 31.03.2022, thereby, invalidating the assessment order passed

u/s 147 on 23.03.2023. Hence, according to him, such an illegal action of the AO can be challenged before this Tribunal for the first time.

9. In the light of the aforesaid averments, the Ld AR wants us to adjudicate this legal issue.

10. Having heard both parties, we examine the legal issue. 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 15.03.2022 u/s.148A(b) of the Act which resulted in issuance of notice u/s.148 of the Act on 31.03.2022 and thereafter, framed assessment u/s.147/143(3) on 23.03.2023. In assessee's case the notice under section 148A(b) was issued on 15.03.2022, the relevant extract of the notice is as under:



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE INCOME TAX OFFICER
NON CORP WARD 10(3) CHE

To,
THIRUNAVUKKARASU RAAJESWARI
NEW NO 8 OLD NO 43 FIRST MAIN ROAD ,
BALAJI NAGAR KOLATHUR
CHENNAI 600099 , Tamil Nadu
India

PAN:	A.Y:	Dated:	DIN & Notice No:
BEMPR4538H	2018-19	15/03/2022	ITBA/AST/F/148A(SCN)/2021-22/1040745574(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 **2018-19** 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 **21/03/2022**.

4. This notice is being issued after obtaining the prior approval of the **PCIT, Chennai-3** accorded on date **15/03/2022** vide Reference No. **10000029359543**.

MAHADEVAMANGALAM KACHAPESWARAN SIVAKUMAR
NON CORP WARD 10(3) CHE

Note: If digitally signed, the date of digital signature may be taken as date of document.
ROOM NO:617,SIXTH FLOOR, CHENNAI-WANAPARTHY BLOCK, No. 121, MAHATMA GANDHI ROAD, NUNGAMBAKKAM, CHENNAI, Tamil Nadu, 600034
Email: CHENNAI.ITO.NC10.3@INCOMETAX.GOV.IN, Office Phone:04428333276

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.

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.

11. As noted, we find that the AO had issued the statutory reopening notice u/s.148 of the Act on 31.03.2022 after issuance of notice u/s.148A(b) dated 15.03.2022. 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 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]*.

12. 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.

13. In this regard 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]*.

14. 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 15.03.2022, has directed the assessee to respond to his notice by 21.03.2022, 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).

15. In this 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 31.03.2022 is invalid and hence assessment completed on 23.03.2023 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.

16. Coming to ITA No.4053/Chny/2026, wherein assessee has assailed the penalty confirmed u/s.271AAC(1) of the Act, we note that the AO levied penalty by order dated 29.09.2023, which is pursuant to the assessment order passed on 23.03.2023 (supra). Having held that the

assessment order dated 23.03.2023 in the assessee's case for AY 2018-19 as void in the eyes of law, the impugned action of the NFAC to initiate & levy penalty u/s. 271AAC(1)of the Act by order dated 29.09.2023 is also null in the eyes of law, because the action of the AO to initiate penalty u/s. 271AAC(1)of the Act, is pursuant to the findings recorded by the AO in the assessment order dated 23.03.2023, which forms the foundation for initiating penalty u/s. 271AAC(1) in the hands of the assessee. Hence, according to Ld AR, since assessment order dated 23.03.2023 is nullity, subsequent action of levying penalty can't survive. We find considerable force in it and hold that since assessment order is non-est in eyes of law, subsequent action of levying penalty is also non est. For such a proposition, we rely on the legal maxim "Sublato Fundmento Credit opus" meaning in case a foundation is removed, the super-structure falls. In Badarinath v. Tamil Nadu AIR 2000 SC 3243, wherein the Hon'ble Supreme Court held that once the basis of proceedings is gone, all consequential orders & acts would fall on the ground automatically which is applicable to judicial and quasi-judicial proceedings. Therefore, it is held that the impugned order of NFAC confirming penalty levied by AO u/s. 271AAC(1)of the Act dated 29.09.2023 is also null/non-est in the eyes of law. Therefore, we quash the penalty order u/s. 271AAC(1)of the Act.

17. In the result, appeals filed by the assessee are 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