IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES, "SMC" BENCH, JAIPUR

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
&
SHRI T. R. SENTHIL KUMAR, JUDICIAL MEMBER

ITA No. 21/JPR/2026
(Assessment Year: 2016-17)

Rajesh Kumar Khandelwal 382, Behind Mangori Walo Ki Bagichi, Brahampuri, Jaipur-302002	Vs.	ITO Ward 5(1)/ AO NFAC, Jaipur
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: ABMPK 2840 F		
Appellant	..	Respondent

Appellant by :	Shri Ashish Khandelwal, CA
Respondent by :	Mrs. Aarti Rawat, Addl. CIT

Date of Hearing	14.10.2026
Date of Pronouncement	21.10.2026

O R D E R

Per Shri Om Prakash Kant, AM :-

This appeal by the assessee is directed against order dated 27.11.2025, passed by the National Faceless Appeal Center-Delhi (hereinafter referred to as "Ld. CIT(A)") for assessment year 2016-17, raising following grounds:-

1. That both the lower authorities have erred in law as well in facts in not dropping/quashing the proceeding initiated by issue of notice u/s 148 of Act beyond 3 years even when it was crystal clear that information in possession of AO was not capable of suggesting escaped income to be above Rs.50 Lakhs.

2. That Id CIT-A erred in law as well in fact of the case is not quashing the notice issued u/s 148 by the Jurisdictional AO in gross violation of CBDT Circular/Instruction.

3. That the ld CIT-A have erred in law as well in facts in observing non-compliance by the appellant dehors submission filed by the appellant and therefore order passed is stereotyped and inconsiderate information/document on IT portal. of

4. That ld CIT-A has erred in law as well in facts of the case in not appreciating the identical cases of other co-owner of property were dropped/non adjudicated owing to quantum of escaped Income below Rs.50 Lakhs.

5. That the ld CIT-A has erred in law as well as facts of the case is not taking cognizance of revised LTCG computation filed by the appellant relying on verdict of Apex Court in Goetz India without appreciating that the impugned verdict put embargo on power of AO and on appellate authorities.

6. That ld DVO has erred in law as well in fact of the case is not appreciating that property was not commercially converted and FMV evaluated does not represent true FMV at the time of transfer of Property.

7. That the appellant reserves his right to add, amend, alter or withdraw any ground of appeal on or before hearing of this appeal.

2. The principal issue arising for consideration is whether the reassessment proceedings initiated under sections 148A and 148 of the Income-tax Act, 1961 ("the Act") are sustainable in law, having regard to the monetary threshold prescribed under section 149 of the Act.

3. Briefly stated, the case was reopened on the basis of information flagged under the Risk Management Strategy of the CBDT, indicating that the assessee had entered into a transaction involving the sale of immovable property situated at Bhikampura, Thanagazi, for a consideration of ₹1,69,01,000 during the relevant previous year. Since the assessee had not filed a return of income, the Assessing Officer issued a notice under section 148A(b) of the Act. No response was furnished by the assessee. The Assessing Officer thereafter passed an order under section 148A(d), treating the entire sale consideration as income alleged to have escaped assessment, and issued notice under section 148 on 19.12.2023.

4. In the reassessment proceedings, the Assessing Officer made an addition of ₹34,36,535 towards capital gains attributable to the assessee's one-fourth share in the property. The assessee challenged the validity of the reassessment proceedings and the addition on merits before the learned CIT(A). As the assessee did not appear during the appellate proceedings, the learned CIT(A) dismissed the appeal.

5. Before us, the learned counsel for the assessee submitted that the registered sale deed itself disclosed that the property was jointly owned by four persons. Accordingly, the assessee's one-fourth share in the sale consideration amounted to ₹42,25,250, which was below the statutory threshold of ₹50 lakh prescribed under section 149 of the Act for issuance of notice beyond the period of three

years. It was contended that the Assessing Officer could not have treated the entire sale consideration as income chargeable to tax in the hands of the assessee when the registered document available on record disclosed the co-ownership of the property.

6. The learned Departmental Representative, on the other hand, submitted that the assessee had failed to respond to the notice issued under section 148A(b) of the Act and, therefore, the Assessing Officer had no material before him to ascertain the income chargeable to tax in the assessee's hands.

7. We have heard the rival submissions and perused the material available on record. The relevant provisions of section 149 prescribe a monetary threshold of ₹50 lakh in respect of income chargeable to tax alleged to have escaped assessment for issuance of notice beyond the period of three years, subject to the other statutory conditions. The threshold is to be examined with reference to the income chargeable to tax alleged to have escaped assessment and not merely the gross sale consideration of the property.

8. In the present case, the registered sale deed, which formed part of the material relating to the transaction, disclosed that the property was owned by four persons. The Assessing Officer, however, proceeded to treat the entire sale consideration of ₹1,69,01,000 as income alleged to have escaped assessment in the hands of the assessee, without appropriately considering the disclosed co-ownership and the assessee's proportionate share. The

assessee's one-fourth share in the sale consideration works out to ₹42,25,250, which is below the prescribed threshold of ₹50 lakh.

9. The assessee's failure to respond to the notice under section 148A(b) of the Act cannot justify disregarding the material already available on record. The Assessing Officer was required to consider the registered document and determine, on the basis of the material available, whether the income chargeable to tax alleged to have escaped assessment in the assessee's hands satisfied the statutory threshold. The distinction between gross sale consideration and income chargeable to tax has also been emphasised by the Hon'ble Madhya Pradesh High Court in *Nitin Nema v. Office of the Principal Chief Commissioner of Income-tax* (2023) 458 ITR 690 (MP). The same principle was followed by the coordinate Bench of the Tribunal in *Vipendra Ravindra Mandal v. ITO*, ITA No. 1819/Mum/2025, in considering the sustainability of reassessment proceedings where the alleged escaped income was below the prescribed monetary threshold. The relevant finding of the Tribunal is reproduced as under:-

> *6. We have considered the rival submissions and perused the material on record. The core issue is whether the impugned notice under Section 148 was issued beyond the limitation prescribed under Section 149(1)(b) of the Act. For ease of reference, the provision is extracted as under:*
>
> *[**Time limit for notices under sections 148 and 148A.***
>
> ***149.** (1) No notice under section 148 shall be issued for the relevant assessment year,-*
>
> ***(a) if three years and three months have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);***

(b) if three years and three months, but not more than five years and three months, 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 related to any asset or expenditure or transaction or entries which show that the income chargeable to tax, which has escaped assessment, amounts to or is likely to amount to fifty lakh rupees or more.

(2) No notice to show cause under section 148A shall be issued for the relevant assessment year,-

(a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);

(b) if three years, but not more than five years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment, as per the information with the Assessing Officer, amounts to or is likely to amount to fifty lakh rupees or more.]

6.1 On a plain reading, it is evident that where the alleged escapement of income represented in the form of an asset is less than ₹50 lakhs, a notice under Section 148 can be issued only within a period of three years from the end of the relevant assessment year. The CIT(A), while placing reliance on the decision of the Hon'ble Delhi High Court in Rohit Kumar v. ITO (W.P.(C) No. 2830/2022), observed that at the stage of recording reasons, the AO can only proceed on the basis of the material available, and in the absence of a return or other details, may reasonably take the entire sale consideration as the amount of income which has escaped assessment. The CIT(A) further held that an assessee cannot take advantage of his own default in failing to file a return, and thereafter, upon reopening, claim that the taxable income would be below ₹50 lakhs so as to render the proceedings invalid. The Ld. CIT(A) accordingly rejected the contention of the assessee observing as under:

> *"5.7 In the present case it is seen that at the time of reopening of assessment, the alleged escapement was Rs 71,00,000 which is more than 50 lakhs. It may be noted that as the appellant had not filed return of income for the year and therefore, with due respect to the various judicial decision that the income chargeable to tax cannot be the gross receipts/consideration in any business transaction, AO could not have known or worked out the capital gain as there was no information available with the AO in the form of return etc. Therefore, I am of the considered view that AO was correct in assuming the whole of the transaction as undisclosed and as income chargeable to tax. The appellant has the responsibility of filing the appeal within the due date and disclosing the transaction and income in the return of income but it failed to do so. An assessee cannot be allowed to take undue advantage of his own wrongi.enot filing return of income and on reopening*

claim that even if the total transaction was above Rs 50 lakhs, the income out if it less than Rs 50 lakhs and on technicalities be allowed to claim that the reopening is invalid. Hence, the appeal on this ground is thus treated as dismissed."

6.2 In the present case, the AO issued a notice under Section 148A(b) giving the assessee an opportunity to explain the income corresponding to the sale consideration of ₹71 lakhs. No response was forthcoming. In such circumstances, the AO, having no contrary material, proceeded to treat the full sale consideration as income that had escaped assessment. The order under Section 148A(d) was passed with the prior approval of the specified authority under Section 151 of the Act, and the notice under Section 148 was issued accordingly. The relevant observation made in the order u/s 148A(d) of the Act by the AO is reproduced as under:

"Order under clause (d) of section 148A of the Income-tax Act, 1961

In this case Information has been received in accordance with the Risk Management Strategy formulated by CBDT on Insight Portal maintained by the Income Tax Department under the Head RMS (Risk Management Strategy-Non filing of Return) for F.Y. 2015-16 (A.Y. 2016-17). In view of the explanation 1 to section 148, such information provided by Risk Management Strategy (RMS) constitutes/ suggest income chargeable to tax has escaped assessment for A.Y. 2016-17.

2. In this case, the information is available as under:

Information code	*Information description*	*F.Y.*	*Amount (in Lakhs)*
AIR-007	*Sold immovable property valued at Rs. 30,00,000 or more*	*2015-16*	*71*
TDS-194IA (R)	*TDS Statement - Sales consideration on sale of immovable property (Section 194IA*	*2015-16*	*71*

2.1. In view of the above information available with this office and verification of status of Return Of Income filed by the assessee from e-filing portal, it is found that the assessee is not filed its return of income. No assessment has been made earlier u/s 143(3)/147/144 of the IT. Act. It is seen that during the year under consideration, the assessee undertook above mentioned financial

transactions wherein gross financial implication is Rs.71,00,000/-. Since, the assessee has not filed the Return Of Income for the relevant year, it is clearly evident that the assessee has not offered the receipts from sale of immovable property of Rs. 71,00,000/- as income for the year under consideration.

Further, in accordance with section 148A(b) of the I.T. Act, an opportunity of being heard was provided to the assessee, vide Showcause notice u/s 148A(b)of the I.T. Act along with information of insight portal dated 08.02.2023. The said notice was sent to the assessee through e-filing Portal and also through Speed Post requiring it to furnish the relevant details along with supporting documentary evidence with respect to the transactions as cited above, to this office by 17.02.2023. This notice was duly served upon the assessee. Vide the above said showcause notice the assessee was also asked as to why the subject transactions amount shall not be treated as income of the year under concerned and why the order u/s 148A(d) of the IT Act should not be passed and subsequently the notice under section 148 of the Act should not be issued to you on the basis of information which suggests that income chargeable to tax has escaped assessment in your case for the FY 2015-16 relevant to AY 2016-17.

However, till date no response has been received from the assessee against the opportunity provided u/s 148A(b) of the Income tax Act, which establishes that assessee has no explanation for issue discussed above. The assessee has not filed its ITR despite having high value of financial transaction involving evasion of tax. It is also evident from information available with Assessing Officer that the income chargeable to tax for A.Y.2016-17 has escaped assessment mentioned above. Accordingly, it is concluded that this is a fit case for issuing notice u/s 148 of the I.T. Act.

5. Further, it is to be mentioned that the escapement to the tune of Rs. 71,00,000/- from sale proceeds credited into bank account represents in the form of asset as per provisions of Section 149(1) of the I.T. Act."

6. The Order u/s. 148A(d) is passed with the prior approval of the specified authority (Pr. Chief Commissioner of Income Tax, Mumbai) u/s. 151 of the Income Tax Act, 1961. The Notice u/s. 148 of the Income

> *Tax Act for reopening of the assessment proceedings for A.Y. 2016-17 is issued accordingly*

6.3 In the case of Nitin Nema vs. PCIT (supra) the Hon'ble Madhya Pradesh High Court observed that revenue authorities are not supposed to consider sale consideration of the property as income chargeable to tax. The relevant finding of the Hon'ble High Court is reproduced as under:

> *"9. From the aforesaid discussion what comes out loud and clear is that the Revenue has failed to understand the fundamental difference between sale consideration on one hand and income chargeable to tax on the other. The Revenue despite being assisted by thousands of experts in the field of finance and taxation, has committed such elementary mistake leading to harassment to the assessee who has been compelled to file the present avoidable piece of litigation. More so, this Court has been compelled to decide this frivolous matter wasting its precious time and energy which could have been utilized in more pressing matters.*
>
> *9.1 Thus, the Revenue deserves to be saddled with exemplary cost and correspondingly the petitioner is entitled to compensatory cost."*

*6.4 The ratio laid down by the Hon'ble Madhya Pradesh High Court in Nitin Nema (supra) makes it abundantly clear that, for the purposes of determining the monetary limit of income escaping assessment under section 149(1)(b) of the Act, it is the **net income** which is to be reckoned, and not the gross receipts. In the present case, it is an admitted position that the net income likely to have escaped assessment falls below the threshold of ₹50,00,000/-. Consequently, no notice under section 148 of the Act could validly be issued against the assessee for reopening an assessment beyond the period of three years.*

6.5 The statutory threshold of ₹50,00,000/- in respect of net income escaping assessment continues to operate, notwithstanding the fact that the assessee did not make a representation during the proceedings under section 148A. During the reassessment proceedings, the assessee categorically explained that the net income likely to have escaped was less than ₹50,00,000/-. The learned CIT(A), however, placing reliance on the judgment of the Hon'ble Delhi High Court in Rohit Kumar v. ITO (supra), held that at the stage of recording reasons, the Assessing Officer was justified in treating the entire sale consideration as income escaped, in the absence of further details.

6.6 We are, however, guided by the principle laid down by the Hon'ble Supreme Court in CIT v. Vegetable Products Ltd. [1973] 88 ITR 192 (SC), wherein it was held that if two views are possible on the interpretation of law, the view favorable to the assessee should be adopted. Respectfully following the above dictum of the Hon'ble Supreme Court, we prefer to adopt the view taken by the Hon'ble Madhya Pradesh High Court in Nitin Nema (supra), which directly supports the assessee's case.

6.7 In the light of the admitted factual position that the net income chargeable to tax, represented in the form of assets, is below the monetary threshold of ₹50,00,000/-, we hold that no notice under section 148 of the Act could have been issued. Accordingly, the reassessment proceedings initiated in the case of the assessee are held to be unsustainable in law. Ground No. 1 of the assessee's appeal is, therefore, allowed.

6.8 Since we have already held the reassessment proceedings as unsustainable in law the consequent ground on merit is not required to be adjudicated and same is rendered infructuous.

10. In the facts of the present case, the material available to the Assessing Officer disclosed that the property was jointly owned by four persons and that the assessee's share in the gross sale consideration itself was below ₹50 lakh. The Assessing Officer could not, merely on account of the assessee's non-compliance, treat the entire sale consideration as income chargeable to tax in her hands for the purpose of satisfying the threshold under section 149 of the Act. We, therefore, hold that the jurisdictional condition for invoking the extended period of limitation has not been satisfied in the present case. The reassessment proceedings initiated against the assessee are accordingly unsustainable in law.

11. In view of our decision on the jurisdictional issue, the grounds challenging the addition made towards capital gains on merits are rendered academic and do not require adjudication.

12. In the result, the appeal of the assessee is allowed.

Order pronounced in the Open Court on 21.10.2026

Sd/-	Sd/-
(T.R. Senthil Kumar)	(Om Prakash Kant)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Dated 21.10.2026
Pritesh Vaishnav, PS

True Copy

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

By Order,

Asst. Registrar
ITAT, Jaipur