IN THE INCOME TAX APPELLATE TRIBUNAL,
AGRA(DB) BENCH, AGRA
BEFORE :
SUNIL KUMAR SINGH, JUDICIAL MEMBER
BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER

ITA No. 487/Agr/2026
Assessment Year: 2013-14

Malook Chand Cotton And Oil Mills, 7/46, Pathar Bazar, Aligarh- 202001	**Vs.**	PCIT, Agra-1, Aayakar Bhawan, Sanjay Place, Agra-282002
PAN :AABFM1383M		
(Appellant)		**(Respondent)**

Assessee by	Shri Pankaj Gargh, Adv.
Department by	Ms. Sangeeta Yadav, CIT DR

Date of hearing	06.08.2026
Date of pronouncement	22.10.2026

ORDER

PER: BRAJESH KUMAR SINGH, A.M.

This appeal is directed against the impugned order dated 24.03.2026 passed in Revision No. PCIT, Agra-1/Revision-263/100000985574/2026 by the Ld. PCIT, Agra-1 (hereinafter referred to as the Ld. PCIT), u/s. 263 of the

Income Tax Act, 1961 (hereinafter referred to as the "Act") for the A.Y. 2013-14.

2. Brief facts of the case: The assessee firm filed its return of income for AY. 2013-14 on 29.09.2013 declaring total income of Rs. 57,42,144/-. The case was selected for scrutiny and assessment u/s 143(3) of the Act was completed on 01.03.2016 at the assessed income of Rs. 61,39,970/-. Thereafter, the AO received an information that a survey was conducted on 08.08.2014 in the case of Shri Ram Prakash Bhatia an alleged accommodation entry operator wherein the assessee had received accommodation entry of bogus purchases amounting to Rs. 2,45,52,845/-. The AO after making necessary enquires passed an order u/s 148 A (d) of the Act on 30.07.2022 and also issued notice u/s 148 of the Act on 30.07.2022.

2.1 After considering the reply the AO added sum of Rs. 28,49,494/- by estimating profit @ 10% on the said bogus purchases vide an assessment order u/s 147 and 143(3) r.w.s 144 of the Act dated 20.05.2023.

2.2 Thereafter, the Ld. PCIT initiated proceedings u/s 263 of the Act by issuing a show cause notice dated 03.02.2026 by observing that the entire bogus purchases amounting to Rs. 2,63,74,441/- made by the assessee from M/s Shiva Stores belonging to Shri Ram Prakash Bhatia during the year

should have been disallowed as against Rs. 28,49,495/- made by the AO. The Ld. PCIT after considering the reply of the assessee set aside the order of the AO with the directions as discussed by the Ld. PCIT in para no. 2,3 and 6 of the impugned order.

3. Aggrieved with the said order, the assessee filed an appeal before us. During the course of hearing the assessee filed an application for additional ground of appeal. The said application and the additional ground of appeal filed by the assessee are reproduced as under:

> "1. That the present appeal is against the Order u/s 263 of the I. T. Act dated 24.03.2026 passed by Ld. PCIT-1, Agra.
>
> 2. That the assessment in this case has been completed u/s 147 of the I. T. Act dated 20.05.2023.
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> 3. After fling of appeal with Grounds of Appeal before ITAT, the appeal file was given to another Counsel for submission before the Hon'ble Bench. He suggested that the proceedings in the present case are by issue of notice u/s 148 dated 30.07.2022, the proceedings are barred by limitation and hence the Order passed u/s 263 to revise Assessment Order which is itself null & void, the Ld. PCIT lacked Jurisdiction u/s 263.
>
> 4. Hence the assesse is taking additional legal ground as under: -
>
> Additional Legal Ground
>
> "That the Order passed u/s 263 by Id. PCIT 1, Agra lacked Jurisdiction and is liable to be quashed as the Assessment Order passed u/s 147 dated 20.05.2023 is bad in law, without Jurisdiction and deserves to be quashed being null & void as the notice issued u/s 148 dated 30.07.2022 is barred by limitation."
>
> That the above additional ground is a legal ground emerging out from the root of the case.

> It is requested that the above additional ground may kindly be admitted in the light of Hon'ble SC judgment in the case of NTPC Ltd. v. CIT 229 ITR 383 and the assesse be allowed to submit his case on this additional ground first.
>
> For this act of kindness, the assesse shall be highly obliged."

3.1 The above additional ground is a legal ground and all the facts to decide this ground are available on record. Therefore, the same is admitted in the light of Hon'ble SC judgment in the case of NTPC Ltd. v. CIT 229 ITR 383.

4. At the outset the Ld. AR referring to the additional ground of the appeal submitted that the order passed u/s 263 of the Act was void *ab initio* since it was passed against the assessment order u/s 147 and 143(3) r.w.s 144 of the Act dated 20.05.2023 which was bad in law in view of the decision of the Hon'ble Supreme Court in the case of Union of India & Ors. v. Rajeev Bansal [469 ITR 46 (SC).

4.1 Since this additional ground of appeal challenges the validity of exercising jurisdiction under Section 263 of the Act and raises a legal ground, the same is adjudicated first before proceeding with the matter.

5. At the outset the Ld. AR filed the list of dates relating to the assessment proceedings initiated vide notice u/s 148 of the Act dated 30.07.2022 which is reproduced as under:

Particulars	**Date**	**Page no. of the paper book**
First notice u/s 148 Old regime TOLA	29-06-2021	11
Time remaining till 30.06.2021	01 day	
Notice u/s 148A(b) as per Apex Court decision in Ashish Agarwal	30.05.2022	12-13
Time granted to reply up to 14-06-2022		13
Reply filed in response to notice u/s 148A(b)	10-06-2022	14-16
Order u.s 148A(d)	30-07-2022	17-20
Time limits as per Apex Court decision in Rajeev Bansal (Para 112)		
Time available to issue notice u/s 148 as per original notice (From 29-06-2021 till 30-06-2021)	01 day	
Time to be excluded 22-05-2021 till 02-06-2022 as Stayed by court (Third proviso to section 149(1)		
Time limit to issue notice u/s 148 (01 day from 10-06-2022)	11-06-2022	
Notice u/s 148 actually issued on	30-07-2022	21-22

5.1 In this regard, the Ld. AR submitted that in view of the decision of the Hon'ble Apex Court in the case of Union of India vs. Rajeev Bansal (supra) the notice u/s 148 of the Act issued on 30.07.2022 was bad in law and therefore the assessment order passed u/s 147 r.w.s 144 r.w.s. 144B of the Act dated 20.05.2023 in pursuance of the said invalid notice was also bad in law. The Ld. AR submitted that in view of the fact that the order passed u/s 147 r.w.s 144 r.w.s. 144B of the Act dated 20.05.2023 was bad in law, no proceedings u/s 263 of the Act could have been initiated by the Ld. PCIT Agra-1 in respect of such an invalid assessment order. In this regard, the Ld. AR relied upon the

order of the Co-ordinate Bench of the Tribunal Mumbai Bench, in the case of Westlife Development Ltd. Vs PCIT-5, Mumbai. [2017] 88 taxmann. Com 439 (Mumbai).

6. On the other hand, the Ld. CIT DR strongly supported the aforesaid order of the Ld. PCIT. The Ld. CIT DR referring to the above contention of the assessee submitted that since the original order passed u/s 147 r.w.s 144 r.w.s. 144B of the Act dated 20.05.2023 had become final and no challenge was made in respect of the said assessment order, the assessee could not challenge the legal validity of the said assessment order when the Ld. PCIT was invoking the provision of section 263 of the Act by the Ld. PCIT.

7. We have heard both the parties and perused and material on record. The undisputed fact in this case is that the Ld. PCIT has invoked the provisions of section 263 of the Act in respect of the assessment order passed u/s 147 r.w.s 144 r.w.s. 144B of the Act dated 20.05.2023. In this regard the list of dates for the aforesaid assessment proceedings are reproduced as under:

Particulars	**Date**	**Page no. of the paper book**
First notice u/s 148 Old regime TOLA	29-06-2021	11
Time remaining till 30.06.2021	01 day	
Notice u/s 148A(b) as per Apex Court decision in Ashish Agarwal	30.05.2022	12-13

Time granted to reply up to 14-06-2022		13
Reply filed in response to notice u/s 148A(b)	10-06-2022	14-16
Order u.s 148A(d)	30-07-2022	17-20
Time limits as per Apex Court decision in Rajeev Bansal (Para 112)		
Time available to issue notice u/s 148 as per original notice (From 29-06-2021 till 30-06-2021)	01 day	
Time to be excluded 22-05-2021 till 02-06-2022 as Stayed by court (Third proviso to section 149(1)		
Time limit to issue notice u/s 148 (01 day from 10-06-2022)	11-06-2022	
Notice u/s 148 actually issued on	30-07-2022	21-22

7.1 On similar facts, the Co-ordinate Bench of this Tribunal in the case of Sub Major Sub Bhadauria vs. ITO, Ward 1(1)(2), Agra in ITA no. 469/Agr/2026 vide order dated 12.08.2026 had quashed the assessment proceedings in pursuance of similar notice u/s 148 of the Act issued after the lapse of the surviving period between the date of original notice issued u/s 148 of the Act and the balance time remaining till 30.06.2021. In this regard, the relevant extracts of the order dated 12.08.2026 are reproduced as under:

> "6. The various dates of actions and compliances required in light of decision dated 04.05.2022 of the Hon'ble Supreme Court in Ashish Agarwal (supra), have been tabulated by the assessee in the brief synopsis as under:
>
> | **Particulars** | **Date** |
> |---|---|
> | First notice u/s 148 Old regime TOLA | 25-06-2021 |
> | Notice u/s 148A(b) as per Apex Court decision in Ashish Agarwal | 26-05-2022 |
> | Time granted to reply up to 09-06-2022 | |
> | Reply filed in response to notice u/s 148A(b) | 10-06-2022 |

Notice u.s 148A(d) and 148	30-07-2022
Time limits as per Apex Court decision in Rajeev Bansal (Para 112)	
Time available to issue notice u/s 148 as per original notice (From 21-05-2021 till 30-06-2021)	05 days
Time to be excluded 22-05-2021 till 02-06-2022 as Stayed by court (Third proviso to section 149(1)	
Time limit to issue notice u/s 148 (05 days from 10-06-2022)	15-06-2022
Notice u/s 148 actually issued on	30-07-2022

7. The factum of various dates with reference to the actions and compliances narrated hereinabove, are not in dispute. The very small issue that arises for consideration is as to whether the subsequent notice issued u/s. 148 of the Act on 30.07.2022 is beyond the period of limitation in light of the decision of Hon'ble Supreme Court in Rajeev Bansal (supra). The relevant paras are read as under:

> "110. The effect of the creation of the legal fiction in Ashish Agarwal(supra) was that it stopped the clock of limitation with effect from the date of issuance of Section 148 notices under the old regime [which is also the date of issuance of the deemed notices]. As discussed in the preceding segments of this judgment, the period from the date of the issuance of the deemed notices till the supply of relevant information and material by the assessing officers to the assesses in terms of the directions issued by this Court in Ashish Agarwal (supra) has to be excluded from the computation of the period of limitation. Moreover, the period of two weeks granted to the assesses to reply to the show cause notices must also be excluded in terms of the third proviso to Section 149.
>
> 111. The clock started ticking for the Revenue only after it received the response of the assesses to the show causes notices. After the receipt of the reply, the assessing officer had to perform the following responsibilities: (i) consider the reply of the assessee under Section 149A(c); (ii) take a decision under Section 149A(d) based on the available material and the reply of the assessee; and (iii) issue a notice under Section 148 if it was a fit case for reassessment. Once the clock started ticking, the assessing officer was required to complete these procedures within the surviving time limit. The

surviving time limit, as prescribed under the Income Tax Act read with TOLA, was available to the assessing officers to issue the reassessment notices under Section 148 of the new regime.

112. Let us take the instance of a notice issued on 1 May 2021 under the old regime for a relevant assessment year. Because of the legal fiction, the deemed show cause notices will also come into effect from 1 May 2021. After accounting for all the exclusions, the assessing officer will have sixty-one days [days between 1 May 2021 and 30 June 2021] to issue a notice under Section 148 of the new regime. This time starts ticking for the assessing officer after receiving the response of the assessee. In this instance, if the assessee submits the response on 18 June 2022, the assessing officer will have sixty-one days from 18 June 2022 to issue a reassessment notice under Section 148 of the new regime. Thus, in this illustration, the time limit for issuance of a notice under Section 148 of the new regime will end on 18 August 2022."

8. This issue was also subject matter of consideration by the Hon'ble Delhi High Court in the case of Ram Balram Buildhome Vs. ITO & Anr, 445 ITR 1 (Del) dated 30.01.2025. Relevant operative portion of the said order is reproduced herein below:-

"65. Thus, in the facts of the present case, the last date for issuance of notice under Section 148 of the Act for AY 2013-14 under the statutory framework, as was existing prior to 01.04.2021 was 31.03.2020, that is, six years from the end of the relevant assessment year.

66. By virtue of Section 3 (1) of TOLA time for completion of specified acts, which fell during the period 20.03.2020 to 31 12.2020 were extended till 30.06.2021 [Notification No.38/21 dated 27.04.2021]. Thus, the notice dated 01.06.2021 was issued twenty-nine days prior to the expiry of period of limitation for issuing a notice under Section 148 of the Act as was extended by TOLA. As noted above, the period from 01.06.2021, the date of issuance of notice, and 04.05.2022, being the date of decision of the Supreme Court in Union of India & Ors. v. Ashish Agarwal is required to be excluded by virtue of the third proviso to Section 149 (1) of the Act.

67. Additionally, the period from the date of decision in Union of India & Ors. v. Ashish Agarwal till the date of providing material, as required to the accompanied with a notice under Section 148A (b) of the Act. is required to be excluded. Thus, the period between 04.05.2022 to 30.05.2022, the date on which the AO had issued the notice under Section 148A (b) of the Act in furtherance of his earlier notice dated 01.06.2021, is also required to be excluded by virtue of the third proviso to Section 149 (1) of the Act as held by the Supreme Court in Union of India & Ors. v. Rajeev Bansal.

68. In addition to the above, the time granted to the petitioner to respond to the notice dated 30.05.2022-the period of two weeks-is also required to be excluded by virtue of the third proviso to Section 149 (1) of the Act. The petitioner had furnished its response to the notice under Section 148A (b) of the Act on 13.06.2022. Thus, the period of limitation began running from that date.

69. As noted above, by virtue of TOLA, the AO had period of twenty-nine days limitation left on the date of commencement of the reassessment proceedings,

which began on 01.06.2021, to issue a notice under Section 148 of the Act. The said notice was required to be accompanied by an order under Section 148A (d) of the Act. Thus, the AO was required to pass an order under Section 148A (d) of the Act within the said twenty-nine days notwithstanding the time stipulated under Section 148A (d) of the Act. This period expired on 12.07.2022.

70. Since the period of limitation, as provided under Section 149 (1) of the Act, had expired prior to issuance of the impugned notice on 30.07.2022. The said is squarely beyond the period of limitation.

71. It is contended on behalf of the Revenue that the AO is required to pass an order under Section 148A (d) of the Act by the end of the month following the month on which the reply to the notice under Section 148A (b) of the Act was received. Thus, the order under Section 148A (d) of the Act as well as the notice under Section 148 of the Act (both dated 30.07.2022) are within the prescribed period. This contention is without merit as it does not take into account that proceedings under Section 148A of the Act necessarily required to be completed within the period available for issuing notice under Section 148 of the Act, as prescribed under Section 149 of the Act. Thus, the time available to the AO to pass an order under Section 148A (d) of the Act was necessarily truncated and the same was required to be passed on or before 12.07.2022. The fourth proviso to Section 149 of the Act did not come into play as the time period available for the AO to pass an order under Section 148A (d) of the Act was in excess of the seven days.

72. In view of the above, we find merit in Mr. Sehgal's contention that the impugned notice dated 30.07.2022 has been issued beyond the period of limitation.

73. The petition is accordingly allowed and the impugned order dated 30.07.2022 passed under Section 148A (d) of the Act; the impugned notice dated 30.07.2022 Issued under Section 148 of the Act; and the assessment order dated 30.05.2023 framed under Section 147 of the Act pursuant to the notice dated 30.07.2022 for AY 2013-14, are set aside. Pending application is also disposed of."

9. In view of the observations of the Hon'ble Apex Court in Rajeev Bansal (supra), in the instant case, the extended due date for issuance of notice u/s. 148 of the Act expired on 15.06.2022. Since the notice u/s. 148 of the Act was issued on 30.07.2022, the said notice has to be treated as barred by limitation consequentially, the reassessment would be liable to be quashed as void ab initio.

10. Since the reopening of the assessment has been quashed, the adjudication on other grounds raised by the assessee becomes academic in nature and are left open.

11. In the result, assessee's appeal is allowed."

7.2 Relying upon the above order, on similar facts in this case as per the list of dates tabulated above, we are of the considered view that the impugned notice u/s 148 of the Act dated 30.07.2022 issued in this case was bad in law as it has been issued after the lapse of surviving period to issue such notice u/s 148 of the Act which as per the list of dates mentioned above could have been issued by 11.06.2022. Consequently, the impugned assessment order dated 20.05.2023 passed u/s 147 r.w.s 144 of the Act in pursuance of the said notice was also bad in law against which the Ld. PCIT has invoked the provision of section 263 of the Act. On similar facts the Co-ordinate Bench of the Mumbai Tribunal in the case of Westlife Development Ltd. vs. PCIT-5 (supra) has held that in such a situation proceedings u/s 263 of the Act cannot be invoked against an assessment order which is not a valid assessment order in the eyes of the law. In this regard the relevant findings in para nos. 8 to 8.10 and para nos. 10 to 14 of the order in the case of Westlife Development Ltd. vs. PCIT-5 (supra) are reproduced as under:

> "8. Challenging the jurisdictional defects of assessment order for assailing the jurisdictional validity of the revision order passed u/s 263: The first issue that arises for our consideration is - whether the assessee can challenge the jurisdictional validity of order passed u/s 143(3) in the appellate proceedings taken up for challenging the order passed u/s 263? If we analyse the nature of both of these proceedings, which are under consideration before us, we find that the original assessment proceedings can be classified in a way as 'primary proceedings'. These are, in effect, basic / foundational proceedings and akin to a platform upon which any subsequent proceedings connected therewith can rest upon. The proceedings initiated u/s 263 seeking to revise the original assessment order is off shoot of the primary proceedings and therefore, these

may be termed as 'collateral proceedings' in the legal framework. The issue that arises here is whether any illegality/invalidity in the order passed in the 'primary proceedings' can be set up in the 'collateral proceedings' and if yes, then of what nature?

8.1. We have analysed this issue carefully. There is no doubt that after passing of the original assessment order, the primary (i.e. original proceedings) had come to an end and attained finality and, therefore, outcome of the same cannot be disturbed, and therefore, the original assessment order framed to conclude the primary proceedings had also attained finality and it also cannot be disturbed at the instance of the assessee, except as permitted under the law and by following the due process of law. Under these circumstances, it can be said that effect of the original assessment order cannot be erased or modified subsequently. In other words, whatever tax liability had been determined in the original assessment order that had already become final and that cannot be sought to be disturbed by the assessee. But, the issue that arises here is that if the original assessment order is illegal in terms of its jurisdiction or if the same is null & void in the eyes of law on any jurisdictional grounds, then, whether it can give rise to initiation of further proceedings and whether such subsequent proceedings would be valid under the law as contained in Income Tax Act? It has been vehemently argued before us that the subsequent proceedings (i.e. collateral proceedings) derive strength only from the order passed in the original proceedings (i.e. primary proceedings). Thus, if order passed in the original proceedings is itself illegal, then that cannot give rise to valid revision proceedings. Therefore, as per law, the validity of the order passed in the primary (original) proceedings should be allowed to be examined even at the subsequent stages, only for the limited purpose of examining whether the collateral (subsequent) proceedings have been initiated on a valid legal platform or not and for examining the validity of assumption of jurisdiction to initiate the collateral proceedings. If it is not so allowed, then, it may so happen that though order passed in the original proceedings was illegal and thus order passed in the subsequent proceedings in turn would also be illegal, but in absence of a remedy to contest the same, it may give rise to an 'enforceable' tax liability without authority of law. Therefore, the Courts have taken this view that jurisdictional aspects of the order passed in the primary proceedings can be examined in the collateral proceedings also. This issue is not res integra. This issue has been decided in many judgments by various courts, and some of them have been discussed by us in followings paragraphs.

8.2. In a matter that came up before Hon'ble Supreme Court in the case of Kiran Singh & Ors. v. Chaman Paswan & Ors., [1955] 1 5CR 117 the facts were that the appellant in that case had undervalued the suit at Rs.2,950 and laid it in the court of the Subordinate Judge, Monghyr for recovery of possession of the suit lands and mesne profits. The suit was dismissed and on appeal it was confirmed. In the second appeal in the High Court the Registry raised the object ion as to valuation under Section 11. The value of the appeal was fixed at Rs.9,980. A contention then was raised by the plaintiff in the High Court that on account of

the valuation fixed by the High Court the appeal against the decree of the court of the Subordinate Judge did not lie to the District Court, but to the High Court and on that account the decree of the District Court was a nullity. Alternatively, it was contended that it caused prejudice to the appellant. In considering that contention at page 121, a four Judge Bench of Hon'ble Supreme Court speaking through Vankatarama Ayyar, J. held that:

> " It is a fundamental principle well-established that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree and such a defect cannot be cured even by consent of parties."

8.3. This judgment was subsequently followed by Hon'ble Supreme Court in the landmark case of Sushil Kumar Mehta vs Gobind Ram Bohra, (1990) 1 SCC 193, wherein an issue arose whether a decree can be challenged at the stage of execution and whether a decree which remained uncontested operates as res-judicata qua the parties affected by it. Hon'ble apex court, taking support from aforesaid judgment, observed as under:

> "In the light of this position in law the question for determination is whether the impugned decree of the Civil Court can be assailed by the appellant in execution. It is already held that it is the Controller under the Act that has exclusive jurisdiction to order ejectment of a tenant from a building in the urban area leased out by the landlord. Thereby the Civil Court inherently lacks jurisdiction to entertain the suit and pass a decree of ejectment. Therefore, though the decree was passed and the jurisdiction of the Court was gone into in issue Nos. 4 and 5 at the ex-parte trial, the decree there-under is a nullity, and does not bind the appellant. Therefore, it does not operate as a res judicata. The Courts below have committed grave error of law in holding that the decree in the suit operated as res judicata and the appellant cannot raise the same point once again at the execution."

8.4. Similar view has been taken by Hon'ble Supreme Court by following aforesaid judgments recently in the case of Indian Bank vs Manual Govindji Khona reported in 2015 (3) SCC 712. Further, similar view was emphasized by Hon'ble Bombay High Court (GOA Bench) in the case of Mavany Brothers vs CIT (Tax Appeal No 8 of 2007) in its order dt 17th April, 2015 wherein it was held that an issue of jurisdiction can be raised at any time even in appeal or execution.

8.5. The aforesaid principles, enunciated by the Apex Court in the case of Kiran Singh & Ors. v. Chaman Paswan & Ors, supra were reiterated by the Apex Court in the cases of Superintendent of Taxes vs Onkarmal Nathmal Trust (AIR 1975 SC 2065) and Dasa Muni Reddy v. Appa Rao (AIR 1974 SC 2089). In the first of these decisions it was pointed out that revenue statutes protect the public on the one hand and confer power upon the State on the other, and the fetter on the

jurisdiction is one meant to protect the public on the broader ground of public policy and, therefore, jurisdiction to assess or reassess a person can never be waived or created by consent. This decision shows that the basic principle recognized in Kiran Singh (supra) is applicable even to revenue statutes such as the Income Tax Act. Dasa Muni Reddy (supra) is a judgment where the principle of 'coram non judice' was applied to rent control law. It was held that neither the rule of estoppel nor the principle of res judicata can confer the Court jurisdiction where none exists. Here also the principle that was put into operation was that jurisdiction cannot be conferred by consent or agreement where it did not exist, nor can the lack of jurisdiction be waived.

8.6. These judgments were subsequently noticed by Hon'ble Gujarat High Court in the case of P. V. Doshi 113 ITR 22(Gujrat). This case arose under the Income Tax Act with reference to the provisions of Section 147 dealing with re-assessment. The facts were that the assessment was sought to be reopened under Section 147 and notice under section 148 was issued. Validity of reopening was not challenged upto Tribunal and additions were challenged on merits only. The Tribunal restored the matter to the Assessing Officer with some directions to reexamine the issue on merits. When the matter came back to the assessing officer the assessee specifically raised the point of jurisdiction to reopen the assessment, contending that the notice of reopening was prompted by a mere change of opinion. The AO rejected plea of the assessee but the AAC accepted this ground and also held the reassessment to be bad in law on jurisdictional ground. Against the order of the AAC the Revenue went in appeal before the Tribunal and specifically raised the plea that the question of jurisdiction to reopen the assessment having been expressly given up by the assessee in the appeal against the reassessment order in the first round, the assessee was debarred from raising that point again before the AAC and the AAC was equally wrong in permitting the assessee to raise that point which had become final in the first round and in adjudicating upon the same. The plea of the Revenue impressed the Tribunal which took the view that after its earlier order in the first round of proceedings the matter attained finality with regard to the point of jurisdiction which was given up before the AAC and not agitated further and that in the remand proceedings what was open before the Assessing Officer was only the question whether the addition was justified on merits and the point regarding the jurisdictional aspect was not open before the Assessing Officer. According to the Tribunal, the assessee having raised the point in the first round and having given it up could not revive it in the second round of proceedings where the issue was limited to the merits of the additions. In this view, the Tribunal accepted the Revenues plea. The assessee thereafter carried order of the Tribunal in reference before the Gujarat High Court. The High Court after considering various judgments of the Supreme Court on the point of jurisdiction to reopen the assessment and also after specifically discussing the judgment of the Supreme Court in Onkarmal Nathmal Trust (supra) and Dasa Muni Reddy (supra) held that the Tribunal was in error in holding that the question of jurisdiction became final when it passed the earlier remand order. It was held that neither the question of res judicata nor the rule of estoppel could be invoked

where the jurisdiction of an authority was under challenge. According to Hon'ble Gujarat High Court, the rule of res judiccitci cannot be invoked where the question involved is the competence of the Court to assume jurisdiction, either pecuniary or territorial or over the subject matter of the dispute. Hon'ble High Court further held that since neither consent nor waiver can confer jurisdiction upon the Assessing Officer where it did not exist, no importance could be attached to the fact that the assessee, in the first round of proceedings, expressly gave up the plea against the erroneous assumption of jurisdiction by the assessing authority. According to the Hon'ble Court, the "finality or conclusiveness could only arise in respect of orders which are competent orders with jurisdiction and if the proceedings of reassessment are not validly initiated at all, the order would be a void order as per the settled legal position which could never have any finality or conclusiveness. If the original order is without jurisdiction, it would be only a nullity confirmed in further appeals'. In this view of the matter, Hon'ble High Court finally answered the reference in favour of the assessee.

8.7. It is further noted that many of these judgments were discussed and followed by the co-ordinate bench of the Tribunal in the case of Indian Farmers Fertilizers Co-operative Ltd vs KIT 105 ITD 33 (Del), wherein a similar issue had arisen. In this case, the issue raised before the bench was whether it is open to the assessee, not having appealed against the reassessment order, to set up or canvass its correctness in collateral proceedings taken for rectification thereof u/s 154. The bench minutely analysed law in this regard and applying the principle of 'coram non judice' and following aforesaid judgments of the supreme court, it was held that if an assessee seeks to challenge the reassessment proceedings as being without jurisdiction, when action for rectification is sought to be taken on the assumption of the validity of the reassessment order, then the assessee has to step in and protect its interests and the liberty to question even the validity of the reassessment proceedings ought to be given to it..... " (emphasis supplied).

8.8. Similar view was taken in another decision of the Tribunal in the case of Dhiraj Suri vs ACIT 98 ITD 87 (Del). In the said case, appeal was filed by the assessee before the Tribunal against the levy of penalty. In the appeal challenging the penalty order, the assessee challenged the validity of block assessment order which had determined the tax liability of the assessee on the basis of which penalty was levied subsequently. The revenue objected with respect to the ground of the assessee raising jurisdictional issues of assessment proceedings in the appeal against the penalty order. <u>After analysing the legal position, as clarified by Hon'ble Gujrat High Court in the case of P.V. Doshi, supra and Hon'ble Bombay High Court in the case of Jainaravan Babulal vs CIT. 170 ITR 399, the bench held as that if the block assessment itself is without jurisdiction then there is no question of levy of any penalty u/s. 158BFA(2) and therefore it is open to the assessee to set up the question of validity of the assessment in the appeal against the levy of penalty.</u>

8.9. We also derive support from another judgement of Hon'ble Bombay High Court in the case of Inventors Industrial Corporation Ltd vs CIT 194 ITR 548

(Bombay) wherein it was held that assessee was entitled to challenge the jurisdiction of the AO to initiate re-assessment proceedings before the CIT(A) in the second round of proceedings, even though he had not raised it in earlier proceedings before the Assessing Officer or in the earlier appeal.

8.10. Thus, on the basis of aforesaid discussion we can safely hold that as per law, the assessee should be permitted to challenge the validity of order passed u/s 263 on the ground that the impugned assessment order was non est and we hold accordingly.

10. If the impugned assessment order passed u/s 143(3) was illegal or nullity in the eyes of law, then, whether the CIT had a valid jurisdiction to pass the impug ned order u/s 263 to revise the non est assessment order: Having decided the aforesaid two issues, the next issue that is to be decided by us is about the validity of order passed u/s 263 by the Ld. CIT seeking to revise the assessment order which was nullity in the eyes of law.

10.1. We have discussed in detail in earlier part of our order that an invalid order cannot give birth to legally valid proceedings. It is further noticed by us that some of the judgments relied upon by the Ld. Counsel have already addressed this issue. This issue has also been decided by the co-ordinate bench (Delhi Bench of Tribunal) in the case of Krishna Kumar Saraf vs CIT (supra). The relevant part of the order is reproduced below:

> "17. There is no quarrel with the proposition advanced by Id. DR that the proceedings u/s 263 are for the benefit of revenue and not for assessee.
>
> 18. However, u/s 263 the Id. Commissioner cannot revise a non est order in the eye of law. Since the assessment order was passed in pursuance to the notice U/S 143(2), which was beyond time, therefore, the assessment order passed in pursuance to the barred notice had no legs to stand as the some was non est in the eyes of law. All proceedings subsequent to the said notice are of no consequence. Further, 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 some was legal, which went to the root of the matter.
>
> 19. While exercising powers u/s 263 Id. Commissioner cannot revise an assessment order which is non est in the eye of law because it would prejudice the right of assessee which has accrued in favour of assessee on account of its income being determined. If Id. Commissioner revises such an assessment order, then it would imply extending/ granting fresh limitation for passing fresh assessment order. It is settled law that by the action of the authorities the limitation cannot be extended, because the provisions of limitation are provided in the same.
>
> 20. In view of above discussion, ground no.3 is allowed and revision order passed u/s 263 is quashed."

> 10.2. It is further noticed by us that similar view has been taken by Chandigarh Bench of the Tribunal in the case of Steel Strips Ltd (supra).
>
> 11. Thus, after taking into account all the facts and circumstances of the case, we find that in this case, the original assessment order passed u/s 143(3) dt 24-10-2013 was null & void in the eyes of law as the same was passed upon a non-existing entity and, therefore, the Ld. CIT could not have assumed jurisdiction under the law to make revision of a non est order and, therefore, the impugned order passed u/s 263 by the Ld.CIT is also nullity in the eyes of law and therefore the same is hereby quashed.
>
> 12. Since we have quashed the impugned order passed u/s 263 by Ld. CIT on jurisdictional ground, we do not find it necessary to deal with, at this stage, other legal aspects and issues raised on merits of the impugned order.
>
> 13. We further clarify, at the cost of repetition, that our order shall have no bearing on the tax liability determined by the original assessment order dt. 24-10-2013, if any.
>
> 14. In the result, the appeal filed by the assessee is allowed."
>
> (emphasis supplied by us)

7.3 As discussed above, we have already held in para no. 7.2 of this order that the notice u/s 148 of the Act dated 30.07.2022 was bad in law in this case and consequently the impugned assessment order dated 20.05.2023 passed u/s 147 r.w.s 144 of the Act was also bad in law. Therefore, following the above order of the Co-ordinate Bench of the Tribunal, Mumbai, we hold that the order u/s 263 of the Act passed by the Ld. PCIT Agra-1 vide order dated 24.03.2026 is also bad in law since it has been passed against a non est order dated 20.05.2023. Accordingly, the impugned order passed u/s 263 dated 24.03.2026 in this case by the Ld. CIT is also nullity in the eyes of law and therefore the same is hereby quashed. The additional ground of the appeal is

allowed. In view of additional ground of the appeal being allowed, the other grounds of appeal become academic and are left open in this case.

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

Order pronounced in the Open Court on- 22.10.2026

Sd/-	***Sd/-***
(SUNIL KUMAR SINGH)	**(BRAJESH KUMAR SINGH)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 22.10.2026

*aks

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, Agra