

Communiqué

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High Court Rulings

Notice under section 148 issued for reopening assessment for year 2015-16 is barred by limitation as per section 149 read with sections 153A and 153C where search has been conducted in FY 2024-25.

Facts

The petitioner was engaged in the business of job work of diamonds during AY 2025-26, the petitioner filed the return of income for the year under consideration on 31-03-16 declaring total income of INR 19,85,220. The respondent issued a notice dated 31-03-25 u/s 148 for the year under consideration stating therein that a search was initiated u/s 132 on 09-05-24 in the case of the person in respect of whom the petitioner is assessable.

Section 149 bars the issuance of notice u/s 148 for the relevant AY beginning on or before 01-04-21, if a notice u/s 148 could not have been issued at that time on account of it being beyond the time specified under the provisions of section 149(1)(b). It also refers to the limitation period of 10 years, which has elapsed from the end of the 'relevant assessment year', which is, in the present case is 2015-16 (prior to the cut-off date of 1-4-2021).

It is submitted that the "relevant assessment year" means an AY preceding the AY relevant to the PY in which search is carried out or requisition is made, which falls beyond six AY but not later than ten AY from the "end of the AY relevant to the PY in which search is conducted".

In the instance case, the relevant AY to the PY in which the search was undertaken u/s 132 is AY 2025-26. It is argued that the ten-year period should be calculated from the end of the search assessment year, meaning it starts on 1st April following that year. Hence, in the present case, the notice u/s 148 for the AY 2015-16 would be time-barred, as the period of 10 years would end at AY 2016-17, since the AY 2025-26 will become the first AY. Reliance is placed on legislative notes and the Finance Act, 2017, to argue that the search year is excluded, making the calculation effectively six plus four years.

The Delhi High Court in Pr. CIT (Central-1) v. Ojjus Medicare (P.) Ltd. [2024] 161 taxmann.com 160/465 ITR 101 (Delhi) as well as the Madras High Court in A.R. Safiullah v. ACIT on 24-3-2021, has already considered the implications of Explanation (1) to section 153A to the limitation and the expression "relevant AY" used therein in Explanation (1) to section 153A.

Ruling

In the instance case, the relevant AY to the PY in which the search was undertaken u/s 132 is AY 2025-26. It is argued that the ten-year period should be calculated from the end of the search assessment year, meaning it starts on 1st April following that year. Hence, in the present case, the notice u/s 148 for the AY 2015-16 would be time-barred, as the period of 10 years would end at AY 2016-17, since the AY 2025-26 will become the first AY. Reliance is placed on legislative notes and the Finance Act, 2017, to argue that the search year is excluded, making the calculation effectively six plus four years.

The Delhi High Court in Pr. CIT (Central-1) v. Ojjus Medicare (P.) Ltd. [2024] 161 taxmann.com 160/465 ITR 101 (Delhi) as well as the Madras High Court in A.R. Safiullah v. ACIT on 24-3-2021, has already considered the implications of Explanation (1) to section 153A to the limitation and the expression "relevant AY" used therein in Explanation (1) to section 153A.

Source : High Court, Gujarat in Jayantibhai Karamshibhai Maniya vs ITO vide [2026] 182 taxmann.com 493 (Gujarat) on January 05, 2026.



ITAT Rulings

Assumption of jurisdiction u/s 148 was vitiated and reassessment orders were to be quashed, where the reassessment was completed without a valid notice u/s 143(2) and alleged manual notices u/s 143(2) were neither reflected on ITBA nor regularized.

Facts

The revenue has provided copies of manual notice u/s 143(2) issued on 07-11-19 for the AY 2012-13 to 2016-17 in response to RTI query u/s 7 of the RTI Act, that notice was indeed issued.

The AO completed assessments for AYs 2012-13 to 2016-17 u/s 147 r/w Section 144. Copies of manual notices u/s 143(2) dated 07-11-19 were later provided in response to the RTI query. The assessee raised an additional legal ground that the assessment orders framed u/s 147/144 were void ab initio, as there was no valid notice u/s 143(2) was issued before completing the reassessment and the same only deserved to be quashed forthwith.

It is, however, to be determined whether the same was validly issued. The validity is to be determined with reference to Circular No.19/2019 issued by CBDT, under which it had become mandatory from 01-10-19 to issue any communication with computer generated DIN and when due to technical difficulties, DIN is not issued, communication could be issued manually only after recording reasons in writing with prior written approval of the Chief Commissioner/Director General. Accordingly, the notice u/s 143(2) for the AY under consideration is considered as invalid and deemed to have never been issued. Therefore, assumption of jurisdiction u/s 148 for reassessment proceedings are vitiated in the absence of valid notice u/s 143(2) and is quashed as void ab initio.

The Id. counsel for the assessee submitted that the assessee is challenging the assumption of jurisdiction u/s 147 on part of the AO in the absence of service of mandatory notice u/s 143(2) within the stipulated time frame rendering the assessment orders for AYs 2012-13 to 2016-17 as void-ab-initio being liable to be quashed forthwith. The Id. Counsel relied on the judgment of Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. v. Commissioner of Income-tax [1999] 157 CTR 249 and several others as well wherein it has been held that, where it is only required to consider the question of law arising from the facts which are on record, there is no reason why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee. In rejoinder, the Id. counsel for the assessee referred to the CBDT Circular 19/2019 dated 14-08-19 to submit that the department was required to communicate with the assessee with DIN duly quoted in the body of such communication.



Ruling

ITAT stated that vide CBDT Circular, it had become mandatory from 01-10-19 to issue any communication with computer generated DIN and when due to technical difficulties, DIN is not issued, communication could be issued manually only after recording reasons in writing with prior written approval of the CCIT/DGIT. During appeal proceedings ITAT afforded several opportunities to the Revenue to show us that there existed reasons recorded for issuing the notices u/s 143(2) of the Act manually along with prior approval of CCIT/DGIT.

- The Revenue, however, could not show that the manual issuance of notices u/s 143(2) has been regularized by recording reasons after taking written approval of the Chief Commissioner/Director General of income- tax.
- ITAT further stated that since no valid 143(2) notice existed, the reassessment proceedings u/s 147 were vitiated. The assessment orders for AYs 2012-13 to 2016-17 were therefore quashed as void abinitio. The Tribunal held that such manual notices were invalid and deemed never to have been issued.

Source : ITAT, Delhi in Smt. Lalita Agarwal vs Income-tax Officer vide [2026] 182 taxmann.com 386 (Delhi Trib.) on January 15, 2026.

Discharge of gratuity liability and assessee was entitled to deduction of gratuity expenditure in respect of transferred employee, where assessee has transferred an employee along with corresponding gratuity liability to another concern by passing a journal entry.

Facts

The assessee company has incurred a certain gratuity expenditure and claimed the same in its P/L Account. The AO disallowed the payment of gratuity u/s 43B. The CIT(A) has analyzed the gratuity expenditure claimed by the assessee and he has allowed to the extent of actual payment made by the assessee to the employee, however, rejected the claim related to other employee, who was transferred to another concern. The Commissioner is of the view that mere transfer of gratuity liability by passing a journal entry, does not fall under the category of actual payment. Hence, the assessee must discharge its liability either to make payment directly to the relevant transferred employee or transfer the liability to the other concern. In this case, the assessee has transferred the liability to the other concern and claimed the relevant gratuity as its expenditure, therefore, the submissions of the assessee are to be agreed with. Accordingly, ground raised by the assessee is allowed.

Assessee has filed its return of income for AY 2020-21 on 28.01.21 declaring nil income. Ld. CIT(A) observed that the assessee has created provisions for gratuity. He observed that such provisions shall not be allowed u/s 40A (7) unless such payments are made to any contribution towards approved gratuity funds or payment of any gratuity becomes payable during previous years. After considering submissions of the assessee, he observed

that the assessee has made a payment of INR 2,75,995 as full and final settlement to Mr. Neelesh Singh who has left the company, further, the assessee has transferred Mr. Ajay Bhatnagar to other concern, & the relevant gratuity which was claimed to the extent of INR 6,51,894 and the same amount was transferred to the above said company by passing a journal entry in its book. Accordingly, the assessee has passed just a journal entry and adjusted the same under domestic debtors in its book.



Ruling

Considering the rival submissions and material placed on record, it is observed that the assessee has incurred a certain gratuity expenditure and claimed the same in its P/L account. The AO disallowed the same, as its provision of gratuity does not fall u/s 40A (7). It is observed that Ld. CIT(A) has analyzed the gratuity expenditure claimed by the assessee and he has been allowed to the extent of actual payment made by the assessee to the employee Mr. Neelesh Singh, however, rejected the claim related to other employee Mr. Ajay Bhatnagar, who was transferred to another concern. Ld. CIT(A) is of the view that mere transfer of the gratuity liability does not fall under the category of actual payment.

After considering the submissions, we are of the view that there is a liability relating to the gratuity in relation to Mr. Ajay Bhatnagar who has provided the regular services to the assessee, till he was transferred. The relevant employee was transferred to another concern and the relevant liability for paying gratuity which was due to the employee being also transferred to the other concern. However, in the present case, the assessee has transferred the liability to the other concern and claimed the relevant gratuity as its expenditure, therefore, we are inclined to agree with the submissions of the assessee. Accordingly, ground raised by the assessee is allowed & the appeal filed by the assessee is allowed.

Source : : ITAT Delhi, in Adani Tracks Management Service Ltd. vs AO-CPC vide [2026] 182 taxmann.com 573 (Delhi - Trib.) on January 21, 2026.

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