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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\# **CNR No. DLHC010164812026**

\+ W.P.(C) 5278/2026, CM APPL. 25949/2026&CM APPL. 25950/2026

GARIMA VIKAS .....Petitioner

Through: Mr. Bipindra N.C. and Mr. Akshay Ravi, Advocates.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Kshitij Chhabra, SPC along with Mr. Ishita Kumar, Advocate for R-1/UoI.
Mr. Shlok Chandra, SSC with Ms. Naincy Jain and Ms. Madhavi Shukla, JSCs alongwith Mr. Udit Dad and Mr. Ujjwal Jain, Advocates.

CORAM:
HON'BLE MR. JUSTICE DINESH MEHTA
HON'BLE MR. JUSTICE RAJNEESH KUMAR GUPTA

O R D E R

% **14.09.2026**

1. By way of present writ petition, the petitioner has challenged the assessment order dated 21.03.2026, so also, the proceedings which have been initiated against the petitioner *vide* notice dated 24.03.2025, issued under Section 148 of the Income Tax Act, 1961 *(hereinafter referred to as 'the Act of 1961')*.

2. In response to the Court's query, as to why the petitioner should not avail the statutory remedy available to her under the provisions of the Act of 1961, learned counsel responded that since the initiation of the proceedings

itself was fundamentally void and without jurisdiction, and the same has resulted in the assessment order, the remedy of appeal should not be taken to be a bar in the petitioner's way of invoking the writ jurisdiction of this Court. In this regard, learned counsel argued that the jurisdictional notice dated 24.03.2025 for Assessment Year (AY) 2021-22 was issued directly under Section 148 of the Act of 1961, without following procedure prescribed under Section 148A(b) of the Act of 1961. He argued that, without following the procedure provided under Section 148A(b), 148A(c) and 148A(d) of the Act of 1961, issuing notice under Section 148 of the Act of 1961 is contrary to the statutory scheme, and thus, not only the notice under Section 148 of the Act of 1961, but also, the consequential assessment order is liable to be quashed and set aside.

3. Ms. Naincy Jain, learned Junior Standing Counsel for the respondent, on the other hand, argued that the petitioner's argument is flawed, in view of Explanation 2, clause (iv) of Section 148 of the Act of 1961, which reads, as under:

> *"**148. Issue of notice where income has escaped assessment:** …*
>
> *Explanation 2. - For the purposes of this section, where, -*
>
> *(i) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A, on or after the 1st day of April, 2021, in the case of the assessee; or*
>
> *(ii) a survey is conducted under section 133A, other than under sub-section (2A) [20] [***] of that section, on or after the 1st day of April, 2021, in the case of the assessee; or*
>
> *(iii) 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 or requisitioned under section 132 or section 132A in*

case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or

(iv) the Assessing Officer is satisfied, with the prior approval of Principal Commissioner or Commissioner, that any books of account or documents, seized or requisitioned under section 132 or 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, relate to, the assessee,

the Assessing Officer shall be deemed to have information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee [21] [where] the search is initiated or books of account, other documents or any assets are requisitioned or survey is conducted in the case of the assessee or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person." …

4. She argued that in case when a search is initiated on a third-party and during the course of such search, a document or information is received in relation to an assessee, a notice under Section 148 of the Act of 1961 can directly be issued and that is precisely what has happened in the instant case, where a search was conducted in case of Bhutani Group, as can be discerned from the notice dated 24.03.2025 issued to the petitioner.

5. In rejoinder, learned counsel for the petitioner argued that the Assessment Year in question is 2021-22, and the notice impugned was issued on 24.03.2025, whereas much before issuance of the notice Explanation 2 had been omitted from the statute by way of the Finance Act, 2024, and therefore, the Revenue's reliance upon Explanation 2 is misplaced.

6. It was argued by learned counsel for the petitioner that Explanation 2 of Section 148 of the Act of 1961 cannot be pressed into service and without following the procedure under Section 148 of the Act or serving a notice

under Section 148A(b) of the Act of 1961 directly issuing notice under Section 148 of the Act of 1961 is illegal and without authority of law.

7. Heard learned counsel for the parties.

8. While observing that if the petitioner had any concern or grievance regarding the issuance of notice under Section 148 of the Act of 1961, which was issued on 24.03.2025, it was incumbent upon the petitioner, to have approached the Court, soon after the notice was served, at least before visiting with an assessment order. Whereas, the petitioner has come before this Court, once he has been faced with an assessment order. In normal circumstances, once an assessment order has been passed, the correct course of action for the assessee is to avail the statutory remedies.

9. However, since the petitioner has raised a jurisdictional issue and a question of law, and that apart since learned counsel has insisted upon decision of the legal issue, we propose to decide the question of seminal importance, as the same is not sub-servient to any factual determination. The petitioner's contention that since Explanation 2 has been obliterated from the statute by way the Finance Act, 2024, it cannot be used by the Revenue is misplaced.

10. In this regard, what becomes very relevant is, sub-section (3) of Section 152 of the Act, which reads thus:

> … "*(3) Where a search has been initiated under section 132 or requisition is made under section 132A, or a survey is conducted under section 133A [other than under sub-section (2A) of the said section], on or after the 1st day of April, 2021 but before the 1st day of September, 2024, the provisions of sections 147 to 151 shall apply as they stood immediately before the commencement of the Finance (No. 2) Act, 2024.*"…

11. A perusal of the above quoted provision leaves no manner of doubt that in case, a search has been conducted between 01.04.2021 to 01.09.2024, the provision of Section 147 to Section 151 of the Act of 1961, as they stood prior to the amendment introduced by the Finance Act, 2024, shall apply. Indisputably, the search in the case of Bhutani Group was conducted on 04.01.2024, before 01.09.2024. Such being the position, by virtue of sub-section (3) of Section 152 of the Act of 1961, the provision prior to the amendment of Section 147/148 of the Act of 1961 introduced *vide* Finance Act, 2024 shall apply. The Assessing Officer (AO), was therefore, fully justified in issuing notice under Section 148 of the Act of 1961, without first issuing notice under Section 148A(b) of the Act of 1961. We do not find any merit in petitioner's contention. The petition is thus, dismissed.

12. In case, the petitioner wants to raise any ground on merit of the addition(s), he may file an appeal before the Commissioner of Income Tax (Appeals), in accordance with law. The petitioner shall not be entitled to raise the jurisdictional issue, as has been raised before us and decided against her.

13. In case, the appeal is preferred [on merit of the addition(s)] within the period of one month from today, the same shall be entertained without raising any objection on limitation.

14. The present petition stands dismissed. All pending applications also stand disposed of, accordingly.

DINESH MEHTA, J.

RAJNEESH KUMAR GUPTA, J.

SEPTEMBER 14, 2026/v