

आयकर अपीलीय अधिकरण
कोलकाता 'सी' बेंच कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'C' BENCH AT KOLKATA**

Before

**SHRI GEORGE MATHAN, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**ITA No(s). 1642/KOL/2025
Assessment Year(s) 2018-19**

DCIT, CC-1(4), Kolkata		Paceman Sales Promotion Pvt. Ltd.
Aayakar Bhawan Poorva, 110 Shanti Pally, Kolkata, West Bengal, 700107	Vs.	14, N.S. Road, Kolkata, West Bengal, 700001
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
स्थायी खाता संख्या/PAN: AABCP5021A		

उपस्थिति/Appearance:

अपीलार्थी के ओर से/

Assessee represented by : Miraj D. Shah, Advocate.

प्रत्यर्थी के ओर से/

Department represented by : Sandeep Kumar Mehta, Addl. CIT, Sr. DR.

सुनवाई की तिथि/

Date of concluding the hearing : 31.08.2026

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

In this case, a draft signed order has been sent by my brother, the Ld. JM. I have gone through the draft order prepared by the Ld. JM in this case, which is as under:

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, KOLKATA

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER

AND SHRI RAKESH MISHRA, ACCOUNTANT MEMBER



ITA No.1642/Kol/2025
Assessment Year: 2018-19

DCIT, CC-1(4), Kolkata		Paceman Sales Promotion Pvt. Ltd. 14, N. S. Road, Kol-1. (PAN: AABCP5021A)
(Appellant)		(Respondent)

Assessee by : Shri Miraj D. Shah, Advocate
Revenue by : Shri Sandeep Kumar Mehta, Sr. DR

Date of Hearing : 31.08.2026
Date of Pronouncement : 31.08.2026

ORDER

Per George Mathan, JM:

This is an appeal filed by the revenue against the order of the CIT(Appeals)-20, Kolkata [hereinafter referred to as the 'CIT(A)'] in appeal no.CIT(A), Kolkata-20/11309/2017-18 dated 29.11.24 for the assessment year 2018-19.

2. *Shri Miraj D. Shah, Advocate represented on behalf of the assessee and Shri Sandeep Kumar Mehta, Sr. DR represented on behalf of the revenue.*

3. *The appeal of the revenue is delayed by 173 days. In this regard, the revenue has filed a petition which is further supported by affidavit for condonation of delay stating sufficient reasons for the delay. Considering the contents of the affidavit filed by the revenue for condonation of delay, we condone the said delay in filing the appeal before the Tribunal. The appeal of the revenue is being disposed off on merits.*

4. *It was submitted by the ld. AR that the reasons recorded for reopening was in regard to the alleged escapement of income of Rs.4,20,00,000/- received from Sanwaria Vyapaar Pvt. Ltd. The ld. AR placed before us the copy of the order u/s 148A(d) of the Act which reads as follows:*



ITA No(s). 1642/KOL/2025
Assessment Year(s) 2018-19
Paceman Sales Promotion Pvt. Ltd.



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE ASSISTANT
COMMISSIONER OF INCOME TAX
CENTRAL CIR 3(4), KOLKATA

To, PACEMAN SALES PROMOTION P RIVATE LIMITED 14 , N.S. ROAD KOLKATA KOLKATA 700001 , West Bengal India	
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PAN: AABCP5021A	A.Y: 2018-19	Dated: 26/03/2022	DIN & Notice No: ITBA/AST/F/148A/2021-22/1041646147(1)
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Name of the assessee	PACEMAN SALES PROMOTION P RIVATE LIMITED
Address of the assessee	14 , N.S. ROAD KOLKATA KOLKATA 700001 , West Bengal India
Resident/ Not Ordinarily Resident/ Non-Resident	Resident
Date of order	26/03/2022
Specified authority approval	Name PCIT (Central), Kolkata-2 Reference No. 100000029053360 Date 26/03/2022

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

Credible information has been received in this office in the case of M/s. Paceman Sales Promotion Pvt. Ltd. (PAN: AABCP5021A) on the basis of information forwarded in the case of M/s. Sanwaria Vyapaar Pvt. Ltd. (AASCS4875N).

Multiple high value RTGC credit and subsequent transfer out had been noticed in the bank account of M/s. Sanwaria Vyapaar Pvt. Ltd. As per information available on MCA website, the status of Sanwaria Vyapaar Pvt Ltd is 'Strike off'. On perusal of e-filing website, it is found that the company has filed ITR from AY 2013-14 to AY 2017-18. It is found from the analysis of these returns that the company has nil fixed assets and nil business activities. The company has nominal capital of Rs. 1 lakh and the amount of Rs. 7.785 crores received by the company has not been reflected in the Income Tax Return for the relevant assessment year. The financial analysis reveals that Sanwaria Vyapaar Pvt Ltd is a paper concern and the amount of Rs. 7.875 crores has been transferred to the

Note: If digitally signed, the date of digital signature may be taken as date of document.
AAYAKAR BHAWAN, 110 SHANTIPALLY, E.M.BYPASS, KOLKATA, West Bengal, 700107
Email: KOLKATA.DCIT.CEN3.4@INCOMETAX.GOV.IN, Office Phone: 03324410311

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.

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following beneficiaries:

Sl.No	Name of the beneficiary company	PAN No.	Amount(Rs.)
1.	PACEMAN SALES PROMOTION PVT LTD	AABCP5021A	4,20,00,000
1.	NORFIOX VINCOM PVT LTD	AAACN8942R	3,67.50,000
Total			7,87,50,000

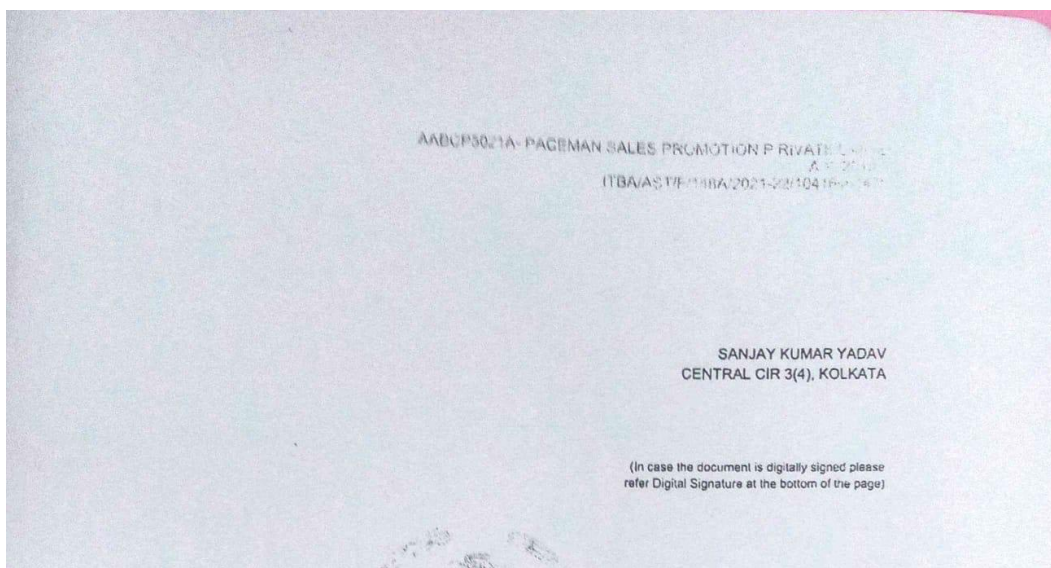
From the above discussion, it is hereby inferred that the above-narrated set of information/findings suggests that the income chargeable to tax amounting to Rs.4,20,00,000/- has escaped assessment in A.Y.: 2018-19 in the hands of M/s. Paceman Sales Promotion Pvt. Ltd. (PAN: AABCP5021A).

According Section 148A-

The assessing officer shall, before issuing any notice under section, 148-

1. Conduct any enquiry, if required, with the prior approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;
2. Provide an opportunity of being heard to the assessee, with the prior approval of specified authority, 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 result of enquiry conducted, if any, as per clause (a);
3. Consider the reply of assessee furnished, if any, in response to the show-cause notice referred to in clause (b);
4. Decide, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under section 148 by passing an order, with the prior approval of specified authority, within one month from the end of the month in which the reply referred to in clause (c) is received by him, or where no such reply is furnished, within one month from the end of the month in which time or extended time allowed to furnish a reply as per clause (b) expires:

Based on the information received as stated above, a show cause notice u/s 148A(b) of the IT Act was issued to the assessee on 14.03.2022 with the prior approval of the specified authority requesting the assessee to submit the explanation by 21.03.2022 but no reply was submitted by the assessee in response to the show cause notice. So in absence of the reply from the assessee it is assumed that the assessee has nothing to say against the show cause notice and thus it is considered to be a fit case for issuing notice u/s 148 of the IT Act. In this case a sum of Rs.4,20,00,000/- has escaped assessment in the hand of the assessee and therefore the case stands the merit of reopening the assessment. Accordingly notice u/s 148 of the IT Act is being issued to initiate the proceedings u/s 147 of the IT Act.



4.1 It was the submission that the reasons for which the reopening had been done did not result in an addition in the assessment order in so far as the explanation given by the assessee has been accepted. It was the submission that however another addition representing the trading loss on penny stock was made in the assessment order. It was the submission that on appeal, the ld. CIT(A) deleted the addition holding that the reasons recorded for the initiation of the proceedings u/s 147 of the Act had ceased to survive. It was the submission that the ld. CIT(A) had relied upon the decisions of the Hon'ble Delhi High Court in the case of *ATS Infrastructure Ltd. Vs. ACIT* reported in 473 ITR 595 (Del) and also the decision in the case of *Ranbaxy Laboratories Ltd. Reported in 331 ITR 136 (Del)*. It was further submitted by the ld. AR that in the grounds as raised by the revenue, the revenue has not challenged the findings of the ld. CIT(A) in regard to the issue of the reopening. It was the submission that the order of the ld. CIT(A) is liable to be upheld.

5. In reply, the ld. Sr. DR submitted that in view of Explanation 3 of section 147, the revenue was at liberty to make additions on issues which were not there in the reasons for reopening. At this point, it was put to the ld. Sr. DR that if the additions which were proposed in the reasons recorded for reopening have not been made in the assessment then would the reopening survive. The ld. Sr. DR did not respond to the said question. It was prayed by the ld. Sr. DR that the order of the ld. CIT(A) is liable to be reversed and that of the Assessing Officer restored.

6. We have considered the rival submissions. A perusal of the facts in the present case clearly shows that the order passed u/s 148A(d) clearly states that the reopening has been made on the allegation that there has been escapement of income which is liable to tax to an extent of



Rs.4,20,00,000/- received from Sanwaria Vyapaar Pvt. Ltd. A perusal of the assessment order shows that no addition on account of reasons recorded has been made. Thus clearly shows that the very foundation of the reopening itself has failed. This being so, as it is noticed that the ld. CIT(A) has followed the principles laid down by the Hon'ble Delhi High Court in the case of Ranbaxy Laboratories Ltd. referred to supra, we find no reason to interfere with the order of the ld. CIT(A). Consequently, the appeal filed by the revenue stands dismissed.

7. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 31/08/2026.

[Rakesh Mishra]

लेखा सदस्य/Accountant Member

[George Mathan]

न्यायिक सदस्य/Judicial Member

Dated: 31/08/2026

RS

Copy of the order forwarded to:

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

//True copy//

By order

Deputy Registrar, Kolkata Benches

2. Since in view of the amendment in section 147 itself, I was not in agreement with the order, specifically para 6 and the conclusion thereof, I had expressed my disagreement with the order and requested the Ld. JM to modify his order accordingly and sent a note as under:

Respected Brother,

I have gone through the draft order. However, I am not in agreement with para 6 and conclusion thereof in view of the amendment in section 147 itself



and complete overhauling of the provision which is subsequent to the decision of the Hon'ble Delhi High Court in Ranbaxy Laboratories Ltd.

2. Although it is mentioned in para 5 that the Ld. Sr. DR made a reference to Explanation 3 of section 147 and there is reference to reasons', however, in the amended section 147 the phrases 'reason' and reason to believe' are conspicuously absent and Explanations 1, 2 & 3 have been replaced by the term 'information' and the Explanation below section 147, which has reference to section 148A, which in turn use the phrase 'information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment' and the same is defined in Explanation 1 below section 148 for the purposes of section 148 and section 148A and there is no reference to the term 'reason' in section 148A. Therefore, reliance upon the decision of Hon'ble Delhi High Court in the case of Ranbaxy Laboratories Ltd., in my humble view, may not be applicable.

3. I request to kindly modify the draft order in view of the amendment in section 147 itself and Explanation thereof after mutual discussion, if required, else I shall be drafting a separate order.

With kind regards,

Yours sincerely

3. The response of the Ld. JM was as under:

Respected Brother,

As I have already sent you my signed order I would like to stand by my views expressed. I request you to kindly proceed with writing your dissent. I however would retain my liberty to reconsider after reading your dissent order.

4. In view of his response to my disagreement with his signed order, my draft order is as follows.

5. During the course of the hearing before us, the Ld. AR relied upon the decisions of **ATS Infrastructure Ltd. Vs. ACIT reported in 473 ITR 595 (Del)** and **Ranbaxy Laboratories Ltd. Reported in 331 ITR 136 (Del)** and on a query from the Bench that the Explanation was differently worded, he stated that the same is discussed in the order of

the Hon'ble Delhi High Court in the case of **ATS Infrastructure** (supra) and in **Ranbaxy Laboratories Ltd.** (supra) and since no addition was made on the issue on which the case was reopened, no other addition could have been made. However, in order to understand the issue, it is imperative to reproduce the provisions of section 147 of the Act - both pre-amended as well as post-amended - which are as under along with the earlier Explanation - 3 and the amended Explanation to section 147 of the Act:

I. Section 147 Pre-amendment:

“Income escaping assessment.

147. If the Assessing Officer has **reason to believe** that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, **assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section**, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year) :

.....

Explanation 3.—For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148.

Explanation 4.—For the removal of doubts...”

6. Section 147 has been substituted with effect from 01.04.2021 by the Finance Act, 2021 and the substituted section is as under:

II. Section 147 Post-amendment:

“Income escaping assessment.

147. If any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year, the Assessing Officer **may, subject to the provisions of sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for such assessment year** (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year).

Explanation.—For the purpose of assessment or reassessment or recomputation under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, irrespective of the fact that the provisions of section 148A have not been complied with.”

7. Thus, from a comparative reading of the amended section 147 and the unamended section 147, it is evident that the substantive provision in the unamended section 147 covered the income escaping assessment for which the Assessing Officer had reason to believe as well as for assessing or reassessing any other income chargeable to tax which has escaped assessment and which comes to the notice of the Assessing Officer subsequently even though the reasons for such escaped income were not recorded earlier. Explanation - 3 to section 147 was incorporated to enable the Assessing Officer to assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148. However, in the amended section 147, the words '**and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section**' have been deleted, even though the Explanation 3 of the unamended provision is more or less incorporated as Explanation except the minor changes in

its wording. Hon'ble Delhi High Court in the case of **ATS Infrastructure Ltd.** (supra) followed the decision in **Ranbaxy Laboratories Ltd.** which in turn had followed the decision in **Commissioner of Income-tax-5, Mumbai vs. Jet Airways (I) Ltd.** The Courts had been holding earlier as under in the case of **Commissioner of Income-tax-5, Mumbai vs. Jet Airways (I) Ltd. [2010] 195 Taxman 117 (Bombay)/[2011] 331 ITR 236 (Bombay)/[2011] 239 CTR 183 (Bombay)[12-04-2010]:**

The condition precedent to the exercise of the jurisdiction under section 147 is the formation of a reason to believe by the Assessing Officer that any income chargeable to tax has escaped assessment. Upon the formation of a reason to believe, the Assessing Officer, before making the assessment, reassessment or recomputation under section 147, has to serve a notice on the assessee requiring him to furnish a return of his income. Upon the formation of the reason to believe that income chargeable to tax has escaped assessment, the Assessing Officer is empowered to assess or to reassess such income 'and also' any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under section 147. [Para 5]

The effect of the Explanation 3 which was inserted by the Finance (No. 2) Act, 2009 is that, even though the notice issued under section 148 containing the reasons for reopening the assessment does not contain a reference to a particular issue with reference to which income has escaped assessment, yet the Assessing Officer may assess or reassess the income in respect of any issue which has escaped assessment, when such issue comes to his notice subsequently in the course of the proceedings. The reasons for the insertion of the Explanation 3 are to be found in the memorandum explaining the provisions of the Finance (No. 2) Bill, 2009. [Para 6]

The memorandum states that some of the Courts have held that the Assessing Officer has to restrict the reassessment proceedings only to issues in respect of which reasons have been recorded for reopening the assessment, and that it is not open to him to touch upon any other issue for which no reasons have been recorded. This interpretation was regarded by the Parliament as being contrary to the legislative intent. Hence, the Explanation 3 came to be inserted to provide that the Assessing Officer may assess or reassess income in respect of any issue which comes to his notice subsequently in the course of proceedings under section 147, though the reasons for such issue have not been included in the reasons recorded in

the notice under section 148(2). [Para 8]

The effect of section 147, as it now stands after the amendment of 2009, can, therefore, be summarised as follows : (i) the Assessing Officer must have reason to believe that any income chargeable to tax has escaped assessment for any assessment year; (ii) upon the formation of that belief and before he proceeds to make an assessment, reassessment or recomputation, the Assessing Officer has to serve a notice on the assessee under sub-section (1) of section 148; (iii) the Assessing Officer may assess or reassess such income, which he has reason to believe, has escaped assessment and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the section; and (iv) though the notice under section 148(2) does not include a particular issue with respect to which income has escaped assessment, yet he may nonetheless, assess or reassess the income in respect of any issue which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the section. [Para 9]

Interpreting the provision as it stands without adding or deducting from the words used by the Parliament, it is clear that upon formation of a reason to believe under section 147 and following the issuance of a notice under section 148, the Assessing Officer has the power to assess or reassess the income which he has reason to believe had escaped assessment and also any other income chargeable to tax. The words 'and also' cannot be ignored. The interpretation which the Court places on the provision should not result in diluting the effect of these words or rendering any part of the language used by the Parliament otiose. The Parliament having used the words "assess or reassess such income and also any other income chargeable to tax which has escaped assessment", the words 'and also' cannot be read as being in the alternative. On the contrary, the correct interpretation would be to regard these words as being conjunctive and cumulative. It is of some significance that the Parliament has not used the word 'or'. The Legislature did not rest content by merely using the word 'and'. The words 'and' as well as 'also' have been used together and in conjunction. Evidently, therefore, what the Parliament intends by use of the words 'and also' is that the Assessing Officer, upon the formation of a reason to believe under section 147 and the issuance of a notice under section 148(2), must assess or reassess: (i) 'such income'; and also (ii) any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the section. The words 'such income' refer to the income chargeable to tax which has escaped assessment and in respect of which the Assessing Officer has formed a reason to believe that it has escaped assessment. Hence, the language used by the Parliament is

indicative of the position that the assessment or reassessment must be in respect of the income in respect of which he has formed a reason to believe that it has escaped assessment and also in respect of any other income which comes to his notice subsequently during the course of the proceedings as having escaped assessment. If the income, the escapement of which was the basis of the formation of the reason to believe, is not assessed or reassessed, it would not be open to the Assessing Officer to independently assess only that income which comes to his notice subsequently in the course of the proceedings under the section as having escaped assessment. If upon the issuance of a notice under section 148(2), the Assessing Officer accepts the objections of the assessee and does not assess or reassess the income which was the basis of the notice, it would not be open to him to assess income under some other issue independently. The Parliament, when it enacted the provisions of section 147 with effect from 1-4-1989, clearly stipulated that the Assessing Officer has to assess or reassess the income which he had reason to believe had escaped assessment and also any other income chargeable to tax which came to his notice during the proceedings. In the absence of the assessment or reassessment of the former, he cannot independently assess the latter. [Para 11]

The Explanation 3 to section 147 lifts the embargo inserted by judicial interpretation on the making of an assessment or reassessment on grounds other than those on the basis of which a notice was issued under section 148 setting out the reasons for the belief that income had escaped assessment. Those judicial decisions had held that when the assessment was sought to be reopened on the ground that income had escaped assessment on a certain issue, the Assessing Officer could not make an assessment or reassessment on another issue which came to his notice during the proceedings. This interpretation will no longer hold the field after the insertion of the Explanation 3 by the Finance (No. 2) Act, 2009. However, the Explanation 3 does not and cannot override the necessity of fulfilling the conditions set out in the substantive part of section 147. An Explanation to a statutory provision is intended to explain its contents and cannot be construed to override it or to render the substance and core nugatory. Section 147 has the effect that the Assessing Officer has to assess or reassess the income ('such income') which escaped assessment and which was the basis of the formation of belief and if he does so, he can also assess or reassess any other income which has escaped assessment and which comes to his notice during the course of the proceedings. However, if after issuing a notice under section 148, he accepts the contention of the assessee and holds that the income for which he had initially formed a reason to believe that it had escaped assessment, has, as a matter of fact, not escaped assessment, it is not open to him to independently assess some

other income, and if he intends to do so, a fresh notice under section 148 would be necessary, the legality of which would be tested in the event of a challenge by the assessee. [Para 16]

Section 147(1), as it stands, postulates that upon the formation of a reason to believe that income chargeable to tax has escaped assessment for any assessment year, the Assessing Officer may assess or reassess such income 'and also' any other income chargeable to tax which comes to his notice subsequently during the proceedings as having escaped assessment . The words 'and also' are used in a cumulative and conjunctive sense. To read these words as being in the alternative would be to rewrite the language used by the Parliament. This view has been supported by the background which led to the insertion of the Explanation 3 to section 147. The Parliament must be regarded as being aware of the interpretation placed on the words 'and also', by the Rajasthan High Court in CIT v. Shri Ram Singh [2008] 306 ITR 343. The Parliament has not taken away the basis of that decision. While it is open to the Parliament, having regard to the plenitude of its legislative powers to do so, the provisions of section 147(1), as they stood after the amendment of 1-4-1989, continue to hold the field. [Para 17] {emphasis supplied}

The question of law would, accordingly, stand answered against the revenue and in favour of the assessee. The appeal was, accordingly, to be dismissed. [Para 18]

8. Thus, the decision in Jet Airways (supra) is no longer applicable to amended section 147 as the same does not contain reason to believe but has reference to information, it requires issue of an order u/s 148A(d) of the Act before issuing notice u/s 148 of the Act and the order u/s 148A(d) of the Act being a separate order. The decisions relied upon by the Ld. AR that in order to sustain reassessment proceedings based upon any subsequent information, there must be an addition in respect of the escaped income which formed the basis for reopening originally are no longer applicable to the facts of the case as the **decisions relied upon by the assessee were based upon the presence of the words 'and also' in the substantive provision of the unamended section 147, which are no longer forming part of the substantive provision**

of section 147. In fact, the Explanation appended below the amended section 147 enlarges the scope of section 147 on receipt of subsequent information, and empowers the Assessing Officer to reassess any other income on an issue which comes to his notice subsequently as the Explanation now does not require issue of another order u/s 148A(d) of the Act and brings within its ambit any subsequent information relating to income which has escaped assessment and which comes to the notice of the Assessing Officer in the course of the proceedings of reassessment. Significantly, in respect of such subsequent information, the requirement of following the procedure prescribed under section 148A is also dispensed with.

9. The Ld. AR drew our attention to the decision of Hon'ble Delhi High Court and on a remark that the *Explanation* was differently worded, he stated that the same is discussed in the order of the Hon'ble Delhi High Court in the case **of ATS Infrastructure** (supra) and in **Ranbaxy Laboratories Ltd.** (supra) that since no addition was made on the issue on which the case was reopened, no other addition could have been made.

10. The argument of the Ld. AR is not correct since the decisions refer to the pre-amended section 147 of the Act and earlier section 147 itself had a conjunction and were worded that *if the Assessing Officer had reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he could subject to the provisions of sections 148 to 153, assess or reassess such income **and** also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or*

any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year). Thus, assessment of any other income escaping assessment necessarily required addition to be made on the ground for which the case was originally reopened.

11. The amended provision of section 147, however, does not have such a conjunctive phrase 'and also' and only refers to the income chargeable to tax escaping assessment for any assessment year and the power of the Assessing Officer to assess or reassess such income in section 147 does not refer to any other income which may come to his notice subsequently but the Explanation below section 147 mentions that the Assessing Officer may assess or reassess the income in respect of any issue which has escaped assessment and such issue comes to his notice subsequently in the course of the proceedings under this section, irrespective of the fact that the provisions of section 148A have not been complied with. It is evident from a reading of the Explanation that the legislature intended to widen the scope of the substantive provision of section 147 by insertion of the Explanation.

12. Thus, when looking at how Section 147 of the Income Tax Act has evolved, a clear story emerges about the changing powers of the Ld. AO during reassessment proceedings. In its older, unamended form, the law explicitly allowed an Assessing Officer to target both the initial escaped income that triggered reopening and also any other escaped income he happened to discover along the way but required addition on account of the ground for which the case was initially reopened. To make things simpler, an Explanation was added to clarify that the Ld. AO does not need to go through the preliminary procedural hurdles of

recording reasons for these newly discovered issues. However, when the law was amended, the specific phrase "and also" was removed from the main text, even though the clarifying Explanation was largely kept intact. This subtle change completely dismantles the assessee's defence. The assessee has leaned on past High Court rulings arguing that an officer could not tax newly discovered income unless they first successfully made an addition based on the original reason the reassessment was opened. But those older judgments heavily relied on the now deleted "and also" phrase, making them not applicable to the current law.

13. Further, my view is also supported by a decision of the Hon'ble Rajasthan High Court in the case of **Papu Ram vs. Assistant Commissioner of Income-tax [2026] 190 taxmann.com 548 (Rajasthan)**, the relevant extract from which is as under:

"FACT I

■ *The assessee–proprietary concern, Dara Construction Company, was subjected to reassessment proceedings for A.Y. 2018-19 on the basis of information furnished by the National E-Statement Centre (NEAC) that GVPREL Dara Joint Ventures had paid Rs. 16.64 crores to the assessee; notice under section 148A was issued and, after following the prescribed procedure, an order under section 148A(d) directing issuance of notice under section 148 was passed, followed by notice under section 148. During reassessment, the AO issued a show-cause notice to enlarge the scope of proceedings in respect of further escaped income that came to his notice during the course of proceedings, to which the assessee responded. The final reassessment order dated 31-3-2023 made an addition based on information/material received during search proceedings, while no addition was ultimately made in respect of the escaped income forming the basis of the original reassessment.*

■ *Before the High Court, the assessee contended that, under the amended section 147, when no addition was made in respect of the escaped income forming the foundation for initiating reassessment, the reassessment could not be sustained merely on the basis of subsequent information relating to other escaped income. The respondents, on the other hand, contended that, in view*

of the Explanation to section 147, reassessment could encompass any issue relating to escaped income that subsequently came to the AO's notice during the proceedings, without following the procedure under section 148A in respect of such subsequent information.

- On writ petition before the High Court.

HELD I

- From a comparative reading of the unamended section 147 and the amended section 147, it is clear that the substantive provision contained in the unamended section 147 covered both the information relating to income which had escaped assessment whether based on the original information or on information which subsequently came to the notice of the Assessing Officer in the course of the proceedings. Explanation 3 was incorporated to clarify that where information relating to income which had escaped assessment subsequently came to the notice of the Assessing Officer in the course of the proceedings, the requirements of section 148A were not required to be complied with. However, in the amended section 147, the words 'and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section' have been deleted. However, the Explanation 3 of the unamended provision was more or less incorporated except the minor changes in its wording. [Para 14]

- The judgments relied upon by the petitioner in support of the contention that in order to sustain reassessment proceedings based on any subsequent information coming to the notice of the Assessing Officer during the course of the proceedings, there must be an addition in respect of the escaped income which formed the basis for initiating the original reassessment proceedings, are no longer relevant for the reason that the decisions of various High Courts relied upon by the petitioner were based upon the presence of the words 'and also' in the substantive provision of the unamended section 147. The said words no longer form part of the substantive provision of section 147. Therefore, the reliance placed by both parties on judgments rendered in the context of the interpretation of the unamended substantive provision of section 147 is of little relevance to the present writ petition. [Para 15]

- In the present case, the Explanation to the amended section 147 clearly enlarges the scope of the substantive provision. The substantive provision, by itself, deals with assessment or reassessment proceedings in respect of income which has escaped assessment and for which the procedure prescribed under sections 148A and 148B to 153 is required to be followed. The Explanation, however, brings within its ambit any subsequent information relating to income which has escaped assessment and which comes to the notice of the Assessing Officer in the course of the proceedings. Significantly, in respect of such

subsequent information, the requirement of following the procedure prescribed under section 148A is dispensed with. The legislative intention is, therefore, clear. The Assessing Officer has been empowered to reassess income in respect of any issue relating to escaped income which subsequently comes to his notice in the course of the proceedings, without requiring the initiation of a fresh proceeding under section 148A. [Para 20]

FACT II

■ For A.Y. 2018-19, reassessment was initiated on NEAC information regarding payment of Rs. 16.64 crores by a joint venture to the assessee; notices under sections 148A and 148 followed. During reassessment, the AO issued a show-cause notice for further escaped income; the final order made an addition based on search material, with no addition on the original ground.

■ Before the High Court, the assessee challenged the Explanation to section 147 as ultra vires and alternatively sought its reading down to prevent enlargement of reassessment on information not mentioned in the initial section 148 notice; the revenue contended that the Explanation permits assessment of any subsequently noticed escaped income without section 148A compliance.

■ On writ petition before the High Court.

HELD II

■ Adverting to the scope of explanation, it is appropriate to refer a decision of Apex Court in the case of *Dattatraya Govind Mahajan v. State of Maharashtra* [1977] 2 SCC 548 and also *S. Sundaram Pillai* (1985) 1 SCC 591. [Para 16]

■ The judgment in *Dattatraya Govind Mahajan* (cited supra) is a decision rendered by the Constitution Bench. The ratio laid down therein is that the orthodox role of an Explanation is to clarify or remove any doubt or ambiguity in the substantive provision. However, the Apex Court held that ultimately, it is the intention of the legislature which is paramount. The label assigned to a provision cannot control or deflect such legislative intention. The legislature may express its intention in different ways. Ultimately, the words used by the legislature are the true repository of legislative intent, and an Explanation must be construed having regard to the context and setting in which it occurs. The aforesaid Constitution Bench decision subsequently came up for consideration before the Apex Court in *State of Andhra Pradesh v. Corporation Bank* (2007) 9 SCC 55. [Para 18]

■ From *State of Andhra Pradesh v. Corporation Bank* (supra), it is clear that the role of an Explanation is to clarify or remove any ambiguity in the main provision. Ordinarily, it cannot widen the ambit of the substantive provision. However, if, upon a true and proper construction of the Explanation, it appears to the Court in a given case that the effect of the Explanation is to widen the

scope of the main provision, such effect must be given to the legislative intention. The various judgments relied upon by the petitioner, particularly *Hardev Motor Transport v. State of MP* (MANU/ SC/ 8596/2006) and *Md. Firoz Ahmad Khalid v. State of Manipur* [2025] 173 taxmann.com 909 (SC), have considered and applied the aforesaid principle. Ultimately, what emerges from the aforesaid decisions is that if the legislative intention is clear from a reading of the Explanation that the legislature intended to widen the scope of the substantive provision, effect must be given to such legislative intention, notwithstanding the label/fact that the Explanation thereby enlarges the scope of the substantive provision. [Para 19]

■ In the above context, the legislature, while incorporating the Explanation into the amended provision of section 147, has consciously retained the substance of the Explanation with certain modifications. It cannot, therefore, be said that such Explanation was incorporated inadvertently or without due application of mind. A comparison of Explanation 3 to the unamended provision with the Explanation to the amended provision of section 147, though they substantially serve the same object, reveals certain changes in the language. The Explanation to the unamended provision contained the words relating to the enlargement of the scope of reassessment 'notwithstanding that the reasons for such issue had not been included in the reasons recorded under sub-section (2) of section 148'. In the amended provision, these words have been supplemented by the further stipulation that such reassessment may be undertaken 'irrespective of the fact that the provisions of section 148A have not been complied with'. These amendments, though apparently minor, make the legislative intention clear. The legislature intended to empower the Assessing Officer to reassess income in respect of any issue relating to escaped income which subsequently comes to his notice in the course of the reassessment proceedings. At the same time, the legislature has consciously dispensed with the requirement of following the procedure prescribed under section 148A in respect of such subsequent information. The aforesaid words, therefore, have the effect of widening the scope of the original reassessment proceedings, in respect of which the procedure contemplated under section 148A was otherwise required to be followed, need not be followed. As is evident from the ratio laid down by the Constitution Bench and other Benches of the Apex Court in the judgments referred to above, legislative intent must be given effect to even where an Explanation has the effect of broadening the scope of the substantive provision. Accordingly, the Explanation cannot be held to be liable to be struck down. [Para 21]

FACT III

■ For A.Y. 2018-19, reassessment was initiated on NEAC information regarding payment of Rs. 16.64 crores by a joint venture to the assessee; notices

under sections 148A and 148 followed. During reassessment, the AO issued a show-cause notice for further escaped income; the final order made an addition based on search material, with no addition on the original ground.

■ *Before the High Court, the assessee contended that subsequent action had to be based on information already available with the AO and that fresh search-derived material could not enlarge the reassessment; the respondents contended that 'any issue' in the Explanation to section 147 permits enlargement based on information subsequently coming to the AO's notice during section 147 proceedings, without separate section 148A compliance.*

■ *On writ petition before the High Court.*

HELD III

■ *A close reading of the Explanation to section 147 reveals that the use of words 'any issue' relating to income which has escaped assessment, and which subsequently comes to the notice of the Assessing Officer in the course of the proceedings, are similarly considered. The words 'any issue' do not restrict the issue relating to any material available with the Assessing Officer at the time of commencement of the reassessment proceedings. If restricted interpretation is given, it violates the plain language used in the Explanation. Such an issue may be in relation to escaped income not only restricted to any information which is the part of the reassessment proceedings but also any other material come to notice of the Assessment Officer from a source outside the original reassessment proceedings, may also constitute the basis for enlarging the scope of the reassessment proceedings. When the language of the provision is clear and unambiguous, there is no occasion to resort to other provisions of the enactment for the purpose of interpreting the provision in question. Such recourse may be had only where the language of the provision is ambiguous or susceptible to more than one interpretation. Therefore, the said contention of the petitioner is also rejected. [Para 23]*

FACT IV

■ *In the pending reassessment for A.Y. 2018-19, initiated on NEAC information regarding payment to the assessee-proprietary concern, the AO issued a show-cause notice to enlarge its scope based on further escaped income and ultimately made an addition based on search material, with no addition on the original ground.*

■ *Before the High Court, the assessee contended that the pending reassessment could not be widened on the basis of search-derived material when an independent statutory mechanism existed for assessing income detected during search; the respondents opposed the contention.*

■ *On writ petition before the High Court.*

HELD IV

■ *It is also the contention of the petitioner that the respondent could not have resorted to reassessment proceedings to widen the scope of the existing reassessment proceedings when there is an independent mechanism for initiating proceedings on the basis of material found during a search. It is true that there is an independent mechanism for assessing any escaped income detected by the authorities in the course of a search. Where no reassessment proceedings are pending, the procedure prescribed in respect of the search is the only procedure that can be followed. However, where reassessment proceedings are already pending, the authorities have two courses available to them. First, they may widen the scope of the pending reassessment proceedings on the basis of material collected during the search relating to any income that has escaped assessment for the relevant assessment year. Alternatively, the authority may also independently initiate proceedings in accordance with the procedure prescribed on the basis of the material collected during the search in respect of the same assessment year. Thus, merely because the authority has adopted one of the two available courses, it cannot, by itself, be said that the proceedings are illegal. Therefore, this contention is also unsustainable. In view of the above, the writ petition is devoid of merit and is liable to be dismissed. [Para 24]*

■ *In the result, the writ petition is dismissed. [Para 25]"*

14. The Hon'ble High Court in the case of **Papu Ram** (supra) has discussed the decisions in the cases of **CIT v. Jet Airways (I) Ltd. [2011] 331 ITR 236/[2010] 195 Taxman 117 (Bombay) (para 5)**, **CIT v. Adhunik Niryat Ispat Ltd. [2011] 63 DTR 212 (Delhi) (para 5)**, **Ranbaxy Laboratories Ltd. v. CIT [2011] 12 taxmann.com 74/336 ITR 136/200 Taxman 242 (Delhi)** besides many other decisions before arriving at their findings. Thus, the Ld. AO is now empowered to assess any other income which has escaped assessment and which comes to his notice subsequently, without following the procedure mandated u/s 148A in respect of this additional escaped income, irrespective of the fact whether any addition on the originally escaped income has been made or not for which the case was reopened. Thus, the assessee fails on the legal ground decided in his favour by the Ld. CIT(A).

15. Since the Ld. AR did not argue the merits of the case and as the assessee fails on the legal ground, it is relevant to reproduce the findings of the Ld. CIT(A) as under:

“5. Discussions and Decision:

5.1 I have carefully considered the grounds of appeal of the appellant, assessment order of the AO and submissions of the appellant. The appellant has raised as many as 26 grounds of appeal. However, all the substantial grounds of appeal relates to the addition of Rs.63,48,367/- on account of trading loss on penny stock. As per the assessment order, the A.O has stated that the assessee has made bogus claim of Trading Loss amounting to Rs.63.48,367/- on the sale of penny stock. The assessee has traded in scrip of M/s Virtual Global Education Ltd [Scrip code 534741] and incurred fictitious losses in equity/ derivative trading of Rs.63,48,367/-. The A.O on the receipt of information through the Insight Portal of the department examined the fact of the case as it was alleged that price rigging had happened in the trading of the shares of the M/s Virtual Global Education Ltd on the platform of BSE and NSE. Finally, the A.O disallowed the claim of fictitious loss of Rs.63,48,367/-.

5.2 However, the appellant in its submission has stated that the A.O has wrongly disallowed the claim of trading loss of Rs.83.48.367/- as the case of the assessee was reopened u/s 147 of the Act for assessment on different reason. The appellant has stated that the case of the assessee was reopened vide the order u/s 148A(d) of the Act dated 26.03.2022 and consequently issuance of notice u/s 148 of the Act dated 20.03.2022 stating the reason to believe that the assessee is the beneficiary of receipt of Rs.4.20,00,000/- from a company namely Sanwaria Vayapaar Pvt. Ltd. It was alleged by the AO that Sanwaria Vayapaar Pvt. Ltd. is a paper company. However the appellant stated that assessment order was passed on different reason and an addition of Rs 63,48.367/- was made on account of trading loss on penny stock [M/s Virtual Global Education Ltd. Scrip code 534741) and no addition was made on account of transaction of Rs.4,20,00,000/- from Sanwaria Vayapaar Pvt. Ltd. The appellant has further pleaded that it is a settled law pronounced by various High Courts that if no addition is made on the basis of the reason recorded by the Assessing officer for reopening an assessment u/s 148, recourse cannot be had to explanation 3 to section 147 to make an addition on any other issue not included in the reason to believe for reopening the assessment. The relevant judgement on this issue cited by the appellant are as under:

- 1. Commissioner of Income-tax Vs Monarch Educational Society [2016] 387 ITR 416 (Del)*
- 2. Ranbaxy Laboratories Ltd. Vs. CIT [2011]336 ITR 136(Delhi)*

3. CIT Vs. Mohmed Juned Dadani [2013] 355 ITR 172 (Guj)

5.3 I have examined the point raised by the appellant in its submission and found that the case of the appellant has been reopened on the issue of transaction of Rs.4,20,00,000/- from M/s Sanwaria Vayapaar Pvt. Ltd. But the A.O has not made any addition in the assessment order on this issue. Further, the A.O has made addition of Rs. Rs.63,48,367/- on account of trading loss on the sale of penny stock of M/s Virtual Global Education Ltd. Which was not mentioned in the reason to believe recorded by the A.O for initiation of reassessment proceedings u/s 148 of the case.

The Hon'ble Delhi High Court in case of **Ranbaxy Laboratories Ltd. Vs. CIT[2011]336 ITR 136(Delhi)** while dealing with a similar issue has held as under:

"assessment in respect of items of club fees, gifts and presents, etc., but the same having not been done, the Assessing Officer proceeded to reduce the claim of deduction under Section 80 HH and 80-1 which as per our discussion was not permissible. Had the Assessing Officer proceeded not to make dis-allowance in respect of the items of club fees, gifts and presents, etc., then in view of our discussion as above, he would have been justified as per explanation 3 to reduce the claim of deduction under Section 80 HH and 8-I as well.

21. In view of our above discussions, the Tribunal was right in holding that the Assessing Officer had the jurisdiction to reassess issues other than the issues in respect of which proceedings are initiated but he was not so justified when the reasons for the initiation of those proceedings ceased to survive. Consequently, we answer the first part of question in affirmative in favour of Revenue and the second part of the question against the Revenue.

22. The present appeal is accordingly allowed."

5.4 Therefore considering the merit in the submission of the appellant and the fact that the reason recorded for the initiation of proceedings u/s 147 of the Act has ceased to survive in this case and the A.O has made addition on the issue which was not mentioned in the reason recorded. Therefore, the addition cannot survive in the eyes of law. Hence, the addition of Rs.63,48,367/- is deleted.

6. The appeal of the appellant is allowed."

16. Thus, the order of the Ld. CIT(A) heavily relies upon the findings in the case of Ranbaxy (supra). Further, brief facts of the case as discussed in the assessment order are that the assessee company earns

interest income by way of providing loan to others. An information was received by the Ld. AO that the assessee had engaged in purchase and sale of shares of penny stock namely Virtual Global Education Ltd PAN: AABCT3362J (Scrip Code: 534741). On analysing the statement of purchase and sale of shares of the above-mentioned scrip, it was found that the entire purchase (made on 10.03.2017) of shares was sold out on 14.07.2017 i.e., the entire quantity of shares was sold within a span of few months. It was further found from the details of purchase and sale of shares of Virtual Global Education Ltd. that huge loss was claimed in accounts. The statement of purchase and sale of shares also revealed that the sale price of shares was drastically less than the purchase price of shares. On examination of the profit and loss account of the assessee for the relevant period, it was seen that the assessee earned profit of ₹ 1,77,62,871/- in the year under consideration and the income was adjusted with loss incurred in penny stocks namely Virtual Global Education Ltd. (Scrip Code: 534741), as claimed by the assessee company. The Ld. AO examined the transactions and noted that the assessee purchased 17,00,000 shares of Virtual Global Education Ltd. for ₹ 98,58,646.10 and the entire purchases were sold for ₹ 35,10,279.23 during the financial year 2017-18 result in the loss of ₹ 63,48,367, which was accounted in the books of the assessee. After examining the transactions and noting that the price movement was not on change in the company's financial results, nor the movement of price had any relevance with the sensx and other details related to the financial analysis of the company from year 2011 to 2019, the transactions were treated as colourable transactions which were seemingly valid but actually were feigned or counterfeit transactions entered into for some ulterior purposes and relying upon several judicial



pronouncements, the Ld. AO disallowed the trading loss in penny stocks claimed by the assessee at ₹ 63,48,367 and assessed the total income at ₹ 2,07,23,537/-. Since the assessee has not given any evidence to dispute the findings of the Ld. AO, I have no hesitation in concurring with the views of the Ld. AO. Hence, the order of the Ld. CIT(A) is reversed and the addition made by the Ld. AO is hereby confirmed. Thus, Ground Nos. 1 and 2 of the Revenue's appeal are allowed. Ground No. 3 relates to the appeal falling under the exceptional clause of CBDT Circular No. 05/2024 and Ground No. 4 is general in nature and both the grounds do not require separate adjudication.

17. In the result, the appeal filed by the Revenue is allowed.

Order pronounced in the open court on 23.10.2026.

I agree

Sd/-

[George Mathan]

Judicial Member

Sd/-

[Rakesh Mishra]

Accountant Member

Kolkata

Date: 23.10.2026



Copy of the order forwarded to:

1. **DCIT, CC-1(4), Kolkata.**
2. ***Paceman Sales Promotion Pvt. Ltd.***
3. CIT(A)-20, Kolkata.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.