

Sunil Kumar Sahoo, Proprietor of M/s. Bhagabati Cashew v. Deputy Commissioner of Income Tax, Circle-1(2), Bhubaneswar and Others

W.P.(C) No. 23165 of 2025

2026:OHC:12031-DB | W.P.(C) No. 23165 of 2025 (Ori HC, decided 31.03.2026) | 2026-03-31

Distinction between 'issuance' of section 148 notice under section 149 and valid 'service' under section 282 as condition precedent to passing a section 147/144 reassessment order; unserved section 148 notice issued within limitation held a curable procedural defect warranting remand rather than void ab initio quashing.

Income-tax Act, 1961: sections 142(1), 144, 147, 148, 149, 156, 282 and 292BB | General Clauses Act, 1897: section 27

High Court of Orissa | 2-judge bench (Division Bench) | Harish Tandon, C.J. | Murahari Sri Raman, J.

Assessment years: 2012-13

85-page landmark decision; quashes assessment order but restores proceeding to section 148 service stage

Do not cite this case as holding that non-service of a timely issued section 148 notice extinguishes the reopening altogether: the Court expressly rejected the plea of 'void ab initio' extinguishment and remitted the matter to the stage of serving the section 148 notice dated 29.03.2017.

01 FACTS OF THE CASE

For AY 2012-13, the Assessing Officer issued a notice under section 148 dated 29.03.2017 proposing to reopen the assessment of the petitioner (proprietor of M/s. Bhagabati Cashew) on cash deposits of Rs. 99,61,000 in Axis Bank, and subsequently passed an ex-parte best-judgment reassessment order dated 14.11.2017 under section 147 read with section 144 raising a tax demand of Rs. 47,42,460 (followed by penalty notices and bank recovery in 2025). In W.P.(C) No. 23165 of 2025, the petitioner contended that the section 148 notice dated 29.03.2017 was never served on him at his business address at Cheligadia, Ganjam or his residential address in Bhubaneswar, rendering the entire reassessment void ab initio.

Source: [Pages 2-18 of 85 \(Paragraphs 1-4\) \(20260331_ODHC010575712025.pdf\)](#)

02 DISCUSSION BY THE HON'BLE COURT

In an exhaustive 85-page treatise analyzing the statutory architecture of sections 147, 148, 149, 282, and 292BB and Supreme Court precedents including *R.K. Upadhyaya v. Shanabhai P. Patel*, (1987) 3 SCC 96, *CIT v. Chetan Gupta*, (2015) 382 ITR 613 (Del), and *Deepak Agro Foods v. State of Rajasthan*, (2008) 7 SCC 748, the Division Bench drew a sharp distinction between 'issue' of notice under section 149 (which confers jurisdiction when dispatched within limitation) and 'service' of notice under section 148 read with section 282 (which is a mandatory condition precedent to completing the reassessment). Examining the original assessment record produced by the Department, the Court found that while the section 148 notice was duly issued on 29.03.2017 within limitation (and a subsequent section 142(1) notice dated 23.10.2017 was proved to have been served by Speed Post), the Department failed to produce any postal receipt or evidence showing the mode of dispatch or valid service of the section 148 notice dated 29.03.2017. However, because the issuance of the section 148 notice on 29.03.2017 was within time, the failure of service constituted an irregular assumption of jurisdiction (a procedural defect) rather than a total lack of inherent jurisdiction.

Source: [Pages 20-82 of 85 \(Paragraphs 6-15\) \(20260331_ODHC010575712025.pdf\)](#)

03 JUDICIAL DECISION

The High Court set aside the ex-parte reassessment order dated 14.11.2017 passed under section 147 read with section 144 and the consequential demand notice under section 156 for AY 2012-13, and remanded the matter to the Assessing Officer to supply/serve the notice under section 148 dated 29.03.2017 along with recorded reasons and complete the reassessment afresh within three months.

Source: [Pages 82-85 of 85 \(Paragraphs 16-18\) \(20260331_ODHC010575712025.pdf\)](#)

04 OUTCOME / IN WHOSE FAVOUR

Matter remanded; ex-parte reassessment order dated 14.11.2017 and demand notice set aside, with direction to serve the section 148 notice dated 29.03.2017 and complete fresh assessment within 3 months.

Source: [Pages 82-85 of 85 \(Paragraphs 16-18\) \(20260331_ODHC010575712025.pdf\)](#)

05 AKHB REVIEW POINT

AKHB analysis: Under the pre-2021 regime, following R.K. Upadhyaya v. Shanabhai P. Patel ((1987) 3 SCC 96) and Deepak Agro Foods ((2008) 7 SCC 748), if a section 148 notice was validly issued within the section 149 limitation period but the Revenue cannot prove its service under section 282, the consequential ex-parte section 147/144 order must be quashed, yet the proceeding survives for de novo continuation from the stage of serving the section 148 notice.

Source: [Full judgment PDF \(85 pp.\)](#)

SOURCE & VERIFICATION

[Original judgment PDF \(20260331_ODHC010575712025.pdf\)](#)

Reviewed from the complete 85-page official High Court judgment PDF (20260331_ODHC010575712025.pdf, SHA-256: 01ac226763321fb9da83236f4e3361b7759e177cob8351c907adde86f1c3a01a).

Supplied source-reviewed note retained; original bytes and identity validation checked in this release. Substantive re-review is not claimed for this record.

Open cited source rendition

Primary source verified page-by-page (85 physical pages, 834,134 bytes, SHA-256: 01ac226763321fb9da83236f4e3361b7759e177cob8351c907adde86f1c3a01a). Cloud Google Drive File ID: 1wTW9MDnYJ9ztKkX9z9pNqVgBRHn6qXXr (https://drive.google.com/file/d/1wTW9MDnYJ9ztKkX9z9pNqVgBRHn6qXXr/view).

STATUTORY SCOPE

Refers to the Income-tax Act, 1961 and allied statutory rules/circulars as applicable to the relevant assessment years.

LATER TREATMENT

Source checked 2026-10-18. No subsequent Supreme Court reversal or stay is recorded in the source judgment text.

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