

DRAFT NOTICE REPLY OF POLITICAL PARTIES U/S 148 WITH 80GGB, 80GGC AND OTHERS.

Income Tax Officer,

Ward ---,

Respected Sir,

Reg.: -----

PAN: -----

Assessment Year.: 20----20----

Ref.: Notice u/s 148A(b) dated- ---/---/2023

DIN: ITBA/-----

With reference to the above, it is respectfully submitted that notice under section 148 of Income Tax cannot be issued in the case considering the facts and legality of the case as under:

FACTS OF THE CASE

(A) Assessee has genuinely made donations and rightly claimed deduction under section 80GGB/80GGC of Income Tax Act,1961:

Kindly consider that your good self has in a way doubted the genuinely made donation by the Assessee of a sum of Rs./- to
..... PARTY OF INDIA during F.Y. 20.....-.....
relevant to A.Y. 20.....-.....

- In the captioned notice, it is submitted that a search u/s 132 of the Act was conducted on the group of on

In the search, on the basis of bank account statements of these
....., beneficiaries/donors who had availed deduction for the bogus
donation made to these have been identified and as per the
information, the Assessee has nmade bogus political donation of Rs./- to
.....Party Of India (Secular) during FY 20....-..... relevant to
A Y 20....-.....

In view of the above information, SCN has been issued asking me as to why notice u/s 148 should not be issued for income chargeable to tax to the extent of Rs./ which has escaped the assessment within the meaning of provision of section 147 of the Income Tax Act, 1961 for the assessment year 20....-.....

- In response to the above show cause notice, we wish to state that, as per the income tax return filed for AY 20....-....., the assessee has claimed the deduction u/s 80GGC of the income tax Act 1961 to the tune of Rs./-. The said deduction was claimed for the donation made to the Party (Secular) which was duly registered u/s of the 29A Representation of the People Act, 1951 (43 of 1951). Copy of the Registration certificate of the Party of India (Secular) w/s 29A of the Representation of the People Act, 1951 (43 of 1951) along with the Copy of income tax return for the AY 20....-....., and Receipt of Donation (Receipt No.....) is enclosed for your kind perusal.

- Additionally, the assessee has made donation of sum Rs...../- to and Rs./- to during F.Y 20..../..... relevant to A.Y 20..../.....

- Copy of extracted bank statement of Alc No. for the period is enclosed for your kind reference. From the copy of bank statement, it shall be apparent that Assessee has made donation of Rs./ to..... Party of India (Secular) vide Cheque/DD/NEFT Ref. No. on/...../20.....

- It is further submitted that it is not a case where cash has been deposited by Assessee on or a couple of days prior to date on which donation is made by Assessee.

(B) Proposed issuance of Notice under section 148 is bad in law:

- We find from the notice dated that the same is based on information flagged on insight portal under the category of High Risk CRIU/VRU for A.Y. on

- We wish to draw your attention to the provisions of the section 80GGC of the Income tax Act 1961 which is reproduced verbatim as under:

"Deduction in respect of contributions given by any person to political parties U/S 80GGC.

In computing the total income of an assessee, being any person, except local authority and every artificial juridical person wholly or partly funded by the Government. there shall be deducted any amount of contribution made by him, in the previous year, to a political party or an electoral trust.

"Provided that no deduction shall be allowed under this section in respect of any sum contributed by way of cash. "

Explanation.- For the purposes of sections 80GGB and 80GGC, "political party" means a political party registered under section 29A of the Representation of the People Act, 1951 (43 of 1951).

" In view of the above provisions, it is clearly evident that for claiming the exemption under section 80GGC, assessee has to fulfil two conditions which are as under:

a) Donation should be made to a "political party" means a political party registered under section 29A of the Representation of the People Act, 1951 (43 of 1951).

b) Donation should not be allowed under this section in respect of any sum contributed by way of cash.

In the our case, the assessee has fulfilled both the above conditions as mentioned by the section 80GGC of the Income tax Act 1961.

The assessee has made the donation through banking channel. (Copy of the relevant bank statement of BANK, Bank A/c No. is enclosed for your kind perusal) and to a "political party" means a political party section 29A of the registered under 1951 (43 of 1951).

- Going further, in the captioned notice, it is neither submitted nor any corroborative evidence has been produced which evident that how assessee's contribution made to the Kisan Party of India (Secular) has been considered bogus. In the captioned notice, it's generalized statement that during the course of pre as well as post search it has been established that these were involved in the activity of providing accommodation entry by way of bogus donation. Since we have made the contribution to the said party hence it is considered as bogus political donation without any corroborative evidence.

Moreover, the captioned notice has spoken about the modus operandi of the bogus transaction detected in the course of the ongoing search operation

which revealed that the donation is received through cheque/RTGS/NEFT in the ' bank account.

This money is then re-routed through various layers, and returned to the original donors, primarily in the form of cash, in lieu of some commission that ranges from to %.

Based on the prescribed modus operandi, it is alleged that the assessee has received the cash after deduction of the commission but no corroborative evidence has been produced in the captioned notice which evidences that the assessee has received the cash. The captioned notice has a generalized statement related to bogus political donation which has no cognisance in the eyes of law.

In view of the above provision of the law and facts of the case, it is clearly evident that while making donation to a political party, the assessee has fulfilled both the conditions as prescribed under section 80GGC of the Income Tax Act, 1961 and based on the finding of the search conducted as per captioned notice, it is clearly evident that no corroborative evidence has been produced regarding the re routing of cash to the assessee after deduction of the commission. Since no evidence has been produced and generalized statement in the notice has no legal sanctity.

Hence the proceedings to issue the notice u/s 148 should be dropped at your end.

- We take this opportunity to put some legal objections to the lissuance of notice under section 148 in foregoing paras:

B.1 Jurisdiction in the case vests with National Faceless Assessment Centre (NFAC):

Requirement of law is not followed:

- The law mandates that before issuance of notice under section 148, Assessing officer shall
 - a) Conduct an enquiry.
 - b) Provide opportunity to Assessee.
 - c) Consider reply of Assessee.
 - d) Decide about issuance of notice under section 148.

- It needs to be Kindly considered that for all practical purposes of:

- a) Assessment, reassessment or re-computation under section 147,

and

- b) Issuance of notice under section 148:

the powers are vested in National Faceless Assessment Centre in accordance with CBDT Notification No. 18/2022 F.No. 370142/16/2022-TPL(part I) Dated. 29/03/2022.

- Thus all proceedings (including notices) by Jurisdictional conducted Assessing Officer(DC/ACIT,CIR ,.....) are void-ab-initio. The notice under Section 148A clause (b) is not tenable in the eyes of law.The notice/proceeding needs to be dropped as the notice has not been issued by NFAC under Faceless Scheme.

(Copy of Notification dt.29/03/2022 is enclosed for your ready reference)

B.2 Notice prior to enquiry by The Assessing Officer is irregular:

Without prejudice to para 1a above, the notice under S.148A clause (b), issued to Assessee by your goodself, suffers from a legal & technical lapse in as much as that No Enquiry whatsoever has been conducted by your good self prior to issuance of notice under the section.

Your attention is requested to provisions of section 148A(a) which lays down that:

“The assessing officer shall before issuing any notice under section 148

- a) Conduct any enquiry, if required, with the prior approval of specified authority, with respect to information which suggests that the income chargeable to tax has escaped assessment.

Please note the terms in the provisions

THE ASSESSING OFFICER- in the instant case, THE ASSESSING OFFICER refers to your goodself.

It is apparent from the Notice (and Annexure) that THE ASSESSING OFFICER has not conducted any enquiry, which shall be clear from the undernoted:-

Annexure to the Show Cause Notice under section 148A starts with the comments

“In your cases, information is flagged on insight portal under the category of High Riskfor A.Y. dated..... ”

Our Objections-

i. It is obvious that your goodself has not loaded/flagged on insight portal on This implies that THE ASSESSING OFFICER(your goodself) has merely utilised the information flagged by some other authority and has failed to discharge the legal onus of conducting enquiry. This casual action is unwarranted in the reopening procedure and renders the notice bad in law

ii. It shall be in place to mention that there was literally no time gap between information received & issuance of notice, implying no exercise of mind, no enquiry at your end. It is apparent as under:

- Receipt of information on

and

- Issuance of notice under section 148A (b) on

- Your Goodself has further erred in not properly comprehending and verifying the allegations in the information stated in the information stated in the Annexure to show cause notice as:

The plurality in phrase "In your cases, information is flagged on insight portal under the category of High Risk CRIU/VRU for A.Y. on"leads one to think that it was a general reference not of a specific nature leading one to assume the casual manner of the enquiry.

The provisions in sec 148A(a) spells out that 'THE ASSESSING OFFICER shall before issuing any notice under section 148- conduct any enquiry, if required!' Thus suitable enquiries ought to be conducted by your goodself.

Your choosing to not enquire properly, renders the notice as issued without application of mind.

B.3 THE ASSESSING OFFICER has merely acted on some satisfaction, of borrowed nature of some other authorities:

A.O. has merely forwarded the forward in cut paste fashion received from some search party which on a general basis had concluded that:

" ... large number of incriminating documents related to bogus donation receipts, diaries containing details of commission charged, loose papers containing vital information and WhatsApp chats in the mobile phones of the office bearers of the and their key handlers confirming the allegations, were found."

This is a general finding not specific to the assessee. The notice does not spell out-

The alleged middle men.

The manner in which the cash (alleged to be returned to Bogus Donor) was passed on to THE ASSESSEE. No date, no amount, no person, no place etc. are mentioned as evidence relied upon by your goodself.

The notice based on unverified facts needs to be dropped. Reopening on the basis of borrowed satisfaction shall be unlawful.

Courts have consistently held in several cases that Reopening on the basis of BORROWEDSATISFACTION is improper .Some case laws are presented here:-

- **Commissioner Of Income-Tax vs. Shree Rajasthan Syntex Ltd:**

"Re-assessment is based on borrowed satisfaction; That Ld. AO has grossly erred in law and facts in issuing notice u/s 148 without having personal satisfaction in respect of escaped Income. Satisfaction of DDIT (I&CI), Jaipur is called as borrowed satisfaction.

CIT Vs. Shree Rajasthan Syntex Ltd. (2009) 313 ITR 231 (Raj) SLP dismissed and Sun Pharmaceutical Industries Ltd. Vs. Dy. CIT (2016) 287 CTR (Del) 621."

- **Yash Ventures Pvt Ltd., Mumbai V. Ito 13 (3)(1), Mumbai**

"In our opinion this is a case of borrowed satisfaction which is incorrect and against the settled legal position and re-opening done on the basis of borrowed...) wherein it has been held that re-opening has to be done on the basis of own satisfaction of the AO and not on borrowed satisfaction. Similarly Hon'ble Delhi High Court in PCIT Vs Meenakshi Overseas...satisfaction cannot be sustained. The provisions of section 147 of the Act mandates that the satisfaction of AO is imperative and must for recording reasons on the basis of some tangible materials."

B.4 The Notice under section 148 shall be Time Barred, Not Valid:

With reference to the above, it is respectfully submitted that the case is not re-openable under section 148 of Income Tax Act as the issue pertains to A.Y. and no notice can be issued (in view of time limit prescribed under Section 149) after lapse of 3 years from the end of relevant assessment year, as our case does not fall in Section 149(1)(b). Thus notice for reopening beyond shall be bad in law and facts of the case.

Relevant extracts of Section 149 are reproduced here:

"Time limit for notice [Section 149] - Section 149(1) No notice under section 148 shall be issued for the relevant assessment year-

(a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b),

(b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to ' 50 lakhs or more for that year. "

B.5 Mistake in Interpreting Proviso-Third of S.149:

- It is understood that department has erred in interpreting the proviso third and fourth of section 149 reproduced below:-

"Provided also that for the purpose of computing the period of limitation as per this section, the time or extended time allowed to the assessee, as per show-cause notice issued under clause (b) of section 148A or the period during which the proceeding under section 148A is stayed by any order or injunction of any court, shall be excluded."

"Provided also that where immediately after the exclusion of the period referred to in the immediately preceding proviso, the period of limitation available to the Assessing Officer for passing an order under clause (d) of section 148A is less than seven days, such remaining period shall be extended to seven days and the period of limitation under this sub-section shall be deemed to be extended accordingly."

- It shall merit your attention that the extension of limitation is applicable on 2 conditions namely:

i. Where time or extended time is allowed to assessee by A.O.

and

ii. Stay order by court (condition N.A. in our case).

Notice under Sec 148A(b) has been issued and some pertinent facts are as under:-

- Relevant A.Y. :
- Notice u/s 148A issued on :
- Statutorily available :
- Time Available (As per SCN, Due Date of reply) :

Correct interpretation of the provisions is needed.

Kindly note that section 148A(b) mandates that opportunity of being heard shall be provided to assessee (with in such time specified in notice) and that time shall not be less than seven days but not exceeding thirty days from the date on which such notice is issued.

- It be further noted that, in our case the statutorily minimum time available as per above provisions was to expire on but assessee was asked to reply before
- The issue of extended time limit, in consonance of second and third proviso of S.146 depends on interpretation of the phrase - "**the time or extended time allowed to the assessee**"

Time (or extended time) allowed to the assessee is of 2 types:

a. Statutorily available time to assessee.

and

b. Time or extended time allowed by Assessing Officer.

a) Statutorily available time with assessee is governed and stated in Section 148A(a) which states that opportunity of being heard shall be provided to assessee 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."

and

b) Time allowed or extended time allowed by Assessing Officer is governed by the phrase "or such time, as may be extended by him (A.O.) on the basis of an application in this behalf. "

Kindly note that allowing of time by A.O. can only be on the basis of application by assessee. In our case, assessee has not applied/ not placed application to extend the date to allow us further time. Thus there is no logic in assuming extended time limit by relating the same with the last date of reply (.....) mentioned in the Show Cause Notice as:

Statutorily time available to the assessee (in terms with S.148A(b)) is minimum seven days and for notice dt. it would be:

Show cause notice due date for reply given by AO. :

(Period from to is Days)

No application there to by Assessee for extension of Statutory Period

- Time Allowed / Extended time : Nil

Accordingly, the last date for reopening the case under ction 148 shall be deemed to be and the exclusion provided in provisos of S.149 leading to extension of time limit does not apply to our case. The Notices after shall be NULL & VOID, which be kindly noted.

B.6 Prior Approval of Specified Authority Not Taken:

The notice u/s 148A suffers from one more violation. The notice is related to statutory obligation of Assessing Officer of ENQUIRY as laid in Section 151 of Income Tax Act, 1961.

Section 151 mandates that for the purpose of section 149A, the specified authority shall be -

(i) Principal commissioner or Principal Director or Director and Section 148A(a) lays down that for conducting enquiry, prior approval of specified authority (i.e., Principal commissioner) is to be obtained.

(ii) As notice under section 148A is regarding conduction of enquiry, prior permission was to be obtained from Jurisdictional commissioner. The Annexure merely mention that **Information was** flagged in insight portal under the category of HIGH RISK CRIUNRU for A.Y. on and your

goodself has not mentioned anything about obtaining the prior approval to issuance of notice under section 148A. This makes us to infer that the enquiry being conducted by way of notice under section 148A is illegal because it was not prior approved by Principal Commissioner. This shall render the enquiry as well as the notice under section 148A is Null and Void.

(C) The assesses has made genuine donation of sum Rs. to Kisan Party of India and sum of Rs to and Rs. to during F.Y..... relevant to A.Y.....

(D) Principles of Natural Justice Not Followed:

We be kindly provided copies of all papers, diaries, documents, statements, proceedings etc. in the course of search proceedings (..... Group) conducted by which the Department has opined thatwere involved in the activity of providing accommodation entry by way of bogus donation. Also provide copies of all information relied upon/ enquired upon by your goodself.

Till the time we receive the above papers we could not be able to properly object to the proposed opening which shall tantamount to depriving the Assessee to defend his case which shall be against the principles of Natural Justice.

(E) Permit us to Cross Examine the Witness of Department:

The case at present is based on mere conjectures and surmises. We wish to cross examine the witnesses after being permitted access to papers, documents, statements etc. relied by Department.

Kindly drop the proceedings and oblige.

Respectfully Submitted.