

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'I' BENCH
MUMBAI**

**BEFORE: SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
&
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

**ITA No. 2427/MUM/2024
(Assessment Year : 2017-18)**

Abdul Saeed Issak Mulla A-7 Mahagajanan CHS, Sector 9A Plot No. 19 Vashi, Navi Mumbai, 400703.	V.	INT Tax Ward 3(2)(1) Room No. 1627, 16 th Floor, Air India Building, Nariman Point, Mumbai-400021.
PAN/GIR No. BCNPM9953Q		
(Appellant)	..	(Respondent)

Assessee by	Shri. Aditya Ramachandran
Revenue by	Shri. Krishna Kumar, Sr. DR
Date of Hearing	29/01/2025
Date of Pronouncement	10/02/2025

आदेश / ORDER

PER SUNIL KUMAR SINGH (J.M):

1. This appeal has been preferred against the order dated 09.03.2024 relevant to A.Y. 2017-18 passed u/s. 147 r.w.s 144C(13) of the Act by learned assessing officer.
2. The facts leading to this appeal state that the assessee is a non-resident Indian. Assessee e-filed return of income for A.Y. 2017-18 on 02.07.2017, declaring total income at Rs. 80. In the meantime it was noticed that out of the cash of Rs.

16,00,000/- seized by senior police inspector, Nehru Nagar Police Station, Mumbai, in old denomination notes of Rs. 500/- and Rs. 1000/- from Shri. Chandrakant Jadhav, cash of Rs. 7,35,000/- belongs to the assessee. in light of the information, there was escapement of income. Assessee's case was reopened u/s. 147 of the Act and notice u/s. 148 of the Act dated 23.04.2021 was issued. Thereafter, following the directions of Hon'ble Supreme Court issued vide order dated 04.05.2022 in civil appeal no. 3005/2022, union of India and ors. V. Ashish Agarwal, assessee was provided an opportunity of hearing before passing order u/s. 148A(d) of the Act dated 29.07.2022 with prior approval of specified authority. Accordingly, notice u/s. 148 of the Act dated 29.07.2022 was issued and served upon the assessee. Assessee did not file his return of income in response to the notice u/s. 148 of the Act. Statutory notices were issued. Assessee furnished required details. Learned assessing officer after considering the submission of assessee, held the sum to be an unexplained money and undertook certain variations to the appellant and passed draft assessment order dated 29.05.2023 proposing the addition in assessee's income to the extent of Rs. 7,35,000/-. Assessee filed objections before CIT(DRP-1), Mumbai-3 on 28.06.2023, wherein DRP Panvel upheld the view of the assessing officer, treating the sums in question as unexplained one and rejected assessee's objections. Learned assessing officer, accordingly passed the impugned assessment order on 09.03.2024 at part with draft

assessment order, assessing total income of the assessee at Rs. 7,35,80/-.

3. Assessee has raised following grounds under appeal:

GROUND

- “ 1. In the facts and circumstances of the case and in law, the learned AO erred in making disallowance u/s 69A on account of unexplained Money the sum of Rs. 7,35,000/-*
- 2. The Ld. A.O initiated the penalty proceedings u/s 274 r.w.s271AAC (1) of the Income Tax Act, 1961, the said penalty shall be dropped.”*

ADDITIONAL GROUND

- “ 1.On the facts and circumstances of the case and in law the Assessing Officer has erred in passing the order under Section 148A(d) and issuing the notice under Section 148 after obtaining the approval of the Pr. CIT-27. Mumbai which was not the correct specified authority' as per Section 151 (amended with effect from 1-4-2021) who should have approved it when three years have already elapsed from the end of the relevant assessment year.*
- 2.On the facts and circumstances of the case and in law the ITO. Ward 28(1)(1). Mumbai has erred in passing the order u/s 148A(d) and also issuing the notice u/s 148 without appreciating that he was not having the jurisdiction for the same in view of Section 151A and the notification issued thereunder notifying e-Assessment of Income Escaping Assessment Scheme. 2022 and thereby, rendering the said order and the notice as well as the entire assessment proceeding as null and void*
- 3.On the facts and circumstances of the case and in law, the ITO, Ward 28(1)(1), Mumbai was not having the jurisdiction over the appellant as he was a non-resident during the year and, therefore he has erred in passing the order u/s 148A(d) and also issuing the notice u/s. 148.*
- 4.On the facts and circumstances of the case and in law, the Assessing Officer has erred in issuing notice under Section 148 although there was no 'information' (as defined in Explanation 1 to Section 148) which was in existence.*
- 5.On the facts and circumstances of the case and in law, the learned Assessing Officer has erred in passing the assessment order under Section 143(3) rws 144C(3) beyond the time limit provided for completion of the assessment under the provisions of Section 153 as interpreted by Honourable Bombay High Court in the case of Shelf Drilling Ron Tappmeyer Ltd. vs. Assistant Commissioner of Income-tax, International Taxation [2023] 153 taxmann.com 162.”*

4. Purused the records. Heard learned representative for the appellant assessee and learned DR for the respondent revenue.
5. The assessee has drawn the attention of the bench towards additional ground no. 1 (out of 5 additional grounds) raised by the assessee on 08.11.2024, submitting that the learned assessing officer has not obtained the approval of the specified authority u/s. 151 of the Act, hence the assessment order is bad in law.
6. Learned DR has supported the impugned assessment order.
7. Hon'ble Apex Court in National Thermal Power Co. Ltd. V. CIT(1998) 229 ITR has held that the Tribunal has jurisdiction to examine a question of law which arises from the facts as found by the authorities below and having a bearing on the tax liability to the assessee. The additional ground No. 2 raised by assessee is a pure question of law, hence we admit the same and proceed first to determine this pure question of law.
8. We note that Hon'ble Supreme Court, vide order dated 03.10.2024 passed in civil appeal no. 8629/2024, Union of India and Ors. V. Rajeev Bansal has settled the issue in dispute in respect of taking approval from the appropriate authority u/s. 151 of the Act before issuance of notice u/s. 148 of the Act in respect of those cases, where the revenue has invoked the provisions of section 148A as per the directions of the Hon'ble Supreme Court in Union of India V.

Ashish Agarwal (2023) 1 SCC 617. The relevant para 73 to 81 of Rajeev Bansal (Supra) are reproduced as under:

“73. Section 151 imposes a check upon the power of the Revenue to reopen assessments. The provision imposes a responsibility on the Revenue to ensure that it obtains the sanction of the specified authority before issuing a notice under section 148. The purpose behind this procedural check is to save the assesses from harassment resulting from the mechanical reopening of assessments. A table representing the prescription under the old and new regime is set out below:

<i>Regime</i>	<i>Time Limits</i>	<i>Specified Authority</i>
<i>Section 151(2) of the old regime</i>	<i>Before expiry of four years from the end of the relevant assessment year</i>	<i>Joint Commissioner</i>
<i>Section 151(1) of the old regime</i>	<i>After expiry of four years from the end of the relevant assessment year</i>	<i>Principal Commissioner or Chief Commissioner or Principal Commissioner or Commissioner</i>
<i>Section 151(i) of the new regime</i>	<i>Three years or less than three years from the end of the relevant assessment year</i>	<i>Principal Commissioner or Principal Director or Commissioner or Director</i>
<i>Section 151(ii) of the new regime</i>	<i>More than three years have elapsed from the end of the relevant assessment year</i>	<i>Principal Commissioner or Chief Commissioner or Principal Director General or Chief Commissioner or Director General.</i>

74. The above table indicates that the specified authority is directly co-related to the time when the notice is issued. This plays out as follows under the old regime:

(i) If income escaping assessment was less than Rupees one lakh. (a) a reassessment notice could be issued under section 148 within four years after obtaining the approval of the Joint Commissioner; and (b) no notice could be issued after the expiry of four years, and

(ii) If income escaping was more than Rupees one lakh; (a) a reassessment notice could be issued within four years after obtaining the approval of the Joint Commissioner; and (b) after four years but within six years after obtaining the approval of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.

75. After 1 April 2021, the new regime has specified different authorities for granting sanctions under Section 151. The new regime is beneficial to the assessee because it specifies a higher level of authority for the grant of sanctions in comparison to the old regime. Therefore, in terms of Ashish Agarwal (*supra*), after 1 April 2021, the prior approval must be obtained from the appropriate authorities specified under Section 151 of the new regime. The effect of Section 151 of the new regime is thus:

- (i) If income escaping assessment is less than Rupees fifty lakhs (a) a reassessment notice could be issued within three years after obtaining the prior approval of the Principal Commissioner, or Principal Director or Commissioner or Director, and (b) no notice could be issued after the expiry of three years, and
- (ii) If income escaping assessment is more than Rupees fifty lakhs (a) a reassessment notice could be issued within three years after obtaining the prior approval of the Principal Commissioner, or Principal Director or Commissioner or Director; and (b) after three years after obtaining the prior approval of the Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General

76. Grant of sanction by the appropriate authority is a precondition for the assessing officer to assume jurisdiction under Section 148 to issue a reassessment notice. Section 151 of the new regime does not prescribe a time limit within which a specified authority has to grant sanction. Rather, it links up the time limits with the jurisdiction of the authority to grant sanction. Section 151 (ii) of the new regime prescribes a higher level of authority if more than three years have elapsed from the end of the "relevant assessment year. Thus, non-compliance by the assessing officer with the strict time limits prescribed under Section 151 affects their jurisdiction to issue a notice under Section 148.

77. Parliament enacted TOLA to ensure that the interests of the Revenue are not defeated because the assessing officer could not comply with the pre-conditions due to the difficulties that arose during the COVID-19 pandemic Section 3(1) of TOLA relaxes the time limit for compliance with actions that fall for completion from 20 March 2020 to 31 March 2021 TOLA will accordingly extend the time limit for the grant of sanction by the authority specified under Section 151 The test to determine whether TOLA will apply to Section 151 of the new regime is this if the time limit of three years from the end of an assessment year falls between 20 March 2020 and 31 March 2021, then the specified authority under Section 151(i) has an extended time till 30 June 2021 to grant approval. In the case of Section 151 of the old regime, the test is. if the time limit of four years from the end of an assessment year falls between 20 March 2020 and 31 March 2021, then the specified authority under Section 151 (2) has time till 31 March 2021 to grant approval. The time limit for Section 151 of the old regime expires on 31 March 2021 because the new regime comes into effect on 1 April 2021.

78. For example, the three year time limit for assessment year 2017-2018 falls for completion on 31 March 2021. It falls during the time period of 20 March 2020 and 31 March 2021, contemplated under Section 3(1) of TOLA. Resultantly, the authority specified under Section 151(i) of the new regime can grant sanction till 30 June 2021.

79. Under Finance Act 2021, the assessing officer was required to obtain prior approval or sanction of the specified authorities at four stages:

a. Section 148A(a)- to conduct any enquiry, if required, with respect to the information which suggests that the income chargeable to tax has escaped assessment,

b. Section 148A(b) - to provide an opportunity of hearing to the assessee by serving upon them a show cause notice as to why a notice under Section 148 should not be issued based on the information that suggests that income chargeable to tax has escaped assessment. It must be noted that this requirement has been deleted by the Finance Act 2022:

c. Section 148A(d)- to pass an order deciding whether or not it is a fit case for issuing a notice under Section 148, and

d. Section 148- to issue a reassessment notice.

80. In *Ashish Agarwal (supra)*, this Court directed that Section 148 notices which were challenged before various High Courts "shall be deemed to have been issued under Section 148-A of the Income Tax Act as substituted by the Finance Act, 2021 and construed or treated to be show-cause notices in terms of Section 148-A(b)." Further, this Court dispensed with the requirement of conducting any enquiry with the prior approval of the specified authority under Section 148A(a). Under Section 148A(b), an assessing officer was required to obtain prior approval from the specified authority before issuing a show cause notice. When this Court deemed the Section 148 notices under the old regime as Section 148A(b) notices under the new regime, it impliedly waived the requirement of obtaining prior approval from the specified authorities under Section 151 for Section 148A(b). It is well established that this Court while exercising its jurisdiction under Article 142, is not bound by the procedural requirements of law. 130

81. This Court in *Ashish Agarwal (supra)* directed the assessing officers to "pass orders in terms of Section 148-A(d) in respect of each of the assesses concerned." Further, it directed the assessing officers to issue a notice under Section 148 of the new regime "after following the procedure as required under Section 148-A." Although this Court waived off the requirement of obtaining prior approval under Section 148A(a) and Section 148A(b), it did not waive the requirement for Section 148A(d) and Section 148. Therefore, the assessing officer was required to obtain prior approval of the specified authority according to Section 151 of the new regime before passing an order under Section 148A(d) or issuing a notice under Section 148.

These notices ought to have been issued following the time limits specified under Section 151 of the new regime read with TOLA, where applicable.

9. In view of aforesaid observations made by Hon'ble Supreme Court, it becomes clear that the prior approval under section 148A(a) and 148(b) were waived, however, the prior approval of the specified authority according to section 151 of the new regime was not waived before passing an order u/s. 148A(d) or issuing a notices u/s. 148 of the Act on or after 01.04.2021 in terms of the decision of Hon'ble Supreme court in Ashish Agarwal (Supra).
10. The provisions of section 151 of the Act under the new regime post Finance Act, 2021, read as under:

Sanction for issue of notice.

151. Specified authority for the purposes of section 148 and section 148A shall be-

- (i) Principal Commissioner or Principal Director or Commissioner or Director, if three years or less than three years have elapsed from the end of the relevant assessment year;*
- (ii) Principal Chief Commissioner or Principal Director General or where there is no Principal Chief Commissioner or Principal Director General, Chief Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year.*

11. According to the notice u/s. 148 of the Act for A.Y. 2017-18, which is available on record, was issued on 29.07.2022 after obtaining the prior approval accorded by the of PCIT-27, Mumbai on 27.07.2022 vide para 3 of the said notice vide reference no. pr.CIT-27/148A(d) Approval/2022-23. Three years have elapsed from the end of the relevant assessment year 2017-18 on 31.03.2021. According to section 151(ii) of the Act, under new regime, the approval should have been obtained either from the Principal Chief Commissioner of

Income or Principal Director General or Chief Commissioner or Director General as specified authority which is not so obtained in the case in hand. We accordingly hold that the notice u/s. 148 of the Act is invalid hence the consequent assessment u/s. 147 of the Act is quashed. The other legal/factual issues remain merely academic in nature, hence require no adjudication.

12. In the result, the assessee's appeal is allowed.

Order pronounced in open court on 10.02.2025.

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Mumbai; Dated 10/02/2025

Anandi Nambi, *Steno*

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai