**IN THE INCOME TAX APPELLATE TRIBUNAL,**
**MUMBAI BENCH "C", MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**
**AND SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 6269/Mum/2024 (A.Y. 2015-16)**
**ITA No. 6270/Mum/2024 (A.Y. 2017-18)**

| | | |
|---|---|---|
| CLE Private Limited<br><br>7th Floor, Raheja Point I, Vakola, Santacruz(E), Mumbai-400055.<br><br>**PAN: AACCR 7266 A** | Vs. | DCIT, Central Circle-3(4), Mumbai |
| (Appellant) | | (Respondent) |

**Present for:**
Assessee by : Shri Niraj Sheth a/w Jitendra Sanghvi
Revenue by : Shri R.A. Dhyani, CIT/DR &
Shri Mahesh Pamnani, Sr. DR

Date of Hearing : 20.01.2025
Date of Pronouncement : 17.02.2025

## O R D E R

**PER AMARJIT SINGH, AM:**

Both these appeals filed by the assessee are directed against the different order of the First Appellate Authority pertaining to A.Y. 2015-16 & A.Y. 2017-18 respectively. These appeals are adjudicated together as follows:

## ITA No. 6269/M/2024 (A.Y. 2015-16)

*"A RE-OPENING OF ASSESSMENT IS BAD IN LAW*

*1. On the facts and in the circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) 51, Mumbai (hereinafter referred to as CIT(A)) erred in confirming the action of the Dy. Commissioner of Income Tax, Central Circle 3(4), Mumbai (hereinafter referred to as Assessing Officer) in re- opening the assessment u/s.147 of the Income Tax Act, 1961 ("the Act").*

.

*Your Appellant submits that the re-opening of the assessment u/s. 147 of the Act is bad-in-law, illegal and the same ought to be quashed.*

*2. On the facts and in the circumstances of the case and in law, the Learned CIT(A) erred in confirming the action of re-opening of assessment by the Assessing Officer to be valid and as per law and supported by specific material from the investigation wing.*

*The Appellant submits that the reopening of assessment on the basis of details / evidences received from the Investigation wing without providing the same to the Appellant and without providing an opportunity for cross examination of the said information/party is bad in law, illegal, void and the said order ought to be quashed.*

*B. <u>PRINCIPLES OF NATURAL JUSTICE:</u>*

*3. On the facts and in the circumstances of the case and in law, the Learned CIT(A) erred in confirming the action of the Assessing Officer of passing the re-assessment order u/s. 143(3) r.w.s. 147 of the Act without providing the details / evidences received from the Investigation wing to the Appellant and without providing an opportunity for cross examination of the said information / party relied by the Assessing Officer, thereby passing the re-assessment order in violation of principle of natural justice.*

*The Appellant submits that the re-assessment order u/s. 143(3) r.w.s. 147 of the Act passed is bad-in-law, illegal, void and the same ought to be quashed.*

*C. <u>ADDITION U/S, 68 OF THE ACT-RS. 39,75,00,000</u>*

*4. On the facts and in the circumstances of the case and in law, the Learned CIT(A) erred in confirming the addition u/s. 68 of the Act of Rs. 39,75,00,000 in respect of the advances received by the Appellant treating them as unexplained cash credit.*

*The Appellant submits that the above addition is wrongly made and the same ought to be deleted.*

*5. On the facts and in the circumstances of the case and in law, the Learned CIT(A) erred in confirming the action of the Assessing Officer of making addition u/s. 68 of the Act of Rs. 39,75,00,000 without providing the details / evidences received from the Investigation wing to the*

*Appellant and without providing an opportunity for cross examination of the said information/party relied by the Assessing Officer.*

*The Appellant submits that the above addition of so-called unexplained cash credit of Rs. 39,75,00,000 is wrongly made and the same ought to be deleted.*

*6. On the facts and in the circumstances of the case and in law, the Learned CIT(A) erred in confirming the addition made by the Assessing Officer u/s. 68 of the Act of Rs. 39,75,00,000 on the alleged ground that the Appellant has not provided any document in support of the credit worthiness of the lenders and genuineness of the transaction.*

*The Appellant submits that the addition u/s. 68 is wrongly made and ought to be deleted.*

*7. On the facts and in the circumstances of the case and in law, the Learned CIT(A) erred in confirming the addition u/s, 68 of the Act on the alleged ground that the Appellant had failed to provide any document relating to the lenders for verification by the Assessing Officer and the lenders have not responded to the notices issued by the Assessing Officer.*

*The Appellant submits that non-receipt of the documents / information from the lenders after issue of notice u/s. 133(6) cannot be the basis for making addition u/s. 68 and therefore the above addition u/s. 68 of so-called unexplained cash credit of Rs. 39,75,00,000 is wrongly made and the same ought to be deleted.*

*D. <u>COMPUTATION OF BOOK PROFITS U/S. 115JB</u>*

*8. On the facts and in the circumstances of the case and in law, the Learned CIT(A) erred in dismissing the ground of appeal raised with respect to computation of book profits u/s. 115JB as arising out of the Order u/s. 154 dated 19.10.2023 and not from the Order u/s. 147 rws 144B dated 11.05.2023 in respect of which the appeal was filed.*

*The Appellant submits that the Assessing Officer had not discussed and not computed the book profits u/s. 115JB in the body of the assessment order and straight away computed the book profits u/s. 115JB at Rs. 1,12,42,922 In the computation sheet attached to the order as against the book loss of Rs. 767,73,76,418 for which the Appellant had raised a ground and the same ought to have been decided by CIT(A).*

.

*9. On the facts and in the circumstances of the case and in law, the Learned CIT(A) erred in appreciating that the Assessing Officer had computed the book profit at Rs. 1,12,42,922 as against the book loss of Rs. 767,73,76,418 and for which the ground was raised.*

*The Appellant submits that the CIT(A) ought to have decided the said ground and directed the Assessing Officer to consider the book profits u/s. 115JB as computed in the rectification order dated 19.10.2023 instead of dismissing the ground as arising out of the rectification order u/s, 154.*

*10. On the facts and in the circumstances of the case and in law, the Learned CIT(A) failed to appreciate the fact that the specific ground with respect to addition u/s. 68 being made for, computing book profits u/s. 115JB could not be raised in the appeal filed before itself since the computation of book profits u/s. 115JB was not discussed in the body of the assessment order.*

*The Appellant submits that CIT(A) wrongly dismissed the submissions that the addition u/s. 68 cannot be made while computing book profits u/s. 115JB which is a self-contained code.*

*The Appellant submits that section 115JB is a self-contained code and no additions or deletions other than those prescribed under the Act can be made to the book profit and the CIT(A) ought to have directed the Assessing Officer to delete the adjustment of Rs. 39,75,00,000 made to the book profits.*

*E. GENERAL*

*11. The Appellant craves leave to add, to amend, vary or alter, including by substitution, any of the above grounds of appeal."*

2. Fact in brief is that scrutiny assessment u/s 143(3) of the Act was completed on 29.12.2017 and at assessed loss of Rs. 85,34,48,506/-. Subsequently, the assessing officer issued notice u/s 148 of the Act on 31.07.2022 for reopening the assessment pursuant to the order u/s 148A(d) of the Act dated 31.07.2022. As per information available on the record and order passed u/s 148A(d) of the Act, it was found that the assessee has taken loan

.

and advances during the assessment year under consideration from the following parties:

| *Entity* | *Amount* |
|---|---|
| *Siddhivinayak Leasing and Financial India Limited* | *1,35,00,000/-* |
| *Katyani Capital Pvt. Ltd.* | *14,94,00,000/-* |
| *Katyani Trading Enterprises Pvt. Ltd.* | *14,94,00,000/-* |
| *Maulik Trading Enterprises Limited* | *1,35,00,000/-* |
| *Bhayana Reality Pvt. Ltd.* | *50,00,000/-* |
| *Elvina Real Estate Pvt. Ltd.* | *23,46,00,000/-* |

3. During the course of assessment vide notice u/s 142(1) of the Act, the assessee was asked to provide the ledger for the unsecured loans/advances along with narrations, proof of identity & creditworthiness of the creditors, proof of genuineness of the transaction, PAN and latest postal address of creditors. The assessee was also asked to furnish the confirmation of accounts along with details of banking transactions, copy of ITR and balance sheet of preceding 3 years of creditors along with bank statement etc. The assessee in response vide letter dated 07.04.2023 filed the details. However, the AO stated that assessee has not furnished the copy of return of income, Financial & Bank Statements of the creditors stating that these were the private and confidential documents of the lenders. The AO further stated that a notice u/s 133(6) of the Act was issued to the Katyani Trading Enterprises Pvt. Ltd., Elvina Real Estate Pvt. Ltd. asking to furnish the copy of ledger account of Sonata Investment Ltd. as per their books of account, copy of ITR, balance sheet etc. However, no response has been received, therefore, the assessing officer held that identity, creditworthiness and genuineness of the transaction remained

unexplained. Therefore, treated the loan transaction of Rs. 39,75,00,000/- as unexplained u/s 68 of the Act.

4. The assessee filed appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee.

5. During the course of appellate proceedings before us, the ld. Counsel submitted that reopening of assessment in the case of assessee is bad in law. The ld. Counsel referred copy of notice issued u/s 148A(b) dated 21.05.2022 placed in the paper book wherein the assessing officer referred that notice u/s 148 shall be treated to be the show cause notice in terms of section 148A(b) of the Act as per the decision of Hon'ble Supreme Court in Civil Appeal No. 3005/2022 dated 04.05.2022. He also referred the reply of the assessee filed in response to notice issued u/s 148A(b) of the Act placed in the paper book filed. He submitted after referring the various paras of the judgement of the Hon'ble Supreme Court in the case of Rajeev Bansal (2024) 167 taxmann.com 70 (SC) that the notice issued u/s 148A(b) is bad in law, illegal and ought to be quashed. The ld. Counsel has also placed reliance on the decision of ITA No. 4812/M/2024 in the case of ITO vs Pushpak Realities Pvt. Ltd., in the case of Union of India vs Rajeev Bansal (2024) 167 taxmann.com 70 (SC). Before us, the ld. Counsel submitted that the AO failed to provide within 30 days information and material relied upon by the Revenue as directed by the Hon'ble Supreme Court in the case of Union of India vs Ashish Agarwal judgement dated 04.05.2022.

.

6. On the other hand, ld. DR submitted that section 147 of the Act authorizes the assessing officer to assess or reassess income that has escaped assessment if there is reason to believe it. He further stated that conclusive evidence at the time of reopening is not required to initiate reassessment proceeding. He also submitted that once the AO has recorded his reasons for reopening courts cannot go into the aspect of sufficiency of those reasons. He also referred following judicial pronouncements:

> *"a. Kalyan Mavji v CIT (SC) 102 ITR 287*
> *b. ITO v Lakhmani Mewal Das (SC) 103 ITR 437*
> *c. Phool Chand Bajranj v ITO (SC) 203 ITR 456*
> *d. Sri Krishna (P) Ltd. v CIT (SC) 221 ITR 538*
> *e. Central Provinces Manganese Ore v ITO (SC) 191 ITR 662"*

The ld. DR further submitted that speaking order u/s 148A(d) was passed after informing the assessee and giving opportunity to submit its objection.

7. Heard both the sides and perused the material on record in respect of reopening of assessment. The original return of income was filed on 30.09.2015. Thereafter scrutiny assessment was completed u/s 143(3) of the Act on 29.12.2017. Subsequently, the assessment was reopened by issuing of notice u/s 148 of the Act on 31.07.2022. As per the copy of reasons recorded for reopening the case information has been received from the DDIT(Inv.) Unit-3(4), Mumbai that on the basis of search action carried out in the case of Himanshu Verma and others on 13.04.2017 at Noida it was found that he was involved in providing accommodation entries in lieu of commissions through the number of shell companies. List of Mumbai beneficiary was shared by the office of

.

DDIT(Inv.), Mumbai which also included the name of the assessee as M/s. Sonata Investment Ltd. now known as CLE Pvt. Ltd. The Hon'ble Supreme Court in the case of Union of India vs Ashish Agarwal (2022) 138 taxmann.com 64 (SC) dated 04.05.2022 held notice u/s 148 of the Act issued during the period 01.04.2021 to 30.06.2021 under the old law shall be deemed to be show cause notices issued u/s 148A(b) of the new law and has directed the assessing officer to follow the procedures with respect to such notices.

8. However, in view of the decision of Hon'ble Supreme Court in the case of Ashish Agarwal dated 04.05.2022 as mentioned above, the assessing officer has again issued notice dated 21.05.2022. The assessee has responded to this notice issued vide letter dated 01.06.2022 within the statutory time limit of two weeks from the date of issue of notice dated 21.05.2022 with reference to section 148A(b) of the Act. The assessee has submitted that since time limit of 30 days as directed by the Hon'ble Supreme Court in the above referred judgement has already lapsed, therefore, notice issued u/s 148A(b) is bad in law. It is evident from the material placed on record that the AO had not made compliance with the direction of Hon'ble Supreme Court to provide the information and material relied upon by the Revenue within 30 days as discussed above.

9. The judicial pronouncements referred by the ld. DR are distinguishable from the facts of the case of the assessee because of applicability the provisions of TOLA (2020) and decisions of

Hon'ble Supreme Court in the case of Ashsh Agarwal and Rajeev Bansal.

10. We have perused the decision of Hon'ble Supreme Court in the case of Union of India vs Rajeev Bansal (2024) 167 taxmann.com 70 (SC) wherein held that TOLA overrides Income-tax Act to extent of relaxing time limit for issue of reassessment notice which fell for completion from 20.03.2020 to 31.03.2021 till 30.06.2021. The TOLA was enacted in the backdrop of the Covid 19 Pandemic to provide relaxation of time limit specified under the provisions of Income-tax Act and certain other legislations as defined in section 2(1)(b) of TOLA taxation and other law Amendment Act, 2020. The Finance Act 2021 amended the provisions dealing with the reassessment procedure under the Income-tax Act w.e.f. 01.04.2021. TOLA extended time limit for completion or compliance of action under the specified Act falling for completion or compliance between 20.03.2020 to 31.03.2021 till 30.06.2021. The effect of TOLA and notifications issued under legislation was that (i) if the time prescribed for passing any order or issue of any notice, sanction or approval fell for completion or compliance from 20.03.2020 to 31.03.2021 and (ii) if the completion or compliance of such action could not be made during the stipulated period within the time limit for completion or compliance of such action was extended to 30.06.2021. The Finance Act substituted the old regime for reassessment with the new regime. The first proviso to section 149 does not expressly bar the application of TOLA. Section 3 of TOLA applies to the entire Income-tax Act including Sections 149 and 151 of the new regime.

.

As per clause 19(e) of the order of the Hon'ble Supreme Court in the case of Rajeev Bansal once the first proviso to section 149(1)(b) is read with TOLA then all the notices issued between 01.04.2021 and 30.06.2021 pertaining to A.Y. 2013-14 to A.Y. 2016-17 and A.Y. 2017-18 will be within the period of limitation as explained in the tabulation below:

| *Assessment Year* | *Within 3 Years* | *Expiry of limitation read with TOLA for (2)* | *Within six Years* | *Expiry of limitation read with TOLA for (4)* |
|---|---|---|---|---|
| *1* | *2* | *3* | *4* | *5* |
| *2013-14* | *31.03.2017* | *TOLA not applicable* | *31.03.2020* | *30.06.2021* |
| *2014-15* | *31.03.2018* | *TOLA not applicable* | *31.03.2021* | *30.06.2021* |
| *2015-16* | *31.03.2019* | *TOLA not applicable* | *31.03.2022* | *TOLA not applicable* |
| *2016-17* | *31.03.2020* | *30.06.2021* | *31.03.2023* | *TOLA not applicable* |
| *2017-18* | *31.03.2021* | *30.06.2021* | *31.03.2024* | *TOLA not applicable* |

11. Proviso to section 149(1)(b) of the new regime used the expression beyond the time limit specified under the provisions of clause (b) of sub-section (1) of this section, as they stood immediately before the commencement of the Finance Act, 2021. Thus, the proviso specifically referred to the time limit specified u/s 149(1)(b) of the old regime. The Hon'ble Supreme Court in the case of Shri Rajeev Bansal, held that the Revenue accepted that without application of TOLA, the time limit for issuance of reassessment notices after 01.04.2021 expires for A.Y. 2013-14 to 2017-18 in the following manner:

> *"i. for the assessment years 2013-14 and 2014-15, the six year period expires on 31st March, 2020 and 31st March, 2021 respectively; and*
>
> *ii. for the assessment years 2016-17 and 2017-18, the three year period expires on 31st March, 2020 and 31st March, 2021 respectively."*

12. Before the Hon'ble Supreme Court in the case of Rajeev Bansal as per para 19(f) of the order the Revenue conceded that for

the assessment year 2015-16, all the notices issued on or after 1st April, 2021 will have to be dropped as they will not fall for completion during the prescribed under TOLA.

13. In this regard, we have also consider the decision of ITAT, Mumbai in the case of ITO vs Pushpak Realities Pvt. Ltd. vide ITA No. 4812/M/2024 dated 07.11.2024 wherein the decision of Hon'ble Supreme Court in the case of Shri Rajeev Bansal was discussed. The relevant extract of the decision is reproduced as under:

> *"8. We find that now this issue has been settled by the latest judgment of the Hon'ble Supreme Court in the case of Union of India vs. Rajeev Bansal in Civil Appeal No.8629 of 2024 alongwith other civil appeal numbers. The Hon'ble Supreme Court had referred to the submissions made on behalf of the Revenue vide para 19 which is quite relevant and same is reproduced hereunder:-*
>
> *19. Mr N Venkataraman, learned Additional Solicitor General of India, made the following submissions on behalf of the Revenue:*
>
> *a. Parliament enacted TOLA as a free-standing legislation to provide relief and relaxation to both the assessees and the Revenue during the time of COVID- 19. TOLA seeks to relax actions and proceedings that could not be completed or complied with within the original time limits specified under the Income Tax Act,*
>
> *b. Section 149 of the new regime provides three crucial benefits to the assesses: (i) the four-year time limit for all situations has been reduced to three years, (ii) the first proviso to Section 149 ensures that re-assessment for previous assessment years cannot be undertaken beyond six years, and (iii) the monetary threshold of Rupees fifty lakhs will apply to the re- assessment for previous assessment years,*
>
> *c. The relaxations provided under Section 3(1) of TOLA apply "notwithstanding anything contained in the specified Act." Section 3(1), therefore, overrides the time limits for issuing a notice under Section 148 read with Section 149 of the Income Tax Act;*

*d. TOLA does not extend the life of the old regime. It merely provides a relaxation for the completion or compliance of actions following the procedure laid down under the new regime;*

*e. The Finance Act 2021 substituted the old regime for reassessment with a new regime. The first proviso to Section 149 does not expressly bar the application of TOLA. Section 3 of TOLA applies to the entire Income Tax Act including Sections 149 and 151 of the new regime. Once the first proviso to Section 149(1)(b) is read with TOLA, then all the notices issued between 1 April 2021 and 30 June 2021 pertaining to assessment years 2013-2014, 2014-2015,2015-2016,2016-2017, and 2017-2018 will be within the period of limitation as explained in the tabulation below;*

| *Assessment Year* | *Within 3 Years* | *Expiry of limitation read with TOLA for (2)* | *Within six Years* | *Expiry of limitation read with TOLA for (4)* |
|---|---|---|---|---|
| *1* | *2* | *3* | *4* | *5* |
| *2013-14* | *31.03.2017* | *TOLA not applicable* | *31.03.2020* | *30.06.2021* |
| *2014-15* | *31.03.2018* | *TOLA not applicable* | *31.03.2021* | *30.06.2021* |
| *2015-16* | *31.03.2019* | *TOLA not applicable* | *31.03.2022* | *TOLA not applicable* |
| *2016-17* | *31.03.2020* | *30.06.2021* | *31.03.2023* | *TOLA not applicable* |
| *2017-18* | *31.03.2021* | *30.06.2021* | *31.03.2024* | *TOLA not applicable* |

*f. The Revenue concedes that for the assessment year 2015-16, all notices issued on or after 1 April 2021 will have to be dropped as they will not fall for completion during the period prescribed under TOLA;*

*g. Section 2 of TOLA defines "specified Act" to mean and include the Income Tax Act. The new regime, which came into effect on 1 April 2021, is now part of the Income Tax Act. Therefore, TOLA continues to apply to the Income Tax Act even after 1 April 2021; and*

*h. Ashish Agarwal (supra) treated Section 148 notices issued by the Revenue between 1 April 2021 and 30 June 2021 as showcause notices in terms of Section 148A(b). Thereafter, the Revenue issued notices under Section 148 of the new regime between July and August 2022. Invalidation of the Section 148 notices issued under the new regime on the ground that they were issued beyond the time limit specified under the Income Tax Act read with TOLA will completely frustrate the judicial exercise undertaken by this Court in Ashish Agarwal (supra).*

*9. Thus it can be seen that, one very important fact which has been stated by the Revenue before the Hon'ble Supreme Court in para 19 (f) wherein the Revenue concedes that for the A.Y.2015- 16, all notices*

*issued on or after 1 April 2021 will have to be dropped as they will not fall for completion during the period prescribed under TOLA. Further, for the A.Y.2013-14 and 2014- 15 Revenue has accepted that the expiry of the limitation (TOLA) will expire on 30/06/2021."*

*10. In para 54 the Hon'ble Supreme Court has explained the extension of TOLA time limit till 31/06/2021 in the following manner:-*

*"54. The proviso to Section 149(1)(b) of the new regime uses the expression "beyond the time limit specified under the provisions of clause (b) of sub- section (1) of this section, as they stood immediately before the commencement of the Finance Act, 2021." Thus, the proviso specifically refers to the time limits specified under Section 149(1)(b) of the old regime. The Revenue accepts that without application of TOLA, the time limit for issuance of reassessment notices after 1 April 2021 expires for assessment years 2013-2014, 2014-2015, 2015-2016, 2016-2017, and 2017- 2018 in the following manner:*

*(i) for the assessment years 2013-2014 and 2014-2015, the six year period expires on 31 March 2020 and 31 March 2021 respectively; and (ii) for the assessment years 2016-2017 and 2017-2018, the three year period expires on 31 March 2020 and 31 March 2021 respectively.*

*a. Finance Act 2021 substituted the old regime."*

*11. Thereafter, the Hon'ble Supreme Court has elaborated the law brought by the Finance Act, 2021 substituting u/s. 147 to 151 and the TOLA providing for relaxation of time limit prescribed under the specified Acts. Further, their Lordships have also observed that Section 3(1) of TOLA starts with non-obstante clause which has to be read as controlling the provisions of the specified Acts including the provision of Income Tax Act which also overrides Section 149 only to the extent of relaxing the time limit of issuing of re-assessment notice u/s.148. The Hon'ble Court held that time limit for issuance of re-assessment notices which falls for completion between 20th March 2020 and 31/03/2021 has been extended till 30/06/2021. However, non-obstante clause u/s.3(1) of TOLA will neither the extent of time limit of three years from the end of the relevant assessment year u/s.149(1)(a) neither the new regime extend the time limit of six years from the end of the relevant assessment years u/s.149(1)(b) of the old regime. From para 73 to 76, the Lordships have elaborated the sanction of specified authority u/s.151 vis-à-vis the time limit prescribed in Section 151. For the sake of ready reference para 73-76 reads 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.128 A table representing the prescription under the old and new regime is set out below:*

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

*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.*

*12. Thus, the Hon'ble Supreme Court clearly held that after 01/04/2021 the new regime has specified different authorities for granting sanction u/s.151 and since it is a beneficial to the assessee because it specifies the higher level of authority for the grant of sanctions in comparison to the old regime, therefore, in terms of Shri Ashish Agarwal judgment, after 01/04/2021 the prior approval must be obtained from the competent authorities specified u/s.151 of the new regime and then their Lordships have clearly held in para 76 that the non-compliance by the AO to the restricted time limit prescribed u/s.151 affects the jurisdiction to issue a notice u/s.148.*

*13. In para 94 the Hon'ble Supreme Court has mentioned about the three important periods to see the limitation which are as under:-*

*"4. Before we proceed, we need to bear in mind three important periods:*

*i. The period up to 30 June 2021 – this period is covered by the provisions of the Income Tax Act read with TOLA;*

*ii. The period from 1 July 2021 to 3 May 2022 – the period before the decision of this Court in Ashish Agarwal (supra); and*

*iii. The period after 4 May 2022 – the period after the decision of this Court in Ashish Agarwal (supra). This period is covered by the directions issued by PART F this Court in Ashish Agarwal (supra) and the provisions of the Income Tax Act read with TOLA.*

*a. Third proviso to Section 149*

*95. The third proviso to Section 149 reads thus: "Provided also that for the purposes 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 an order or injunction of any court, shall be excluded."*

*96. The third proviso excludes the following periods to calculate the period of limitation: (i) the time allowed to the assessee under Section 148A(b); and (ii) the period during which the proceedings under Section 148A are "stayed by an order or injunction of any court."*

*14. Finally, after analyzing the judgment of Shri Ashish Agarwal in various time limits provided in the Act and the time extended by TOLA, the Hon'ble Supreme Court concluded as under:-*

*114. In view of the above discussion, we conclude that:*

*a. After 1 April 2021, the Income Tax Act has to be read along with the substituted provisions;*

*b. TOLA will continue to apply to the Income Tax Act after 1 April 2021 if any action or proceeding specified under the substituted provisions of the Income Tax Act falls for completion between 20 March 2020 and 31 March 2021;*

*c. Section 3(1) of TOLA overrides Section 149 of the Income Tax Act only to the extent of relaxing the time limit for issuance of a reassessment notice under Section 148;*

.

*d. TOLA will 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 extended time till 30 June 2021 to grant approval;*

*e. 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 extended time till 31 March 2021 to grant approval;*

*f. The directions in Ashish Agarwal (supra) will extend to all the ninety thousand reassessment notices issued under the old regime during the period 1 April 2021 and 30 June 2021;*

*g. The time during which the show cause notices were deemed to be stayed is from the date of issuance of the deemed notice between 1 April 2021 and 30 June 2021 till the supply of relevant information and material by the assessing officers to the assesses in terms of the directions issued by this Court in Ashish Agarwal (supra), and the period of two weeks allowed to the assesses to respond to the show cause notices; and*

*h. The assessing officers were required to issue the reassessment notice under Section 148 of the new regime within the time limit surviving under the Income Tax Act read with TOLA. All notices issued beyond the surviving period are time barred and liable to be set aside;*

*15. Thus, from the aforesaid judgment, it is clear that firstly, after 01/04/2021, the Income Tax Act has to be read alongwith substituted provisions of TOLA will continue to apply after 01/04/2021 if any action or proceedings provided under the substituted provision of the Income Tax falls for completion between 21/03/2020 to 31/03/2021 and Section 3(1), overrides Section 149 of the Income Tax Act; Similarly, TOLA will extend the time limit for grant of sanction by the authorities specified u/s.151 and if the time limit of three years falls between 21/03/2021 and 31/03/2021 then the specified authority u/s.151(i) has extended time limit till 30/06/2021. The direction of Shri Ashish Agarwal will extent to all re-assessment notice issued in old regime i.e. from 01/04/2021 to 30/06/2021 and finally Court held that ld. AO was required to issue reassessment notice u/s.148 under the new regime within the time limit surviving u/s.148 of the Income Tax Act r.w. TOLA.*

.

*Thus, in all such instances for the relevant assessment years under question the time limit was extended only up to 30/06/2021 for issuance of notice u/s.148.*

*16. Now here in this case as noted above for A.Y.2013-14 after 148A (b), notice u/s.148 was issued on 29/07/2022; for A.Y. 2014-15 it was issued on 31/07/2022; and for A.Y.2015-16 it was issued 28/07/2022. Thus, in all these years as noted above the original time limit for six years for A.Y.2013-14 was upto 31/03/2020; for 2014-15 it was 31/03/2021; and for A.Y. 2015- 16 it was 31/03/2022. Even under the TOLA, the time limit for issuance of notice u/s 148 had expired on 30/06/2021 both for A.Y. 2013-14 & A.Y. 2014-15. For the A.Y.2015-16, the Revenue itself has contended before the Hon'ble Supreme Court as noted above, all the notices issued on or after 01/04/2021 will have to be dropped as they will not fall for completion during the period prescribed under TOLA. Here notice u/s. 148 for the A.Y. 2015-16 has been issued on 28/07/2022 which is admittedly barred by limitation under the new provision of Section 149(1) and it is not covered under TOLA. Accordingly, all the notices are quashed being barred by limitation on the reasons given above and we are not going on the reasons given by the ld. CIT (A) for quashing the notice.*

*17. Since the issue involved was squarely covered by the judgment of the Hon'ble Supreme Court in the case of Shri Rajeev Bansal therefore, the same has been decided on the principle laid down by the Hon'ble Supreme Court."*

14. In the light of the above facts and findings for the A.Y. 2015-16, under three year rule the limitation period for reopening the assessment would expire on 31.03.2019. Therefore, TOLA would not apply because the limitation period expired before 20th March, 2020. In case the escaped income exceeds Rs. 50 lakh under the proviso to section 149(1) while applying the six year Rule the limitation for issuing notice u/s 148 of the Act expire on 31.03.2022 which is outside the limit from 20.03.2020 to 31.03.2021 prescribed by the TOLA.

Therefore, notice u/s 148 of the Act for the A.Y. 2015-16 on 31.07.2022 is barred by limitation since the same is not covered under TOLA as discussed which is squarely covered by the decision of Hon'ble Supreme Court in the case of the Rajeev Bansal and the decision of the ITAT, Mumbai as referred supra in this order. Accordingly, the reassessment is invalid as the notice issued for reopening the assessment is quashed being barred by limitation for the reason as discussed above in this order.

15. Since, we have quashed the assessment, therefore, other grounds of appeal filed by the assessee on merit become academic and same required no adjudication and left open. Accordingly, the appeal of the assessee is allowed.

**ITA No. 6270/M/2024 (A.Y. 2017-18)**

*"A. RE-OPENING OF ASSESSMENT IS BAD IN LAW:*

*1. On the facts and in the circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) 51, Mumbai (hereinafter referred to as CIT(A)] erred in confirming the action of the Dy. Commissioner of Income Tax, Central Circle 3(4), Mumbai (hereinafter referred to as Assessing Officer) in re-opening the assessment u/s. 147 of the Income Tax Act, 1961 ("the Act").*

*Your Appellant submits that the re-opening of the assessment u/s. 147 of the Act is bad-in-law, illegal and the same ought to be quashed.*

*2. On the facts and in the circumstances of the case and in law, the Learned CIT(A) erred in confirming the action of re-opening of assessment by the Assessing Officer to be valid and as per law and supported by specific material from the investigation wing.*

*The Appellant submits that the reopening of assessment on the basis of details /evidences received from the Investigation wing without providing the same to the Appellant and without providing an opportunity for cross*

*examination of the said information/party is bad in law, illegal, void and the said order ought to be quashed.*

*B. PRINCIPLES OF NATURAL JUSTICE:*

*3. On the facts and in the circumstances of the case and in law, the Learned CIT(A) erred in confirming the action of the Assessing Officer of passing the re-assessment order u/s. 143(3) r.w.s. 147 of the Act without providing the details / evidences received from the Investigation wing to the Appellant and without providing an opportunity for cross examination of the said information / party relied by the Assessing Officer, thereby passing the re-assessment order in violation of principle of natural justice.*

*The Appellant submits that the re-assessment order u/s. 143(3) r.w.s. 147 of the Act passed is bad-in-law, illegal, void and the same ought to be quashed.*

*C. ADDITION U/S, 68 OF THE ACT-RS, 4,10,00,000*

*4. On the facts and in the circumstances of the case and in law, the Learned CIT(A) erred in confirming the addition u/s. 68 of the Act of Rs. 4,10,00,000 in respect of the advances received by the Appellant treating them as unexplained cash credit.*

*The Appellant submits that the above addition is wrongly made and the same ought to be deleted.*

*5. On the facts and in the circumstances of the case and in law, the Learned CIT(A) erred in confirming the action of the Assessing Officer of making addition u/s. 68 of the Act of Rs. 4,10,00,000 without providing the details / evidences received from the Investigation wing to the Appellant and without providing an opportunity for cross examination of the said Information/party relied by the Assessing Officer.*

*The Appellant submits that the above addition of so-called unexplained cash credit of Rs. 4,10,00,000 is wrongly made and the same ought to be deleted.*

*6. On the facts and in the circumstances of the case and in law, the Learned CIT(A) erred in confirming the addition made by the Assessing Officer u/s. 68 of the Act of Rs. 4,10,00,000 on the alleged ground that the Appellant has not provided any document in support of the credit worthiness of the lenders and genuineness of the transaction.*

.

*The Appellant submits that the addition u/s. 68 is wrongly made and ought to be deleted.*

*7. On the facts and in the circumstances of the case and in law, the Learned CIT(A) erred in confirming the addition u/s. 68 of the Act on the alleged ground that the Appellant had failed to provide any document relating to the lenders for verification by the Assessing Officer and the lenders have not responded to the notices issued by the Assessing Officer.*

*The Appellant submits that non-receipt of the documents / information from the lenders after issue of notice u/s. 133(6) cannot be the basis for making addition u/s. 68 and therefore the above addition u/s. 68 of so-called unexplained cash credit of Rs. 4,10,00,000 is wrongly made and the same ought to be deleted.*

*E. GENERAL*

*8. The Appellant craves leave to add, to amend, vary or alter, including by substitution, any of the above grounds of appeal."*

16. Similarly, in this case the AO observed that assessee had taken unsecured loan of Rs. 4,10,000,000/-from M/s. Supnext Infraheights Pvt. Ltd. which was an entity involved in providing accommodation entries only. The assessing officer issued notice u/s 148 on 31.07.2022 reopening the assessment pursuant to the order u/s 148A(d) of the Act dated 31.07.2022. Accordingly added the entire amount of Rs. 4,10,00,000/- as unexplained cash credit vide order dated 10.05.2023 passed u/s 147 of the Act. The ld. CIT(A) has dismissed the appeal of the assessee.

17. Before us, the ld. Counsel submitted that notice u/s 148 of the Act in the case of the assessee was issued after obtaining approval of the Pr. Commissioner of Income Tax which is not valid u/s 151 of the Act and he referred pages no. 24 to 29 of the paper

book pertaining to the copies of notice u/s 148 and order u/s 148A(d) of the Act.

18. On the other hand, ld. DR relied on the order of ld. CIT(A).

19. Heard both the sides and perused the material on record. Further sanction for issue of notice u/s 151 of the Act under the new regime and old regime are as under:

| *Regime* | *Time limits* | *Specified authority* |
|---|---|---|
| *Section 151(2) of the old regime* | *Before expiry of four years from the end of the relevant assessment year* | *Joint Commissioner* |
| *Section 151(1) of the old regime* | *After expiry of four years from the end of the relevant assessment year* | *Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner* |
| *Section 151(i) of the new regime* | *Three years or less than three years from the end of the relevant assessment year* | *Principal Commissioner or Principal Director or Commissioner or Director* |
| *Section 151(ii) of the new regime* | *More than three years have elapsed from the end of the relevant assessment year* | *Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General* |

20. In Ashish Agarwal case, it is held that notice issued u/s 148 of the Act be deemed to have been issued u/s 148A of the Income-tax Act as substituted by the Finance Act, 2021 u/s 148A(b), assessing officer was required to obtain prior approval from the specified authority before issuing a show cause notice. The assessing officer was required to obtain prior approval of the specified authorities according to section 151 of the new regime before passing an order u/s 148A(d) or issuing a notice u/s 148.

21. We have also perused the decision of ITAT, Mumbai in the case of Surya Ferrous Alloys (P) Ltd. regarding obtaining approval

u/s 151(2) of the Act before issuing the notice u/s 148 of the Act wherein it is held that notice issued beyond period of 3 year from end of assessment year fall within the provision of section 151(ii) of amended law whereby specified authority for grant of approval was specified as Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General and approval obtained from Principal Commissioner of Income Tax was not valid. The relevant extract of the decision is reproduced as under:

> *"8.3. In the present case, the relevant Assessment Year 2017-18 and the time limit of three years lapsed on 31.03.2021 which falls between 20.03.2020 and 31.03.2021 during which provisions of taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (TOLA) would apply. Accordingly, the amended provisions under the Act read with TOLA extended the time limit for granting of approval till 30.06.2021 by the specified authority. Thus, on the above stated facts and law, in the present case, three years had lapsed from the end of the Assessment Year when the order u/s 148A(d) and notice u/s.148 was issued on 30.07.2022. In the present case, since the notice u/s. 148 and order u/s. 148A(b) have been issued beyond the period of three years from the end of the relevant Assessment Year, case of the assessee falls within the provisions of section 151(i) of the amended law whereby the specified authority for grant of approval is specified as Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General. Contrary to this requirement, the approval obtained is by Principal Commissioner of Income Tax-17. Mumbai. Accordingly, since a proper sanction by the specified authority had not been obtained for issue of notice u/s. 148 under the applicable provisions of law, said notice is invalid and bad in law.*
>
> *8.4. Keeping in juxtaposition the undisputed and the uncontroverted facts as stated above and the judicial precedent of the Hon'ble Supreme Court in the case of Ashish Agarwal and Rajiv Bansal (supra), we hold that sanction by specified authority has not been obtained by the Id. Assessing Officer in accordance with the provisions contained in section 151 of the Act under the new regime, since notice u's.148 has been issued beyond three years from the end of the relevant Assessment Year.*

*Accordingly, the said notice issued is invalid and thus quashed. Resultantly, the impugned re-opening proceedings so initiated and the impugned re-assessment order passed thereafter are also quashed.*

*9. Since we have already quashed the impugned order u/s. 147 based on the legal aspect of the notice issued without obtaining proper approval as required u/s.151, the other legal aspects raised by the assessee in the present cross objection are rendered academic not warranting adjudication thereupon.*

*9.1. The impugned re-assessment proceedings have been quashed considering legal jurisdictional issue raised by the assessee in its cross objection, therefore the appeal of the Revenue contending on the merits of the case for which relief was granted by Id. CIT(A) has become infructuous and accordingly dismissed.*

*10. In the result, appeal of the Revenue is dismissed and cross objection of the assessee is allowed."*

22. In the case of the assessee for the A.Y. 2017-18, the time limit of three years lapsed on 31.03.2021 which fall between 2.03.2020 and 31.03.2021 during which provisions of TOLA Act, 2020 would apply. In the case of the assessee, notice u/s 148 was issued on 31.07.2022 which was beyond the period of three years from the end of the relevant assessment year therefore, case of the assessee fall within the provisions of section 151(ii) of the amended law whereby the specified authority for grant of approval is specified as Principal Chief Commissioner or Principal Director General Chief Commissioner or Director General. In the case of the assessee, the approval for issuing notice u/s 148 of the Act dated 31.07.2022 was obtained from the Principal Commissioner of Income Tax – 6 as categorically referred at para 3 of the notice issued, we find merit in the contention of the ld. Counsel, since a proper sanction of the specified authority as discussed supra in this order had not been obtained for issue of notice u/s 148 of the

Act, therefore, following the decision of the Hon'ble Supreme Court in the case of Ashish Agarwal and Rajeev Bansal and the decision of the Co-ordinate Bench of ITAT, Mumbai as discussed above in this order the notice issued u/s 148 of the Act is invalid and bad in law. Accordingly, reopening proceedings are quashed. Since we have quashed the reassessment proceedings therefore, other grounds of appeal filed on merit become academic and left open. Accordingly, the appeal of the assessee is allowed.

23. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 17.02.2025.

| | |
|---|---|
| **Sd/-** | **Sd/-** |
| **(RAHUL CHAUDHARY)** | **(AMARJIT SINGH)** |
| **JUDICIAL MEMBER** | **ACCOUNTANT MEMBER** |

Mumbai, Dated: 17.02.2025
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The DR

//True Copy//

By Order

Assistant Registrar
ITAT, Mumbai Benches, Mumbai