

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

BEFORE SHRI.NARENDER KUMAR CHOUDHRY (JUDICIAL MEMBER)  
AND  
SHRI S RIFAUR RAHMAN (ACCOUNTANT MEMBER)

I.T.A. No.2198/Mum/2023 - A.Y. 2009-10  
I.T.A. No.2199/Mum/2023 - A.Y. 2007-08

ITO 23(1)(6), Mumbai  
Room No.203, 2<sup>nd</sup> Floor,  
Earnest House, Nariman Point  
Mumbai-400 021  
**APPELLANT**

vs  
Holiday Resort Corporation  
79/81, Giriraj Building, Bhoiwada  
Bhuleshwar, Mumbai-400002  
**PAN : AACFH4445A**  
**RESPONDENT**

C.O. No.97/Mum/2023  
(Arising out of ITA No.2198/Mum/2023)  
(A.Y. 2009-10)  
&  
C.O. No.96/Mum/2023  
(Arising out of ITA No.2199/Mum/2023)  
(A.Y. 2007-08)

Holiday Resort Corporation  
79/81, Giriraj Building, Bhoiwada  
Bhuleshwar, Mumbai-400002  
**PAN : AACFH4445A**  
**CROSS OBJECTOR**

vs  
ITO 23(1)(6), Mumbai  
Room No.203, 2<sup>nd</sup> Floor,  
Earnest House, Nariman Point  
Mumbai-400 021  
**RESPONDENT**

Present for the Assessee : Shri. Piyush Chajjed  
Present for the : Shri.Shambu Yadav, Ld.  
Department Sr.DR

Date of hearing :02/01/2024  
Date of pronouncement :30/01/2024

**ORDER**

**Per N.K. Choudhry (JM):**

These Appeals and Cross Objections have been preferred by the Revenue Department and the Assessee respectively, against the two independent orders even dated 19/04/2023 impugned herein passed by the National Faceless Appeal Centre, Delhi ( in short 'NFAC') /Ld. Commissioner') under section 250 of the Income-tax Act, 1961 (in short, 'the Act') for the A.Ys.2009-10 & 2007-08, respectively.

**2.** These appeals and cross objections are almost based on the identical facts and circumstances and, therefore, the same were heard together and are being disposed of by this composite order. As the Assessee has raised the legal issue in cross objections, hence for the sake of brevity, we are inclined to decide cross objections No.96 & 97/Mum/2023 first, before proceedings to the appeals filed by the Revenue.

**3.** The Assessee has mainly raised the issue that admittedly, in the instant case, the case was reopened after four years from the end of the relevant assessment year and, therefore, notice under section 148 of the Act was supposed to be issued, subject to the satisfaction of the Additional Commissioner or Joint Commissioner or Principal Commissioner or Commissioner, on the reasons recorded by the Assessing Officer "*that it is a fit case for issue of such notice*", as mandated under section 151(1) of the Act. Even otherwise, in any other case not falling under sub section (1) of section 151, the notice should have been issued by the Assessing Officer on satisfaction of the Joint Commissioner to the effect that the reasons recorded by such

Assessing Officer that it is a fit case for issue of such notice. In the instant case, reasons were recorded on 28/03/2014 which are reproduced herein below: -

*“The assessee’s case for A.Y. 2007-08 was reopened for assessment based on the AIR information in respect of sale of immovable property. During the course of re-assessment proceedings the assessee was asked to submit the details and documents related to the above transactions.*

*From the perusal of details filed by the assessee in respect of the re-assessment proceedings it is seen that the assessee has undertaken A project in Kune Village, Lonavala. Wherein the 7.16 hectares land belonging to one of the partner was converted as Stock in trade during the F.Y. - 2005-06 i.e. A.Y. - 2006-07 @ 221/ Sq. Feet which has been brought into the firm by the partner. The amount of conversion comes to Rs.7,03,25,230/- (221 x 7,70,702) and the amount of Rs.17,04,42,000/- is shown as work in progress in the books of accounts.*

*During the A.Y. - 2007-08 the assessee have shown total sales of Rs.1,56,29,389/- as sale of plots and this amount was deducted from the work in progress. However, no amount is offered for tax by the assessee in respect of the above sale transactions. The approved plan, and the copies of sales agreement were perused and it is seen that the above larger land is sub-divided into 46 plots of land after keeping the space for roads and other proposed amenities. During the course of proceedings it is held that the revenue to be recognised in respect of the sale of plots of land in the year of sale as the assessee has not undertaken any construction activity and all the rights, title in the said plot of land has been assigned to the vendors with the legal right to use the internal roads and passages in the land as access to the plot. Therefore the amount of difference between the sale price and the conversion price is held to be chargeable to tax as business income. As no other activity is done on the plots and it is sold to the vendors, the revenue is recognised in the year of sale and the corresponding capital gains on the conversion of capital asset into stock in trade is also held to be chargeable to tax in the year of sale.*

*From the perusal of return of income filed for A.Y. - 2009-10 it is seen (but the assessee has shown sales of Rs.3,68,69,500/- however, no income is offered by the firm for the year. As held for the A.Y. 2007-08 that the business profit as well as capital gains are chargeable to tax in the year of sale and no such income is offered for tax by the assessee. In view of the above facts I have reason to believe that the income of more than Rs.1,00,000/- has escaped assessment in the case of the assessee and accordingly Notice u/s. 148 of the Act is issued after obtaining the*

*approval of the Joint Commissioner of Income Tax Range - 18(1), Mumbai."*

**3.2** The Assessee further claimed that said reasons were placed along with Form for recording of reasons for initiating the proceedings under section 148 and for obtaining the approval of the Additional Commissioner on his satisfaction on the reasons recorded that it is a fit case for issue of notice under section 148 of the Act; however, in such Form, no comments of the Additional Commissioner, Range-14(3), Mumbai appears. Except granting the administrative approval for issue of notice under section 148 of the Act, vide letter dated 28/03/2014 issued by Joint Commissioner of Income-tax - 14(3), Mumbai, no specific satisfaction has been recorded by the competent/concerned authority that it is a fit case for issue of notice under section 148 of the Act, which goes to the root of the case and dent the assessment order itself.

**4.** On the contrary, the Ld. DR emphasized that the contentions raised by the Assessee are not in sync with the law and / or the provisions of section 148/151 of the Act. As it is not the case here that no approval is granted. In fact, approval granted vide letter dated 28/03/2014 goes to show that the competent authority has gone through the reasons recorded and the material available on record and, therefore, came to the conclusion that this is a fit case for issue of notice under section 148 of the Act and consequently granted the administrative approval. Thus, directly or indirectly inference can be drawn that the Competent Authority before granting the approval made himself satisfied about the initiation of proceedings u/s 147 of the Act and issuance of notice u/s 148 of the Act.

**5.** We heard the parties and perused the material available on record. On consideration of the contentions raised by the parties question emerge **“Whether without recording specific satisfaction by the specified Authority as specified u/s 151 of the Act, for issuance of notice u/s 148 of the Act, the reopening of the case u/s 147/148 of the Act and/or notice issued u/s 148 of the ACT and/or Assessment order passed in pursuance to such notice u/s 148 of the Act is sustainable or not ”.**

**5.1** The Hon’ble Apex Court in the case of Chugamal Rajpal vs SP Chaliha (1971) 79 ITR 603 (SC) dealt with the situation wherein the Ld. Commissioner did not record himself that he was satisfied that this was a fit case for issue of notice under section 148 of the Act in Answer to question No.8, which was raised as under: -

*“Whether the Commissioner is satisfied that it is a fit case for the issue of notice under section 148, he just noted the word “Yes” and affixed his signature therein.”*

**5.2** The Hon’ble Apex Court ultimately quashed the notice under section 148 itself by holding that the important safeguards provided in sections 147 and 151 of the Act were lightly treated by the Income-tax Officer as well as by the Commissioner as both of them appear to have taken the duty imposed on them under these provisions as of little importance. They have substituted the form for the substance.

**5.3** The Hon’ble jurisdictional High Court in the case of Kartik Suresh Chandra Gandhi vs ACIT (2023) 154 taxmann.com 193 (Bom) also dealt with the notice issued under section 148 of the Act for reopening of the case and ultimately quashed the notice under section 148A(d) of

the Act, on non-following the safeguards provided in sections 148 & 151 of the Act.

**5.4** In this case admittedly, though the administrative approval was granted vide letter dated 28/03/2014 by the Joint Commissioner of Income-tax-14(3), Mumbai; however, it is a fact that in the reasons recorded dated 28/03/2014 for initiating the proceedings under section 147 of the Act or in the Form for obtaining the approval of the Additional Commissioner of Income-tax Range-14(3), Mumbai or in the administrative approval dated 28/03/2014, no specific satisfaction has been recorded and even otherwise there is nothing on record to suggest that specified Authority has elsewhere directly or indirectly recorded the satisfaction as mandated u/s 148 of the Act. Thus directly or indirectly non-recording of satisfaction as mandated for issue of notice u/s 148 of the Act, not only dents the reopening of the case u/s 147/148 of the Act and/or notice issued u/s 148 of the Act but also make the assessment order as void-ab-initio. Hence, respectfully following the judgments referred to above by the Hon'ble Apex Court and the jurisdictional High Court wherein the Hon'ble Courts quashed the notice u/s 148 of the Act itself on non-following the safeguards as mandated under sections 148 and 151 of the Act, we are inclined to quash the assessment orders itself, hence the Assessment orders are quashed. Consequently, Cross objections filed by the Assessee are allowed.

**6.** As we have already quashed the assessment orders itself, therefore, not dwelling into the merits/grounds of the appeals of the Revenue, as the same have become infructuous.

7. In the result, Cross Objections under consideration filed by the Assessee are allowed and the appeals filed by the Revenue are dismissed being infructuous.

**Order pronounced in the open court on 30/01/2024.**

**Sd/-**

**sd/-**

<b>(S.RIFAUH RAHMAN)</b>	<b>(NARENDER KUMAR CHOUDHRY)</b>
<b>ACCOUNTANT MEMBER</b>	<b>JUDICIAL MEMBER</b>

Pavanan

**प्रतिलिपिअग्रेषित** **Copy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्डफाइल/Guard file.

BY ORDER,

//True Copy//

Asstt.Registrar, **ITAT, Mumbai**