

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

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SMT RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No.2884/Mum/2023  
(Assessment Year :2017-18)**

**&**

**CO No.120/Mum/2023  
(Arising out ITA No.3408/Mum/2023)  
(Assessment Year :2017-18)**

M/s. Parinee Housing Private Limited Flat No.102 & 103 1 <sup>st</sup> Floor Smag House Plot No.157A, Sarojini Road, Extension Opp. Darshana Apartments Maharashtra-400 056	Vs.	Deputy Commissioner of Income Tax, Central Circle-2(4) Room No.802, 8 <sup>th</sup> Floor Old CGO Annexe Building M.K.Road, Marine Lines Mumbai Maharashtra-400 020
<b>PAN/GIR No.AAGCP0245D</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

**ITA No.3408/Mum/2023  
(Assessment Year :2017-18)**

Deputy Commissioner of Income Tax, Central Circle- 2(4) Room No.802, 8 <sup>th</sup> Floor Old CGO Annexe Building M.K.Road, Marine Lines Mumbai Maharashtra-400 020	Vs.	M/s. Parinee Housing Private Limited Flat No.102 & 103 1 <sup>st</sup> Floor Smag House Plot No.157A, Sarojini Road, Extension Opp. Darshana Apartments Maharashtra-400 056
<b>PAN/GIR No. AAGCP0245D</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Rajan Vora & Shri Gajendra Jain
Revenue by	Shri H.M. Bhatt
<b>Date of Hearing</b>	<b>01/05/2024</b>
<b>Date of Pronouncement</b>	<b>09/05/2024</b>

### आदेश / O R D E R

#### PER BENCH:

The aforesaid cross appeals have been filed by the assessee as well as by the Revenue and cross objection by the assessee against order dated 17/07/2023, passed by Ld. CIT(A)-48, Mumbai for the quantum of assessment passed u/s.147 for A.Y.2017-18.

2. In assessee's appeal the assessee challenged the validity of reopening of assessment u/s.147 on various grounds and also on merits whereas the Revenue has challenged the following grounds:-

*"Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made by the AO without appreciating that the assessee could not establish any commercial expediency or business connection to advance such interest free loans." ii Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made by the AO without appreciating that as per section 185 of the Company's Act, the assessee was prohibited from advancing loans to its Director."*

3. As far as the issue relating to validity of reopening u/s.147, the brief facts are that assessee company is engaged in the business of real estate development as builders and

developers and for the year under consideration, the return of income was filed on 12/10/2017 reporting income at Rs. Nil. Here in this case, ld. AO has issued a notice u/s.148 under the old provisions after 01/04/2021.

4. The provisions for reassessment to reopen the assessment under certain circumstances was amended by the Finance Act, 2021 with effect from 1<sup>st</sup> April 2021. However, the case was reopened by issuing notice dated 28<sup>th</sup> June 2021 under section 148 under the old provisions despite it was issued after 1<sup>st</sup> April 2021 based on time limit extended under the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (the Relaxation Act).

5. The assessee had filed writ petition before the High Court of Bombay challenging the validity of notice issued under section 148 under old provisions post 1<sup>st</sup> April 2021. The said notice under section 148 was quashed by the Hon'ble High Court of Bombay vide order dated 29 March 2022.

6. Subsequently, the Hon'ble Supreme Court in the case of **UOI Vs. Ashish Agarwal (Civil Appeal No. 3005 of 2022) vide order dated 4 May 2022 held that reassessment notice if issued after 1 April 2021 under unamended section 148 would be deemed to be notice under section 148A(b) [under new law] and certain time was allowed to provide information relied upon by AO to proceed under new regime.**

7. Pursuance to the aforesaid decision, the AO issued letter dated 26 May 2022 to treat notice dated 28 June 2021 issued under section 148 as notice issued under section 148A(b) along-with a letter stating an information has been received from ITO 3(1)(1) Mumbai, that the assessee had taken accommodation entry of Rs. 69.00,000 from M/s AB Agrotech India Private Limited (AB Agrotech) by transferring the cash which was in-turn deposited in the bank account of AB Agrotech during demonetization period).

8. In response to the said notice, the assessee filed detailed submission vide reply dated 7 June 2022 stating that the said loan is received by banking channel through account payee cheque / RTGS from AB Agrotech having PAN AAICA7309R and the said party had sufficient bank balance from which the loan was granted. Thus, it was submitted that identity, genuineness and creditworthiness of the party was proved, and the assessee is not required to prove source of source

9. With regard to the objections filed by the assessee, order dated 22 July 2022 passed u/s 148A(d) of the Act disposed the objections filed by the assessee, along-with notice under section 148 was issued on the same date.

10. Thereafter, the ld. AO has treated the loan of Rs.69,00,000/- extended to the assessee company by AB Agrotech holding that assessee could not prove the creditworthiness and it was not genuine and accordingly, the same was taxed u/s.68. The ld. AO has also made addition of Rs. 4,12,62,345/- on account of notional interest towards

interest free loan granted to the Director in the following manner:-

Sr. No.	Name / Party	Loan given (Rs.)	Interest @12%
1	Shri Vipul Shah	16,51,34,319	1,98,16,118
2	Shri Dhaval Shah	17,83,10,040	2,13,97,205
3	Parinee Homes Pvt Ltd	1,22,734	14,728
	<b>Total</b>	<b>34,35,67,093</b>	<b>4,12,28,051</b>

11. Before us Id. Counsel for the assessee, Shri Rajan Vohra submitted that the provisions for re-opening of assessment were amended by the Finance Act, 2021. The **first proviso** to section 148 refers to the approval by the specified authority to be obtained before a notice under section 148 of the Act is issued. As per provisions of the section 151, '**specified authority' for the purposes of section 148 and section 148A shall be, if three years or less than three years have elapsed from the end of the relevant assessment year, Principal Commissioner or Principal Director or Commissioner or Director and if more than three years have elapsed from the end of the relevant assessment year, then Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General.** In the instant case, the notice under section 148 along with order passed under section 148A(d) has been issued on 22 July 2022 after obtaining approval of Principal

Commissioner of Income-tax, Central-1. Since the present appeals relate to A.Y.2017-18 and as the impugned order u/s. 148A(d) and the notice u/s.148 was issued on 22/07/2022 which is beyond the period of three years which has lapsed on 31/03/2021. Accordingly, the approval as contemplated in Section 151(ii) of the Act have to be obtained by Pr. Chief Commissioner or Principal Director General of Chief Commissioner or Director General and here in this case the approval has been taken by Pr. CIT


12. On the other hand ld. DR submitted that since notice was issued under old provision after 01/04/2021 and at that time the authority to approve notice was Principal Commissioner only. Therefore, notice is valid.

13. We have heard both the parties and also perused the relevant facts as noted above. In this case, a notice u/s.148 was issued under old provision even though it was issued after 01/04/2021, i.e., on 28/06/2021. However, in pursuance of the judgment of Hon'ble Supreme Court in the case of Ashish Agarwal reported in 441 ITR 1 and also as per the CBDT instructions, a fresh notice u/s.148 was issued to the assessee on 22/07/2022. Since the reopening of the assessment has been done post amendment by the Finance Act 2021, therefore, in accordance with the *first proviso* to Section 148 approval of specified authority had to be obtained before the notice u/s.148 is issued. The specified authority for giving the approval before the notice was issued u/s.148 as provided u/s.151 which reads as under:-

**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 <sup>33</sup>[\*\*] Chief Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year;**

14. Here in this case approval has been given by the Pr. CIT, the scanned copy of such notice is reproduced hereunder:-

	OFFICE OF THE DEPUTY COMMISSIONER OF INCOME TAX CENTRAL CIRCLE-2(4)	
	Room No.802, 8 <sup>th</sup> Floor, Old CGOAnnexe Building, M.K. Road, Marine Lines, Mumbai - 400 020, Email id: <a href="mailto:mumbai.dcit.cen2.4@incometax.gov.in">mumbai.dcit.cen2.4@incometax.gov.in</a> Tel: 022-22092414	
No. DCCC-2(4)/Parinee Housing/148/2022-23		Date: 22.07.2022

To,  
Parinee Housing Private Limited,  
C-38 & 39, G Block Crescenzo,  
BKC, Bandra East, Mumbai 400051

PAN: AAGCP0245D	A.Y. 2017-18	Dated - 22.07.2022
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**Notice under section 148 of the Income-tax Act, 1961**


Madam/Sir,


1. I have the following information in your case or in the case of the person in respect of which you are assessable under the Income-tax Act, 1961 (hereinafter referred to as "the Act") for Assessment Year 2017-18 :-

Information which requires action in consequence of the judgement of the Hon'ble Supreme Court in the case Union of India Vs. Ashish Agarwal, Civil Appeal 3005/2022, dated 4<sup>th</sup> May, 2022 suggesting that income chargeable to tax has escaped assessment within the meaning of section 147 of the Act. Order under sub-section (d) of section 148A of the Act has been passed in such case vide DIN ITBA/COM/F/17/2022-23/1044000904(1) dated 22.07.2022 and annexed herewith for reference.

2. I, therefore, propose to assess or reassess such income or recomputed the loss or the depreciation allowance or any other allowance or deduction for the Assessment Year 2017-18 and I, hereby, require you to furnish, within 30 days from the service of this notice, a return in the prescribed form for the Assessment Year 2017-18.

3. This notice is being issued after obtaining the prior approval of the Principal Commissioner of Income-tax, Central - 1, Mumbai accorded on 14.07.2022 and received in this office on date 21.07.2022 vide Reference No. PCIT(C)-1/148/Approval/2022-23.

  
 (Kartik Saresa, I.R.S)  
 Deputy Commissioner of Income Tax,  
 Central Circle - 2(4), Mumbai



NT  
**CERTIFIED TRUE COPY**

15. This approval has been granted by Id. PCIT on 14/07/2022 prior to issuance of notice issued on 22/07/2022. Thus, here in this case, sanction of notice has not been given by the 'specified authority'. Once proper sanction by the specified authority has not been given in accordance with the provisions of the law, then such a notice has to be held as invalid.

16. This precise issue had come up before the Hon'ble Bombay High Court in case of **Siemens Financial Services (P) Ltd reported in (2023) 457 ITR 647 order dated 25/08/2023** wherein Hon'ble High Court observed and held as under:-

*"20. Under Section 151 "specified authority" for the purposes of section 148 and section 148A shall be, if three years or less than three years have elapsed from the end of the relevant assessment year, Principal Commissioner or Principal Director or Commissioner or Director. If more than three years have elapsed from the end of the relevant assessment year, then Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General.*

*21. Admittedly, in this case, the approval/sanction for order under section 148A(d) of the Act has been granted by the Principal Commissioner of Income Tax-8. The entire controversy is, therefore, (a) whether the Principal Commissioner was the specified authority, who could have granted the approval/sanction ?, (b) if not, the effect thereof?*

*23. The first proviso to section 148 of the Act refers to the approval of the specified authority being obtained before a notice under section 148 of the Act can be issued. Explanation 3 to section 148 of the Act specifies that the meaning of the term 'specified authority' as provided for in section 151 of the Act is to apply for the purpose of section 148. Section 148A(d) of the Act also requires the Assessing Officer to pass an order after considering the reply of the assessee as to whether or not*

*it is a fit case to issue a notice under section 148 of the Act and such an order under section 148A(d) of the Act has to be passed with the prior approval of the specified authority. The Explanation to section 148A of the Act also incorporates the meaning of 'specified authority' as provided for in section 151 of the Act.*

**24.** *As per section 151 of the Act, the 'specified authority' who has to grant his sanction for the purposes of section 148 and section 148A is the Principal Chief Commissioner or Principal Director General or where there is no Principal Chief Commissioner or Principal Director General, the Chief Commissioner or Director General if more than three years have elapsed from the end of the relevant assessment year. The present petition relates to the AY 2016-17, and as the impugned order and impugned notice are issued beyond the period of three years which elapsed on 31st March, 2020 the approval as contemplated in section 151(ii) of the Act would have to be obtained which has not been done by the Assessing Officer. The impugned notice mentions that the prior approval has been taken of the 'Principal Commissioner of Income-tax - 8' ('PCIT-8') which is bad in law as the approval should have been obtained in terms of section 151(ii) and not section 151(i) of the Act and the PCIT-8 cannot be the specified authority as per section 151 of the Act. Further, even in the affidavit-in-reply, the department has accepted that the approval obtained is of the 'Principal Commissioner of Income-tax - 8' and, hence, such an approval would be bad in law.*

**25.** *TOLA, enacted on 29th September 2020 and came into force on 31st March 2020. It inter alia, provided for a relaxation of certain provisions of the Income-tax Act, 1961. Where any time limit for completion or compliance of an action such as completion of any proceedings or passing of any order or issuance of any notice fell between the period 20th March 2020 to 31st December 2020, the time limit for completion of such action stood extended to 31st March 2021. Thus, TOLA only seeks to extend the period of limitation and does not affect the scope of section 151.*

**26.** *The Assessing Officer cannot rely on the provisions of TOLA and the notifications issued thereunder as section 151 has been amended by Finance Act, 2021 and the provisions of*

*the amended section would have to be complied with by the Assessing Officer, w.e.f., 1st April 2021. Hence, the Assessing Officer cannot seek to take the shelter of TOLA as a subordinate legislation cannot override any statute enacted by the Parliament. Further, the notification extending the dates from 31st March 2021 till 30th June 2021 cannot apply once the Finance Act, 2021 is in existence. The sanction of the specified authority has to be obtained in accordance with the law existing when the sanction is obtained and, therefore, the sanction is required to be obtained by applying the amended section 151(ii) of the Act and since the sanction has been obtained in terms of section 151(i) of the Act, the impugned order and impugned notice are bad in law and should be quashed and set aside.*

**32.** *We have to also note that the instructions dated 11th May 2022, on which respondents have relied upon, has no applicability to the facts of this case. These instructions expressly provides that it applies only to the issue of reassessment notice issued by the Assessing Officer during the period beginning 1st April 2020 and ending with 30th June 2021 within the time extended under TOLA and various notifications issued thereunder. Since the impugned notice in this case is dated 31st July 2022, certainly the instructions no. 1 of 2022 dated 11th May 2022 shall have no applicability at all. Even for a moment, if we accept Mr. Suresh Kumar's arguments that Apex Court's findings in Ashish Agarwal (supra) read with time extension provided by TOLA will allow extended reassessment notices to travel back to their original date when such notices were issued and then new section 149 of the Act is to be applied at that time, the extended reassessment notices are defined under the instructions to be notice issued between 1st April 2021 and ending with 30th June 2021. Therefore, the instructions would not help respondents' case at all."*

17. The Hon'ble Jurisdictional High Court has referred to series of judgments wherein it was held that TOLA cannot be applied in case of assessment proceedings for A.Y.2015-16 and subsequent years and has referred to various provisions

of the amended Act and the judgments exactly on the same point.

18. Again this proposition has been separately upheld in series of judgments of Hon'ble jurisdictional High Court in the following cases:-

- *Siemens Financial Services (P.) Ltd [2023] 457 ITR 647, dated 25 August 2023) (Bombay HC)*
- *Rhuthu Sunil Mantri vs ITO (WP No. 3850/2022) dated 17 October 2023 (Bombay HC)*
- *Mahavir Jewels vs Assistant Commissioner of Income-tax (W.P. (L) No. 18837/2023, dated 6 November 2023) (Bombay HC)*
- *Chandar Mahadev Naik v. Income Tax Officer (W.P. (L) No. 17578/2023, dated 30 October 2023) (Bombay HC)*

Further in the case of New India Assurance Ltd vs. ACIT in writ petition No.1945 of 2023, vide judgment and order dated 15/01/2024, Hon'ble jurisdictional High Court had made following observations:-

*“(i) We are unable to comprehend the contention raised that if the notice dated 30<sup>th</sup> May 2022 under section 148A(b) of the Act is valid in terms of Apex Court order in Ashish Agrawal (Supra), then the notice under Section 148 of the Act cannot be issued on 31<sup>st</sup> March 2021 and respondent cannot be expected to do impossible. It has nowhere been urged by petitioner that assessing officer ought to complete the proceedings before the show cause notice under Section 148A(b) of the Act was issued. It is the case of petitioner that the reopening notice under Section 148 ought to have been issued within 6 years from the end of the AY 2013-14. This limitation period, as extended by TOLA, expired on 31 March 2021. However, in the present case, the reopening notice has been issued in July 2022 and, therefore, beyond the statutory time limit. In any case, as stated above, the Hon'ble Supreme Court, while*

*invoking powers under Article 142, consciously and categorically granted liberty to assessees to raise all defences available to the assessee, including the defences under Section 149 of the Act. This specific and express directions cannot be set at naught. Accepting this contention of the Revenue would be a travesty of justice.*

19. Thus, following series of judgments of the Hon'ble Jurisdictional High Court, we hold that once the sanction of notice has not been given by the specified authority in accordance with the law existing when sanction was obtained and where the AO has issued the reopening of notice beyond the period of three years, then such notice is invalid and deserves to be quashed. Accordingly, the notice u/s.148 is quashed and consequently, the entire reopening and re-assessment order is also quashed.

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

Order pronounced on 9<sup>th</sup> May, 2024.

**Sd/-**  
**(RENU JAUHRI)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

Mumbai; Dated 09/05/2024  
KARUNA, sr.ps

**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**