

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

**BEFORE JUSTICE (RETD.) SHRI C.V. BHADANG, PRESIDENT  
AND  
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

**ITA No. 3477/MUM/2024**

:

**A.Y : 2016-17**

Aakruti Ketan Mehta,  
2501/2502, Ashok Tower,  
Dr.S.S. Rao Road, Parel,  
Mumbai  
PAN :BAVPM3711N

(Appellant)

Vs. National Faceless Assessment  
Centre,  
Jawaharlal Nehru Stadium,  
2<sup>nd</sup> Floor, E-Ramp,  
New Delhi

(Respondent)

**Assessee by** : Shri Dharmesh Shah &  
Ms. Mitali Parekh,

**Revenue by** : Shri Manoj Kumar Sinha, Sr.DR

**Date of Hearing** : 20/08/2024

**Date of Pronouncement** : 26/08/2024

**ORDER**

**PER B.R. BASKARAN, A.M :**

The assessee has filed this appeal challenging the order dated 10-06-2024 passed by the Ld.Commissioner of Income Tax (Appeals), NFAC, Delhi and it relates to the Assessment Year (AY.) 2016-17. In this appeal, the assessee, inter alia, is challenging the validity of reopening of assessment.

2. The facts relating to the case are that the assessee filed her return of income on 21-07-2016, declaring a total income of Rs.39.64 lakhs, which was revised later to Rs. 39.54 lakhs. Subsequently, the

AO received information from the Investigation Wing that the assessee has declared Long Term Capital Gain on sale of shares of a penny scrip, named, Toyam Industries (previously known as Ojas Assets Reconstructions Co. Ltd.,). The Investigation wing reported that the transactions carried on by the parties in the above said scrip are bogus in nature. Accordingly, the AO reopened the assessment by issuing notice u/s. 148 of the Income Tax Act, 1961 (‘the Act’) on 09-04-2021.

3. With regard to the reopening of assessment, it is noticed that the Parliament has made changes in the provisions relating thereto. The Ld A.R explained the same. He submitted that the provisions relating to reopening of assessment have been substituted by Finance Act, 2021 w.e.f. 01-04-2021. As per the new provisions, the AO, before issuing notice u/s 148 of the Act for reopening of assessment, is required to issue a notice under newly inserted section 148A of the Act in order to for conduct enquiries relating to escaped income and also for providing an opportunity to the assessee before issuing notice u/s. 148 of the Act. The new provisions came into effect from 01-04-2021. In the instant case, the AO issued notice u/s 148 of the Act on 09.04.2021, i.e., after the date of insertion of new provisions, without following the mandatory requirement prescribed in sec.148A of the Act, i.e. the AO should have issued notice u/s. 148A of the Act and followed the procedures mandated therein before issuing notice u/s 148 of the Act.

4. The Ld A.R submitted there was a reason for the AO in issuing notice u/s. 148 of the Act as per the old provisions. Due to COVID situation prevailing at that point of time, the Government of India brought a relaxation Act titled as Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act. 2020 (Shortly called as “TOLA”), as per which, the limitation period of various provisions was extended upto 30-06-2021. Hence, the Revenue was under the impression that the time limit for issuing notice u/s. 148 of the Act under the old provisions, could be issued up to 30-06-2021.

Accordingly, the AO has issued the impugned notice u/s 148 of the Act on 09-04-2021.

5. However, such kind of notices issued under old provisions after 31-03-2021 came to be struck down by various High Courts and when the matter reached Hon'ble Supreme Court, the Hon'ble Apex Court, in the case of Union of India and others vs. Ashish Agarwal [2022] 444 ITR 1 (SC), provided remedies to the Revenue by stating that - *notices issued u/s. 148 to the respective assesseees shall be deemed to have been issued u/s. 148A of the Act as substituted by the Finance Act, 2021 and be treated to be show cause notices in terms of section 148A(b)*. The relevant portion of the order passed by the Hon'ble Supreme Court in the above said case is extracted below:-

*“...Therefore, we propose to modify the judgments and orders passed by the respective High Courts as under:*

- (i) The respective impugned section 148 notices issued to the respective assesseees shall be deemed to have been issued under section 148A of the Income-tax Act as substituted by the Finance Act, 2021 and treated to be show-cause notices in terms of section 148A(b). The respective Assessing Officers shall within thirty days from today provide to the assesseees the information and material relied upon by the Revenue so that the assesseees can reply to the notices within two weeks thereafter;*
- (ii) The requirement of conducting any enquiry with the prior approval of the specified authority under section 148A(a) be dispensed with as a onetime measure vis-à-vis those notices which have been issued under section 148 of the unamended Act from April 1, 2021 till date, including those which have been quashed by the High Courts;*
- (iii) The Assessing Officers shall thereafter pass an order in terms of section 148A(d) after following the due procedure as required under section 148A(b) in respect of each of the concerned assesseees;*
- (iv) All the defences which may be available to the assessee under section 149 and/or which may be available under the Finance Act, 2021 and in law and whatever rights are available to the Assessing Officer under the Finance Act, 2021 are kept open and/or shall continue to be available and;*

- (v) *The present order shall substitute/modify respective judgments and orders passed by the respective High Courts quashing the similar notices issued under unamended section 148 of the Income-tax Act irrespective of whether they have been assailed before this court or not. ....”*

6. The Ld.AR submitted that the AO, accordingly treated the notice dated 9.4.2021 issued as per the old provisions of sec. 148, as the notice issued under new provisions of sec.148A of the Act. However, the AO issued another notice u/s 148A(b) of the Act on 20-05-2022. Under the new provisions of sec.148A(d), the AO is required to pass an order disposing the objections filed by the assessee. However, the AO is required to obtain prior approval of the “Specified authority” for passing an order u/s.148A(d) of the Act. The Specified authority, who is entitled to sanction the issue of notice/passing order u/s 148A(d) is mentioned in section 151 and it reads 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 <sup>33</sup>[\*\*\*] Chief Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year:]

*[Provided that the period of three years for the purposes of clause (i) shall be computed after taking into account the period of limitation as excluded by the third or fourth or fifth proviso or extended by the sixth proviso to sub-section (1) of section 149.]”*

6.1. The Ld.AR submitted that the order u/s. 148A(d) of the Act was passed by the AO on 30-06-2022. We noticed that the initial notice u/s 148 of the Act under the old provisions was issued on 09-04-2021 and another notice u/s 148A(b) of the Act was issued on 20-05-2022. Thus, all the notices have been issued after the expiry of three years from the end of the relevant assessment year i.e., A Y. 2016-17.

6.2. The Ld.AR submitted that, as per the provisions of section 151 of the Act, the specified authority for the purpose of issuing notices under section 148A of the Act, after expiry of three years from the end of the relevant assessment year, would be “Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General.” However, in the instant case, the AO has obtained prior approval from the Principal Commissioner of Income-tax. It is stated so by the AO in the notice issued u/s. 148A(b) of the Act and also in the order passed u/s. 148A(d) of the Act also. Accordingly, the Ld.AR submitted that the AO has not obtained approval from proper authority, in which case, the impugned notice & order are liable to be quashed. Consequently, the impugned assessment order also will not survive in the eyes of law. In support of this proposition, the Ld.AR placed reliance on the decision rendered by the Hon’ble Bombay High Court in the case of Siemens Financial Services Pvt. Ltd., vs. DCIT [2023] 457 ITR 647 (Bom).

7. The Ld. DR, on the contrary, submitted that the notice issued by the AO under the old provisions of section 148 has been regularized by the Hon’ble Supreme Court in the case of Ashish Agarwal (supra). He submitted that, under the old provisions, approval should be obtained from Principal Commissioner and hence, the AO has obtained approval from the PCIT.

8. We heard the rival contentions and perused the record. Though the AO had initially issued notice u/s 148 under old provisions, yet, subsequently, the AO has regularized the same as per the decision rendered by Hon’ble Supreme Court in the case of Ashish Agarwal (supra). Hence, the reassessment proceedings have been continued under new provisions only. Hence the AO has issued notice u/s 148A(b) and also passed order u/s. 148A(d) of the Act. The provisions of section 148A(d) of the Act would require the AO to pass order on the question, viz., whether or not it is a fit case to issue a notice u/s. 148 of the Act. In terms of that section, the order has to be passed with the prior

approval of the “specified authority”. We also noticed that the specified authority is defined u/s. 151 of the Act. If the notice was issued after expiry of three years from the end of the relevant assessment year, the approval has to be obtained by the AO from “Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General.”

9. In the instant case, the assessment year involved is AY 2016-17 and the order u/s. 148A(d) of the Act has been passed on 30-06-2022, i.e., after expiry of three years after the end of the assessment year 2016-17. Hence, in terms of sec. 151 read with 148A(d) of the Act, the approval should have been obtained by the AO from Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General. On the contrary, in the instant case, the AO has obtained approval from Principal Commissioner, which is contrary to the requirement of sec. 151 of the Act.

10. The question on the validity of notices issued/order passed without obtaining approval from appropriate authority has been examined by the Hon’ble Bombay High Court in the case of Siemens Financial Services Pvt. Ltd., (supra), wherein it was 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?*

*In our view, the approval is not valid. Hence, the impugned order passed under section 148A(d) read with notice issued under section 148 of the Act dated July 31, 2022 is not valid and has to be quashed and set aside.*

*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.*

*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 assessment year 2016-17, and as the impugned order and impugned notice are issued beyond the period of three years which elapsed on March 31, 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 Principal Commissioner of Income-tax-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.*

*The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, enacted on September 29, 2020 and came into force on March 31, 2020 ([2020] 428 ITR (St.) 29). 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 March 20, 2020 to December 31, 2020, the time limit for completion of such action stood extended to March 31, 2021. Thus, the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act 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 the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act and the notifications issued thereunder as section 151 has been amended by the Finance Act, 2021 and the provisions of the amended section would have to be complied with by the Assessing Officer, with effect from April 1, 2021. Hence, the Assessing Officer cannot seek to take the shelter of the Taxation and Other Laws*

*(Relaxation and Amendment of Certain Provisions) Act as a subordinate legislation cannot override any statute enacted by Parliament. Further, the notification extending the dates from March 31, 2021 till June 30, 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.”*

10.1. In the case of Siemens Financial Services Pvt. Ltd., (supra), the concerned AO had issued notice/passed order u/s 148A(d) after expiry of three years from the end of the relevant assessment year. The AO had obtained approval from Principal CIT. The Hon’ble jurisdictional Bombay High Court has held that the notice and also the order are bad in law. Since the facts of the present case are identical to the one decided by the Hon’ble Bombay High Court, respectfully following the same, we hold that the order passed u/s 148A(d) and also the notice issued u/s. 148 of the Act in the present case are bad in law and is liable to be quashed. Consequently, the impugned assessment order was bad in law and accordingly, the impugned orders passed by both the lower authorities are liable to be quashed. We order accordingly.

11. Since we have decided the legal issue in favour of the assessee, the issues raised on merits need not be addressed.

12. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 26<sup>th</sup> August, 2024

Sd/-  
(JUSTICE (RETD.) C.V. BHADANG)  
PRESIDENT

Sd/-  
(B.R. BASKARAN)  
ACCOUNTANT MEMBER

Mumbai, Date : 26-08-2024

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "A" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar  
I.T.A.T, Mumbai