

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT &
MS PADMAVATHY S, AM**

I.T.A. No.5055/Mum/2024
(Assessment Year: 2015-16)

I.T.A. No.5050/Mum/2024
(Assessment Year: 2016-17)

ACIT-19(1) Room No. 506, 5 th Floor, Piramal Chambers, Lalbaug, Mumbai-400012.	Vs.	Manish Financial 11-A, 5 th Floor, Rockside Apartment, A-Wing, Walkeshwar Road, Mumbai-400006 PAN : AAWFM3351J
Appellant)	:	Respondent)

C.O. No.231/Mum/2024 in ITA No. 5055/Mum/2024
(Assessment Year: 2015-16)

C.O. No. 230/Mum/2024 in ITA No.5050/Mum/2024
(Assessment Year: 2016-17)

Manish Financial G-1, Meher Houswe, Kawasji Patel Street, Fort, Mumbai-400001 PAN : AAWFM3351J	Vs.	ACIT-19(1) Room No. 506, 5 th Floor, Piramal Chambers, Lalbaug, Mumbai-400012.
Appellant)	:	Respondent)

Appellant /Assessee by : Shri Suchek Anchaliya, Tushar
Nagori, AR

Revenue / Respondent by : Smt. Sanyogita Nagpal, CIT-DR /
Shri R.R. Makhwana, Sr. DR

Date of Hearing : 25.11.2024
Date of Pronouncement : 02.12.2024

ORDER

Per Padmavathy S, AM:

These appeals by the revenue and the Cross Objections of the assessee are against the orders of the Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre (NFAC), Delhi, (in short CIT(A)) both dated 29.07.2024 for Assessment Year (AY) 2015-16 and 2016-17. The issues contended are common for both the appeals and hence these appeals were heard together and disposed of through this common order. The revenue is contending the appeal on merits by raising various grounds and the assessee has raised grounds in the Cross Objections with regard to the legality of the notice issued under section 148 of the Act.

AY 2015-16

2. Brief facts pertaining to AY 2015-16 is that the assessee filed the return of income for AY 2015-16 on 19.09.2015 declaring a total loss of Rs. 1,95,79,100/-. The assessment under section 143(3) of the Income Tax Act (the Act) was completed on 27.12.2017. The Assessing Officer (AO) reopened the assessment by issuing notice under section 148 of the Act dated 29.06.2021 for the reason that the assessee has derived fictitious loss in the trading of equity derivatives and the assessee is a beneficiary of bogus capital gains. The said notice become deemed to be a notice issued under section 148A(b) of the Act, as per the directions of the Hon'ble Supreme Court in the case of Union of India vs Ashish Agrawal (Civil

appeal No.3005/2022). The AO subsequently passed the order under section 148A(d) on 29.07.2022 after rejecting the objections raised by the assessee with regard to the alleged fictitious transactions. The AO also issued notice under section 148 of the Act on 29.07.2022. The assessment was completed under section 147 of the Act in which the AO made an addition of Rs. 13,69,49,047/- considering the loss claimed by the assessee as non-genuine. On further appeal the CIT(A) considered the issue on merits and by placing reliance on various judicial pronouncements deleted the addition made by the AO.

3. For the purpose of adjudication we will first consider legal contention raised in the Cross Objections with regard to the notice under section 148 being time barred as per the provisions of section 149 as confirmed by the Hon'ble Supreme Court in the case of Union of India Vs. Rajeev Bansal (Civil Appeal No. 8629 of 2024). The relevant provisions of section 149 read as under –

Time limit for notice.

149. (1) *No notice under section 148 shall be issued for the relevant assessment year,—*

- (a) *if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);*
- (b) *if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year:*

Provided *that no notice under section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if such notice could not have been issued at that time on account of being 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:*

4. The contention of the ld. AR is that the first proviso to section 149 clearly stipulates that notices under section 148 of the Act cannot be issued, if the time limit prescribed under the un-amended provisions of section 149 as applicable prior to 01st April 2021 had already expired. The ld. AR submitted that in assessee's case for AY 2015-16 the time limit for issue of notice under the un-amended provisions of section 149 expired on 31.03.2022 i.e. six years from the end of the relevant assessment year where the escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year. The ld. AR further submitted that the relaxation under the TOLA is not applicable in assessee's case for AY 2015-16 for the reason that TOLA provisions are applicable only to cases where the time limit for issuing notices expired on or before 20.03.2020 or 31.03.2021 as has been held by the Hon'ble Supreme in the case of Rajeev Bansal (supra). The ld. AR also submitted that the similar issue has been considered by the Co-ordinate Bench in the case of ITO Vs. Pushpak Realities Pvt. Ltd. (ITA No. 4812, 4814, 4816/Mum/2024 dated 07.11.2024) where it has been held that the notice issued under section 148 of the Act dated 28.07.2022 issued for AY 2015-16 is barred by limitation. The ld. AR submitted that in assessee's case the notice under section 148 is dated 29.07.2022 and therefore, the issue is covered by the decision of the Co-ordinate Bench.

5. The ld. DR on the other hand submitted that the time limit of 4 years from the end of the relevant AY for AY 2015-16 fell on 31.03.2020 and therefore it squarely falls within the relaxation given by TOLA extending the time till 30.06.2021. The ld. DR further submitted that the original notice under section 148 was issued by the AO on 29.06.2021 and therefore it is not barred by limitation as contended by the assessee.

6. We heard the parties and perused the material on record. In assessee's case, the AO issued the original notice under section 148 dated 29.06.2021 for AY 2015-16 and consequent to the directions given by the Hon'ble Supreme Court in the case of Ashish Agrawal (supra), the said notice was deemed as notice issued under section 148A(b). The AO after passing the order under section 148A(d) issued the notice under section 148 dated 29.07.2022. The contention of the assessee is that the said notice is barred by limitation as per the first proviso to the un-amended provisions of section 149(1) as has been confirmed by the decision of the Hon'ble Supreme Court in the case of Rajeev Bansal (Supra). The relevant observations of the Hon'ble Supreme Court reads as under –

19. Mr N Venkataraman, learned Additional Solicitor General of India, made the following submissions on behalf of the Revenue:

*(a) to (e)*****

(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;

46. The ingredients of the proviso could be broken down for analysis as follows:

(i) no notice under section 148 of the new regime can be issued at any time for an assessment year beginning on or before 1 April 2021;

(ii) if it is barred at the time when the notice is sought to be issued because of the "time limits specified under the provisions of" 149(1)(b) of the old regime.

Thus, a notice could be issued under section 148 of the new regime for assessment year 2021-2022 and before only if the time limit for issuance of such notice continued to exist under section 149(1)(b) of the old regime.

49. The first proviso to Section 149(1)(b) requires the determination of whether the time limit prescribed under section 149(1)(b) of the old regime continues to exist for the assessment year 2021-2022 and before. **Resultantly, a notice under Section 148 of the new regime cannot be issued if the period of six years from the end of the relevant assessment year has expired at the time of issuance of the notice.** This also ensures that the new time limit of ten years prescribed under section 149(1)(b) of the new regime applies prospectively. For example, for the assessment year 2012-2013, the ten year period would have expired on 31 March 2023, while the six year period expired on 31 March 2019. Without the proviso to Section 149(1)(b) of the new regime, the Revenue could have had the power to reopen assessments for the year 2012-2013 if the escaped assessment amounted to Rupees fifty lakhs or more. The proviso limits the retrospective operation of Section 149(1)(b) to protect the interests of the assesses.

7. This issue of notice under section 148 issued for 2015-16 being time barred is considered by the coordinate bench in the case of Pushpak Realities Pvt. Ltd.(supra) and it is held that

****** 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.”*

8. A combined reading of the above observations of the Hon'ble Supreme Court and the findings of coordinate bench makes it clear that the test for checking the validity of notices issued under section 148 under new regime for AYs 2021-22 or prior years is whether the period of six years has expired at the time of issue of such notice and in that case the notice under section 148 becomes invalid. These observations also makes it clear that the time limit of ten years as per the amended

provisions of section 149(1)(b) can be applied only prospectively. In assessee's case when we apply this test for AY 2015-16, the period of six years has expired on 31.03.2022 and therefore the notice dated 29.07.2022 under section 148 of the Act for AY 2015-16 is invalid since it is barred by limitation. Accordingly the assessment completed under section 147 of the Act is liable to be quashed.

9. Since we have already quashed the order under section 147 based on the legal contention of notice being time barred the other legal contentions raised by the assessee in the CO have become academic not warranting any adjudication. Accordingly the CO is partly allowed.

10. We have quashed the order of re-assessment for AY 2015-16 considering the legal contentions raised by the assessee in the C.O. therefore the appeals of the revenue for AY 2015-16 contending the relief granted by the CIT(A) on the merits of the issues have become infructuous. Accordingly, the appeals of the revenue are dismissed.

AY 2016-17

11. The assessee for the year under consideration filed the return of income declaring a loss of Rs.3,37,77,313/-. The assessment was reopened by issue of notice under section 148 of the Act on 23.04.2021 and notice was deemed to be a notice issued under section 148A(b) as per the directions of the Hon'ble Supreme Court in the case Ashish Agrawal (supra). The AO issued a notice under section 148 dated 30.07.2022 after passing order under section 148A(d) of the Act. In the C.O. of AY 2016-17 one of the legal contentions raised by the assessee is that the AO has not obtained approval of the appropriate authority for the

purpose of issuing under section 148 of the Act. The relevant ground in the C.O. reads as under:

“On the facts and in the circumstances of the case and in law, the Ld. CIT(A) (NFAC) erred in not holding the notice u/s 148 of the Act as invalid and bad in law without appreciating the fact that when the notice issued u/s 148 of the Act was beyond period of three years, approval was required to be taken as per provisions of amended section 151 of the Act from Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General of Income Tax and not from Principal Commissioner of Income Tax and as laid down by the Hon'ble Supreme Court in case of Union of India vs. Rajeev Bansal (Civil Appeal No 8629 of 2024).”

12. The ld. AR submitted that the Hon'ble Supreme Court in the case of Rajeev Bansal (supra) has considered the issue of getting approval from appropriate authority under section 151 before issue of notice under section 148 of the Act to cases where the revenue has invoked the provisions of section 148A as per the directions of the Hon'ble Supreme Court in the case of Ashish Agrawal (supra). In this regard the ld. AR drew our attention to the relevant observations of the Hon'ble Hon'ble Supreme Court as extracted below:

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

Regime	Time limits	Specified authority
<i>Section 151(2) of the old regime</i>	<i>Before expiry of four years from the end of the relevant assessment year</i>	<i>Joint Commissioner</i>
<i>Section 151(1) of the old regime</i>	<i>After expiry of four years from the end of the</i>	<i>Principal Commissioner or Chief Commissioner or Chief</i>

	<i>relevant assessment year</i>	<i>Commissioner or Principal Commissioner or Commissioner</i>
<i>Section 151(i) of the new regime</i>	<i>Three years or less than three years from the end of the relevant assessment year</i>	<i>Principal Commissioner or Principal Director or Commissioner or Director</i>
<i>Section 151(ii) of the new regime</i>	<i>More than three years have elapsed from the end of the relevant assessment year</i>	<i>Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General</i>

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

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

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

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

(i) If income escaping assessment is less than Rupees fifty lakhs: (a) a reassessment notice could be issued within three years after obtaining

the prior approval of the Principal Commissioner, or Principal Director or Commissioner or Director; and (b) no notice could be issued after the expiry of three years; and

(ii) If income escaping assessment is more than Rupees fifty lakhs: (a) a reassessment notice could be issued within three years after obtaining the prior approval of the Principal Commissioner, or Principal Director or Commissioner or Director; and (b) after three years after obtaining the prior approval of the Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General.

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

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

78. For example, the three year time limit for assessment year 2017-2018 falls for completion on 31 March 2021. It falls during the time period of 20 March 2020 and 31 March 2021, contemplated under Section 3(1) of TOLA.

Resultantly, the authority specified under Section 151(i) of the new regime can grant sanction till 30 June 2021.

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

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

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

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

d. Section 148-to issue a reassessment notice.

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

81. This Court in Ashish Agarwal (supra) directed the assessing officers to "pass orders in terms of Section 148-A(d) in respect of each of the assesses concerned." Further, it directed the assessing officers to issue a notice under Section 148 of the new regime "after following the procedure as required under Section 148-A." Although this Court waived off the requirement of obtaining prior approval under Section 148A(a) and Section 148A(b), it did

not waive the requirement for Section 148A(d) and Section 148. Therefore, the assessing officer was required to obtain prior approval of the specified authority according to Section 151 of the new regime before passing an order under Section 148A(d) or issuing a notice under Section 148. These notices ought to have been issued following the time limits specified under Section 151 of the new regime read with TOLA, where applicable.

13. The ld. DR on the other hand submitted that the original notice issued by the AO under the old regime was issued correctly with approvals from the appropriate authority under the erstwhile section 151 of the Act and therefore the proceedings cannot be invalidated on the ground that the approval is not obtained from appropriate authorities.

14. We heard the parties and perused the material on record. In assessee's case for AY 2016-17 pursuant to the directions of the Hon'ble Supreme Court in the case of Ashish Agrawal, the AO passed an order under section 148(d) of the Act and issued a notice under section 148 on 30.07.2022. From the above observations of the Hon'ble Supreme Court it is clear that though the prior approval under section 148A(b) and 148(d) were waived in terms of the decision of Ashish Agarwal (supra), for issue of notice under section 148A(a) and under section 148 on or after 1 April 2021, the prior approval should be obtained from the appropriate authorities specified under Section 151 of the new regime. The provisions of section 151 of the Act under the new regime read as under:

Sanction for issue of notice.

151. *Specified authority for the purposes of section 148 and section 148A shall be,—*

- (i) *Principal Commissioner or Principal Director or Commissioner or Director, if three years or less than three years have elapsed from the end of the relevant assessment year;*

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

15. In assessee's case from the perusal of para 3 of the notice issued under section 148 for AY 2016-17 we notice that the same is issued with the prior approval of Pr.CIT-19 Mumbai accorded on 29.07.2022 vide reference No.Pr.Cit-19/148/2022-23 and this fact is not contravened by the Id DR. For AY 2016-17, the period of three years have elapsed as of 31.03.2020 and the notice is issued beyond three years on 30.07.2022. Therefore as per the decision of the Hon'ble Supreme Court, the approval should have been obtained under the amended provisions of section 151(ii) of the Act i.e. the approval should have been obtained from the Principal Chief Commissioner whereas the approval has been obtained from Pr.CIT as stated in the notice under section 148 itself. Therefore we see merit in the contention of the assessee that the notice under section 148 for AY 2016-17 is issued without obtaining the prior approval from the appropriate authority. Accordingly we hold that the notice under section 148 is invalid and the consequent assessment under section 147 is liable to be quashed.

16. Since we have already quashed the order under section 147 based on the legal contention of notice being issued without obtaining proper approval, the other legal contentions have become academic not warranting any adjudication.

17. We have quashed the re-assessment proceedings for AY 2016-17 considering the legal contentions raised by the assessee in the C.O. therefore the appeals of the revenue for AY 2016-17 contending the relief

granted by the CIT(A) on merits have become infructuous. Accordingly, the appeals of the revenue are dismissed.

18. In the result, the appeals of the revenue for AY 2015-16 and AY 2016-17 are dismissed and C.O. of the assessee for these years are partly allowed.

Order pronounced in the open court on 02-12-2024.

Sd/-
(SAKTIJIT DEY)
Vice President

**SK, Sr. PS*

Sd/-
(PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai