

**IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH MUMBAI**

**BEFORE MS KAVITHA RAJAGOPAL, JUDICIAL MEMBER  
AND  
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 3091/MUM/2024  
Assessment Year: 2017-18**

Satish Harnamdas Sethi, 1004, Glain Classic Click Avenue, Hiranandani, Powai, Mumbai - 400076  (PAN : AAFPS0739M)	Vs.	National Faceless Assessment Centre, Delhi
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Assessee : Shri Jitendra Singh, Advocate  
Revenue : Shri Pushkaraj Bhangapatil, Sr.AR

Date of Hearing : 13.12.2024  
Date of Pronouncement : 24.12.2024

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide order no. ITBA/NFAC/S/250/2024-25/1064106949(1), dated 15.04.2024 passed against the assessment order by the National Faceless Assessment Centre, Delhi, u/s. 147 r.w.s. 144B of the Income-tax Act (hereinafter referred to as the "Act"), dated 11.05.2023 for Assessment Year 2017-18.

2. Grounds taken by the assessee are reproduced as under:

“1. The National Faceless Appeal Centre (NFAC), Delhi erred in passing the order dated 15th April 2024 upholding the action of the National Faceless Assessment Centre, Delhi [hereinafter referred to as 'Ld. AO'] in passing the assessment order dated 11th May 2023 under section 147 r.w.s 144B read with section of the Income Tax Act, 1961 [hereinafter referred to as "the Act"] determining total income of the Appellant at Rs.1,77,22,061/- without appreciating the facts and circumstances of the case. The Appellant strongly objects to the impugned order passed by NFAC as the same is illegal, arbitrary and perverse on the following amongst other grounds which are urged without prejudice to one another: -

**2. Notice issued under section 148 of the Act by the jurisdictional Assessing Officer is without jurisdiction, illegal and bad in law**

- i. The jurisdictional Assessing Officer fell in error of law in issuing the notice dated 31st July 2022 under section 148 of the Act by obtaining approval of inappropriate authority. The jurisdictional Assessing Officer failed to appreciate the notice was issued beyond the period of 3 years from the end of the impugned assessment year. Hence, the approval taken from Pr. CIT -17, Mumbai is against the provisions of section 151 of the Act. Therefore, the notice issued under section 148 as well as the reassessment order passed under section 147 r.w.s. 144B in pursuance of the said notice are bad in law and the same may be quashed.
- ii. The jurisdictional Assessing Officer further fell in error of law in issuing the notice under section 148 of the Act without mentioning mandatory DIN No. as mandated by the CBDT Circular No. Circular No.19/2019 dated 14th August 2019. The Appellant therefore prays that the notice issued under section 148 as well as the reassessment order passed under section 147 r.w.s. 144B in pursuance of the above notice are against the provisions of law and the same may be quashed.
- iii. The jurisdictional Assessing Officer further fell in error of law in issuing the notice under section 148 of the Act in contravention of provisions of section 151A of the Act. Section 151A of the Act mandates that the notice under section 148 can only be issued by the faceless Assessing Officer and not by the jurisdictional Assessing Officer. The Appellant, therefore, prays that the jurisdictional Assessing Officer has no jurisdiction to issue the notice under section 148 of the Act. The Appellant, humbly, prays that the notice issued under section 148 as well as the reassessment order passed under section 147 r.w.s. 144B of Act in pursuance to the said notice are against the well settled provisions of law and the same may be quashed and set aside.

3. Addition under head income from other invoking the provisions of section 56(2)(vii)(b) of the Act unjustified - 1,41,89,511/-.

- i. The Ld. CIT(A) erred in upholding the action of the Ld. AO in making addition of Rs.1,41,89,511/- under section 56(2)(vii)(b) of the Act being difference between the actual purchase consideration and stamp authority valuation without appreciating the facts and circumstances of the case. The Appellant, therefore, prays that the addition of Rs.1,41,89,511/- is unjustified and the same may be deleted.

- ii. *The Ld. CIT(A) failed to appreciate that the residential flat in question was purchased by the appellant in the year 2015 after payment of earnest money as per the allotment letter issued by the builder. Hence, the appellant submits that the addition of Rs.1,41,89,511/- by considering the value adopted by the stamp duty authority in the year 2017 at the time of registration of flat is unjustified and the same may be deleted.*
  - iii. *The Ld. CIT(A) further failed to appreciate that during the course of assessment proceedings, the appellant had furnished DVO's report for the adjacent flat wherein the value was determined at par with the value of the Appellant's flat. Hence, the Ld. AO is not justified in rejecting the DVO's valuation of the adjacent flat without referring the matter to the DVO. The Appellant, therefore, prays that the addition of Rs.1,41,89,511/- under section 56(2)(vii)(b) of the Act is unjustified and the same may be deleted.*
4. *The Appellant denies any liability to pay interest under section 234B and 234C of the Act. Hence, the same are not leviable.*

3. Ld. Counsel for the assessee has asserted for his submissions primarily on the legal issued raised in the above stated grounds.

4. Brief facts of the case are that assessee filed his return of income on 07.12.2017 reporting total income at Rs.35,32,550/-. According to the information available with the ld. Assessing Officer, assessee had purchased immovable property for Rs.1,84,80,000/- whose value as per Stamp Duty Authority is Rs.3,26,29,511/-. Owing to variation in the purchase consideration vis-à-vis stamp duty value of the property, case of the assessee was re-opened by issuing a notice u/s.148 of the Act, dated 15.06.2021. In the reason to believe recorded prior to issue of notice u/s.148, it is noted that because of difference in the purchase consideration and stamp duty value, there is a difference of Rs.1,41,89,511/- which has not been offered to income-tax in violation of provision of section 56(2)(vii)(b) of the Act. In the copy of reasons to believe supplied by the ld. Assessing Officer to the assessee, in para 7 of the said reasons, it is noted that since this case is within four years from the end of the relevant assessment year under consideration, necessary sanction for issuing notice u/s.148

has been obtained from Joint Commissioner of Income Tax-26(1), Mumbai in accordance with provisions of section 151 of the Act (old regime). In the same para, it is also noted that necessary administrative approval of Chief Commissioner of Income Tax-5, Mumbai as per Central Board of Direct Taxes (CBDT) instruction File No.225/40/2021/ITA-II, dated 04.03.2021 and 12.03.2021 was obtained vide approval letter, dated 22.04.2021.

4.1. Notice issued u/s.148. dated 15/06.2021, notes in the last line that *“It has been issued after obtaining the necessary satisfaction from Range 26(1), Mumbai”*, bearing digital signature of Income Tax Officer, Ward – 26(2)(1), Mumbai, whereby the concerned incumbent Income Tax Officer is identifiable. Subsequent to this issue of notice, several writ petitions were filed by various assesseees before the Hon'ble High Courts challenging the validity of such notices for which the matter travelled before the Hon'ble Supreme Court, whereby the Hon'ble Apex Court directed in para 10 of its order, dated 05.05.2022 in the case of Union of India vs. Ashish Agrawal (Civil Appeal No. 3005 of 2020) that re-assessment notice if issued after 01.04.2021 under unamended section 148 would be deemed to be notice u/s.148A(b) under the new law and certain time was allowed to provide information relied upon by the ld. Assessing Officer to proceed under the new regime. Pursuant to the said decision, ld. Assessing Officer issued a letter dated 18.05.2022 to treat the initial notice dated 15.06.2021 as notice issued u/s. 148A(b) giving the information for the purpose of initiating the re-opening proceedings.

4.2. Assessee furnished his reply dated 16.06.2022 by raising objections on the issue of notice u/s. 148A(b). Assessee also claimed that he had purchased the immovable property for which advance was

given in March, 2015 and placed copy of agreement along with written submission on record. Claim of the assessee was not accepted and ld. Assessing Officer concluded that it is a fit case for issuing notice u/s.148. For this purpose, in para 8 of the order passed u/s.148A(d), dated 31.07.2022, he noted that necessary approval for passing this order and issuance of notice u/s.148 was taken from PCIT-17, Mumbai. Consequent to this order passed by ld. Assessing Officer, notice u/s.148, dated 31.07.2022 was issued with ITO-26(2)(1), Mumbai as the undersigning authority. The said notice is manually signed by the ld. Assessing Officer who is identifiable.

5. On the above stated facts, ld. Counsel for the assessee has emphasised on that aspect of the legal issue which is not in compliance with the provisions of law that is approval obtained by the Assessing Officer for the purpose of issuing notice is not in accordance with the provisions of section 151 under the new regime as contained in ground No.2(i). Other aspects of the legal issues are that the notice has been issued by the Jurisdictional Assessing Officer (JAO), who does not have authority to issue such notices, since it lies with the Faceless Assessing Officer (FAO) as enunciated in the faceless regime and that the notice u/s.148 is issued without mentioning mandatory DIN as mandated by CBDT circular No.19/2019, dated 14.08.2019.

5.1. According to the ld. Counsel, in the provisions for re-opening of assessment with amendment by Finance Act, 2021, the first proviso to section 148 refers to approval by specified authority which is to be obtained before issuing notice u/s. 148. Section 151 describes specified authority for the purpose of section 148 and 148A, based upon the time limits within which the reopening proceedings are to be initiated i.e.,

- i. By Principal Commissioner of Income Tax or Principal Director or Commissioner or Director, if three years or less than three years have lapsed from the end of the Assessment Year.
- ii. By Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General, if more than three years have been lapsed from the end of the relevant Assessment Year.

6. Before us, ld. Sr. DR furnished a written submission dated 17.12.2024, to put on record the arguments made in the course of hearing. In the said written submission, ld. Sr. DR has covered the subject matter on the legal issues raised by the assessee by giving an overview of the legal framework : pre and post amendment of the Act and TOLA's interplay therewith. He has also analysed the decision of Hon'ble Supreme Court both in the case of Ashish Agrawal and Rajeev Bansal (supra) for the purpose of justifying the approval requirements which in the present case has been obtained from PCIT. He has referred to provisions of Section 149(1)(a) to emphasise that PCIT approval suffices in the present case. According to him, crux of the decisions of the Hon'ble Apex Court lies in giving temporal flexibility and not hierarchical escalation as contended by ld. Sr. DR. According to him, while the new regime applies procedurally, TOLA's extended time line from the old regime survives, making the notice validly issued within three years and thus subject to approval requirements of Section 151(1)(i), leaving no scope for an artificially heightened standard of CCIT/PCCIT approval.

7. Admitted position of fact in this case is that income chargeable to tax which escaped assessment is more than Rs.50,00,000/-, since ld. Assessing Officer has alleged that difference between actual

purchase consideration and stamp authority valuation of Rs.1,41,89,511/- has not been offered by the assessee for taxation. Also, it is undisputed that notice u/s.148 has been issued after the expiry of three years from the end of the relevant Assessment Year. Three years from the end of the Assessment Year 2017-18 lapsed on 31.03.2021. As per section 149(1)(b) of the Act (new regime), re-assessment proceedings could have been initiated after the expiry of three years from the end of the relevant Assessment Year only if the income chargeable to tax which escaped assessment is more than Rs.50,00,000/-. These admitted facts are relevant on the legal aspect relating to obtaining prior approval from the specified authority which are undisputed and nothing has been brought on record by the Revenue to controvert the same.

8. We find that in a recent decision by the Hon'ble Supreme Court in the case of Union of India and other Vs. Rajeev Bansal [2024] 167 taxmann.com 70 (SC), dated 03.10.2024, Hon'ble Court after the fall out of its own decision in the case of Ashish Agarwal (supra) had dealt with the issue in respect of sanction of the specified authority and concluded that TOLA will extend the time limit for the grant of sanction by the authority specified u/s.151. According to the Hon'ble Court, the test to determine whether TOLA will apply to section 151 of the new regime is that if the time limit of three years from the end of the Assessment Year falls between 20.03.2020 and 31.03.2021 then, the specified authority u/s.151(i) has extended time till 30.06.2021 to grant the approval. According to the Hon'ble Court, Assessing Officers were required to issue the re-assessment notice u/s.148 of the new regime within the time limit surviving under the Act read with TOLA. All notices issued beyond the surviving period are time barred and liable to be set aside. Hon'ble Court had elaborately dealt with this

issue in Part E of its decision in para 73 to 78 which are 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. 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 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 Commissioner or 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.*

*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 years 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.....*

*81. This quote in Ashish Agrawal (supra) directed the Assessing Officers to “pass orders in terms of Section 148-A(d) in respect of each of the assessee concerned.” Further, it directed the Assessing Officers to issue a notice u/s.148 of the new regime “after following the procedure as required u/s.148-A.” Although this quote waived off the requirement of obtaining prior approval u/s.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 u/s. 148A(d) or issuing a notice u/s.148. These notices ought to have been issued following the time limits specified u/s.151 of the new regime r.w. TOLA, where applicable....*

114.

*.....d. TOLA will extend the time limit for the grant of sanction by the authority specified u/s.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 u/s.151(i) has extended time till 30 June 2021 to grant approval; ...”*

8.1. From the above, we note that in para 73, in the table last two rows relate to provisions of Section 151(i)(ii) of the new regime prescribing the time limit as well as the specified authority. In para 75, it is very categorically mentioned by the Hon'ble Court that after 01.04.2021, in terms of Ashish Agrawal (supra) the prior approval must be obtained from the appropriate authorities specified u/s.151 of the new regime. This abundantly brings clarity on the aspect of obtaining approval for issue of notice u/s.148 which are fall out of the decision in Ashish Agrawal (supra). In para 77, objective of section 3(1) of TOLA is mentioned which is to relax the time limit for compliance with actions that fall for completion from 20.03.2020 to 31.03.2021. Thus, the objective is specific for providing temporal flexibility. In para 78, the same has been explained by an example taking Assessment Year 2017-18 which also in specific terms mentions that the authority specified u/s.151(i) of the new regime can grant sanction till 30.06.2021. Thus, while concluding in para 81 on the issue obtaining approval, Hon'ble Court has specifically stated that the Assessing Officer is required to obtain prior approval of the specified authority according to section 151 of the new regime before passing an order u/s.148A(d) or issuing a notice u/s.148. According to the Hon'ble Court, though it had waived off the requirement obtaining prior approval u/s.148A(a) and Section 148Ab, it did not waive the requirement for section 148A(d) and Section 148.

8.2. Taking into consideration the submissions made by the ld. Sr. DR and keeping the same in juxtaposition with the above observations and findings of the Hon'ble Court, we note that the issue we are presently addressing raised before us is not on the aspect of "when" for the procedural compliance for issuance of notice u/s.148 but on the aspect of "by whom" it ought to have been issued. Ld. Sr. DR has contended that there is hierarchical escalation vis-à-vis obtaining approval for issuing notice u/s.148. In this respect, Hon'ble Court has very categorically held in para 75 that the prior approval must be obtained from the appropriate authorities specified u/s.151 of the new regime for the notices issued in terms of Ashish Agrawal (supra) after 01.04.2021. Reference by ld. Sr. DR to Section 149(1)(a) deals with time limit for issuing notice u/s.148. Contention of the ld. Sr. DR that there is no hierarchical escalation for obtaining prior approval for issuing notice u/s.148 is not in coherence with the guidelines mandated by the Hon'ble Apex Court as enunciated above. Repeatedly, Hon'ble Court has stated including by way of illustration that TOLA extends time line from the old regime which survives making the notice validly issued subject to the approval requirements of Section 151 under the new regime. Accordingly, the prior approval requirement is mandated under the section 151 of new regime.

8.3. In the present case, the relevant Assessment Year is 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. Thus, the amended provisions under the Income-Tax 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 31.07.2022. 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(ii) 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 in this respect 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, such 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 ld. 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 appeal are rendered academic not warranting adjudication thereupon.

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

Order is pronounced in the open court on 24 December, 2024

Sd/-  
(Kavitha Rajagopal)  
Judicial Member

Sd/-  
(Girish Agrawal)  
Accountant Member

***Dated: 24 December, 2024***

*MP, Sr.P.S.*

**Copy to :**

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

BY ORDER,

(Dy./Asstt.Registrar)  
ITAT, Mumbai