

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH MUMBAI

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

**ITA No. 1406/MUM/2024
Assessment Year: 2017-18**

Assistant Commissioner of Income Tax- 15(3)(2), Mumbai	Vs.	Surya Ferrous Alloys Pvt. Ltd., 117, Skylark Building, Plot No.63, Sector-11, CBD Belapur, Navi Mumbai – 400614 (PAN : AAHCS8596H)
(Appellant)		(Respondent)

**CO.No.77/Mum/2024
Arising out of ITA No. 1406/MUM/2024
Assessment Year: 2017-18**

Surya Ferrous Alloys Pvt. Ltd., 117, Skylark Building, Plot No.63, Sector-11, CBD Belapur, Navi Mumbai – 400614 (PAN : AAHCS8596H)		Assistant Commissioner of Income Tax- 15(3)(2), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee : Shri Ajay R Singh, Advocate and
Shri Akshay Pawar, Advocate

Revenue : Shri Pushkaraj Bhangapatil, Sr.DR

Date of Hearing : 13.12.2024

Date of Pronouncement : 24.12.2024

ORDER**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by the Revenue and Cross Objection filed by the assessee are against the order of Ld. CIT(A), National Faceless Assessment Centre, New Delhi, dated 25.01.2024 passed against the assessment order of ACIT 15(3)(3), Mumbai, u/s. 144 rws 147 of the Income-tax Act, 1961 (hereinafter referred to as the "Act") for AY 2017-18.

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

"1. Whether on the facts and circumstances of the case and in law, the order of Ld. CIT(A) is not bad in law in restricting the disallowance of purchases to 1% on account of bogus purchases without considering the fact that the entry provider has himself admitted that assessee company has entered into bogus purchases with his company and similar other companies and provided a layer of accommodation during the course of search.

2. Whether on the facts and circumstances of the case and in law, the order of Ld.CIT(A) is not bad in law in not realizing that the goods purchased by the assessee in cash through grey market invokes provisions of section 40A(3), hence the assessee is not entitled for any relief.

3. Whether on the facts and circumstances of the case and in law the order of the Ld.CIT(A) is not bad in law in legalizing the illegal purchases.

4. Whether on the facts and circumstances of the case and in law the order of the Ld.CIT(A) is not bad in law in legalizing the purchases made in grey market.

5. The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored."

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

1. The Id JAO had no jurisdiction to issue show cause notice u/s 148A(b) dated 20/05/2022 pass order u/s 148A(d) dated 30/07/2022 and issue notice u/s 148 dated 30/07/2022 as after 29/03/2022 same can be done in a faceless manner as provided u/s 144B i.e. by Faceless Assessing Officer in view of NOTIFICATION S.O. 1466(E) [NO. 18/2022/F. NO. 370142/16/2022-TPL(PART1), DATED 29-03-2022 titled "E-ASSESSMENT OF INCOME ESCAPING ASSESSMENT SCHEME, 2022" passed u/s 151A of the Act. Thus, Notice u/s 148 dated 30/07/2022 is bad in law.

Approval is bad in law

2. The Id JAO issued notice u/s 148 of the Act dated 30/07/2022 mentions that the prior approval has been taken of the 'Principal Commissioner of Income-tax 6' (PCIT-6) 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-6 cannot be the specified authority as per section 151 of the Act.

3. Through Cross Objection, assessee has raised legal issue challenging the jurisdiction of the Id. Assessing Officer for issuing a notice u/s. 148 which ought to have been issued by the Faceless Assessing Officer (FAO) and not by the Jurisdictional Assessing Officer (JAO) in terms of section 151A of the Act as well as non-compliance of taking prior approval by the specified authority required u/s. 151. Since legal issues raised by the assessee goes to the root of the matter, we first address the Cross Objection filed by the assessee.

4. Brief facts of the case are that assessee filed its return of income on 18.10.2017 reporting total income at Nil. On the basis of information received from the Insight Portal of the Department uploaded by DDIT (Inv.), Unit-4(3), Mumbai that assessee had obtained accommodation entries for bogus bills amounting to Rs.7,19,90,000/-, notice u/s.148 was issued on 22.04.2021. The said notice became deemed to be notice issued u/s.148A(b) (under new regime introduced by Finance Act, 2021) of the Act, pursuant to the directions of Hon'ble Supreme Court in the case of Union of India vs. Ashish Agrawal (2022) 444 ITR 1(SC). To comply with the directions of Hon'ble Supreme Court, a notice u/s.148A(b) was issued on 20.05.2022. Id. Assessing Officer, subsequently passed order u/s.148A(d) on 30.07.2022 by not accepting the claim of the assessee furnished by it, in its reply dated 31.05.2022 and 08.07.2022. While holding that it is fit case for issuing a notice u/s.148, Id. Assessing Officer in para 8 of the order passed u/s.148A(d) noted that necessary

approval for passing the said order and for issuing notice u/s.148 was taken from PCIT-6, Mumbai. Consequent to this order passed by Id. Assessing Officer, notice u/s.148, dated 30.07.2022 was issued with DCIT-15(3)(2), Mumbai as the undersigning authority. The said notice is manually signed by the Id. Officer who is identifiable.

4.1. According to the information available with the Id. Assessing Officer, assessee has entered into purchase transaction during the year under consideration wherein it has transferred Rs.7,19,90,000/- to M/s. Artlink Vintrade Ltd. According to him, said income of Rs.7,19,90,000/- has escaped assessment in the hands of the assessee owing to which case of the assessee was re-opened by issuing a notice u/s.148 of the Act.

5. On the above stated facts, Id. Counsel for the assessee has emphasised on the second aspect of the two legal issues 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 of the cross objection. First aspect out of the two legal issues being 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.

5.1. According to the Id. Counsel, in the provisions for re-opening of assessment upon 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 assessee had obtained accommodation entries for bogus bills amounting to Rs.7,19,90,000/-. 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 assessee 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 or 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 Id. 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 Id. Sr. DR to Section 149(1)(a) deals with time limit for issuing notice u/s.148. Contention of the Id. 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. Accordingly, the amended provisions under the 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 30.07.2022. 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 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, said 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 cross objection are rendered academic not warranting adjudication thereupon.

9.1. The impugned re-assessment proceedings have been quashed considering legal jurisdictional issue raised by the assessee in its cross objection, therefore the appeal of the Revenue contending on the merits of the case for which relief was granted by Id. CIT(A) has become infructuous and accordingly dismissed.

10. In the result, appeal of the Revenue is dismissed and cross objection 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