

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

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.5812/M/2024  
(Assessment Year :2015-16)**

ACIT 19(1) 506, 5 <sup>th</sup> Floor, Piramal Chamber Lalbaug, Mumbai- 400012.	Vs.	M/s. Orbit Financial Capital 7 Mehta Mahal, 15 Mathew Road, Opera House, Charni Road, Maharashtra- 400007.
<b>PAN/GIR No.AACFO3151E</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

**C. O. No.287/M/2024  
(Arising Out OfITA No.5812/M/2024)  
(Assessment Year :2015-16)**

M/s. Orbit Financial Capital 7 Mehta Mahal, 15 Mathew Road, Opera House, Charni Road, Maharashtra- 400007.	Vs.	ACIT 19(1) 506, 5 <sup>th</sup> Floor, Piramal Chamber Lalbaug, Mumbai- 400012.
<b>PAN/GIR No. AACFO3151E</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Ms. Kinjal Bhuta
Revenue by	Shri Krishna Kumar, Sr. DR
<b>Date of Hearing</b>	<b>24/12/2024</b>
<b>Date of Pronouncement</b>	<b>31/12/2024</b>

## आदेश / ORDER

### PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the Revenue and Cross Objection by the assessee against order dated 13/09/2024 passed by NFAC, Delhi for the quantum of assessment passed u/s.147 r.w.s. 144B for the A.Y.2015-16.

2. In the grounds of appeal, the Revenue has raised following grounds:-

1. *Whether on the facts and circumstances of the case and in law, the CIT(A) has erred in deleting the disallowance of fictitious loss of Rs. 1,28,98,090/- through M/s. Goodluck Securities and Rs. 89,17,682/-, through M/s. APAR Finance Ltd. by trading in equity derivatives without appreciating the merit of the case establishing the involvement of the assessee in creating fictitious loss thereby claiming the benefit unlawfully?"*

2. *Whether on the facts and circumstances of the case and in law, the CIT(A) has erred in deleting the disallowance of fictitious loss of Rs. 1,28,98,090/-, through M/s. Goodluck Securities and Rs. 89,17,682/-, through M/s. APAR Finance Ltd. 2 by trading in equity derivatives, without appreciating that the disallowance was made, after analyzing credible information received from Investigation Wing, wherein it was proved beyond doubt that manipulated transactions are being executed to avail artificial losses?"*

3. *"Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was right in deleting the entire disallowance addition made by AO, without appreciating the fact that, during the survey proceedings of Investigation wing, Mrs. Mausami Deb Roy, proprietor of M/s. Goodluck securities, admitted in her statement on oath that her firm was involved in creating artificial profits and for losses to the clients through trades in equity derivatives by trading with*

*dummy companies, who were paper companies which had no existence physically and has no business income except certain amount of commission, receive from providing accommodation entries to beneficiaries?"*

*4. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the entire disallowance addition made by AO, without appreciating the fact that, from the records and the information received and by recorded statements, evidences found, it was proved that the assessee has utilized the services of two brokers, Mis. Goodluck 4 Securities and Mis. APAR Finance Ltd, who was involved in manipulating such transactions for the benefit of its members and findings of the data analysis in the case of the assessee clearly establish that the trading in derivatives of the illiquid stock from the brokers have been carried out in a thoughtful, systematic manner with a malafide intention to book artificial loss?"*

*5. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in holding that there was change of opinion, when the AO in his order had clearly escaped assessment as per requirement of the law then existing and the Ld. CIT (A) has mistakenly considered this as change of opinion, while in fact, it was a new material on record which was not available earlier. Reliance is placed on the decision of Apex Court in the case of Phool Chand Bajrang Lal vs ITO (1993), wherein it has been held that if new and material evidence comes up after the original assessment, the AO has reason to re-open the assessment under section 147 of the I.T. Act, 1961"*

*6. "Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in holding that there was change of opinion when the AO received information afterwards which was not available at the time of assessment u/s 143(3) of the I.T. Act, 1961?"*

*7. Whether on the facts and circumstances of the case and in law, the order of Ld.CIT(A) was perverse in holding that not providing cross-examination vitiates re-assessment*

*proceedings without considering judicial precedents such as 7 Sinte of J&K vs. Bakshi Gulam Mohammad AIR 1967 SC 122, wherein it was held by the Apex Court that the right of hearing does not necessarily include right of cross examination and such right must depend upon the circumstances of each case and also on the statute concerned?"*

*8. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the entire disallowance made by AO without appreciating the fact that the right of cross examination is not an absolute right, as it was held in the case of Nath International Sales Vs UOI, AIR 1992(Del.) 295, and in the case of M/s. Meghna Towers Pvt Ltd 87 taxmann.com 329 ITAT Delhi Bench, was held that where Income-Tax Department had bused racket of bogus accommodation entries and name of assessee was discovered as one of the beneficiaries of alleged racket and further amounts were actually found in the books of assessee to be credited in the name of alleged entry operators, burden was on assessee to prove that it was not a beneficiary of racket and did not allow the ground of appeal of the assessee that the AO had erred in not making available the said entry operators for his cross examination?"*

*9. "Whether on the facts and circumstances of the case and in law, the order of Ld.CIT(A) was perverse in holding that re-assessment proceedings are invalid based on decision of Hon'ble Bombay High Court in case of M/s. Hexaware Technologies Limited Vs ACIT [2024] 162 taxmann.com 225, without appreciating the latest order of Hon'ble Bombay High Court in case of JD Printers Pvt. Ltd Vs ITO, which was already pronounced, when this judgment by CIT(A) was delivered and the Revenue has not been accepted the decision in M/s Hexaware Technologies Limited, and SLP has been filed before the Hon'ble Supreme Court Vide Diary Number: 37843/2024 on 21.08.2024 ?"*

3. Whereas, in Cross Objection, the assessee has raised the following grounds:-

*“1 Whether on facts and circumstances of the case and in law, the notice issued u/s. 148 of the Income Tax Act, 1961 is time barred as per provisions of section 149 of the Act as confirmed by the Hon'ble Supreme Court in the case of Union of India v/s. Rajeev Bansal 167 taxmann.com 70 (Sc)*

*2. Whether on facts and circumstances of the case and in law, Ld. CIT(A) erred in not adjudicating on the disposal order passed u/s. 148A(d) of the Act, that the disposal of objections was not objective or reasoned and was passed in a mechanical manner without application of mind by the AO*

*3 Whether on facts and circumstances of the case and in law, notice issued u/s. 148 of the Income Tax Act, 1961, without generating, allotting and quoting the Document Identification Number (DIN) as mandated by the law is illegal, bad and void in law?*

*4. Whether on facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) ought to have deleted the disallowance of business loss of Rs. 2,18,15,772/- made by the Assessing Officer considering the merits of the case? That, the addition is based on assumptions, surmises and conjectures and ought to be deleted.”*

4. At the outset, it has been stated that ld. Counsel for the assessee stated that the entire re-assessment proceedings and notice u/s.148 dated 27/07/2023 is barred by limitation, in view of the judgment of the Hon'ble Supreme Court in the case of **Union of India vs. Rajeev Bansal reported in (2024) 167 taxmann.com 17**; and judgment of the **Hon'ble Delhi High Court** in the case of **Ibibo Group Pvt. Ltd. vs. ACIT in WP(C) No.17639 / 2022 judgment and order dated 13/12/2024.**

5. The brief facts qua the legal issue are that assessee is a partnership firm has filed its return of income for A.Y.2015-16 on 28/08/2015 declaring total income of Rs.12,99,47,790/-.

6. Before us following sequence of events have been given with regard to issuance of notice u/s.148 and various letters issued and filed before the issuance of final notice u/s.148 dated 27/02/2022.

<b>Particulars</b>	<b>AY:2015-16</b>
Notice u/s. 148 as per old regime (deemed to be show cause notice u/s. 148A(b) of the Act).	29/06/2021
Issue Letter/deemed notice u/s. 148A(b) providing relevant material and information to the assessee.	26/05/2022
Issue Letter issued u/s. 148A(b) providing additional information.	01/06/2022
Response filed by assessee to the above issue letter.	30/06/2022
Order u/s. 148A(d) and notice u/s. 148 (under new law)	27/07/2022

7. At the outset, it has been submitted that as per the Revenue's admission before the Hon'ble Supreme Court in the case of Rajeev Bansal, A.Y.2015-16 does not fall during the period prescribed under TOLA. The time limit for issuance of notice u/s.148 for A.Y.2015-16 expires on 31/03/2022. The

Hon'ble Supreme Court clearly held that TOLA will apply to the Income Tax Act after 01/04/2021 if any action or proceeding specified under substituted provisions of the Income Tax Act falls for completion between 20/03/2020 and 31/03/2021. For the A.Y.2015-16, the time limit for issuance of notice u/s.148 was 31/03/2022 and therefore, it was qua this time limit, the Revenue had conceded before the Hon'ble Supreme Court that TOLA will not apply for the A.Y.2015-16. For the sake of ready reference para 19 of the said judgment 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. Parliament enacted TOLA as a free-standing legislation to provide relief and relaxation to both the assesses and the Revenue during the time of COVID- 19. TOLA seeks to relax actions and proceedings that could not be completed or complied with within the original time limits specified under the Income-tax Act;*

*b. Section 149 of the new regime provides three crucial benefits to the assesses: (1) the four-year time limit for all situations has been reduced to three years; (ii) the first proviso to Section 149 ensures that re-assessment for previous assessment years cannot be undertaken beyond six years; and (iii) the monetary threshold of Rupees fifty lakhs will apply to the re assessment for previous assessment years;*

*c. The relaxations provided under section 3(1) of TOLA apply "notwithstanding anything contained in the specified Act." Section 3(1), therefore, overrides the time limits for issuing a notice under section 148 read with Section 149 of the Income-tax Act,*

*d. TOLA does not extend the life of the old regime. It merely provides a relaxation for the completion or compliance of actions following the procedure laid down under the new regime;*

e. The Finance Act 2021 substituted the old regime for re-assessment with a new regime. The first proviso to Section 149 does not expressly bar the application of TOLA, Section 3 of TOLA applies to the entire Income-tax Act, including Sections 149 and 151 of the new regime. Once the first proviso to Section 149(1)(b) is read with TOLA, then all the notices issued between 1 April 2021 and 30 June 2021 pertaining to assessment years 2013-2014, 2014-2015, 2015-2016, 2016- 2017, and 2017-2018 will be within the period of limitation as explained in the tabulation below:

Assessment Year	Within 3 Years	Expiry of Limitation read TOLA for (2)	Within six Years	Expiry of Limitation read with TOLA for (4)
(1)	(2)	(3)	(4)	(5)
2013-2014	31-3-2017	TOLA not applicable	31-3-2020	30-06-2021
2014-2015	31-3-2018	TOLA not applicable	31-3-2021	30-6-2021
2015-2016	31-3-2019	TOLA not applicable	31-3-2022	TOLA not applicable
2016-17	31-3-2020	30-6-2021	31-3-2023	TOLA not applicable
2017-18	31-3-2021	30-6-2021	31-3-2024	TOLA not applicable

**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:**

g. Section 2 of TOLA defines "specified Act" to mean and include the Income-tax Act. The new regime, which came into effect on 1 April 2021, is now part of the Income-tax Act. Therefore, TOLA continues to apply to the Income Tax Act even after 1 April 2021; and

*h. Ashish Agarwal (supra) treated Section 148 notices issued by the Revenue between 1 April 2021 and 30 June 2021 as show-cause notices in terms of Section 148A(b). Thereafter, the Revenue issued notices under section 148 of the new regime between July and August 2022. Invalidation of the Section 148 notices issued under the new regime on the ground that they were issued beyond the time limit specified under the Income-tax Act read with TOLA will completely frustrate the judicial exercise undertaken by this Court in Ashish Agarwal (supra).*

8. This stand of the department and concession given by the Revenue before the Hon'ble Supreme Court has been dealt by the Hon'ble Delhi High Court in the case of **Ibibo Group Pvt Ltd.(supra)**. The relevant observation of the Hon'ble High Court reads as under:-

*"1. The instant writ petition assails the reassessment action initiated under Section 148 of the Income Tax Act, 1961 ["Act"] for Assessment Year ["AY"] 2015-2016. The petitioner has impugned the order referable to Section 148A(d) of the Act dated 23 July 2022 and the consequential notice under Section 148 of the Act which came to be issued on the same date.*

*2. We bear in mind the following concession which came to be recorded on behalf of the respondent before the Supreme Court in Union of India and Others vs. Rajeev Bansal [2024 SCC OnLine SC 2693] and relevant parts whereof are reproduced hereinbelow:-*

*"(e) The Finance Act, 2021 ((2021) 432 ITR (Stat) 52) substituted the old regime for reassessment with a new regime. The first proviso to section 149 does not expressly bar the application of Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020. Section 3 of the Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 applies to the entire Income-tax Act, including sections 149 and 151 of the new regime. Once the first proviso to section 149(1)(b) is read with Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, then all the notices issued between April 1, 2021 and June 30,*

2021 pertaining to the assessment years 2013-2014, 2014-2015, 2015-2016, 2016-2017, and 2017-2018 will be within the period of limitation as explained in the tabulation below:

Assessment Year	Within Years	3	Expiry of Limitation read with TOLA for (2) (3)	Within Six Years (4)	Expiry of Limitation read with TOLA for (4) (5)
2013-2014	31.03.2017		TOLA not applicable	31.03.2020	30.06.2021
2014-2015	31.03.2018		TOLA not applicable	31.03.2021	30.06.2021
2015-2016	31.03.2019		TOLA not applicable	31.03.2022	TOLA not applicable
2016-2017	31.03.2020		30.06.2021	31.03.2023	TOLA not applicable
2017-18	31.03.2021		30.06.2021	31.03.2024	TOLA not applicable

(f) The Revenue concedes that for the assessment year 2015-2016. all notices issued on or after April 1, 2021 will have to be dropped as they will not fall for completion during the period prescribed under the Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020."

3. In view of the aforesaid, it is evident that the impugned reassessment action for AY 2015-16 would not sustain.

4.The writ petition is accordingly allowed. The impugned order under Section 148A(d) of the Act dated 23 July 2022 and consequential notice referable to Section 148 of even date are hereby quashed and set aside."

9. Thus, the notice u/s.148 issued on 27/07/2022 is clearly barred by limitation. The reason being the test for checking the time limit and the validity of notices issued u/s.148 under new regime applicable from A.Y. 2021-22 and prior regime is, whether

period of six years had expired at the time of issue of such notice or not. In the case of assessee, the period of six years had expired on 31/03/2022 and consequently, the notice dated 27/07/2022 is clearly barred by limitation and on this ground, the assessment proceedings u/s.147 is hereby quashed. Accordingly, the cross objection filed by the assessee is allowed and all the grounds raised by the Revenue are dismissed as infructuous.

**10. In the result, appeal filed by the Revenue is dismissed as infructuous and Cross Objection of the assessee is allowed.**

Order pronounced on 31<sup>st</sup> December, 2024.

**Sd/-**  
**(GIRISH AGRAWAL)**  
**ACCOUNTANT MEMBER**

Mumbai; Dated 31/12/2024  
KARUNA, *sr.ps*

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

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(Asstt.Registrar)  
**ITAT, Mumbai**