

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“F” BENCH MUMBAI**

**BEFORE HON’BLE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER &  
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA No. 1301/Mum/2024  
(Assessment Year: 2003-04)**

Jaiprakash L. Singh Khwaish, Laxmi Singh Estate, S.V. Road, Goregoan (W) – 400062	Vs.	ITO – 31(2)(1) 615, 6 <sup>th</sup> Floor, Kautilya Bhavan, BKC
PAN/GIR No. AACPS4994F		
(Applicant)		(Respondent)

Assessee by	Shri Vimal Punamiya
Revenue by	Ms. Neena Jeph, CIT Ld.DR

Date of Hearing	14.01.2025
Date of Pronouncement	25.02.2025

आदेश / ORDER

**PER SANDEEP GOSAIN, JM:**

The present appeal has been filed by the assessee challenging the impugned order 26.09.2023 passed u/s 250 of the Income Tax Act, 1961 (‘the Act’), by the National Faceless Appeal Centre, Delhi for the assessment year 2003-04. The assessee has raised the following grounds of appeal:

- 1. On the facts and in the circumstances of the case and in law the proceedings initiated by issuance of notice U/s.148 of the Income Tax Act, 1961 is invalid and bad in law.*

2. *On the facts and in the circumstances of the case and in law the order passed u/s. 143(3) r.w.s. 254 of the Act is invalid and bad in law..and the learned C.I.T.(A) erred in upholding the same.*
3. *On the facts and in the circumstances of the case and in law, Opportunity of being heard was not taken before the CIT (A).*
4. *On the facts and in the circumstances of the case and in law the Learned A.O erred in determining the income at Rs.47,31,73,860/-. and the learned C.I.T.(A) erred in upholding the same*
- 5 *On the facts and in the circumstances of the case and in law the learned A.O erred in adding an amount of Rs.6,37,93,770/-as 'consideration received by the assessee in A.Y. 2007-08' and assessing the same as capital gains income for the A.Y. 2003-04, although the same income has been returned and assessed as income in the A.Y. 2007-08 and the learned C.I.T.(A) erred in upholding the same.*
6. *On the facts and in the circumstances of the case and in law the Learned A.O erred in adding an amount of Rs. 3,14,91,030/- as consideration taken by the A.O. in A.Y. 2008-09 on sale of owned flats in Ozone and assessing the same as capital gains income for the A.Y. 2003-04, although the same income has been returned and assessed as income in the A.Y. 2008-09 and the learned C.I.T.(A) erred in upholding the same.*
7. *On the facts and in the circumstances of the case and in law the Learned A.O erred in adding an amount of Rs.38,99,61,600/- as consideration taken by the A.O. in A.Y. 2008-09 on sale of flat//shop/pent houses and assessing the same as capital gains income for the A.Y. 2003-04, although the same income was assessed as income in the A.Y. 2008-09 vide order dated 25-03-2014 passed u/s 143(3) r.w.s. 263 & 147 of the act and was deleted by the learned C.I.T.(A) vide order dated 17-02-2015 and the Hon'ble Tribunal confirmed the deletion by dismissing the appeal of the Revenue.*

8. *On the facts and in the circumstances of the case and in law, Condonation of Delay in filling of appeal is plead.*

9. *On the facts and in the circumstances of the case and in law, the interest charged of u/s.234A,234B,234C of the IT Act is invalid and bad in law and the learned C.I.T.(A) erred in upholding the same.*

10. *Appellant craves leave to add, alter, amend, delete and / or modify any or all of the aforesaid grounds of appeal either at the time of hearing or at any time before the date of hearing.*

2. There is a delay in filing the present appeal and in this regard an application for seeking condonation of delay has been filed by the assessee supported by an affidavit. It was submitted that notice and communications regarding the said matter were served via online portal of the Income Tax department and the assessee being senior citizen was unable to assess the email on which the notices were sent, therefore could not come to know regarding the passing of the order by Ld. CIT(A). It was further submitted that circumstances were beyond the control of the assessee, therefore considering the reasons mentioned in application, the delay may be condoned.

3. On the other hand, Ld. DR contested the said application and requested for rejection of the same.

4. After having heard counsels for both the parties and after going through the reasons mentioned in the application for seeking condonation of delay we noticed that the delay of 90 days arose due to circumstanced beyond the control of the assessee as the assessee was unable to assess the email

account and therefore was unaware regarding the passing of the order by Ld. CIT(A). Hence keeping in view the principles laid down by Hon'ble Supreme Court ***Land Acquisition Collector Vs. Mst. Katiji & Ors., [1987] AIR 1353 (SC)*** wherein it has been held that where substantial justice is pitted against technicalities of none deliberate delay, then in that eventuality substantial justice is to be preferred. Therefore, keeping in view the above principles and the facts of the case we condoned the delay in filing the present appeal. Now the appeal is admitted to be heard.

5. The brief facts of the case are that the assessee along with other co-owners were owners of the land and thus entered into Development Agreement with M/s Brick Works Trading Pvt Ltd regarding the said land and as per the terms of the agreement, the developer shall get 60% share and the co-owners including the assessee shall get 40% share of the total sale consideration.

6. Since the assessee had received sale proceeds qua his share in A.Y 2007-08 & 2008-09, and the same were reported in the return of income therefore AO made addition of capital gains in A.Y: 2007-08 & 2008-09. However, the same were challenged and Hon'ble ITAT observed that since 'Development Agreement' was executed in A.Y: 2003-04 therefore, addition in AY 2007-08 & 2008-09 were deleted.

7. Thereafter, based upon the information / observation of Hon'ble ITAT, AO accordingly initiated process to reopen the assessment for the year under consideration i.e A.Y 2003-04 and passed the assessment order determining the capital gain at Rs. 47,29,87,427/-.

8. Aggreived by the order of assessment, assessee preferred appeal before Ld. CIT(A), however Ld. CIT(A) dismissed the same on account of non compliance of directions by the assessee and also considered the merits of the claim filed by the assessee.

9. Now the assessee has filed the present appeal before us on the grounds mentioned herein above. Since, Ld. CIT(A) has dealt with the merits of the additions made and therefore we have also decided to adjudicate the grounds raised by the assessee by considering the merits of the additions.

*1. On the facts and in the circumstances of the case and in law the proceedings initiated by issuance of notice U/s.148 of the Income Tax Act, 1961 is invalid and bad in law.*

*2. On the facts and in the circumstances of the case and in law the order passed u/s. 143(3) r.w.s. 254 of the Act is invalid and bad in law..and the learned C.I.T.(A) erred in upholding the same.*

*3. On the facts and in the circumstances of the case and in law, Opportunity of being heard was not taken before the CIT (A).*

10. The above grounds raised by the assessee are interrelated and interconnected and relates to initiating the process of

reopening of the assessment and consequential orders passed by AO and upheld by Ld. CIT(A). Therefore we have decided to take up all the above grounds together and to adjudicate the same through the present consolidated order.

11. Ld. AR appearing on behalf of the assessee reiterated the same arguments as were raised by him before the revenue authorities and also relied upon his written submissions, the relevant portion of the written submissions are reproduced herein below:

1. *The appellant is a partner in Registered Partnership firm M/s. Hotel Laxmi International wherein the assessee is a working partner sharing profits and losses to the extent of 30% and also has income under the head capital gains and income from other sources.*
2. *The Appellant is an individual and is being assessed to tax under PAN AACPS4994F with the ITO, 31(2)(1), Mumbai.*
3. *For the year under consideration, the appellant filed a return of income declaring an income of Rs.1,86,429/- on 31/03/2004. The return of income was processed u/s 143(1) of the on 21-04-2004.*
4. *Thereafter, nothing was heard till 31-03-2019, on which day, the Learned A.O. issued a notice u/s 148 of the act. In other words, the reassessment proceedings were **initiated after the expiry of 15 years from the end of the assessment year**. The notice issued was objected to, by the appellant vide letter dated 18-04-2009 and the same was disposed off by the learned A.O. vide letter dated 06 11-2019.*
5. *Thereafter, the Learned A.O. issued a show cause notice dated 27-12-2019 calling for compliance on the very next day i.e. 28-12-2019. The show cause notice could be answered only on 30-12-2019 and was accordingly answered on-line on the 30-12-2019. A copy of the same was submitted in the office of the learned A.O. on 31-12-2019.*
6. *However, the learned A.O. without taking into consideration the*

submission completed the assessment by passing an order dated nil u/s 143(3) r.w.s. 254 of the act. The taxable income was determined at Rs.47,31,73,60/- and a huge demand of Rs 46,11,25,960/- was raised.

7. Further, assessee preferred an appeal before the national faceless appeal centre / CIT(A) against the order passed by Ld. AO against which CIT(A) passed an ex-parte order dated 26.09.2023 deciding against the assessee.
8. Aggrieved with the Assessment order dated **30.12.2019** the appellate is in appeal before your honours raising following jurisdictional and legal grounds as the adjudication of these jurisdictional grounds would be the basis for proceeding further on grounds on merit.:

• **GROUND OF APPEAL :**

1. On the facts and in the circumstances of the case and in law the proceedings initiated by issuance of notice U/s.148 of the Income Tax Act, 1961 is invalid and bad in law.
2. On the facts and in the circumstances of the case and in law the order passed u/s.143(3) r.w.s. 254 of the Act is invalid and bad in law..and the learned C.I.T.(A) erred in upholding the same.
3. On the facts and in the circumstances of the case and in law, Oppurtunity of being heard was not taken before the CIT (A)
4. On the facts and in the circumstances of the case and in law the Learned A.O erred in determining the income at Rs.47,31,73,860/- and the learned C.I.T.(A) erred in upholding the same
5. On the facts and in the circumstances of the case and in law the learned A.O erred in adding an amount of Rs.6,37,93,770/- as 'consideration received by the assessee in A.Y. 2007-08' and assessing the same as capital gains income for the A.Y. 2003-04, although the same income has been returned and assessed as income in the A.Y. 2007-08 and the learned C.I.T.(A) erred in upholding the same.
6. On the facts and in the circumstances of the case and in law the Learned A.O erred in adding an amount of Rs. 3,14,91,030/- as consideration taken by the A.O. in A.Y. 2008-09 on sale of owned flats in Ozone and assessing the same as capital gains income for the A.Y. 2003-04, although the same income has been returned and assessed as income in the A.Y. 2008-09 and the learned C.I.T.(A) erred in upholding the same.

7. *On the facts and in the circumstances of the case and in law the Learned A.O erred in adding an amount of Rs.38,99,61,600/-as consideration taken by the A.O. in A.Y. 2008-09 on sale of flat//shop/pent houses and assessing the same as capital gains income for the A.Y. 2003-04, although the same income was assessed as income in the A.Y. 2008-09 vide order dated 25-03-2014 passed u/s 143(3) r.w.s. 263 & 147 of the act and was deleted by the learned C.I.T.(A) vide order dated 17-02-2015 and the Hon'ble Tribunal confirmed the deletion by dismissing the appeal of the Revenue.*
8. *On the facts and in the circumstances of the case and in law, Condonation of Delay in filling of appeal is plead.*
9. *On the facts and in the circumstances of the case and in law, the interest charged of u/s.234A,234B,234C of the I T Act is invalid and bad in law and the learned C.I.T.(A) erred in upholding the same.*
10. *Appellant craves leave to add, alter, amend, delete and / or modify any or all of the aforesaid grounds of appeal either at the time of hearing or at any time before the date of hearing.*

• **SUMMARY OF THE CASE**

1. *The assessee along with his 4 brothers i.e total 5 sons, had inherited a land on death of their father Shri Laxmi Singh Udit Singh in the year 1986.*
2. *The assessee's mother and sisters relinquished their respective rights in favour of the sons and their brothers.*
3. *Thus, each brother inherited 1/5th share in the land, assessee being one of them.*
4. *On 09.10.2002 the assessee along with his brothers entered into an agreement with M/s Brickworks Trading Pvt. Ltd. for development of land.*
5. *As per the agreement it was agreed that the developer shall get 60% share and the co-owners shall get 40%.*
6. *The profit of 40% was distributed to co-owners during the AY 2007-08.*
7. *the capital gains so determined were duly reported in the return filed for AY 2007-08 and 2008-09.*
8. *Hon'ble ITAT has mentioned in its decisions that the taxability of capital gains did not arise in A.Ys. 2007-08 and 2008-09, but the same arose in the A.Y.2003-04 when the Appellant entered into*

*development agreement with the developer.*

9. *Hon'ble Tribunal, therefore, gave relief to the Appellant in AY 2007-08 and 2008-09 clearly mentioning that the capital gains must be offered in A.Y.2003-04*
10. *Just based on the above information, Ld. AO, accordingly reopened the assessment for AY 2003-04 and passed the assessment order determining the capital gains at Rs. 47,29,87,427/-. Where he is not even authorised to reopen the case as reassessment proceedings were **initiated after the expiry of 15 years from the end of the assessment year.** reassessment proceedings are void and bad in law.*
11. *Thus based on above the Ld. AO reopened the case for AY 2003-04 as per provision of section 150.*

• **GROUND 1,2 and 3**

1. *On the facts and in the circumstances of the case and in law the proceedings initiated by issuance of notice U/s.148 of the Income Tax Act,1961 is invalid and bad in law.*
2. *On the facts and in the circumstances of the case and in law the order passed u/s.143(3) r.w.s. 254 of the Act is invalid and bad in law..and the learned C.I.T.(A) erred in upholding the same.*
3. *On the facts and in the circumstances of the case and in law, Oppurtunity of being heard was not taken before the CIT (A)*

• **SUBMISSION**

**I. SECTION 150 : LIMITATION PRESCRIBED**

*The Section 150 of the Act provides that notwithstanding the limitation prescribed under section 149, notice under section 148 may be issued at any time for the purpose of making an assessment or reassessment or re-computation **in consequence of or to give effect to any finding or direction contained in an order** passed by any authority in any proceedings under the Act by way of appeal, reference or revision or by a court in any proceeding under any other law.*

**Section 150 (1) of the Act reads as under :—**

*150. Provision for cases where assessment is in pursuance of an order*

*on appeal, etc.—*

*(1) Notwithstanding anything contained in section 149, the notice under section 148 may be issued at any time for the purpose of making an assessment or reassessment or recomputation in consequence of or to give effect to any finding or direction contained in an order passed by any authority in any proceeding under this Act by way of appeal, reference or revision or by a Court in any proceeding under any other law.*

*In the original assessment proceeding **addition was made in AY 2007-08** which was later on **deleted by Hon'ble tribunal from AY 2007-08** by holding that **Income is not taxable in AY 2007-08 because possession was handed over in AY 2003-04**. Thus, finding was given for AY 2007-08 that it is not taxable in AY 2007-08 because possession was given in AY 2003-04. But there is no direction or finding from tribunal for assessing income under AY 2003-04 or for reopening of the matter of AY 2003-04. Therefore, based on tribunal's order no additions can be made in AY 2003-04 by taking rescue of section 150. Section 150 applies when there should be any finding or direction for assessing income in that year which is absent in present case. Thus, the order of the Tribunal had not given any finding or direction enabling the AO to seek recourse to section 150 for reopening beyond six years.*

**II. THERE IS NO FINDING AND DIRECTION FOR ASSESSING INCOME IN AY 2003-04:-**

*The Hon'ble Tribunal while dealing with appeal for AY 2007-08 I.T.A. No. 1574/Mum/2013 and others has given a finding that income is not taxable in AY 2007-08, because it falls in AY 2003-04. Finding and direction was given for AY 2007-08 that income is not taxable in AY 2007-08. With respect to AY 2003-04 it is just an incidental observation on year of income of taxability. **It could not be taken as "Finding or Direction" enabling reassessment u/s 150.** The order of the Tribunal dated 19.04.2017 does not record any finding or direction to the effect of reopening and the hence the reopening of the assessment beyond six years is bad- in-law and the same is to be quashed.*

**RELIANCE PLACED ON:-**

- *The Hon'ble Apex Court laid down the principal in case of **ITO v. Murlidhar Bhagwan Das [1964] 52 ITR 335 (SC)***

*that word 'finding' can be only that which is necessary for the disposal of an appeal in respect of an assessment of a particular year and has further been held that the appellate authority may incidentally find that the income belongs to another year, but that is not finding for the disposal of an appeal in respect of the assessment year in question.*

- *In case of **Smt.Neelam Gupta Vs. ITO (2007) 110 TTJ 714**Hon'ble Tribunal quashed the notice u/s 148 by holding that the observation made by the Ld.CIT(A) to the effect that **the AO is however free to take action in assessment year 1997-98 could not be construed as a direction to the AO to initiate reassessment proceedings** for assessment year 1997-98 and therefore, the said notice u/s 148 for the assessment year 1997 issued on 16th November, 2004 is time barred.(Legal PB Pg. No. 42-43)*

**III. SECTION 150(2) PROVIDES THAT DIRECTIONS UNDER SECTION 150(1) OF THE ACT CANNOT BE GIVEN BY THE APPELLATE/REVISIONAL AUTHORITY OR THE COURT IF ON THE DATE ON WHICH THE ORDER IMPUGNED IN THE APPEAL WAS PASSED, THE REASSESSMENT PROCEEDINGS HAD BECOME TIMEBARRED**

*Apart from the above, section 150(1) of the Act provides that the power to issue notice under section 148 of the Act in consequence of or giving effect to any finding or direction of the appellate/revisonal authority or the court is subject to the provision contained in section 150(2) of the Act. Section 150(2) provides that **directions under section 150(1) of the Act cannot be given by the appellate/revisonal authority or the court if on the date on which the order impugned in the appeal was passed, the reassessment proceedings had become time-barred.***

*According to s. 150(2), the provisions of s. 150(1) shall not apply where, by virtue of any other provision limiting the time within which action for assessment, reassessment or recomputation may be taken, such assessment, reassessment or recomputation is*

barred on the date of the order which is the subject-matter of the appeal, reference or revision in which the finding or direction is contained. **Thus, s.150(2) enacts a well-settled principle of law that an appellate or revisional authority cannot give a direction which goes to the extent of conferring upon the AO if he is not lawfully seized of jurisdiction.**

**Section 150 (2) of the Act reads as under :—**

**150. Provision for cases where assessment is in pursuance of an order on appeal, etc.—**

**(2) The provisions of sub-section (1) shall not apply in any case where any such assessment, reassessment or recomputation as is referred to in that sub-section relates to an assessment year in respect of which an assessment, reassessment or recomputation could not have been made at the time the order which was the subject-matter of the appeal, reference or revision, as the case may be, was made by reason of any other provision limiting the time within which any action for assessment, reassessment or recomputation may be taken.**

**RELIANCE PLACED ON:-**

- The Hon'ble Bombay High Court in the case of **Rakesh N. Dutt v. Asstt. CIT [2009] 311 ITR 247** has held that **(Legal PB Pg. No. 9-12) :-**  
**“once section 150 of the Act is not applicable to the case of the assessee, the reopening of the assessment beyond the period of six years from the end of the relevant assessment year would be time barred.”**

**IV. ISSUE OF NOTICE WAS TIME BARRED**

The Ld. AO based on tribunals order dated 19.04.2018 had issued notice under section 148 in 31.03.2019. The assessee's return for assessment year 2003-04 became barred by limitation on 31-3-2010. The assessment for AY 2003-04 could not have been reopened

beyond 31<sup>st</sup> March, 2010 in terms of provision of section 149 of the Income Tax Act, 1961 as limitation for reassessment for AY 2003-04 had expired on 31.03.2010 and therefore, reassessment was barred by limitation.

As per the proviso of section 149 of Income Tax Act, 1961 notice u/s 148 could not have been issued after 6 years lapsed from end of the AY if property situated in india. The AY under consideration is 2003-04 and 16 years had already lapsed. Hence, the notice issued u/s 148 for AY 2003-04 was out of preview of section 149.

**Section 149 of the Act reads as under:-**

**Time limit for notice.**

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

- (a) if four years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b) or clause (c);
- (b) if four years, **but not more than six years**, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year;
- (c) if four years, but not more than sixteen years, have elapsed from the end of the relevant assessment year unless the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment.

*Explanation.*—In determining income chargeable to tax which has escaped assessment for the purposes of this sub-section, the provisions of *Explanation 2* of section 147 shall apply as they apply for the purposes of that section.

(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151.

(3) If the person on whom a notice under section 148 is to be served is a person treated as the agent of a non-resident under section 163 and the assessment, reassessment or recomputation to be made in pursuance of the notice is to be made on him as the agent of such non-resident, the notice shall not be issued after the expiry of a period of six years from the end of the relevant assessment year.

*Explanation.—For the removal of doubts, it is hereby clarified that the provisions of sub-sections (1) and (3), as amended by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012.*

**Thus, notice issued was time barred and the reassessment order needs to be quashed.**

**RELIANCE PLACED ON:-**

<b>SR. NO.</b>	<b>CITATION</b>	<b>OBSERVATION</b>
1.	<i>K.M. Sharma v. ITO</i> [2002] 122 Taxman 426 (SC) (Legal PB Pg. No. 1-2)	<p><b>Section 150</b>, read with sections <b>148</b> and <b>149</b> of the Income-tax Act, 1961 - <b>Income escaping assessment - Provisions for cases where assessment is in pursuance of an order on appeal, etc. - Assessment years 1968-69 to 1971-72 and 1981-82 to 1982-83 - Whether provision of section 150(1), as amended from 1-4-1989, can be given retrospective effect prior to 1-4-1989 for assessments which have already become final due to bar of limitation prior to 1-4-1989 - Held, no - Whether, therefore, position is that section 150(1), as amended with effect from 1-4-1989, does not enable authorities to reopen assessments which have become final due to bar of limitation prior to 1-4-1989 and this position is applicable equally to reassessments proposed on basis of orders passed under Act or under any other law - Held, yes</b></p> <p><b>Interpretation of statutes - Rule of strict construction</b></p> <p>Held that :- Even a procedural provision cannot in the absence of clear contrary</p>

		<i>intendment expressed therein be given greater retrospectivity than is expressly mentioned so as to enable the Authorities to affect finality of tax assessments or to open up liabilities, which have become barred by lapse of time.</i>
2.	<i>BrahmDatt v.ACIT[2018] 100 taxmann.com 324 (Delhi) (Legal PB Pg. No. 24-26)</i>	<b>Amendment to section 149 by Finance Act, 2012, which extended limitation for reopening assessment to sixteen years, could not be resorted for reopening proceedings concluded before amendment became effective</b> Section <u>149</u> , read with section <u>148</u> , of the Income-tax Act, 1961 - Income escaping assessment - Time-limit for issuance of notice (General) - Assessment year 1998-99 - Assessee was a senior citizen who was non-resident for assessment year 1998-99 - Relying on assessee's statement during search that he had settled an offshore trust, Assessing Officer issued notice under section 148 in March, 2015 thereby proposing to tax amount of US \$ 2-3 million contributed by assessee for settling a trust in foreign country - Whether assessment for subject assessment year could not have been reopened beyond 31-3-2005 in terms of provisions of section 149 as applicable at relevant time - Held, yes - Whether subsequent amendment to section 149, by Finance Act, 2012, which extended limitation for initiation of reassessment proceedings to sixteen years, could not be resorted for reopening concluded proceedings in respect of which limitation had already expired/lapsed before amendment became effective - Held, yes - Whether thus, impugned reassessment notice and all consequent proceedings were to be quashed and set aside - Held, yes [Paras 14, 15, 16 an 19][In favour of assessee]

3.	Varkey Jacob Vs.CIT [2005] 146 TAXMAN 665 (KER.)	<b>Section 147, read with section 148, of the Income-tax Act, 1961 - Income escaping assessment - General - Assessment years 1979-80 to 1984-85 - Whether proceedings for reopening assessment for assessment years which have attained finality under existing law due to bar of limitation can be revived by amendment of law which has no express provision of retrospective effect - Held, no</b>
4.	Smt. N. Illamathy v. ITO [2020] 120 taxmann.com 313(Legal PB Pg. No. 27-34)	<p><b>Where assessment of assessee for assessment year 1997-98 was completed under section 143(1), impugned reopening notice dated 22-12-2005 issued by Assessing Officer on ground that a sum received by assessee from a firm in year 1996 was to be admitted to assessee's income as commission received, was barred by limitation in terms of provisions of section 149(1)(b) as applicable at relevant time</b></p> <p><i>It was held as follows :- "18. Admittedly, the notice under section 148 of the Act was issued by the Assessing Officer on 22nd December, 2005 and the law applicable as on date prescribed the limitation of four years, but not more than six years. Thus, the notice issued on or after 31st March, 2004 would suffer from lack of jurisdiction as it is clearly hit by the limitation prescribed under the Statute. Unfortunately, the Tribunal failed to take note of this very important legal issue, which has been settled by the Hon'ble Supreme Court. In fact, the assessee, at the earliest point of time, referred to the decision of the Hon'ble Supreme Court in the case of K.M. Sharma (supra), which was erroneously distinguished by the Assessing</i></p>

		Officer, the Commissioner of Income-tax (Appeals) and the Tribunal and that they all committed an error in gross violation of the Statute".
5.	Ramesh Chand Soni, HUF v. ITO [2018] 89 taxmann.com 71(Legal PB Pg. No. 35-38)	Held that " <b>for the purpose of Computation of period limitation for reassessment as prescribed in sub-section (2) of section 150 of the Act , limitation provided under section 149 of the Act has to be counted from the end of relevant assessment year till date of order which is subject matter of appeal wherein directions were passed.</b> "

**V. THE TRIBUNAL DO NOT HAVE POWER TO GIVE ANY FINDING OR DIRECTION IN RESPECT OF ANOTHER YEAR / PERIOD WHICH IS NOT BEFORE THE AUTHORITY**

The reopening in appellate's case is based on tribunal's order for AY 2007-08 and finding was given for AY 2007-08. The case for AY 2003-04 was not before the Hon'ble tribunal. Thus, the tribunal does not have power to give any finding or direction in respect of another year which is not before the authority.

**RELIANCE PLACED ON:-**

- The decision of the apex court in the case of **CIT v/s. Green World Corporation 314 ITR 81 (106) SC**(Legal PB Pg. No. 3-6) wherein it was observed that the provision of s. 150 although appears to be of a very wide amplitude, but would not mean that recourse to reopening of the proceedings in terms of s. 147 and 148 can be initiated at any point of time whatsoever. Such a proceeding can be initiated only within the period of limitation prescribed therefore as contained in s. 149. Sec. 150(1) is an exception to the aforementioned provision. **It brings within its ambit only such cases where reopening of the proceedings may be necessary to comply with an order of the higher authority. For the said purpose, the records of the proceedings must be before the appropriate authority. It must examine the records of the proceedings. If there is no proceeding before it or if the assessment year in**

**question is also not a matter which would fall for consideration before the higher authority, s. 150 will have no application.**

- The Hon'ble Jurisdictional Bombay High Court also in case of **Smt.SabitaBhagwandas Shah v. ITO [1966] 59 ITR 652**, while interpreting the sections 31, 34 (1) & (2) of the Income Tax Act 1922, (corresponding to the provisions of sections 148, 153 and 253 of 1961 Act) has held that '**finding**' means the finding necessary for giving relief in respect of the assessment year in question and the proviso to section 34(3) of the 1922 Act does not save time prescribed under section 34(1) in respect of escaped assessment of any year other than that which has been the subject matter of appeal or revision.

As the finding can only be given when case is pending before the tribunal. But, in present case AY 2003-04 was not before the tribunal. Hence, there is no finding & direction. Hence, section 150 will not apply.

**VI. FINDING OR DIRECTION. (S.149.).SEC 148 R.W.S 150: REOPENING OF ASSESSMENT - BASED ON TRIBUNAL "FINDING OR DIRECTION" IN RESPECT OF ANY OTHER YEAR OR PERIOD - BEYOND SIX YEARS - NOT VALID**

The Hon'ble Jurisdictional Mumbai Tribunal which is on similar facts **ANILSURI V/S ITO [2014] 46 TAXMANN.COM 8 (MUMBAI - TRIB.) HAS ALLOWED THE APPEAL IN FAVOUR OF THE ASSESSEE.(Legal PB Pg. No. 15-18)**  
**SIMILARITY IN BOTH CASES IS STATED AS UNDER :-**

<b>Sr. No.</b>	<b>FACTS OF ANIL SURI</b>	<b>FACTS OF ASSESSEE</b>
<b>1.</b>	Received consideration in part and <b>granted developer the right to enter</b> the plot to carry out construction work of additional built up area on <b>09.02.2000</b>	<b>Agreement executed on 10/10/2002</b> and permission was granted

2.	AO assessed capital gain in AY 2002-03	AO assessed capital gain in AY 2007-08
3.	Tribunal in appeal for AY 2002-03 held that <b>income is not taxable in AY 2002-03 because it is taxable in AY 2000-01</b>	Tribunal in appeal for AY 2007-08 held that <b>income is not taxable in AY 2007-08 because it is taxable in AY 2003-04.</b>
4.	AO reopened by issuing notice u/s 148 for <b>AY 2000-01</b>	AO reopened by issuing notice u/s 148 for <b>AY 2003-04</b>
5.	<p>It was held as follows in <b>Para 2.3.2 of Anil Suri's case</b></p> <p><i>“After considering the legal position aforementioned, it is pertinent to mention that the decision of the Tribunal on the basis of which the assessment for year under consideration reopened is related to the assessment year 2002-03. <b>The observation of the Tribunal for the purpose of deleting the addition in respect of the assessment year 2002-03 cannot be treated to be a 'finding' for reopening the AY 2001-02 as the appeal for said assessment year has not been before the Tribunal for adjudication.</b> The observation of the Tribunal that 'the case of the assessee is to be brought to tax for assessment year 2000-01 and not assessment 2002-03 as done by the assessing officer' is incidental for holding the addition made in the year 2002-03 is not justifiable and <b>the same cannot be the basis for having recourse to section 150 of the Act by holding it as 'finding or direction'.</b> Section 150(1) is an exception which brings within its ambit only such cases where reopening of the proceedings may be necessary to comply with an order of the higher authority. <b>Since the observation of the Tribunal that 'the case of the assessee is to be brought to tax for assessment year 2000-01', does not require compliance by the authorities below so far as the assessment year 2000-01 is concerned, taking recourse to section 150 of the Act by holding the same as 'finding' of the Tribunal is not legally tenable.”</b></i></p>	

Thus based on above judicial precedent which is identical to appellant's case the reopening and reassessment order has to be quashed.

**VII. DEEMING EXPLANATION 2 TO SECTION 153 ALSO CANNOT RESCUE THE APPLICABILITY OF SECTION 150**

The deeming explanation 2 to section 153 also cannot rescue the applicability of section 150 in present case.

**For ready ref. explanation 2 to section 153 is extracted below:-**

Explanation 2.—For the purposes of this section, where, by an order referred to in clause (i) of sub-section (6),—

(a) any income is excluded from the total income of the assessee for an assessment year, then, an assessment of such income for another assessment year shall, for the purposes of section 150 and this section, be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order; or

Because the findings related for disposal of AY 2007-08 is whether it is taxable in AY 2007-08 or not. Observation for AY 2003-04 is not relevant.

**RELIANCE PLACED ON:-**

- The Hon'ble Jurisdictional Bombay High Court also in case of **KalaNiketan v/s Union of India [2016] 76 taxmann.com 281 (Bombay)** held that (Legal PB Pg. No. 13-14):-

“We find no substance in reliance placed by the respondent's revenue upon so called finding of the revenue. The finding of the Tribunal is that there was no transfer. This finding is one which was required for the disposal of the Appeal the Tribunal was seized of. **The observation that income may have accrued during another year was not a finding required for disposal of the appeal and hence it falls beyond the scope of Section 150 read with the Explanation (2) to Section 153 (3).**”

- The Hon'ble Mumbai Tribunal in case of **Sujeer Properties (AOP) [2011]10 taxmann.com 201 (Mumbai)** laid down the

role of tribunal with respect to section 150 vide PARA 8 as under(Legal PB Pg. No. 19-23):-

*“The revenue's request for direction under section 150 was also devoid of legally sustainable merits. **Section 150 does not enable or require an appellate authority to give any directions for reopening of assessment, but it deals with a situation in which a reassessment is to be initiated to give effect to findings or directions of the appellate authority or the Court. That is a call to be taken by the Assessing Officer and not by the Tribunal.** The scheme of the Act does not permit considerations of safeguarding the interests of the revenue to have a role to play in the Tribunal's giving such findings or directions. To the extent safeguarding of these interests is not implicit in the scheme of the Act, it was not for the Tribunal to supplement the same either. Therefore, it was not necessary to consider the revenue's plea that with a view to safeguard the interests of the revenue, the Tribunal must give a finding so as to enable the Assessing Officer to reopen the assessments of co-owners”.*

- The Supreme Court in the case of **RajinderNath v. CIT [1979] 2Taxman 204** made the following pertinent observations(Legal PB Pg. No. 7-8)-

*“the expressions **"finding" and "direction"are limited in their meaning. A finding must be a finding necessary for the disposal of a particular case.** It must directly be involved in the disposal of the case. A direction by a statutory authority is in the nature of an order requiring a positive compliance. When it is left to the option and discretion of the Assessing Officer whether or not to take action, it cannot be described as a direction. **"Direction" in section 153(3)(ii) of the Act must be an express direction necessary for the disposal of the case. It must also be a direction which the authority or Court is empowered to give**”.*

**VIII. 6 YEARS FROM END OF ASSESSMENT YEAR WAS LAPSED WHEN APPEAL ORDER WAS PASSED**

Sub-section (2) to section 150 restricted the applicability of provision of section 150 in a case where 6 years are already lapsed when appeal order was passed. In present case appeal order for AY 2007-08 was passed on 2.3.2016, but till that time 6 years from end of AY 2003-04 had already lapsed. Hence, this condition also does not get satisfied.

- The similar issue had come up before Hon'ble Chennai Tribunal in case of **Emgeeyar Pictures (P.) Ltd v/s DCIT [2016] 70 taxmann.com 43**

**(Chennai - Trib.) (TM)(Legal PB Pg. No. 39-41)**

Where the hon'ble Tribunal held that:-

*“14. The learned Counsel appearing for the assessee submitted that apart from the two judgments of the Apex Court cited by the learned Judicial Member, the issue is squarely covered by the unreported judgment of the Hon'ble Madras High Court in the case of Goldmine Investments [Tax Case (Appeal) No. 215 of 2008 dated 29.11.2015], wherein on identical circumstances, the Hon'ble Court observed that even **if it is treated as a finding or direction, assessment cannot be reopened beyond the period of limitation.** He has referred to various other decisions/judgments to submit that even if no time limit is prescribed (as assumed by the learned AM), **still a reasonable time frame has to be assumed, as otherwise, the Assessing Officer will get unlimited time to reopen the assessment at his own will which is not permitted in law.** In this regard, he relied upon the decision of ITAT, Hyderabad, in the case of S. Sankara Reddy, In re [2005] 92 ITD 84.*

*15. In the instant case, **the period of limitation expired in 2008 whereas the Tribunal has passed an order, while disposing of the appeals for assessment years 2003-04 and 2004-05, in 2010, by which date no proceedings can be said to have been pending and hence, even if it is assumed that the order of the Tribunal contains a finding or direction, still reopening of assessment is bad***

**in law because it is beyond the period of limitation, as held by the Hon'ble Madras High Court in the case of Goldmine Investments (supra)."**

- Relying on above case law the Lucknow Tribunal in case of **Sandeep Jain vs. ITO ITA 811& 812/Lkw/2017** has decided the appeal in favour of assessee wherein it is held as under (Legal PB Pg. No. 44-59):- **"The Learned A.R. submitted that the notice u/s 147 of the Act was issued and served on the assessee on 31.03.2016 and the assessment year was 2003-04, which was beyond a period of six years as contemplated for reopening of assessment. The Learned A.R. submitted that the provision of Section 150(2) clearly puts an embargo on the Assessing Officer, wherein it has been stated that reassessment or recomputation can only be done by way of action u/s 148 of the Act if the recomputation itself could have been made at the time the order which was the subject to matter of the appeal by reason of any other provision limiting the time within which any action for reassessment is taken. In this respect, the Learned A. R. read the provisions of Section 150(1) and 150(2) of the Act. The Learned A.R. further submitted that the issue has now been settled by the third Member in the case of Emgeeyar Pictures (P.) Ltd. vs. DCIT, 70 taxmann.com 45 (Chennai- TM) and our attention was invited to Para 15 of the order. Our attention was further invited to an order of the I.T.A.T. Jaipur Bench in the case of Ramesh Chand Soni, HUF vs. Income Tax Officer, taxmann.com 71 (Jaipur- Trib.) wherein the Tribunal vide order dated 08.12.2017 has further passed the order in favour of the assessee.**

9. In the present case, undoubtedly, the case was reopened in view of CIT(A)'s order dated 22.12.2015 and on that date the assessment order for 2003-04 were already barred by limitation by the provisions of Section 149 of the Act. Therefore, we accept the contentions of the

*Learned A.R. and following the above judicial precedent allow the appeal of the assessee. Accordingly, appeal in ITA No.811/Lkw/2017 is allowed.”*

12. Whereas on the contrary Ld. DR relied upon the orders passed by the revenue authorities.

13. We have heard the counsels for both the parties, perused the material placed on record, judgements cited before us and the orders passed by the revenue authorities. From the records, we noticed that the assessee along with other coowners being the owners of the land entered into 'Development Agreement' with M/s Brick Works Trading Ltd and received their part of sale proceeds in accordance with the terms and conditions of the development agreement in A.Y 2007-08 and 2008-09, therefore the AO made additions of capital gain in A.Y 2007-08 and 2008-09. Since the same were challenged and the ITAT observed that since development agreement was executed in A.Y 2003-04, therefore keeping in mind this fact the addition in A.Y 2007-08 & 2008-09 were deleted.

14. Thereafter AO making the Tribunal order dated 19.04.2018, as basis issued notice u/s 148 of the Act on 31.03.2019, i.e after a gap of approximately 15 years. Whereas Return of Income for the year under consideration was filed on 31.03.2004 and consequently, order of assessment u/s 143(1) was passed on 21.04.2004 itself. In

this way, on the basis of notice u/s 148 of the Act dated 31.03.2019 AO initiated the proceedings of reopening after 15 years from the relevant assessment year. Which prima-facie goes to show that the proceedings initiated for reassessment are 'time barred'. In this regard, let us examined and evaluate the legal proposition as put forth by the respective parties.

15. It is an admitted fact that the 'only basis' made for reopening of assessment by the AO was 'Tribunal order dated 19.04.20018'. In support of his argument Ld. DR relied upon the provisions of section 150(1) of the Act and tried to justify that the action of the Ld.AO is within limitation. However, before proceeding, further, we first of all refer to the provisions of section 149, wherein it has been specifically mentioned that notice under section 148 of the Act could not have been issued after '**six years**' from the end of the assessment year. Admittedly, the assessment year under consideration is 2003-04 and 16 years have already been elapsed. And even otherwise the coordinate Bench of ITAT could not have given any finding in this regard in its order dated 19.04.2018, as the order of the Tribunal relates to A.Y 2007-08 & 2008-09 and the case of A.Y 2003-04 was not before the Tribunal, thus in these circumstances the Tribunal could not have given findings in respect of another year which is not before the authority, as has been held by Hon'ble

Supreme Court in the case of **CIT Vs. Green World Corporation, 314 ITR 81 (106) SC**, wherein it was observed .

- *The decision of the apex court in the case of **CIT v/s. Green World Corporation 314 ITR 81 (106) SC** (Legal PB Pg. No. 3-6) wherein it was observed that the provision of s. 150 although appears to be of a very wide amplitude, but would not mean that recourse to reopening of the proceedings in terms of s. 147 and 148 can be initiated at any point of time whatsoever. Such a proceeding can be initiated only within the period of limitation prescribed therefore as contained in s. 149. Sec. 150(1) is an exception to the aforementioned provision. **It brings within its ambit only such cases where reopening of the proceedings may be necessary to comply with an order of the higher authority. For the said purpose, the records of the proceedings must be before the appropriate authority. It must examine the records of the proceedings. If there is no proceeding before it or if the assessment year in question is also not a matter which would fall for consideration before the higher authority, s. 150 will have no application.***
- *The Hon'ble Jurisdictional Bombay High Court also in case of **Smt. Sabita Bhagwandas Shah v. ITO [1966] 59 ITR 652**, while interpreting the sections 31, 34 (1) & (2) of the Income Tax Act 1922, (corresponding to the provisions of sections 148, 153 and 253 of 1961 Act) has held that '**finding' means the finding necessary for giving relief in respect of the assessment year in question** and the proviso to section 34(3) of the 1922 Act does not save time prescribed under section 34(1) in respect of escaped assessment of any year other than that which has been the subject matter of appeal or revision.*

16. Thus considering the above judgments we can safely conclude that the findings can only be given by an authority if, or when case of particular assessment year is pending before the said authority. But in the present case A.Y 2003-

04 was not pending or subject matter before the Tribunal therefore no findings could have been given qua A.Y 2003-04.

17. Now before proceedings further let us evaluate the provisions of Sec. 150 of the Act and the same is reproduced herein below:

**150.** (1) Notwithstanding anything contained in [section-149](#), the notice under [section-148](#) may be issued at any time for the purpose of making an assessment or reassessment or recomputation in consequence of or to give effect to <sup>90</sup>any finding or direction contained in an order passed by any authority in any proceeding under this Act by way of appeal, reference or revision <sup>91</sup>[or by a Court in any proceeding under any other law].

(2) The provisions of sub-section (1) shall not apply in any case where any such assessment, reassessment or recomputation as is referred to in that sub-section relates to an assessment year in respect of which an assessment, reassessment or recomputation could not have been made at the time the order which was the subject-matter of the appeal, reference or revision, as the case may be, was made by reason of any other provision limiting the time within which any action for assessment, reassessment or recomputation may be taken.

18. After evaluating the entire provisions contained in section 150 of the Act, we are of the view that section 150(2) of the Act provides that direction under section 150(1) of the Act cannot be given by any authority or court, if on the date on which the order impugned in the appeal was passed, the reassessment proceedings had 'become time-barred'.

19. As noticed by us, from the facts of the case, that the assessee's return for A.Y 2003-04, became **barred by limitation** on 31.03.2010 itself. Therefore assessment for AY

2003-04 could not be reopened beyond 31.03.2010 as in terms of the provisions of section 149, the limitation for re-assessment had expired on 31.03.2010. Therefore on the day when ITAT passed orders dated 19.04.2018, even on that date itself the reassessment proceedings had become **time-barred**.

20. Thus, in this way, section 150(2) of the Act enacts a well settled principle of law that an Appellate Authority cannot give a direction which goes to the extent of conferring upon the AO, if he is not lawfully seized of jurisdiction. In this regard we find the reliance from the decision of

<b>SR. NO.</b>	<b>CITATION</b>	<b>OBSERVATION</b>
1.	<i>K.M. Sharma v. ITO</i> [2002] 122 Taxman 426 (SC) (Legal PB Pg. No. 1-2)	<b>Section 150</b> , read with sections <b>148 and 149</b> of the Income-tax Act, 1961 - <b>Income escaping assessment - Provisions for cases where assessment is in pursuance of an order on appeal, etc. - Assessment years 1968-69 to 1971-72 and 1981-82 to 1982-83 - Whether provision of section 150(1), as amended from 1-4-1989, can be given retrospective effect prior to 1-4-1989 for assessments which have already become final due to bar of limitation prior to 1-4-1989 - Held, no - Whether, therefore, position is that section 150(1), as amended with effect from 1-4-1989, does not enable authorities to reopen assessments which have become final due to bar of limitation prior to 1-4-1989 and this position is applicable equally to reassessments proposed on basis of</b>

		<p><b>orders passed under Act or under any other law - Held, yes</b></p> <p><b>Interpretation of statutes - Rule of strict construction</b></p> <p><i>Held that :- Even a procedural provision cannot in the absence of clear contrary intendment expressed therein be given greater retrospectivity than is expressly mentioned so as to enable the Authorities to affect finality of tax assessments or to open up liabilities, which have become barred by lapse of time.</i></p>
2.	<p><i>BrahmDatt v.ACIT[2018] 100 taxmann.com 324 (Delhi)</i> <b>(Legal PB Pg. No. 24-26)</b></p>	<p><b>Amendment to section 149 by Finance Act, 2012, which extended limitation for reopening assessment to sixteen years, could not be resorted for reopening proceedings concluded before amendment became effective</b> Section <u>149</u>, read with section <u>148</u>, of the Income-tax Act, 1961 - Income escaping assessment - Time-limit for issuance of notice (General) - Assessment year 1998-99 - Assessee was a senior citizen who was non-resident for assessment year 1998-99 - Relying on assessee's statement during search that he had settled an offshore trust, Assessing Officer issued notice under section 148 in March, 2015 thereby proposing to tax amount of US \$ 2-3 million contributed by assessee for settling a trust in foreign country - Whether assessment for subject assessment year could not have been reopened beyond 31-3-2005 in terms of provisions of section 149 as applicable at relevant time - Held, yes - Whether subsequent amendment to section 149, by Finance Act, 2012, which extended limitation for initiation of reassessment proceedings to sixteen years, could not be resorted for</p>

		<p>reopening concluded proceedings in respect of which limitation had already expired/lapsed before amendment became effective - Held, yes - Whether thus, impugned reassessment notice and all consequent proceedings were to be quashed and set aside - Held, yes [Paras 14, 15, 16 an 19][In favour of assessee]</p>
3.	<p>Varkey Jacob Vs. CIT [2005] 146 TAXMAN 665 (KER.)</p>	<p><b>Section 147, read with section 148, of the Income-tax Act, 1961 - Income escaping assessment - General - Assessment years 1979-80 to 1984-85 - Whether proceedings for reopening assessment for assessment years which have attained finality under existing law due to bar of limitation can be revived by amendment of law which has no express provision of retrospective effect - Held, no</b></p>
4.	<p>Smt. N. Illamathy v. ITO [2020] 120 taxmann.com 313(Legal PB Pg. No. 27-34)</p>	<p><b>Where assessment of assessee for assessment year 1997-98 was completed under section 143(1), impugned reopening notice dated 22-12-2005 issued by Assessing Officer on ground that a sum received by assessee from a firm in year 1996 was to be admitted to assessee's income as commission received, was barred by limitation in terms of provisions of section 149(1)(b) as applicable at relevant time</b></p> <p>It was held as follows :- "18. Admittedly, the notice under section 148 of the Act was issued by the Assessing Officer on 22nd December, 2005 and the law applicable as on date prescribed the limitation of four years, but not more than six years. Thus, the notice issued on or after 31st March, 2004 would suffer from lack of jurisdiction as it is clearly hit by the limitation prescribed under</p>

		<i>the Statute. Unfortunately, the Tribunal failed to take note of this very important legal issue, which has been settled by the Hon'ble Supreme Court. In fact, the assessee, at the earliest point of time, referred to the decision of the Hon'ble Supreme Court in the case of K.M. Sharma (supra), which was erroneously distinguished by the Assessing Officer, the Commissioner of Income-tax (Appeals) and the Tribunal and that they all committed an error in gross violation of the Statute".</i>
5.	<i>Ramesh Chand Soni, HUF v. ITO [2018] 89 taxmann.com 71(Legal PB Pg. No. 35-38)</i>	<b>Held that "for the purpose of Computation of period limitation for reassessment as prescribed in sub-section (2) of section 150 of the Act , limitation provided under section 149 of the Act has to be counted from the end of relevant assessment year till date of order which is subject matter of appeal wherein directions were passed."</b>

21. The Hon'ble Jurisdictional Mumbai Tribunal under somewhat similar facts in the case of **Anil Suri Vs. ITO [2014] 46 taxman.com 8** Mumbai has allowed the appeal in favour of the assessee. The similarity in both the cases i.e of **Anil Suri** and that of assessee are stated in a tabular form which is reproduced below:

<b>Sr. No.</b>	<b>FACTS OF ANIL SURI</b>	<b>FACTS OF ASSESSEE</b>
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1.	Received consideration in part and <b>granted developer the right to enter</b> the plot to carry out construction work of additional built up area on <b>09.02.2000</b>	<b>Agreement executed on 10/10/2002</b> and permission was granted
2.	AO <b>assessed capital gain</b> in AY <b>2002-03</b>	AO <b>assessed capital gain</b> in AY <b>2007-08</b>
3.	Tribunal in appeal for AY 2002-03 held that <b>income is not taxable in AY 2002-03 because it is taxable in AY 2000-01</b>	Tribunal in appeal for AY 2007-08 held that <b>income is not taxable in AY 2007-08 because it is taxable in AY 2003-04.</b>
4.	AO <b>reopened</b> by issuing notice u/s 148 for <b>AY 2000-01</b>	AO <b>reopened</b> by issuing notice u/s 148 for <b>AY 2003-04</b>
5.	<p>It was held as follows in <b>Para 2.3.2 of Anil Suri's case</b></p> <p>“After considering the legal position aforementioned, it is pertinent to mention that the decision of the Tribunal on the basis of which the assessment for year under consideration reopened is related to the assessment year 2002-03. <b>The observation of the Tribunal for the purpose of deleting the addition in respect of the assessment year 2002-03 cannot be treated to be a 'finding' for reopening the AY 2001-02 as the appeal for said assessment year has not been before the Tribunal for adjudication.</b> The observation of the Tribunal that 'the case of the assessee is to be brought to tax for assessment year 2000-01 and not assessment 2002-03 as done by the assessing officer' is incidental for holding the addition made in the year 2002-03 is not justifiable and <b>the same cannot be the basis for having recourse to section 150 of the Act by holding it as 'finding or direction'.</b> Section 150(1) is an exception which brings within its ambit only such cases where reopening of the proceedings may be</p>	

*necessary to comply with an order of the higher authority. **Since the observation of the Tribunal that 'the case of the assessee is to be brought to tax for assessment year 2000-01', does not require compliance by the authorities below so far as the assessment year 2000-01 is concerned, taking recourse to section 150 of the Act by holding the same as 'finding' of the Tribunal is not legally tenable.***

22. Considering the totality of the facts and circumstances of the present case and keeping view the provisions of sub Sec. (2) to Section 150, which restricted the applicability of the provision of Sec. 150 in a case where 6 years have already lapsed when appeal order was passed. Since in the present case the appeal order for 2007-08 & 2007-08 was admittedly passed on 19.04.2018, but till that time 6 years from the end of A.Y 2003-04 had already lapsed therefore in these circumstances reopening proceedings could not have been initiated against the assessee for the year under consideration after a gap of 16 years and similar issue has also come up before Hon'ble Chennai Tribunal in the Case of ***Emgeeyar Pictures (P) Ltd Vs. Ltd Vs. DCIT [2016] 70 taxmann.com 43***, wherein it was held as under:

Where the hon'ble Tribunal held that:-

*"14. The learned Counsel appearing for the assessee submitted that apart from the two judgments of the Apex Court cited by the learned Judicial Member, the issue is squarely covered by the unreported judgment of the Hon'ble Madras High Court in the case of Goldmine Investments [Tax Case (Appeal) No. 215 of 2008 dated 29.11.2015], wherein on identical circumstances, the Hon'ble Court observed that even **if it is treated as a finding or direction, assessment***

**cannot be reopened beyond the period of limitation.** He has referred to various other decisions/judgments to submit that even if no time limit is prescribed (as assumed by the learned AM), **still a reasonable time frame has to be assumed, as otherwise, the Assessing Officer will get unlimited time to reopen the assessment at his own will which is not permitted in law.** In this regard, he relied upon the decision of ITAT, Hyderabad, in the case of S. Sankara Reddy, In re [2005] 92 ITD 84.

15. In the instant case, **the period of limitation expired in 2008 whereas the Tribunal has passed an order, while disposing of the appeals for assessment years 2003-04 and 2004-05, in 2010, by which date no proceedings can be said to have been pending and hence, even if it is assumed that the order of the Tribunal contains a finding or direction, still reopening of assessment is bad in law because it is beyond the period of limitation, as held by the Hon'ble Madras High Court in the case of Goldmine Investments (supra)."**

23. Therefore considering the totality of the facts, circumstances and legal propositions as discussed above, we hold that reassessment proceedings initiated for the year under consideration is 'barred by limitation' and thus stands quashed, consequently ground Nos. 1 to 3 raised by the assessee stands allowed.

4. On the facts and in the circumstances of the case and in law the Learned A.O erred in determining the income at Rs.47,31,73,860/- and the learned C.I.T.(A) erred in upholding the same

5 On the facts and in the circumstances of the case and in law the learned A.O erred in adding an amount of Rs.6,37,93,770/- as

*'consideration received by the assessee in A.Y. 2007-08' and assessing the same as capital gains income for the A.Y. 2003-04, although the same income has been returned and assessed as income in the A.Y. 2007-08 and the learned C.I.T.(A) erred in upholding the same.*

*6. On the facts and in the circumstances of the case and in law the Learned A.O erred in adding an amount of Rs. 3,14,91,030/- as consideration taken by the A.O. in A.Y. 2008-09 on sale of owned flats in Ozone and assessing the same as capital gains income for the A.Y. 2003-04, although the same income has been returned and assessed as income in the A.Y. 2008-09 and the learned C.I.T.(A) erred in upholding the same.*

*7. On the facts and in the circumstances of the case and in law the Learned A.O erred in adding an amount of Rs.38,99,61,600/- as consideration taken by the A.O. in A.Y. 2008-09 on sale of flat//shop/pent houses and assessing the same as capital gains income for the A.Y. 2003-04, although the same income was assessed as income in the A.Y. 2008-09 vide order dated 25-03-2014 passed u/s 143(3) r.w.s. 263 & 147 of the act and was deleted by the learned C.I.T.(A) vide order dated 17-02-2015 and the Hon'ble Tribunal confirmed the deletion by dismissing the appeal of the Revenue.*

24. The other grounds of appeal relates to challenging the order of Ld. CIT(A) in upholding the additions on account of capital gain in the case of assessee.

In this regard Ld. AR reiterated the arguments as were raised by him before the revenue authorities and also submitted a chart containing the computation of capital gain for the A.Y 2003-04 and the same is reproduced herein below:

<b>Particulars</b>	<b>Amount (Rs.)</b>
<i>Market Value of Land as per Development Agreement dated 09.10.2002 (Note 1)</i>	<i>3,51, 33,600/-</i>
<i>- Stamp Duty Valuation of development agreement</i>	

for the entire land for AY 2003-04 Rs. 17,56,68,000/- - Assessee has 1/5 <sup>th</sup> share in the land which works out to be (Rs.17,56,68,000/5)= 3,51,33,600/-		
<b>Less : Indexed Cost of Acquisition (Note 2)</b>		<b>9,84,55,360/-</b>
Total land as per agreement	74,139.40sqmtrs. (7,98,036.50sq.ft.)	
Total FMV of land as on 01.04.1981	Rs.18,35,48,395/- (7,98,036.50 sq.ft.*230)	
Value of 60% land transferred	Rs.11,01,29,037/- (18,35,48,395 *60%)	
Thereby assessee's share is 1/5 <sup>th</sup>	Rs.2,20,25,807/-	
CII for AY 2003-04	447	
Indexed Cost of Acquisition	Rs.2,20,25,807*4.47= <b>Rs.9,84,55,360/-</b>	
<b>Long Term Capital Gain/ (Loss)</b>		<b>(6,33,21,759/-)</b>

25. On the contrary Ld. DR relied upon the orders passed by the revenue authorities.

26. After having heard the counsels for both the parties, we noticed that as per record the development agreement was entered into between the parties for the year under consideration and therefore considering the taxability of capital gain in the year in which contract was entered into, and taking into consideration the computation of capital gain calculated in the chart placed on record by the assessee we found that there is loss instead of capital gain to the assessee. In making the said calculation the assessee has rightly taken the value in accordance with the stamp duty valuation of development agreement for the entire land for the

year under considering and while working 1/5 share of the assessee a sum of Rs. 3,51,33,600/- was taken as market value as determined by the stamp duty authority. And since the land was acquired by the assessee before 1.04.1981 and therefore as per the provisions of Sec. 48 of the Act, the cost of acquisition is considered as fair market value as on 01.04.1981. And hence as per the order of CIT(A) dated 28.05.2014 and valuation report the index cost of acquisition comes to Rs. 8,82,69,984/- as enumerated and detailed in the following chart.

<i>Total FMV of Land as on 01.04.1981</i>	<i>Rs.18,35,48,395/-</i>
<i>Total land as per agreement</i>	<i>74,139.40sq.mtrs.(7,98,036.50sq.ft.)</i>
	<i>(7,98,036.50 sq.ft.*230/-)</i>
<i>Value of 60% of land transferred</i>	<i>Rs.11,01,29,037/-</i> <i>(Rs. 18,35,48,395*.060)</i>
<i>Thereby Assessee's Share (1/5)</i>	<i>Rs2.20.25.807/-</i>
<i>CII for A.Y. 2003-04</i>	<i>447</i>
<i>Indexed Cost of Acquisition</i>	<i>1,97,47,200*4.47= 8,82,69,984/-</i>

27. Therefore from the above computation as well it can be clearly observed that there is no capital gain and instead there is a capital loss so in these circumstances, there is no question of any tax to be paid on the same.

28. Therefore considering the entire facts and circumstances of the present case and also the judicial precedents as referred by us above we allow the grounds of appeal raised by the assessee regarding the additions made on account of capital gain and thus direct the AO to delete the same.

29. In the result, the appeal filed by the assessee stands allowed.

Order pronounced in the open court on 25.02.2025.

Sd/-

**(PRABHASH SHANKAR)**  
**(ACCOUNTANT MEMER)**

Sd/-

**(SANDEEP GOSAIN)**  
**JUDICIAL MEMBER**

Mumbai, Dated 25/02/2025

KRK, PS

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार ( Asst. Registrar)  
आयकर अपीलीय अधिकरण, मुम्बई/ ITAT, Mumbai