

IN THE INCOME TAX APPELLATE TRIBUNAL
“J(SMC)” BENCH, MUMBAI
BEFORE SMT. BEENA PILLAI (JUDICIAL MEMBER)
AND
SHRI OMKARESHWAR CHIDARA (ACCOUNTANT MEMBER)

I.T.A. No. 4499/Mum/2024
Assessment Year: 2016-17

Abhishek Nadgeri 703, Aakesha CHSL, Plot No. 56/57, Darave Bo, Nerul Node-III So, Thane, Maharashtra-400706 PAN: AWHPN3564D (Appellant)	Sanjeev	Vs.	Assessment Income Tax Department IT- Office, Vashi Railway Station Building, Navi Mumbai-400703 (Respondent)	Unit,
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Appellant by	Shri. Devendra Jain
Respondent by	Shri. Asif Karmali, SR. D.R.

Date of Hearing	23.01.2025
Date of Pronouncement	21.02.2025

ORDER

Per: Smt. Beena Pillai, J.M.:

The present appeal filed by assessing arises out of order dated 19/06/2024 passed by NFC Delhi for assessment year 2016-17 on following grounds:

- “1. The Ld. CIT(A) has completed the appellate proceedings without considering the facts and circumstances of the case, which is*

contrary to the law and is also against the principles of natural justice.

2. *The Ld. CIT(A) has erred in upholding the notice u/s 148 issued by the Ld.AO, which in fact was issued beyond the time limit prescribed u/s 149 of the Income Tax Act, 1961 resulting in upholding an assessment made on the basis of the impugned notice which is bad-in-law.*
3. *The Ld. CIT(A) has erred in upholding the validity of the notice issued u/s 148, by obtaining the approval of Hon. PCIT instead from Hon. PCCIT or CCIT in terms of sec. 151 rendering the Notice bad-in-law.*
4. *Addition of Rs. 7,08,336 u/s 69A*
 - a. *The Ld. AO and CIT(A) has erred in treating a sum of Rs. 7,08,336 (being sum admitted by appellant as received against accommodation bills), as unexplained money u/s 69A inspite of explaining the source of money and consequently, subjecting the same to tax at the rates prescribed u/s 115BBE.*
 - b. *The Ld.AO and CIT(A) has also erred in not appreciating that the provisions of section 69A are not applicable since the appellant has offered adequate explanation about the nature and source of the amount received.*
 - c. *The Ld. AO and CIT(A) have erred in not appreciating that the said sum of Rs. 7,08,336 is duly reflecting in the bank statement of the appellant and therefore, the provisions of sec. 69A which are applicable in the case where entries representing income are not recorded in the books of account cannot be invoked in the case of the appellant.”*

Brief facts of the case are as under:

2. The assessee is an individual and filed his return of income for year under consideration on 29/07/2016, declaring total income of Rs.2,74,990/- under the head business income. Subsequently, a search and seizure operation was conducted in the premises of J.M Mhatre group of cases on 20/09/2017. Statement of J.M Mhatre group there the relatives and its

employees were recorded. It was observed that assessee was the son of Shri Sampada S. Nadageri who is an employee of J.M Mhatre group.

2.1 During the statement recorded under section 131 of the Act, the assessee stated that he received amount of Rs.7,08,336/- as contract charges. The Ld.AO on verifying the return of income filed by the assessee for the year under consideration saw that the assessee declared income of Rs. 2,74,990/- only.

2.2 The Ld.AO thus had reason to believe that, assessee received bogus accommodation entry and the case was reopened under section 147 of the Act after recording reasons. Assessee was issued notice under section 148 by the jurisdictional assessing officer on 05/04/2021. The said notice was treated to be the deemed notice issued under section 148A(b) of the Act, as per the directions of *Hon'ble Supreme Court* in case of *UOI vs Ashish Agarwal* in *Civil Appeal No.3005/2022*. The Ld.AO subsequently, passed order under section 148A(d) on 29/07/2022, rejecting the objections raised by the assessee with regard to the alleged bogus transaction.

2.3 The Ld.AO issued notice under section 148 of the Act, on 29/07/2022. The assessment was completed under section 147 of the Act, by making addition of Rs. 7,47,709/- including income from other sources amounting to Rs.7,08,336/-, treated as unexplained money under section 69A of the Act.

Aggrieved by the order of the Ld.AO, assessee preferred appeal before the Ld. CIT(A).

3. Various grounds on merit as well as legal propositions were raised by the assessee before the First Appellate Authority.

3.1 The limitation of passing the assessment order was also challenged. The assessee also challenged that, the assessing officer did not get approval from the appropriate authority as per section 151(ii) of the act.

3.2 The Ld. CIT(A) however dismissed the legal contentions raised by the assessee and confirmed the addition by observing as under:

“6. Decision:

The appellant in its ground of appeal has assailed the AO in initiating the proceedings u/s 147 of the Act. The AO in the assessment order noted that information has been received that the assessee has received contract charges from J.M. Mhatre group on which search was conducted and it was found that the group was indulging in bogus accommodation entries and as such the assessee has received the contract charges of Rs. 708336/- which it has not reflected in its ROI. Accordingly, the AO issued the notice u/s 148 of the Act after following the due procedure. The AO in the assessment order has discussed the facts of the case and the issue relating to the notices issued u/s 148 of the Act in light of the order of the Hon'ble Supreme Court in case of Ashish Agarwal. The submission of the appellant is considered and the assessment order is perused. At the stage of issuance of notice for reassessment, the Assessing Officer has only to form a prima facie view. The material available with the AO at hand was sufficient to form such a view. There were reasons to believe that income had escaped assessment in this case: [New Delhi Television Ltd. v DCIT (2020) 424 ITR 607 (SC)]. In light of the above the appellants challenge to the validity of the issuance of notice u/s 148 and subsequent re-assessment is within the law and the ground of appeal is accordingly dismissed.

6.1 The appellant in its grounds of appeal assailed the AO in taxing the amount of Rs. 708336/- u/s 115BBE of the Act. The appellant in its submission submitted that consequent to the search it had filed the revised ROI declaring income Rs. 747709/- which was earlier at Rs. 274990/- in the original return. The amount was incorporated in the revised return by the assessee in the revised return. The appellant relied on a number of case laws to substantiate its grounds of appeal. The submission of the appellant is examined. The emphasis of the

appellant that it had offered the income in the revised ROI and that the same had been incorporated and is reflected in the books of account and therefore does not warrant invocation of 69A r.w.s. 115BBE of the Act. Therefore, the action of the AO is upheld and the grounds of appeal are dismissed.”

Aggrieved by the order of the Ld. CIT(A) preferred appeal before the *Tribunal*.

4. At the outset the Ld.AR submitted that there is a delay of 13 days in filing the present appeal before the *Tribunal*. He submitted that electronically assessee preferred appeal before the *Tribunal* on 16/08/2024, which was well within the due date of filing the appeal. However, there was an inadvertent error that crept in, wherein the jurisdictional assessing officer was treated as stationed at Delhi instead of Mumbai. The Ld.AR submitted that, the error happened because respondent was National Faceless Authority, Delhi. This resulted in appeal being filed at ITAT Delhi. It was submitted that, subsequently, the assessee filed application before *Hon’ble ITAT Delhi* to transfer the appeal to Mumbai ITAT. However, in the meantime as an abundant caution, the assessee again filed another appeal before ITAT Mumbai resulting in delay of 13 days.

4.2 The Ld.AR thus prayed for the delay to be condoned in the interest of justice as it is unintentional.

4.3 The Ld.DR, though objected to condition of delay, however could not controvert the submissions of the assessee in the application filed for condoning the delay.

I have perused the submissions advanced by both sides in the light of the records placed before this *Tribunal*.

5. It is necessary to analyse whether the reason stated by the assessee to seek condonation of delay before *Tribunal* is sufficient to condone the delay and whether, there exists sufficient cause for not presenting the appeal before *Tribunal*, within the period of limitation under the statute is necessary. The assessee must also show that, it was diligent in taking appropriate steps and the delay was caused notwithstanding with its due diligence. The Court/authority has to examine whether the sufficient cause was shown by the party for condoning the delay, and whether such cause is reasonable or not.

5.1 In the present case in hand, the assessee explained the delay in filing the appeals before the *Tribunal* was due to the inadvertent mistake of filing the appeal before *Hon'ble ITAT Delhi*, based on the respondent being NFAC Delhi. It is noted that the assessee filed appeal before ITAT Delhi within the period of limitation. And upon realizing that the appeal is to be filed at ITAT Mumbai, the assessee took necessary steps to file the appeal before this *Tribunal*. This being the position, it constitutes sufficient cause for filing the appeals belatedly.

5.2 I am therefore of the opinion that the reasons assigned by the assessee inability to present the appeal within time before this *Tribunal* deserves consideration based on the principles laid down by *Hon'ble Supreme Court* in case of *Collector Land Acquisition Vs. Mst. Katiji & Ors.*, reported in (1987) 167 ITR 471.

Accordingly the application dated 22/01/2025 filed by the assessee seeking condonation of 13 days delay in filing the present appeal before this *Tribunal* stands allowed.

6. The Ld.AR on merits submitted that **Ground No.1** raised by the assessee is general in nature and therefore do not require any adjudication.

7. In **Ground No.2** the assessee is challenging the notice issued under section 148 to be beyond the time prescribed under section 149 of the leading assessment to be bad in law.

7.1 The Ld.AR submitted that, for year under consideration, the time limit to issue of notice beyond for years under the un-amended provisions of section 149 expired on 31.03.2022. He submitted that, relaxation under the TOLA is not applicable in assessee's case as TOLA provisions are applicable only to cases where the time limit for issuing notices expired on or before 20/03/2020 to 31/03/2021 and till 31/06/2021, as held by the *Hon'ble Supreme Court* in the case of *UOI vs. Rajeev Bansal* reported in (2024) 167 taxmann.com 70. The Ld.AR thus contended that the notice issued on 29/07/2022 is bad in law as held by *Hon'ble Supreme Court* in case of *UOI vs. Rajeev Bansal(supra)*.

7.2 On the other hand the Ld.DR submitted that, time limit of 6 years from the end of the relevant assessment year falls on 31/03/2023 and therefore, it squarely falls within the relaxation given by TOLA. The Ld.DR further submitted that, original notice under section 148 of the act was issued on 05/04/2021 and therefore, it was not barred by limitation as contended by the Ld.AR.

I have perused the submissions advanced by both sides in the light of the records placed before this *Tribunal*.

7.3 In the present facts of the case, as per the old regime, the time available to issue notice under section 148 of the Act as prescribed under section 149 was till 31/03/2023, being 6 years from the end of the assessment year under consideration. The section notice under 148 under the old regime was issued to the assessee's 05/04/2021 which is beyond 4 years but within 6 years, and as the income alleged to have escaped assessment is likely to be 1lakh, the limitation as prescribed under TOLA will be applicable to the present facts.

I therefore do not find any merit advanced by the in respect of ground number 2.

According to ground number 2 raised by the assistance dismissed.

8. Ground No.3 raised by the assessee challenging the validity of the notice issued under section 148 by obtaining approval from the Principal Commissioner of Income Tax instead of Principle Chief Commissioner of Income Tax or Chief Commissioner of Income Tax in terms of section 151 of the act.

8.1 The Ld.AR submitted that, *Hon'ble Supreme Court* in case of *Rajeeve Bansal (supra)* considered the issue of obtaining approval from the appropriate authority under section 151 before issuance of notice under section 148 of the act. It is submitted that as per the new provisions of section 148A, the directions of the *Hon'ble Supreme Court* clearly emphasis about the competent authority who has to approve such notices as under:

73. Section 151 imposes a check upon the power of the Revenue to reopen assessments. The provision imposes a responsibility on the Revenue to ensure that it obtains the sanction of the specified authority before issuing a notice under section 148. The purpose behind this

procedural check is to save the assesses from harassment resulting from the mechanical reopening of assessments Sri krishna (P.) Ltd. v. ITO [1996] 87 Taxman 315/221 ITR 538 (SC)/[1996] 9 SCC 534. 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

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 year time limit for assessment year 2017-2018 falls for completion on 31 March 2021. It falls during the time period of 20 March 2020 and 31 March 2021, contemplated under section 3(1) of TOLA. Resultantly, the authority specified under section 151(i) of the new regime can grant sanction till 30 June 2021.

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

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

b. Section 148A(b) - to provide an opportunity of hearing to the assessee by serving upon them a show cause notice as to why a notice under section 148 should not be issued based on the information that suggests that income chargeable to tax has

escaped assessment. It must be noted that this requirement has been deleted by the Finance Act 2022;

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

d. Section 148 - to issue a reassessment notice.

80. *In Ashish Agarwal (supra), this Court directed that Section 148 notices which were challenged before various High Courts "shall be deemed to have been issued under section 148-A of the Income-tax Act as substituted by the Finance Act, 2021 and construed or treated to be show-cause notices in terms of Section 148-A(b)." Further, this Court dispensed with the requirement of conducting any enquiry with the prior approval of the specified authority under section 148A(a). Under Section 148A(b), an assessing officer was required to obtain prior approval from the specified authority before issuing a show cause notice. When this Court deemed the Section 148 notices under the old regime as Section 148A(b) notices under the new regime, it impliedly waived the requirement of obtaining prior approval from the specified authorities under section 151 for Section 148A(b). It is well established that this Court while exercising its jurisdiction under Article 142, is not bound by the procedural requirements of law High Court Bar Association v. State of U P [2024] 160 taxmann.com 32/299 Taxman 21 (SC)/[2024] 6 SCC 267.*

81. *This Court in Ashish Agarwal (supra) directed the assessing officers to "pass orders in terms of Section 148-A(d) in respect of each of the assesses concerned." Further, it directed the assessing officers to issue a notice under Section 148 of the new regime "after following the procedure as required under section 148-A." Although this Court waived off the requirement of obtaining prior approval under section 148A(a) and Section 148A(b), it did not waive the requirement for Section 148A(d) and Section 148. Therefore, the assessing officer was required to obtain prior approval of the specified authority according to Section 151 of the new regime before passing an order under section 148A(d) or issuing a notice under section 148. These notices ought to have been*

issued following the time limits specified under section 151 of the new regime read with TOLA, where applicable.

8.2 The Ld.AR argued that the present facts of the case approval was granted by Principal Chief Commissioner Income Tax-27 Mumbai, to pass orders under section 148A(d) as well as issuance of notice under section 148 under the new regime. He submitted that the said information is categorically recorded in the order passed under section 148A(d) as well as the notice issued under section 148 of the act, both dated 29/07/2022.

8.3 The Ld.AR the submitted that as prior approval was not sought from the prescribed authority under section 151 of the new regime, the assessment proceedings and consequential assessment order passed bad in law.

8.4 On the contrary, the Ld.DR submitted that the original notice issued by the Ld.AO was with prior approval of the appropriate authority as per the erstwhile section 151 of the act. He thus submitted that, the proceedings cannot be invalidated on such arguments that the approval was not obtained from the appropriate authority as envisaged under section 151 of the new regime.

I have produced the submissions advanced by both sides in the light of the records placed before the *Tribunal*.

9. We have carefully perused the observations of the *Hon'ble Supreme Court* in case of *Rajiv Bansal (supra)* as well as the decision of *Hon'ble Supreme Court* in case of *Ashish Agarwal (supra)*.

The Ld.AO passed order are section 148A(d) as well as issued notice under section 148 under the new regime on 29/07/2022.

Hon'ble Supreme Court in both decisions referred to herein above observed that, the appropriate authority for issuance of such notices would be as per section 151 of the new regime.

9.1 The impugned documents placed before the *Tribunal* reveals that, the appropriate authority who granted approval is the Principal Chief Commissioner of Income tax-27 Mumbai, as recorded in Para 6 of the order under section 148A(d) and para 3 of the notice issued under section 148, both dated 29/07/2022 vide Reference No. Pr.CIT-27/148A(d)/Approval/2022-23 dated 27/07/2022.

9.2 In the present facts of the case, the notice was issued beyond 3 years from end of the assessment year under consideration. As per the decisions of *Hon'ble Supreme Court*, in above referred decisions the approval should be obtained as per the amended provisions of section 151 (ii) of the act from the Principal Chief Commissioner. However it is noted that the approval is obtained from the Principal Commissioner of Income tax as stated in the notice, as well as the order passed under section 148A (d) of the act.

9.3 We therefore do not find any reason not to uphold the argument advanced by the Ld.DR. Accordingly the notice issued under section 148 is held to be invalid and the consequent assessment order passed under section 147 read with section 144B of the is liable to be quashed.

Accordingly the Ground No.2 raised by the assessee stands allowed.

10. As the order under section 147, is quashed, the addition challenged by the assessee on merits becomes academic at this stage.

In the result of the file by the assessee stands partly allowed as indicated hereinabove.

Order pronounced in the open court on 21/02/2025

Sd/-

(OMKARESHWAR CHIDARA)
Accountant Member

Sd/-

(BEENA PILLAI)
Judicial Member

Mumbai:
Dated: 21/02/2025
Poonam Mirashi,
Stenographer

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy

By order

(Asstt. Registrar)
ITAT, Mumbai