

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"D" BENCH, MUMBAI**

**SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER  
SMT RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No. 3551/MUM/2024  
(Assessment Year: 2017-18)**

**Additional Commissioner of  
Income Tax 19(3)**

513, 5<sup>th</sup> Floor, Piramal Chambers,  
Parel, Mumbai - 400020

**Ramchand Thakurdas Jhamtani**

Gala No. 120, Rajlaxmi Complex, Q  
Building, Backside Kalher, Bhiwandi,  
Thane - 400203, Maharashtra  
[PAN: AAEPJ8492K]

..... **Appellant**

Vs

..... **Respondent**

**C. O. No. 228/MUM/2024  
(Assessment Year: 2017-18)**

**Ramchand ThakurdasJhamtani**

Gala No. 120, Rajlaxmi Complex, Q Building,  
Backside Kalher, Bhiwandi,  
Thane - 400203, Maharashtra  
[PAN: AAEPJ8492K]

..... **Appellant**

**Additional Commissioner of  
Income Tax 19(3)**

513, 5th Floor, Piramal Chambers,  
Parel, Mumbai - 400020

Vs

..... **Respondent**

**Appearance**

For the Appellant/Assessee : Shri Dharan Gandhi  
For the Respondent/Department : Shri R. R. Makwana

**Date**

Conclusion of hearing : 12.02.2025  
Pronouncement of order : 28.02.2025

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**ORDER**

**Per Bench:**

1. The present appeal and cross-objection pertain to Assessment Year 2017-2018. The Revenue has preferred appeal against the

order, dated 16/05/2024, passed by the Commissioner of Income Tax, Appeal, Delhi, National Faceless Appeal Centre (NFAC), [hereinafter referred to as the '**CIT(A)**'], under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as '**the Act**'], whereby the Ld. CIT(A) had disposed off the appeal of the Assessee against the Assessment Order, dated 26/05/2023, passed under Section 147 read with Section 144B of the Act, for the Assessment Year 2017-2018. The Assessee has filed cross objection.

2. The relevant facts in brief are that notice under Section 148 of the Act (old regime) was issued to the Assessee for the Assessment Year 2017-2018 on 28/06/2021 (i.e., after the expiry of 3 years but before 30/06/2021 - extended period time granted by TOLA<sup>1</sup>). Subsequently, in compliance with the judgment of the Hon'ble Supreme Court in the case of Union of India vs. Ashish Agarwal 444 ITR 1 (SC) [04/05/2022], communication, dated 27/05/2022, was sent to the Assessee intimating that the aforesaid notice issued under Section 148 of the Act (*under old regime*) would be treated as the show-cause notice issued in terms of Section 148A(b) of the Act (*under new regime introduced by the Finance Act, 2021 w.e.f. 01/04/2021*). The Assessing Officer also shared with the Assessee material/information on the basis of which the Assessing Officer had formed a belief that income had escaped assessment. Thereafter, order under Section 148A(d) of the Act was passed on 30/07/2022 after taking approval from the Principal Commissioner of Income Tax, Mumbai. This was followed by issuance of notice on 30/07/2022 under Section 148 of the Act (new regime). The reassessment proceedings culminated into passing of the Assessment Order, dated 25/05/2023, passed

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<sup>1</sup> The Taxation And Other Laws (Relaxation And Amendment Of Certain Provisions) Act, 2020

under section 147 read with Section 144B of the Act. The appeal preferred by the Assessee against the aforesaid Assessment Order was allowed by the CIT(A) vide Order, dated 16/05/2024. Being aggrieved, the Revenue has preferred the present appeal before the Tribunal challenging the relief granted by the CIT(A), while the Revenue has filed cross-objection challenging the validity of the re-assessment proceedings.

3. We would first take up cross-objection filed by the Assessee raising jurisdictional issue. The cross objection raised by the Assessee read as under:

*"1. The notice issued u/s 148 of the Act dated 30.07.2022 is bad in law. The Ld. AO has not fulfilled the jurisdictional requirements of section 147 to 151 of the Act."*

4. We have heard both the sides and have perused the material on record in relation to this issue. We have also taken into consideration the judicial precedents cited during the course of hearing.
5. In the facts and circumstances of the present case the issue that arises for consideration is whether the Principal Commissioner of Income Tax or the Principal Chief Commissioner of Income Tax was the Specified Authority for seeking approval for passing order under Section 148A(d) of the Act and issuance of notice under Section 148 of the Act (new regime) for the Assessment Year 2017-18.
6. In this regard we deem it appropriate to refer to judgment of the Hon'ble Supreme Court in the case **Union of India vs. Rajeev Bansal [2024] 469 ITR 46** (SC)[03/10/2024]. The Hon'ble Supreme Court had, while dealing with the issue of approval from specified authority in terms of Section 151 of the Act, made

the following observations:

- "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.**" (Emphasis Supplied)*

- 7. On bare reading of the above extract of the judgment of Hon'ble Supreme Court in the case of Rajeev Bansal (supra), we find that the Hon'ble Supreme Court had clarified as under:

- (a) Under new regime introduced by the Finance Act, 2021 Assessing Officer was required to obtain prior approval or sanction of the 'Specified Authority' at four stages – at first stage under Section 148A(a), at second stage under Section 148A(b), at third stage under Section 148A(d), and at fourth stage under Section 148. In the case of Ashish Agarwal (supra) the Hon'ble Supreme Court waived off the requirement of obtaining prior approval under section 148A(a) and Section 148A(b) of the Act only. 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.
- (b) Under new regime if income escaping assessment is more than Rupees 50 lakhs a reassessment notice could be issued after expiry of three years from the end of the relevant previous year only after obtaining the prior approval of the Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General.
- (c) 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<sup>th</sup> March 2020 and 31<sup>st</sup> March 2021, then the 'Specified Authority' under Section 151(i) has an extended time till 30<sup>th</sup> June 2021 to grant approval.
- (d) 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

(e) 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.

8. In the present case the period of 3 years from the end of the Assessment Year 2017-2018 fell for completion on 31<sup>st</sup> March 2021. The expiry date fell during the time period of 20<sup>th</sup> March 2020 and 31<sup>st</sup> March 2021, contemplated under Section 3(1) of TOLA. Resultantly, the authority specified under Section 151(i) of the new regime could have granted sanction till 30<sup>th</sup> June 2021. On perusal of the order, dated 30/07/2022, passed under Section 148A(d) of the Act we find that the aforesaid order was passed after taking approval from Principal Commissioner of Income Tax. Since the aforesaid order was passed after the expiry of 3 years from the end of the Assessment Year 2017-2018, as per the new regime, the authority specified under Section 151(ii) of the Act (i.e. Principal Chief Commissioner or Chief Commissioner) was required to grant approval. We note that even the notice, dated 30/07/2022, was issued under Section 148 of the Act (new regime) after obtaining the prior approval of the Principal Commissioner of Income Tax. Accordingly, we conclude that in the present case the approval has been obtained by authority specified under Section 151(i) of the new regime instead of the authority specified under Section 151(ii) of the new regime.
9. The non-compliance by the Assessing Officer with the provisions

contained in Section 148A(d) read with Section 151(ii) of the new regime affects the jurisdiction of the Assessing Officer to issue a notice under Section 148 of the Act. Accordingly, the order, dated 30/07/2022 passed under Section 148A(d) of the Act, the consequential reassessment proceedings and the order, dated 25/05/2023, passed under Section 147 read with Section 144B of the Act are quashed as bad in law being violative of the provisions contained in Section 148A(d), Section 148 and Section 151(ii) of the Act. Thus, Cross-Objection raised by the Assessee is allowed and accordingly, all the grounds raised by the Revenue in the departmental appeal in relation to the relief granted by the CIT(A) on merits are dismissed as having been rendered infructuous.

10. In terms of the paragraph 9 above, the Cross-Objection raised by the Assessee is allowed and the appeal preferred by the Revenue is dismissed.

Order pronounced on 28.02.2025.

**Sd/-**  
**(Renu Jauhri)**  
**Accountant Member**

**Sd/-**  
**(Rahul Chaudhary)**  
**Judicial Member**

मुंबई Mumbai; दिनांक Dated : 28.02.2025  
*Karishma J. Pawar, Stenographer*

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त/ The CIT
4. प्रधान आयकर आयुक्त/ Pr.CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT,  
Mumbai
6. गार्डफाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापितप्रति //True Copy//

उप/सहायकपंजीकार / (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai