

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, KOLKATA

**BEFORE SHRI RAJESH KUMAR, AM
AND
SHRI PRADIP KUMAR CHOUBEY, JM**

**ITA No. 1795/KOL/2024
(Assessment Year:2015-16)**

Frontier Warehousing P. Ltd.
4A, MMS Chambers,
Council House Street,
BBD Bagh, Kolkata-700001
West Bengal

Vs.

ACIT, Circle 7(1)
Aaykar Bhavan, P-7,
Chowringhee Square,
Kolkata-700069
West Bengal

(Appellant)

(Respondent)

PAN No. AABCB2875R

Assessee by : Shri Sunil Surana, AR
Revenue by : Shri S. Datta, DR

Date of hearing: 29.01.2025
Date of pronouncement : 25.03.2025

ORDER

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the National Faceless Appeal Centre, Delhi (hereinafter referred to as the "Ld. CIT(A)") dated 25.06.2024 for the AY 2015-16.

02. At the time of hearing, the Id. Counsel for the assessee stated that the assessment framed by the Id. AO is hopelessly barred by the limitation as noticed u/s 148 of the Act was not issued within the prescribed time as provided under the Act, though this was not raised in the regular ground of appeals in the memorandum of appeals. The assessee has also challenged the re-opening on other grounds which were raised before Id CIT(A).



03. After hearing both the sides and perusing the facts available in the appeal folder, we note the issue raised by the assessee is purely a legal issue and goes to the root of the assessment. The Id. Counsel for the assessee submitted that since the issue raised is legal issue which goes to the root of the matter and since no further verification of facts is required to be done from any quarter whatsoever, the legal ground raised by the assessee may kindly be admitted for adjudication. In defense of his arguments the Id. AR relied on the decisions namely i) Jute Corporation of India Ltd. Vs CIT in 187 ITR 688 , ii) National Thermal Power Co. Ltd v. CIT [1998] 229 ITR 383 and also by the decision of Hon'ble Calcutta High Court in PCIT vs. Britannia Industries Ltd. [2017] 396 ITR 677 (Cal). .
04. The Id. DR on the other hand submitted that the issue was not raised before any of the authorities below and therefore, may kindly be restored to the file of any of the authorities below for adjudication.
05. After hearing the rival contentions and perusing the material on record, we find that the assessee has raised an additional ground of appeal challenging the validity of the notice issued u/s 143(2) of the Act being in an invalid format and in our opinion the issued raised in the additional ground is a purely a legal issue qua which all the facts are available in the appeal folder and no further verification of facts are required from any quarter whatsoever. In our considered view the assessee is at liberty to raise any legal issue before any appellate authority for the first time even when the same has not been raised before the lower authorities. The case of the assessee is squarely covered by the decisions of the Apex court in the case of i) Jute Corporation of India Ltd. Vs CIT (supra) , ii) National Thermal Power Co. Ltd v. CIT (supra) and also by the decision of Hon'ble Calcutta



High Court in PCIT vs. Britannia Industries Ltd. (supra). Therefore, we are inclined to admit the same for adjudication.

06. The Id. Counsel for the assessee submitted the notice u/s 148 of the Act was issued on 31.03.2021, a copy of which is available at page no. 2 of the Paper Book. The Id. Counsel for the assessee thereafter submitted that the said notice was not dispatched and served upon the assessee within the time limit prescribed under the Act. The Id. Counsel for the assessee submitted that the said notice is mandatorily required to be issued and served upon the assessee on or before 31st March, 2021. However, the same was dispatched on 1st April, 2021 at 3.28 A.M. The Id. AR prayed that the notice sent through e-mail on 04.02.2021 would be deemed to be issued on 01.04.2021 and accordingly, barred by limitation. The Id. AR submitted that all the consequential proceedings including the assessment framed by the AO is bad in law and may kindly be quashed. The Id. AR in defense of his argument relied on the decision of Hon'ble Calcutta High Court in case of Marudhar Vintrade Private Limited vs. Union of India & Ors. in WPA No. 4382 of 2022. The Id. Counsel for the assessee submitted that the Hon'ble Jurisdictional High Court has decided the similar issue in favor of the assessee where the notice was uploaded for communication on 1st April, 2021 at 3 am.
07. The second plea taken by the assessee is that the assessment year 2015-16 is barred by limitation as the notice u/s 148 of the Act cannot be issued within the extended period as provided under The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions Act) (TOLA) 2021. The Id. Counsel for the assessee relied on the decision of Apex court in the case of Union of India & Ors. Vs. Rajeev Bansal vide order dated 03.10.2024 in civil appeal no. 8629 of 2024, wherein



it has been held that the reopening for A.Y. 2015-16 is not permissible in the extended period as per TOLA on and form 01.04.2021. The Id. Counsel for the assessee also relied on the decision of Delhi High Court in the case of *Ibibo Group Pvt Ltd. Vs ACIT WP© No.17639/2022* dated 13.12.2024 wherein it has been held that the reassessment for A.Y. 2015-16 is barred by limitation by following the decision of *Union of India & Ors. Vs. Rajeev Bansal (supra)*. The Id. AR therefore, prayed that the assessment framed by the proceedings is itself barred by limitation and therefore, the same may be quashed including the assessment framed.

08. The third plea raised by the counsel of the assessee was that the reopening of assessment was bad in law as the same was made after period of four years from the end of the relevant assessment without satisfying the conditions as provided in proviso to section 148 of the Act. The Id. Counsel for the assessee submitted that the assessment u/s 143(3) of the Act was framed in this case vide order dated 26.12.2017 passed u/s 143(3) of the Act and therefore, the reopening of assessment could have been made subject to the satisfaction of conditions as provided in the proviso to Section 147 of the Act. Therefore, the reopening of assessment which is not in consonance with the said proviso to Section 147 of the Act is bad in law. In defense of his argument the Id. Counsel for the assessee relied on the decision of *ACIT Vs. CEAT Ltd.* reported in [2022] 449 ITR 171 (SC). On this count, the assessment may be quashed.
09. On the other hand, the Id. DR relied on the orders of the Id. lower authorities by submitting that the notice was sent before 12 P.M. and therefore, the plea of the assessee is not valid as to notice being barred by limitation.



010. After hearing the rival contentions and perusing the materials available on record, we find that the first plea which is on the notice issued u/s 148 of the Act being barred by limitation. We have examined the facts qua the said plea and are of the view that though the notice was issued u/s 148 of the Act on 31.03.2021 but the same was dispatched on 01.04.2021 as is apparent from the page no. 3 of the Paper Book, which is a print out of the Email received by the assessee from the department. A perusal of the said email showed that the DCIT, Kolkata sent the said notice on 1st April, 2021 at 3.28 AM, which should have been issued on or before 31st March, 2021. Therefore, the notice is barred by limitation. The case of the assessee find support from the decision of the Hon'ble High court in the case of Marudhar Vintrade Private Limited vs. Union of India & Ors. in WPA No. 4382 of 2022 wherein the Hon'ble Court has held that notice issued u/s 148 of the Act which signed on 31.3.2021 but communicated on 1.4.2021 at 3.00 a.m.is and all subsequent proceedings are not sustainable and are quashed. However, there was no bar in issuing fresh notice in accordance with law.
011. So far as the second plea is concerned for A.Y. 2015-16, is barred by limitation, in our opinion the extended period for issuing notice u/s 148 of the Act is not available and therefore, the proceedings are barred by limitation even on this count the proceedings as well as consequential assessment has to be quashed. The case of the assessee find force from the decision of the Hon'ble Apex Court in the case of Union of India & Ors. Vs. Rajeev Bansal vide order dated 03.10.2024 in civil appeal no. 8629 of 2024, wherein it has been held that the reopening for A.Y. 2015-16 is not permissible in the extended period as per TOLA on and from 01.04.2021 and therefore the assessment order for A.Y. 2015-16 is barred by limitation.



012. Thirdly, in this case the assessment has been made u/s 143(3) of the Act vide order dated 26.12.2017 and apparently, the case was reopened after a period of four years from the end of the relevant assessment year which can only be made subject to the satisfaction of the conditions as provided in proviso to Section 147 of the Act, which shows that the reopening of assessment, where the assessment is framed u/s 143(3) of the Act, can only be made if the escapement of income is attributed to the failure of the assessee to truly and materially disclose any information during the assessment proceedings. However, in this case, there is no such failure is reported by the Id. Assessing Officer in the reasons recorded and accordingly, the reopening has been made in violation of first proviso to Section 147 of the Act. The case of the assessee find support from the decision of ACIT Vs. CEAT Ltd. reported in [2022] 449 ITR 171 (SC), wherein the ratio has been laid down by the Id. AO, the Hon'ble Apex Court holding that the reopening u/s 147 of the Act beyond four years from end of the relevant assessment year could be made subject to the satisfaction of the conditions as provided in first proviso to Section 147 of the Act and not otherwise. Therefore, we are inclined to quash the reopening of assessment. Hence, the appeal of the assessee is allowed.

013. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 25.03.2025

Sd/-
(PRADIP KUMAR CHOUBEY, JM)
(JUDICIAL MEMBER)

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 25.03.2025

Sudip Sarkar, Sr.PS



Copy of the Order forwarded to :

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

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Kolkata