

| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, HON'BLE VICE PRESIDENT
&
SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
I.T.A. No. 1347/Mum/2025
Assessment Year: 2014-15

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| Rakesh Mulchand Kothari A-28, Kamgar Nagar Kurla (East) Mumbai - 400024 [PAN: AADPK9088M] | Vs | Income Tax Officer, Wd-24(2)(5), Mumbai |
| अपीलार्थी/ (Appellant) | | प्रत्यर्थी/ (Respondent) |

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|---------------|------------------------------------|
| Assessee by : | Shri Prakash Jhunjunwala, A/R |
| Revenue by : | Shri Ashok Kumar Ambastha, Sr. D/R |

सुनवाई की तारीख/Date of Hearing : 28/04/2025
घोषणा की तारीख /Date of Pronouncement: 30/04/2025

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

This appeal by the assessee is preferred against the order of the Id. CIT(A)-51, Mumbai [hereinafter "the Id. CIT(A)"] dated 31/12/2024 pertaining to AY 2014-15.

2. Grievance of the assessee reads as under:-

"The appellant prefers an appeal against an order passed by Ld. Commissioner of Income Tax (Appeals)-51, Mumbai dated 31/12/2024 on following amongst other grounds each of which are without prejudice to any other :-

1.0 On facts and circumstances of the case and in Law, Ld.CIT(A) erred in confirming the validity of notice issued u/s 148, since such notice u/s.148 dated 09/09/2016 was issued before the expiry of due date of issuance of notice u/s.143(2) [due on 30/09/2016], thereby consequential reassessment order u/s.147 is bad in law;

2.0 On facts and circumstances of the case and in Law, Ld.CIT(A) erred in confirming the validity of notice issued u/s.148, issued in absence of fresh tangible material, without independent application of mind and without having reason to believe of alleged escapement of income;

3.0 *On facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the addition u/s 68 of sale consideration of STT paid listed shares of M/s Surabhi Chemicals & Investments Ltd of Rs.3,24,65,244/-;*

4.0 *The Ld. CIT(A), before confirming the addition of sale consideration of listed shares of Rs.3,24,65,244/-, ought to have considered the understated vital facts, being;*

a) *The correctness of exhaustive documentary evidences such as Contract-cum-bills, D-mat statements, bank statements, bhav copy, confirmation of stock broker, share application, letter of allotment and other documents filed on record had not been disputed by the AO and CIT(A);*

b) *The period of holding of listed shares in appellant's D-mat account exceeds 12 months and such shares had been sold on floor of Bombay stock exchange at prevailing market price;*

c) *The substantial increase in price of shares cannot be a sole reason to treat the bonafide transactions as non-genuine;*

d) *The appellant, in statement u/s.131, had confirmed the transactions alongwith the documentary evidences;*

e) *The appellant is not related to any directors/promoters and exit providers and general statements of 3d persons recorded at back of the appellant, without allowing an opportunity of cross examination is incorrect.*

The appellant craves leave to add, amend, alter and/or withdraw any of the grounds of appeal at the time of hearing."

3. Vide Ground No. 1, the assessee has challenged the validity of notice issued u/s 148 of the Act as bad in law resulting into the consequential re-assessment order framed u/s 147 of the Act as bad in law.

4. Representatives of both the sides were heard at length. Case records carefully perused and the relevant documentary evidence brought on record duly considered in light of Rule 18(6) of ITAT Rules, 1963. Judicial decisions relied upon carefully perused.

5. The quarrel revolves around the notice dated 09/09/2016 issued u/s 148 of the Act by which the AO proposed to assess/re-assess the income/loss for the impugned assessment year.

6. The assessee filed its return of income on 22/03/2016 and the notice u/s 143(2) of the Act could have been issued by 30/09/2016. But before expiry of the period of limitation, for issue of notice u/s 143(2) of the Act the AO issued notice u/s 148 of the Act proposing to re-open the assessment.

7. Since the time limit for issue of notice u/s 143(2) of the Act has not expired, the AO had all the opportunities to scrutinize the return of income and frame the assessment u/s 143(3) of the Act and thereafter if he noticed escapement then he could have issued notice u/s 148 of the Act. Since in the impugned facts, such time limit has not expired it cannot be termed as escapement and the AO cannot respond to proceedings u/s 147 of the Act. Our view is fortified by the decision of the Hon'ble High Court of Madras in the case of *CIT vs. K.M. Pachayappan* reported in 304 ITR 264 (Mad-HC), wherein the Hon'ble High Court was seized with the following substantial question of law:-

"1. Whether, on the facts and circumstances of the case, the Tribunal was right in law in not considering Explanation 2 to section 147 which provides that the Assessing Officer can reopen the assessments even if the assessments have not been completed under section 143 and only intimation had been sent, if the conditions laid under section 147 are fulfilled ?"

7.1. And the Hon'ble High Court held as follows:-

"Heard counsel. In this case, return of income was filed under section 139(4) of the Act on March 15, 2000, and notice under section 143(2) for framing assessment under section 143(3) could have been issued up to March 31, 2000. Therefore, a valid return of income was pending as on March 15, 2000. The Assessing Officer issued notice under section 148 on March 15, 2000 when a valid return under section 139(4) was pending. In this case, the return was filed and the same is pending, which means that the proceeding is still pending. In such a situation, the Revenue could

not have issued notice for the purpose of reopening under section 147 of the Act. In the case of Trustees of H. E. H. The Nizam's Supplemental Family Trust v. CIT [\[2000\] 242 ITR 381](#), the Supreme Court considered the scope of reopening the assessment and held as follows (pages 387 and 390) :

"It is settled law that unless the return of income already filed is disposed of, notice for reassessment under section 148 cannot be issued, i.e., no reassessment proceedings can be initiated so long as assessment proceedings pending on the basis of the return already filed are not terminated. According to the Revenue, it is immaterial whether the order is communicated or not and the only bar to the reassessment proceedings is that proceedings on the return already filed should have been terminated."

"A mere glance at this note would show that it could not be said that the Income-tax Officer gave finality to the refund since no refund is granted either in the hands of the trust or in the hands of the beneficiaries. It is an inconclusive note where the Income-tax Officer left the matter at the stage of consideration even with regard to refund in the hands of the beneficiaries. This note was also not communicated to the trustees. When we examine the note dated November 10, 1965, on the file of 1963-64 nothing flows from that as well. In any case if it is an order, it would be appealable under section 249 of the Act. Since the period of limitation starts from the date of intimation of such an order, it is imperative that such an order be communicated to the assessee. Had the Income-tax Officer passed any final order, it would have, been communicated to the assessee within a reasonable period. In any case, what we find is that the note dated November 10, 1965, is merely an internal endorsement on the file without there being an indication if the refund application has been finally rejected. By merely recording that in his opinion, no credit for tax deducted at source is to be allowed, the Income-tax Officer cannot be said to have closed the proceedings finally. The decisions referred to by the Revenue are of no help in the present case. We are, thus, of the opinion that during the pendency of the return filed under section 139 of the Act along with the refund application under section 237 of the Act, action could not have been taken under section 147/148 of the Act. Our answer to the question, therefore, is in the negative, i.e., against the Revenue."

In the case of KIM Royal Dutch Airlines v. Asst. Director of Income-tax [\[2007\] 292 ITR 49](#), the Delhi High Court, following the above Supreme Court judgment, considered the scope of the provision of sections 139 and 147 of the Act and held as follows (page 63) :

"Applying this line of decisions to the facts of the present case, the inescapable conclusion that would have to be reached is that while assessment proceedings remain inchoate, no 'fresh evidence or material' could possibly be unearthed. If any such material or evidence is available, there would be no restrictions or constraints on its being taken into consideration by the Assessing Officer for framing the then current assessment. If the assessment is not framed before the expiry of the period of limitation for a particular assessment year, it would have to be assumed that since proceedings had not been opened under section

143(2), the return had been accepted as correct. It may be argued that thereafter recourse could be taken to section 147, provided fresh material had been received by the Assessing Officer after the expiry of limitation fixed for framing the original assessment. So far as the present case is concerned, we are of the view that it is evident that, faced with severe paucity of time, the Assessing Officer had attempted to travel the path of section 147 in the vain attempt to enlarge the time available for framing the assessment. This is not permissible in law."

Applying the principles enunciated in the judgments of the Supreme Court as well as the Delhi High Court, cited supra, the Tribunal is right in coming to a conclusion that no action could be initiated under section 147 of the Act, when there is a pendency of the return before the Assessing Officer. The reasons given by the Tribunal are based on valid materials and evidence and we do not find any error or illegality in the order of the Tribunal so as to warrant interference."

8. Finding parity of facts, respectfully following the decision of the Hon'ble High Court of Madras, we set aside the notice issued u/s 148 of the Act thereby quashing the resultant assessment order. Since we have quashed the assessment order, we do not find it necessary to delve into the merits of the case.

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

Order pronounced in the Court on 30th April, 2025 at Mumbai.

Sd/-

**(SAKTIJIT DEY)
VICE-PRESIDENT**

Sd/-

**(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER**

Mumbai, Dated 30/04/2025

**S.C.S.P.*

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

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

आदेशानुसार/ BY ORDER
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai