

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH : BANGALORE**

**BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER  
AND  
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

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| <b>ITA No. 2305/Bang/2024</b>    |
| <b>Assessment Year : 2016-17</b> |

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| Shri Dandu Jojappa Francis,<br>261, Begur,<br>Electronic City S.O.,<br>Kammasandra,<br>Bangalore – 560 100.<br><b>PAN: ABLPF9149D</b> | <b>Vs.</b> | The Income Tax<br>Officer,<br>Ward – 4 (2)(3),<br>Bangalore. |
| <b>APPELLANT</b>  |            | <b>RESPONDENT</b>  |

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|-------------|---|---|
| Assessee by | : | Smt. Richa Bakiwala, CA &<br>Shri Hemasundara Rao P, AR |
| Revenue by  | : | Smt. Neha Sahay, JCIT-DR                                |

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| Date of Hearing       | : | 05-02-2025 |
| Date of Pronouncement | : | 30-04-2025 |

**ORDER**

**PER SOUNDARARAJAN K., JUDICIAL MEMBER**

This is an appeal filed by the assessee challenging the order of the NFAC, Delhi dated 13/09/2024 in respect of the A.Y. 2016-17 and raised the following grounds:

| Grounds of Appeal |   | Tax effect relating to each Ground of appeal |
|-------------------|---|--|
| I.                | The order of the learned Commissioner of Income-tax-Appeals [CIT(Appeals)], National Faceless Appeal Centre (NFAC) dated 13-Sep-2023 passed under section 250 of the Income-tax Act, 1961 ("the Act") insofar it is against the Appellant, is opposed to the law, weight of evidence, facts and circumstance of the Appellant's case. | Rs. 1,79,50,836/-                            |
| II.               | The order is passed against the principle of natural justice and thus, liable to be quashed.  |  |
| III.              | The notice issued under section 148 of the Act does not indicate the intention of your learned Authority to assess/reassess the income, which is mandatory as per provisions of section 148 of the Act, and consequently, the said notice is bad in law.  |  |
| IV.               | The notice dated 30-Jun-2021 issued under Section 148 for initiating income escaping assessment is invalid under the amended provisions of Sections 147-151, as the initiation should have been made through a notice under Section 148A. Furthermore, TOLA does not apply in this case since the due date for issuing                |  |

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|      | the notice is 31-Mar-2023, given the alleged escaped income exceeds Rs. 50 lakhs.   |  |
| V.   | The learned CIT (Appeals) erred by misinterpreting the appellant's plea and wrongly relying on TOLA provisions, which are inapplicable to this case, thereby compounding the Assessing Officer's error.   |  |
| VI.  | The notice under Section 148 and the order under Section 148A(d) were issued after 01.04.2021. As per the amended provisions of Sections 147 to 151, prior approval for such issuance must be obtained from the Chief Commissioner of Income Tax (CCIT) or Principal Chief Commissioner of Income Tax, not the Principal Commissioner of Income Tax (PCIT). Since the approval was granted by the PCIT, the notice and order are invalid. Furthermore, the provisions of TOLA are inapplicable as the due date for issuing the notice was 31.03.2023. Accordingly, the proceedings lack valid jurisdiction and should be quashed. |  |
| VII. | The order issued under Section 148A(d) and the subsequent notice under Section 148, issued by the Jurisdictional  |  |

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|       | Assessing Officer instead of the Faceless Assessment Unit, is legally invalid.  |  |
| VIII. | Without prejudice to the above, the notice dated 26-05-2022, issued pursuant to the Supreme Court's judgment in <i>Ashish Agarwal</i> , is invalid due to material inaccuracies in the information provided by the Assessing Officer. Consequently, the notice and subsequent assessment proceedings must be quashed. |  |
| IX.   | The impugned notice dated 20-07-2022, issued to rectify defects in the earlier notice dated 26-05-2022, is invalid as it was issued beyond the 04-06-2022 deadline prescribed by CBDT Instruction No. 01/2022, making it legally untenable.   |  |
| X.    | The order under Section 148A(d) is invalid as it was issued without giving a proper opportunity to be heard. The learned assessing officer rejected the Appellant's request for a 30-day extension, and the order dated 29-July-2022 was issued without adequate time. Therefore, the order should be quashed.        |  |
| XI.   | The learned Assessing Officer, while providing information under Section 148A(b), has failed to attach any approval or sanction obtained for issuing  |  |

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|       | <p>the prior notice under Section 148 dated 30-06-2021. Instead, a fresh approval was sought, raising questions about whether proper approval was obtained or reasons recorded for initiating the Section 148 proceedings.</p>   |  |
| XII   | <p>The learned CIT (Appeals) erred in upholding the addition made by the Assessing Officer under Section 50C of the Income Tax Act, without establishing that the appellant actually received an amount exceeding the sale consideration declared in the sale deed.</p>  |  |
| XIII. | <p>The learned CIT (Appeals) erred in sustaining the addition made by the learned Assessing Officer under section 50C of the Act, without granting an opportunity to refer the matter to the District Valuation Officer (DVO) for the determination of the fair market value.</p>  |  |
| XIV.  | <p>The learned Assessing Officer erred in making the addition under Section 50C without providing evidence that the appellant received more than the documented sale consideration in cash. The appellant had explained all bank statement remarks and provided details of cash deposits, yet the Assessing Officer made the addition arbitrarily, without the necessary evidence.</p> |  |

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|--------|--|-------------------|
| XV.    | The learned assessing officer ought to have considered "the stamp duty value as on the date of agreement rather than the date of registration when the part amount is received prior to execution of the sale deed which is clearly evident in the sale deed submitted during the assessment proceedings." |                   |
| XVI.   | The learned Assessing Officer should have considered that the property was agricultural land, which was only converted prior to the sale, but had been used for agricultural purposes until that time.   |                   |
| XVII   | The learned CIT (Appeals) erred in upholding the disallowance of Rs. 15,65,300/- for the cost of improvements, despite the appellant providing a valid explanation that the development costs were for daily labor, where invoices are not issued for the services rendered.                               |                   |
| XVIII. | The Appellant craves leave to add, alter, substitute, and delete any or all the grounds of appeal urged above.   |                   |
|        | <b>Total Tax Effect</b>  | Rs. 1,79,50,836/- |

2. The brief facts of the case are that the assessee is an individual and he has not filed his return of income for the A.Y. 2016-17. Based on the information received, the assessing authority had issued a notice under the old provisions of section 148 of the Act on 30/06/2021 after obtaining the

approval from the PCIT, 2, Bengaluru. Subsequently, as per the directions of the Hon'ble Supreme Court in the case of Union of India vs. Ashish Agarwal, the notice issued u/s. 148 was treated as the notice u/s. 148A(b) and the AO had also provided the reasons for the issuance of the said notice on 30/06/2021. In the said notice dated 26/05/2022, the AO sought for an explanation from the assessee why the capital gains arising out of the sale of immovable property could not be treated as undisclosed income. The AO while issuing the notice on 26/05/2022, had wrongly mentioned the details of the properties sold. Therefore the assessee sent the reply on 15/06/2022 and informed that he had not sold any property as described in the notice and in fact the property noted in the notice does not belong to him. Thereafter the AO again issued a notice on 20/07/2022 by giving the correct details of the properties. The assessee sought for 30 days time to furnish the correct information but the AO without granting the time as requested by the assessee, had arrived the conclusion that this case is a fit case for the issuance of notice u/s. 148 of the Act. The AO passed the order u/s. 148A(d) on 28/07/2022 and subsequently issued a notice u/s. 148 of the Act on 30/07/2022. In the said notice issued u/s. 148 of the Act, the AO had mentioned that this notice was issued after obtaining the prior approval of the PCIT, Bengaluru – 2. Admittedly, the case of the AO is that the value of the property involved in the said capital gains is Rs. 1,73,74,800/-.

**3.** The assessee challenged the said order before the Ld.CIT(A) and raised several grounds on merits. Subsequently, by way of additional grounds, the assessee disputed the sanction obtained by the AO u/s. 151 of the Act as not a valid sanction since the authority prescribed u/s. 151(ii) is the Principal Chief Commissioner or Chief Commissioner if more than 3 years have elapsed from the end of the relevant A.Y. The Ld.CIT(A) had not accepted the case of the assessee. As against the said order, the assessee is in appeal before this Tribunal.

**4.** We have heard the arguments of both sides and perused the materials available on record.

**5.** At the time of hearing, the Ld.AR filed a small paper book and also filed a written submissions. The Ld.AR also filed the order of the ITAT, Mumbai in the case of ACIT vs. Surya Ferrous Alloys (P.) Ltd. in ITA No. 1406/Mum/2024 dated 24/12/2024 in which the similar issue came up for consideration and decided in favour of the assessee.

**6.** The Ld.AR also relied on the provisions as well as CBDT Notification dated 29/03/2022 and submitted that the disputed A.Y. is 2016-17 and therefore the notice issued after the period of 3 years, has to be issued only after getting approval from the specified authority as specified in section 151 of the Act. The Ld.AR submitted that the escaped income involved in this case is more than Rs. 50 Lakhs and also the three years period was over on 31/03/2020 and therefore the proper authority for granting the approval for issuing the notice u/s. 148 and 148A is the Principal Chief Commissioner or the Chief Commissioner. The Ld.AR further submitted that notice u/s. 148 as well as 148A was issued by the AO on 30/06/2021 i.e. after the period of three years and therefore the proper authority to grant sanction is the Principal Chief Commissioner or the Chief Commissioner and not the PCIT. The Ld.AR heavily relied on the legal ground and finally made submissions on merits also and prayed to allow the appeal of the assessee both on legal grounds as well as on merits.

**7.** The Ld.DR filed a written submissions dated 05/02/2025 and also relied on the judgment of the Hon'ble Supreme Court reported in (2025) 170 taxmann.com 593 in the case of ACIT vs. Vikram Kapahi and prayed to dismiss the appeal filed by the assessee.

**8.** We heard the arguments of both sides and perused the materials available on record.

**9.** Before going into the merits of the case, let us first consider the legal ground raised by the assessee since the same goes deep into the root of the issue. Initially the notice u/s. 148 was issued by the AO on 30/06/2021 based on the information that the assessee had sold immovable property but not reported any capital gains by filing his return of income. Admittedly, the AO had obtained approval from the PCIT for issuing the said notice u/s. 148 of the Act. Subsequently, the Hon'ble Supreme Court in its judgment in the case of Union of India vs. Ashish Agarwal had directed that the notices issued u/s. 148 of the old provision could be treated as a notice issued u/s. 148A(b) of the Act and the proceedings under the new Act will be valid in respect of all matters. It is to be noted that since the new provision 148A was introduced by way of Finance Act, 2021, the Hon'ble Supreme Court had issued such directions wherever notices were issued under the old provisions, after the new provision has been introduced in 2021.

**10.** Admittedly, in this case, the assessment relates to the year 2016-17 and the notice u/s. 148 was issued on 30/06/2021 after coming into force of the new section 148A. The AO issued another notice on 26/05/2022. But unfortunately in the said notice, the AO had given wrong description of the property and therefore the same could not be treated as a valid notice issued by the AO pursuant to the directions of the Hon'ble Supreme Court. Subsequent to the judgment of the Hon'ble Supreme Court, the CBDT had also issued an instruction on 11/05/2022, in which in paragraph nos. 6-8, the following instructions were given.

***“6.0 Operation of the new section 149 of the Act to identify cases where fresh notice under section 148 of the Act can be issued:***

*6.1 With respect of operation of new section 149 of the Act, the following may be seen:*

- Hon'ble Supreme Court has held that the new law shall operate and all the defences available to assesseees under section 149 of the new law and whatever rights are available to the Assessing Officer under the new law shall continue to be available.*

- *Sub-section (1) of new section 149 of the Act as amended by the Finance Act, 2021 (before its amendment by the Finance Act, 2022) reads as under:-*

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

(a) *if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b):*

(b) *if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year:*

*Provided that no notice under section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if such notice could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (13) of sub-section (1) of this section, as they stood immediately before the commencement of the Finance Act, 2021:*

- *Hon'ble Supreme Court has upheld the views of High Courts that the benefit of new law shall be made available even in respect of proceedings relating to past assessment years. Decision of Hon'ble Supreme Court read with the time extension provided by IOLA will allow extended reassessment notices to travel back in time to their original date when such notices were to be issued and then new section 149 of the Act is to be applied at that point.*

6.2 *Based on above, the extended reassessment notices are to be dealt with as under:*

- (i) *AY 2013-14. AY 2014-15 and AY 2015-16: Fresh notice under section 148 of the Act can be issued in these cases, with the approval of the specified authority, only if the case falls under clause (b) of sub-section (1) of section 149 as amended by the Finance Act, 2021 and reproduced in paragraph 6.1 above. Specified authority under section 151 of the new law in this case shall be the authority prescribed under clause (ii) of that section.*

*(ii) AY 16-17, AY 17-18: Fresh notice under section 148 can be issued in these cases, with the approval of the specified authority, under clause (a) of sub-section (1) of new section 149 of the Act, since they are within the period of three years from the end of the relevant assessment year. Specified authority under section 151 of the new law in this case shall be the authority prescribed under clause (i) of that section.*

*7.0 Cases where the Assessing Officer is required to provide the information and material relied upon within 30 days:*

*7.1 Hon'ble Supreme Court has directed that information and material is required to be provided in all cases within 30 days. However, it has also been noticed that notices cannot be issued in a case for AY 2013-14, AY 2014-15 and AY 2015-16, if the income escaping assessment, in that case for that year, amounts to or is likely to amount to less than fifty lakh rupees. Hence, in order to reduce the compliance burden of assessees, it is clarified that information and material may not be provided in a case for AY 2013-14, AY 2014-15 and AY 2015-16, if the income escaping assessment, in that case for that year, amounts to or is likely to amount to less than fifty lakh rupees. Separate instruction shall be issued regarding procedure for disposing these cases.*

*8.0 Procedure required to be followed 13v the Assessing Officers to comply with the Supreme Court judgment:*

*8.1 The procedure required to be followed by the Jurisdictional Assessing Officer/Assessing Officer, in compliance with the order of the Hon'ble Supreme Court, is as under:*

- The extended reassessment notices are deemed to be show cause notices under clause (b) of section 148A of the Act in accordance with the judgment of Hon'ble Supreme Court. Therefore, all requirement of new law prior to that show cause notice shall be deemed to have been complied with.*
- The Assessing Officer shall exclude cases as per clarification in paragraph 7.1 above.*
- Within 30 days i.e. by 2<sup>nd</sup> June 2022, the Assessing Officer shall provide to the assessees, in remaining cases, the information and material relied upon for issuance of extended reassessment notices.*
- The assessee has two weeks to reply as to why a notice under section 148 of the Act should not be issued, on the basis of information which suggests that income*

*chargeable to tax has escaped assessment in his case for the relevant assessment year. The time period of two weeks shall be counted from the date of last communication of information and material by the Assessing Officer to the assessee.*

- *In view of the observation of Hon'ble Supreme Court that all the defences of the new law are available to the assessee, if assessee makes a request by making an application that more time be given to him to file reply to the show cause notice, then such a request shall be considered by the Assessing Officer on merit and time may be extended by the Assessing Officer as provided in clause (b) of new section 148A of the Act.*
- *After receiving the reply, the Assessing Officer shall decide on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under section 148 of the Act. The Assessing Officer is required to pass an order under clause (d) of section 148A of the Act to that effect, with the prior approval of the specified authority of the new law. This order is required to be passed within one month from the end of the month in which the reply is received by him from the assessee. In case no such reply is furnished by the assessee, then the order is required to be passed within one month from the end of the month in which time or extended time allowed to furnish a reply expires.*
- *If it is a fit case to issue a notice under section 148 of the Act, the Assessing Officer shall serve on the assessee a notice under section 148 after obtaining the approval of the specified authority under section 151 of the new law. The copy of the order passed under clause (d) of section 148A of the Act shall also be served with the notice u/s 148.*
- *If it is not a fit case to issue a notice under section 148 of the Act, the order passed under clause (d) of section 148A to that effect shall be served on the assessee.”*

**11.** As seen from the said instructions, it was clarified that the Hon'ble Supreme Court has held that the new law shall operate and all the defences available to assessee u/s. 149 of the new law and whatever rights are available to the AO under the new law shall continue to be available. Further, the CBDT had clarified that the AO should provide the information and material relied upon for issuance of extended reassessment notices on or before 02/06/2022. In this case, the AO had provided the correct details

only on 20/07/2022 i.e. after the time granted by the CBDT in their instructions dated 11/05/2022. The earlier notice dated 26/05/2022 could not be treated as a valid notice since the details of the property mentioned in that notice is not at all relevant to the issue and therefore that notice could not be taken as a valid notice issued within the time granted in the instructions. Further, we have seen that the assessing officer had estimated the long term capital gains at Rs. 2,83,61,200/- apart from the other additions. Admittedly, the income estimated by the AO is more than Rs. 50 Lakhs and the notice was also issued after the period of 3 years and therefore the assessing officer has to obtain the prior approval of the specified authority to issue such notice. The section 151 of the Act prescribed the specified authority as follows:

*“151. Sanction for issue of notice.— Specified authority for the purposes of section 148 and section 148A shall be,—*

*(i) Principal Commissioner or Principal Director or Commissioner or Director, if three years or less than three years have elapsed from the end of the relevant assessment year;*

*(ii) Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year:*

*Provided that the period of three years for the purposes of clause (i) shall be computed after taking into account the period of limitation as excluded by the third or fourth or fifth provisos or extended by the sixth proviso to sub-section (1) of section 149.”*

**12.** The specified authority, for the purpose of section 148 and section 148A in respect of the assessment years which exceeds more than 3 years are the Principal Chief Commissioner or Chief Commissioner. The section states that if the assessment year is below 3 years, the Principal Commissioner or Commissioner can grant sanction for the issuance of the notice. The disputed year being 2016, the three year period from the end of the A.Y. was over on 31/03/2020 and therefore as per section 151(ii), the correct authority to grant sanction for receiving the notice u/s. 148 and 148A is the Principal Chief Commissioner or the Chief Commissioner. As

seen from the notices issued by the AO on 30/06/2021 and also the notice dated 30/07/2022, the AO had obtained the prior approval of the PCIT, who is not the competent person to grant such approval.

**13.** Further, section 148A(a) also speaks about the approval given by the specified authority. Similarly, 148A(d) also speaks about that. The order u/s. 148A(d) should be passed by the AO with the prior approval of the specified authority. No doubt the AO had obtained the prior approval from the Principal Commissioner of Income Tax who is not the competent person to grant sanction u/s. 151 of the Act.

**14.** We have also considered the order of the Hon'ble ITAT Mumbai Bench cited by the Ld.AR in which similar issue came up for hearing and the Tribunal after considering the various provisions and also the Hon'ble Supreme Court judgment, had given the following findings:

*“8. We find that in a recent decision by the Hon'ble Supreme Court in the case of Union of India and other Vs. Rajeev Bansal [2024] 167 taxmann.com 70 (SC), dated 03.10.2024, Hon'ble Court after the fall out of its own decision in the case of [Ashish Agarwal](#) (supra) had dealt with the issue in respect of sanction of the specified authority and concluded that TOLA will extend the time limit for the grant of sanction by the authority specified [u/s.151](#). According to the Hon'ble Court, the test to determine whether TOLA will apply to [section 151](#) of the new regime is that if the time limit of three years from the end of the Assessment Year falls between 20.03.2020 and 31.03.2021 then, the specified authority [u/s.151\(i\)](#) has extended time till 30.06.2021 to grant the approval. According to the Hon'ble Court, Assessing Officers were required to issue the re-assessment notice [u/s.148](#) of the new regime within the time limit surviving under the Act read with TOLA.*

*All notices issued beyond the surviving period are time barred and liable to be set aside. Hon'ble Court had elaborately dealt with this issue in Part E of its decision in para 73 to 78 which are extracted below:*

*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 assessee from harassment resulting from the mechanical reopening of assessments. 128 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   |
| Section 151(ii) of the new regime | More than three years have elapsed from the end of the relevant assessment year   | Principal Commissioner or Chief Commissioner or Principal Director or Chief Commissioner or Director General or Chief Commissioner or Director General |

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 years 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.....

81. This quote in [Ashish Agrawal](#) (supra) directed the Assessing Officers to "pass orders in terms of Section 148-A(d) in respect of each of the assessee concerned." Further, it directed the Assessing Officers to issue a notice [u/s.148](#) of the new regime "after following the procedure as required u/s.148-A." Although this quote waived off the requirement of obtaining prior approval u/s.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 u/s. 148A(d) or issuing a notice [u/s.148](#). These notices ought to have been issued following the time limits specified u/s.151 of the new regime r.w. TOLA, where applicable....

114.

.....d. TOLA will extend the time limit for the grant of sanction by the authority specified [u/s.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 [u/s.151\(i\)](#) has extended time till 30 June 2021 to grant approval; ..."

8.1. From the above, we note that in para 73, in the table last two rows relate to provisions of [Section 151\(i\)\(ii\)](#) of the new regime prescribing the time limit as well as the specified authority. In para 75, it is very categorically mentioned by the Hon'ble Court that after 01.04.2021, in terms of [Ashish Agrawal](#) (supra) the prior approval must be obtained from the appropriate authorities specified [u/s.151](#) of the new regime. This abundantly brings clarity on the aspect of obtaining approval for issue

of notice [u/s.148](#) which are fall out of the decision in [Ashish Agrawal](#) (supra). In para 77, objective of [section 3\(1\)](#) of TOLA is mentioned which is to relax the time limit for compliance with actions that fall for completion from 20.03.2020 to 31.03.2021. Thus, the objective is specific for providing temporal flexibility. In para 78, the same has been explained by an example taking Assessment Year 2017-18 which also in specific terms mentions that the authority specified [u/s.151\(i\)](#) of the new regime can grant sanction till 30.06.2021. Thus, while concluding in para 81 on the issue obtaining approval, Hon'ble Court has specifically stated that the Assessing Officer is required to obtain prior approval of the specified authority according to [section 151](#) of the new regime before passing an order [u/s.148A\(d\)](#) or issuing a notice [u/s.148](#). According to the Hon'ble Court, though it had waived off the requirement obtaining prior approval [u/s.148A\(a\)](#) and [Section 148Ab](#), it did not waive the requirement for [section 148A\(d\)](#) and [Section 148](#).

8.2. Taking into consideration the submissions made by the ld. Sr. DR and keeping the same in juxtaposition with the above observations and findings of the Hon'ble Court, we note that the issue we are presently addressing raised before us is not on the aspect of "when" for the procedural compliance for issuance of notice [u/s.148](#) but on the aspect of "by whom" it ought to have been issued. Ld. Sr. DR has contended that there is hierarchical escalation vis-à-vis obtaining approval for issuing notice [u/s.148](#). In this respect, Hon'ble Court has very categorically held in para 75 that the prior approval must be obtained from the appropriate authorities specified [u/s.151](#) of the new regime for the notices issued in terms of [Ashish Agrawal](#) (supra) after 01.04.2021. Reference by ld. Sr. DR to [Section 149\(1\)\(a\)](#) deals with time limit for issuing notice [u/s.148](#). Contention of the ld. Sr. DR that there is no hierarchical escalation for obtaining prior approval for issuing notice [u/s.148](#) is not in coherence with the guidelines mandated by the Hon'ble Apex Court as enunciated above. Repeatedly, Hon'ble Court has stated including by way of illustration that TOLA extends time line from the old regime which survives making the notice validly issued subject to the approval requirements of [Section 151](#) under the new regime. Accordingly, the prior approval requirement is mandated under the [section 151](#) of new regime.

8.3. In the present case, the relevant Assessment Year is 2017-18 and the time limit of three years lapsed on 31.03.2021 which falls between 20.03.2020 and 31.03.2021 during which provisions of Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (TOLA) would apply. Accordingly, the amended provisions under the Act read with TOLA extended the time limit for granting of approval till 30.06.2021 by the specified authority. Thus, on the above stated facts and law, in the present case, three years had lapsed from the end of the Assessment Year when the order u/s.148A(d) and notice [u/s.148](#) was issued on 30.07.2022. In the present case, since the notice [u/s. 148](#) and order u/s. 148A(b) have been issued beyond the period of three years from the end of the relevant Assessment Year, case of the assessee falls within the provisions of [section 151\(ii\)](#) of the amended law whereby the specified authority for grant of approval is specified as Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General. Contrary to this requirement, the approval obtained is by Principal Commissioner of Income Tax-17, Mumbai. Accordingly, since a proper sanction by the specified authority had not been obtained for issue of notice [u/s.148](#) under the applicable provisions of law, said notice is invalid and bad in law.

8.4. Keeping in juxtaposition the undisputed and the uncontroverted facts as stated above and the judicial precedent of the Hon'ble Supreme Court in the case of [Ashish Agarwal and Rajiv Bansal](#) (supra), we hold that sanction by specified authority has not been obtained by the ld. Assessing Officer in accordance with the provisions contained in [section 151](#) of the Act under the new regime, since notice [u/s.148](#) has been issued beyond three years from the end of the relevant Assessment Year. Accordingly, the said notice issued is invalid and thus quashed. Resultantly, the impugned re-opening proceedings so initiated and the impugned re-assessment order passed thereafter are also quashed.

9. Since we have already quashed the impugned order [u/s.147](#) based on the legal aspect of the notice issued without obtaining proper approval as required [u/s.151](#), the other legal aspects raised by the assessee in the present cross objection are rendered academic not warranting adjudication thereupon.

*9.1. The impugned re-assessment proceedings have been quashed considering legal jurisdictional issue raised by the assessee in its cross objection, therefore the appeal of the Revenue contending on the merits of the case for which relief was granted by ld. CIT(A) has become infructuous and accordingly dismissed.”*

**15.** The facts involved in the present appeal is similar to the facts decided by the Hon'ble Mumbai Tribunal which has considered the Hon'ble Supreme Court judgment in case of Union of India vs. Ashish Agarwal reported in (2022) 138 taxmann.com 64 and Union of India vs. Rajeev Bansal reported in (2024) 167 taxmann.com 70 and therefore we are also following the said findings of the order to the present case.

**16.** We have also considered the written submissions made by the Ld.DR in which they relied on the judgements of Hon'ble Supreme Court in case of Union of India vs. Rajeev Bansal as well as the Union of India vs. Ashish Agarwal judgement which were already considered by the Hon'ble Mumbai Tribunal in the above said order. Further, the Hon'ble Supreme Court judgment relied on by the Ld.DR is also not in favour of the department. Since the Hon'ble Supreme Court had quashed the notices on the ground that there was no approval of specified authority as contained in section 151(ii) of the Act.

**17.** In view of the above said findings, we are of the view that the notice issued u/s. 148 as well as order passed u/s. 148A(d) of the Act are bad in law and cannot be sustained. Consequently, the proceedings u/s. 147 of the Act also not sustainable since the approval as required u/s. 151 was not obtained from the proper authority. If the approval obtained by the assessing officer is bad in law, the further proceedings based on such notices have become illegal. Therefore we are setting aside the assessment order made u/s. 147 of the Act as not sustainable. Since we are setting aside the assessment order, based on the legal grounds, we are not adjudicating the other grounds raised by the assessee.

**18.** In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 30<sup>th</sup> April, 2025.

Sd/-  
(LAXMI PRASAD SAHU)  
Accountant Member

Sd/-  
(SOUNDARARAJAN K.)  
Judicial Member

Bangalore,  
Dated, the 30<sup>th</sup> April, 2025.  
/MS /

Copy to:

- |               |                        |
|---------------|------------------------|
| 1. Appellant  | 2. Respondent          |
| 3. CIT        | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A)              |

By order

Assistant Registrar,  
ITAT, Bangalore