

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 4851/Del/2024
(Assessment Year: 2016-17)**

Income Tax officer, Ward-2(1), Moradabad	Vs.	Zakira Khan, Civil Linies, Moradabad, Uttar Pradesh
(Appellant)		(Respondent)
PAN: AITPK1754A		

Assessee by :	None
Revenue by:	Shri Amit Katoch, Sr. DR
Date of Hearing	15/04/2025
Date of pronouncement	15/04/2025

ORDER

PER M. BALAGANESH, AM

1. The appeal in ITA No.4851/Del/2024 for AY2 2016-17, arises out of the order of the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'ld. NFAC', in short] in Appeal No. ITBA/NFAC/S/250/2024-25/1067986402(1) dated 26.08.2024 against the order of assessment passed u/s 147 r.w.s. 144 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 28.05.2023 by the Assessing Officer, NaFAC, Delhi (hereinafter referred to as 'ld. AO').
2. The Revenue has raised the following grounds of appeal:-

(i). Law and on facts of the case by holding that initiation of the proceeding itself is not valid as the specified authority to give the sanction beyond three years is Pr. CCIT or CCIT and the approval was obtained from Pr. CIT in this case.

(ii). Law and on facts of the case by ignoring the fact that the specified authority under section 151 of the new law in this case shall be the authority prescribed under clause [1] of that section since A.Y 2016-17 & 2017-18 are within the period of three years from the end of the relevant assessment year as per CBDT's Instruction no 01/2022 dated 11.05.2022 issued for Implementation of the judgement of the Hon'ble Supreme Court dated 04.05.2022 (2022 SCC Online SC 543) (Union of India Vs Ashish Agarwall vide Para 6.2(ii) of the said instruction.

(iii). Law and on facts of the case by deciding the case of the assessee while the Revenue was in appeal before the Supreme Court of India on the same issue which was decided in favor of the Revenue vide Civil Appeal No. 8629 of 2024 in the case of Union of India & Ors Vs Rajeev Bansal where the Hon'ble Supreme Court of India held that "TOLA will 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(1) has extended time till 30 June 2021 to grant approval".

3. None appeared on behalf of the assessee. Since, this is covered matter, we proceed to dispose of this appeal on hearing the Id DR and based on the materials available on record. The assessee is an individual and return of income was not filed for AY 2016-17. The Id AO obtained information through INSIGHT Portal under 'Non-PAN High Risk Category' uploaded by ITO (I&CI), Lucknow that the assessee had sold immovable property for Rs. 5,35,92,000/-. Based on this information, the assessment of the assessee was sought to be reopened vide issuance of notice u/s 148 of the Act on 23.04.2021. As per the directions of the Hon'ble Supreme Court in the case of Union of India Vs. Ashish Aggarwal, notice u/s 148A(b) of the Act dated 25.05.2022 was issued to the assessee. The assessee filed adjournment application on 13.06.2022 and later did not file any

reply. Hence, the Id AO passed an order u/s 148A(d) of the Act and issued fresh notice u/s 148 of the Act on 26.07.2022. In response to the said notice, the assessee filed a return of income on 24.01.2023 admitting the income of Rs. 3,35,890/-. All the details that were called for by the Id AO were duly furnished by the assessee by giving point wise reply. After examining the details, the Id AO treated the entire sale consideration sum of Rs. 5,35,92,000/- as short term capital gains as the assessee failed to furnish the details of cost of acquisition. The Id AO also mentioned in his order that the property has been referred for Valuation to the Learned Departmental Valuation Officer (Id DVO). Finally, the Id AO completed the assessment u/s 147 read with Section 144B of the Act on 28.05.2023 by assessing the total income of Rs. 5,39,27,890/- . The Id AO also had stated that the sale consideration is treated as short term capital gains and that once the Id. DVO submits the valuation report, the capital gain shall be recomputed. The assessee submitted that the notice u/s 148 of the Act dated 23.04.2021 is time barred and it was issued with the prior approval of the Id JCIT instead of Id PCCIT. It was also submitted that reassessment proceedings were initiated merely on the basis of suspicion without having any tangible material having live link to form a belief that the income of the assessee had escaped assessment. The assessee submitted that notice u/s 148 of the Act dated 23.04.2021 and notice dated 26.07.2022 are time barred as per new Section 149 of the Act applicable w.e.f. 01.04.2021 as the provisions of Section 149(1)(b) of the Act cannot be invoked in the instant case and thus the reassessment proceedings are liable to be dropped. Further, it was submitted that the new provisions relating to reassessment proceedings from Section 147 to Section 151 and new Section 148A of the Act were introduced vide Finance Act, 2021 which provides for making enquiry and to provide opportunity of being heard to the

assessee before issuance of notice u/s 148 of the Act. The assessee placed reliance on the decision of the Hon'ble Supreme Court in the case of Union of India Vs. Ashish Aggarwal in Civil appeal No. 3005/2022 dated 04.05.2022 in respect of his proposition. It was submitted that CBDT has issued Instruction No. 1/2022 dated 11.05.2022 whereby in para 6.2 of the instruction, it has been mentioned by CBDT that for AYs. 2013-14, 2014-15 and 2015-16, fresh notice u/s 148 of the Act could be issued with the approval of the Id Pr CCIT only u/s 151 if the case fall u/s 149(1)(b) as amended by Finance Act, 2021. The Id CIT(A) took due cognizance of the entire written submission and the argument advanced by the assessee along with additional evidence and sought a remand report from the Id AO. The Id AO submitted the report on 24.06.2024 giving point wise comments of the submission by the assessee. This remand report is reproduced in pages 15 to 21 of the order of the Id CIT(A). This remand report was forwarded to the assessee seeking rejoinder which was duly filed by the assessee. The Id CIT(A) observed in his order as under:-

"8. I have perused the order passed by the AO, the written submissions filed by the appellant, Remand Report submitted by the AO and the Rejoinder. In this case, the assessment year involved was AY 2016-17. The AO issued the notice u/s 148 of the IT Act on 23.04.2021 by obtaining the approval from JCIT. The approval was given on 23.04.2021 by the JCIT as per the erstwhile provisions of section 147 of the IT Act. The appellant contended that at the time of issuing approval and the notice u/s 148 of the IT act, already four years have elapsed. As per the appellant, it was the fifth year from the end of relevant AY 2016-17 and hence the AO ought to have obtained the sanction from PCIT. This approval was given by the JCIT during the period of TOLA, i.e. during the period of extended time limit. Later, this was relaxed by Hon'ble Supreme Court in the case of Union of India Vs. Ashish Agarwal vide its order dated 04.05.2022. Hence, the proceedings u/s 148A of the IT Act has been commenced in this case. The AO issued notice u/s 148A(b) of the IT Act to the appellant and later passed the order u/s 148A(d) of the IT Act on 26.07.2022.

9. The main challenge of the appellant in this case is that the notice issued by the AO on 26.07.2022 was invalid on account of multiple reasons. The copy of the notice is as under:

To, ZAKIRA KHAN W/o Mushke Hassain Kha .Kothi, Mohd Yaar Kha, CIVIL LINES Moradabad 244001, Uttar Pradesh India			
PAN: AITPK1754A	A.Y. 2016-17	Dated: 26.07.2022	DIN & Notice No.

Notice under section 148 of the Income-tax Act, 1961

Sir/Madam/M/s

1. (A) I have the following information in your case or in the case of the person in respect of which you are assessable under the Income Tax Act, 1961 (hereafter referred to as "the Act") for Assessment Years 2016-17:-

Information flagged by the risk management strategy formulated in this regard;

final objection has been raised by the Comptroller and Auditor General of India to the effect that the assessment has not been made in accordance with the provisions of Act;

a survey was conducted under section 133A of the Act, other than under section 133A(2A) or section 133A(5) of the Act,

information which requires action in consequence of the judgement of the Hon'ble Supreme Court in the case Union of India Vs. Ashish Agarwal, Civil Appeal 3005/2022, dated 4th May, 2022

Suggesting that income chargeable to tax has escaped assessment within the meaning of section 147 of the Act. Order under sub-section (d) of section 148A of the Act has been passed in such case vide DIN ITBA/COM/F/17/2022-23/1044091532(1) dated 26.07.2022 and annexed herewith for reference,

(B) I have information that a search was initiated under section 132 of the Act in your case or in the case of the person in respect of which you are assessable under the Act on the date _____.

(C) I have information that books of accounts, other documents or any assets have been requisitioned under section 132A of the Act in your case or in the case of the person in respect of which you are assessable under the Act.

(D) I am satisfied, with the approval of Principal Commissioner or Commissioner, that money, bullion, jewellery or other valuable article or thing, seized or requisitioned under section 132 or section 132A of the Act in case of _____ relate to you or the person in respect of which you are assessable under the Act.

(E) I am satisfied, with the approval of Principal Commissioner or Commissioner, that books of accounts or documents, seized or requisitioned under section 132 or section 132A of the Act in case of _____ pertains or pertain to, or any information contained therein, relate to you or the person in respect of which you are assessable under the Act.

2. I, therefore, propose to assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for the Assessment Year 2016-17 and I, hereby, require you to furnish, within 30 days from the service of this notice, a return in the prescribed form for the Assessment Year 2016-17.

3. This notice is being issued after obtaining the prior approval of the Pr. Commissioner of Income Tax, Bareilly accorded on date 25.07.2022 vide approval order dated 25.07.2022.


(Jeetendra Kumar Meena)
Income Tax Officer,
Ward-2(1), Moradabad

4. From the above, it could be seen that approval u/s 151 of the Act in the instant case has been granted by the wrong authority. Hence, getting an approval from a wrong authority becomes fatal to the reassessment proceedings. Accordingly, we hold that the reassessment were rightly quashed by the Id CIT(A). Grounds of the revenue are dismissed.

5. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 15/04/2025.

-Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 15/04/2025
A K Keot
Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi