

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: D : NEW DELHI

BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

ITA No.1896/Del/2024
Assessment Year: 2016-17

Rajeev Malik,
26/28, East Patel Nagar,
New Delhi – 110 008.

Vs ACIT, Central,
International Taxation 2(2)(1),
New Delhi.

PAN: AGBPM6372N

(Appellant)

(Respondent)

Assessee by	: Shri Gautam Jain, Advocate & Shri Ankit Kumar, Advocate
Revenue by	: Ms Ekta Jain, CIT-DR
Date of Hearing	: 05.05.2025
Date of Pronouncement	: 06.06.2025

ORDER

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the Assessee against the final assessment order dated 28.03.2024 passed by the Asstt. Commissioner of Income-tax, International Taxation-2(2)(1), New Delhi (hereinafter referred to as the Ld. AO) u/s 147 r.w.s. 144C(13) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2016-17.

2. On hearing both the sides, we find that amongst other grounds on merits, the assessee has raised ground No.2 as follows:-

“2. That initiation of proceedings u/s 147 of the Act and assumption of jurisdiction to frame assessment u/s 147/144C(13) of the Act are without satisfying the statutory preconditions provided in the Act and therefore without jurisdiction and deserve to be quashed as such.”

3. The ld. AR has submitted that the instant proceedings are vitiated on assumption of invalid jurisdiction as the approval was required from the Principal Chief Commissioner of Income-tax or Principal Director General of Income-tax or Chief Commissioner or Director General for the purpose of section 151 of the Act and in the instant case, approval u/s 151 of the Act and notice u/s 148 of the Act have been issued by Commissioner of Income-tax (International Taxation-02), New Delhi. The copy of order under clause (d) of section 148A of the Act has been provided by the assessee at page 48-52 and the same shows that while issuing this order, the AO mentions that the order is passed with the prior approval of Commissioner of Income-tax (International Taxation-02), New Delhi. At the same time, on pages 54 to 55 is a notice u/s 148 wherein also the AO mentions that the notice is being issued after obtaining prior approval of Commissioner of Income-tax (International Taxation-02), New Delhi accorded on 28.07.2022 vide reference No.F.No.CIT(IT)-2/148 (approval)/2022-23/626.

4. We find that this issue has been dealt by the DRP by observing in para 5.2.4 as follows:-

*“5.2.4 The AO shall conduct enquiry u/s. 148 A (a), if required, before issuing Notice u/s. 148 with the prior approval of specified authority, with respect to information which suggests that income chargeable to tax has escaped assessment. Thereafter, the AO shall provide opportunity to the assessee by issuing Show Cause Notice u/s. 148A(b) as to why Notice u/s. 148 should not be issued. The AO should provide his explanation as per the specified time under the said provisions. Notice u/s 148A(b) issued up to 31.03.2022 had to be issued after obtaining approval from specified authority. **However, the approval at this stage is done away with w.e.f. 01.04.2022.** After considering the reply of the assessee received, if any, the AO will decide whether or not it is a fit case for issuing Notice u/s. 148, by passing an Order u/s. 148A(d) with the prior approval of specified authority. Order u/s. 148A(d) has to be passed within 1 month from the end of the month in which reply of assessee has been received or within 1 month from end of month up to which time is allowed to assessee to furnish reply. In the case the AO decides that it is a fit case for issuing Notice u/s. 148 of the Act, then the AO shall serve upon the assessee Notice u/s. 148 of the Act along with copy of Order passed u/s 148A(d) where the AO has information which suggests that income chargeable to tax has escaped assessment and AO has obtained prior approval of specified authority. This approval for issuing Notice u/s. 148 is not required w.e.f. 01.04.2022 where Order u/s 148A(d) has been passed with prior approval of specified authority. In the instant case, the AO has duly complied with the procedure laid down u/s 148A of the Act before issue of notice u/s 148 to initiate reassessment.”*

5. In assessee’s case, from perusal of the concluding para of the notice available at page 55 of the paper book, we find that the notice u/s 148 for AY 2016-17 was issued with prior approval of Commissioner of Income-tax (International Taxation-02) dated 28.07.2022. As for AY 2016-17, the period of three years has lapsed as on 31.03.2020 and the notice is issued beyond three years on 29.07.2022. Therefore, as per the directions of the Hon’ble Supreme Court in the case of **Ashish Aggarwal, (2022 SCC Online SC 543)**, the approval should have been obtained under the amended provisions of section

151(ii) of the Act, i.e., approval should have been obtained from the Principal Chief Commissioner whereas the approval has been obtained from Commissioner of Income-tax (International Taxation-02). Thus, there is merit in the grounds as raised and ld. DRP has failed to appreciate the law in its correct perspective by holding that “*However, the approval at this stage is done away with w.e.f. 01.04.2022*”..

6. In similar facts and circumstances, for AY 2016-17 itself, the Mumbai Bench in the case **ACIT vs. Manish Financial, ITA No.5055/Mum/2024, order dated 02.12.2024** has benefitted the assessee. The relevant findings are quoted below;

“15. In assessee's case from the perusal of para 3 of the notice issued under section 148 for AY 2016-17 we notice that the same is issued with the prior approval of Pr.CIT-19 Mumbai accorded on 29.07.2022 vide reference No.Pr.Cit- 19/148/2022-23 and this fact is not contravened by the ld DR. For AY 2016-17, the period of three years have elapsed as of 31.03.2020 and the notice is issued beyond three years on 30.07.2022. Therefore as per the decision of the Hon'ble Supreme Court, the approval should have been obtained under the amended provisions of section 151(ii) of the Act i.e. the approval should have been obtained from the Principal Chief Commissioner whereas the approval has been obtained from Pr.CIT as stated in the notice under section 148 itself. Therefore we see merit in the contention of the assessee that the notice under section 148 for AY 2016-17 is issued without obtaining the prior approval from the appropriate authority. Accordingly we hold that the notice under

section 148 is invalid and the consequent assessment under section 147 is liable to be quashed.”

6. In the light of the aforesaid, ground No.2 is sustained. The appeal is allowed. The impugned assessment is quashed.

Order pronounced in the open court on 06.06.2025.

Sd/-

(MANISH AGARWAL)
ACCOUNTANT MEMBER

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 06th June, 2025.

dk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi