

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM "DIVISION" BENCH, VISAKHAPATNAM**

(HYBRID HEARING)

**श्री रवीश सूद ,न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI RAVISH SOOD, HON'BLE JUDICIAL MEMBER**

&

SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकर अपीलसं./I.T.A.No.265/VIZ/2024

(निर्धारण वर्ष/ Assessment Year: 2013-14)

Murali Mohan Reddy Bonthu 14/4, Flat No. 503 Sree Satya Sai Towers Main Road Nunna Andhra pradesh - 521212 [PAN:AIOPB5077E]	v.	Income Tax Officer – Ward – 3(1) CR Building, 1 st Floor Annex M.G. Road, Vijayawada – 522002 Andhra Pradesh
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri I. Kama Sastry, CA
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr. Aparna Villuri, Sr.AR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	25.06.2025
घोषणा की तारीख/Date of Pronouncement	:	04.07.2025

आदेश /O R D E R

PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:

1. This appeal is filed by the assessee against order passed by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal centre, Delhi [hereinafter in short "Ld.CIT(A)"] vide DIN & Order

No.ITBA/NFAC/S/250/2024-25/1064852187(1) dated 14.05.2024 for the A.Y.2013-14 arising out of order passed under section 147 of Income Tax Act, 1961 (in short 'Act') dated 28.03.2022.

2. Brief facts of the case are that, assessee being an individual filed its return of income belatedly on 27.09.2016 for the A.Y. 2013-14. From the information available with the Department, it was noticed that assessee is entered into a Joint Development Agreement (JDA) with M/s. Bhagawahti Constructions vide document No. 3663/2012 dated 17.10.2012 by transferring his rights of 67% share of the schedule land in favour of M/s. Bhagawahti Constructions in consideration for eleven flats to be constructed. The transfer of the 67% of the land translates to the consideration of Rs. 1.25 crores. Since the return of income filed by the assessee beyond the due date as prescribed under section 139(4) of the Act, the Ld. Assessing Officer [hereinafter in short "Ld. AO"] treated the return of income filed on 27.09.2016 for the A.Y. 2013-14 as non-est. Subsequently, the case was reopened after obtaining prior approval from the competent authorities and notice under section 148 of the Act was issued on 31.03.2021 and served on the assessee through ITBA Portal. In response to the notice, assessee filed return of income declaring total income at Rs.2,34,400/- on 21.02.2022 by claiming exemption for long term capital gains under section 54F of the Act. Subsequently, notices under section 142(1) of the Act were issued on various dates requiring the assessee to file the details

called for. On verification of the details, it was found that the assessee has received an amount of Rs.1,23,50,126/- against which the assessee has shown Rs.1,24,47,200/- by way of sale consideration. Ld. AO considering the assessee has not filed the development agreement denied the exemption claimed by the assessee under section 54F of the Act by making addition of Rs.1,23,53,826/-.

3. On being aggrieved by the order of the Ld. AO, assessee filed an appeal before Ld. CIT(A). Assessee also challenged the reopening of the assessment under section 148 of the Act before Ld. CIT(A). On perusal of the submissions made by the assessee, Ld. CIT(A) considering non-response from the Ld. AO calling for remand report, proceeded to decide on the basis of material available on record while dismissing the appeal of the assessee.

4. Being aggrieved by the order of the Ld. CIT(A), assessee filed an appeal before the Tribunal by raising following grounds of appeal: -

“1. The Notice under section 148 dated 31.03.2021 is invalid as the same is issued on 15.04.2021 without following the procedure prescribed by the new provisions inserted w.e.f. 01.04.2021.

2. Without prejudice to the above the Notice under section 148 dated 31.03.2021 issued on 15.04.2021 is barred by limitation as per the first proviso to section 149(1)(b) (New) w.e.f. 01.04.2021.

3. The Assessment Unit, National Faceless Assessment Centre is not justified and the CIT(Appeals), National Faceless Appeal Centre is not justified in denying the exemption of Rs.1,23,53,826 claimed by the assessee under section 54F and bringing to tax the total amount as unexplained under section 69A.

4. *The Assessment Unit, National Faceless Assessment Centre is not justified in taxing the income at 30% as against 20% provided for under section 112 in the case of long term capital gains.*

5. *The Assessment Unit, National Faceless Assessment Centre is not justified in levying interest under section 234A for the period it is not possible for the assessee to file a valid return of income.*

6. *All the above grounds of appeal are mutually exclusive and without prejudice to one another.*

7. *The appellant craves leave to add to; alter; amend; modify or delete all or any of the above grounds of appeal.”*

5. Assessee also raised additional grounds which is also part of the Form 36 filed by the assessee.

6. At the outset, Ld. Authorised Representative [hereinafter “Ld.AR”] submitted that notice under section 148 of the Act for the A.Y. 2013-14 was issued on 15.04.2021 without following the procedure prescribed by the new provision inserted on 01.04.2021. He also submitted that notice under section 148 of the Act dated 31.03.2021 issued on 15.04.2021 is barred by limitation as per the first proviso to section 149(1)(b) of the Act w.e.f 01.04.2021. Ld.AR pleaded that the legal ground raised by the assessee as above, shall first be addressed before adjudicating the other grounds raised on merits. Ld.AR by relying on the decision of the Hon’ble Supreme Court in the case of Union of India & Ors. v. Ashish Agarwal [(2002) 444 ITR 0001 (SC) submitted that the new procedure prescribed under section 148(A) under Finance Act, 2021 was not followed by the Ld. AO prior to issuance of notice under section 148 of the Act. He further argued that notice under section 148 of the Act dated

31.03.2021 was signed on 15.04.2021 and a screen shot of the same is available in paper book submitted before the Tribunal. He further submitted that as held in the case of Union of India & Ors. v. Rajeev Bansal [(2024) 8 NYPCTR 1291 (SC)], while reopening of the assessment beyond the prescribed period the provisions of section 149(1)(b) must be satisfied strictly. Further he also submitted that the provisions of amended section 149(1)(b) cannot be applied to the instant case. He also referred to Question No. 5 raised before the Hon'ble Karnataka High Court in the case of CIT v. Micro Labs Ltd., [(2012) 348 ITR 0075] wherein it was held that the matter cannot be remitted back to the file of the Ld. AO for passing fresh order of assessment by holding that the notice is invalid. He therefore pleaded that notice issued under section 148 of the Act is invalid and consequently assessment order passed in accordance with the reassessment notice issued under section 148 of the Act is void-ab-initio.

7. Per contra, Ld. Departmental Representative [hereinafter in short "Ld.DR"] submitted that the mere procedural mistake cannot invalidate the assessment proceedings. She further argued that the addition made by the Ld.AO is Rs.1.25 Crores and hence the provisions of section 149(1)(b) is attracted. She therefore prayed for upholding the order of the Ld. CIT(A).

8. We have heard the rival contentions, perused the material available on record including the case laws cited by the rival parties. It is an undisputed fact that the assessment was reopened by issuance of notice under section 148 of the

Act dated 31.03.2021 which was digitally signed and issued on 15.04.2021. The grievance of the Ld.AR is since the notice has been issued after the commencement of new regime wherein the Finance Act, 2021 amended the provisions of section 147 to 151 of the Act, the Ld. AO ought to have followed the procedure prescribed as per the new regime. He placed heavy reliance on the decision of the Hon'ble Supreme Court in the case of Union of India & Ors. v. Ashish Agarwal (supra) wherein the Hon'ble Supreme Court has directed vide its order dated 04.05.2022 to treat the notice issued under section 148 of the Act as per the amended provisions of the I.T.Act, r.w. section 3(1) of Taxation and other Laws (Relaxation of Certain Provisions) Ordinance, 2020 ("TOLA") as deemed to be a show-cause notice under the provisions of section 148A of the Act. The Hon'ble Supreme Court concluded that section 3(1) of the TOLA overrides section 149 of the Act only to the extent of relaxing the time limit for issuance of the re-assessment notice under section 148 of the Act. TOLA will continue to apply to the Act after 01.04.2021 if any action or proceeding specified under the substituted provisions of the Act falls for completion between 20.03.2020 and 31.03.2021. In the instant case the time limit as per the provisions of unamended Act for the A.Y. 2013-14 as the income is considered as escaping assessment of more than Rs. 1,00,000/- the term expires on 31.03.2020 which is well within the period 20.03.2020 and 31.03.2021.

9. The main contention of the Ld.AR is since the notice has been issued on 15.04.2021 after obtaining the prior approval dated 31.03.2021 from the competent authorities, the Ld. AO is under the obligation to follow the direction of the Hon'ble Supreme Court as held in the case of Union of India & Ors. v. Ashish Agarwal (supra) by treating the notice issued under section 148 dated 15.04.2021 as a show-cause notice under the new regime as per the section 148A(b) of the Act. We observe that the Ld. AO has not issued notice under section 148 of the Act following the directions of the Hon'ble Supreme Court in the case of Union of India & Ors. v. Ashish Agarwal (supra) and also in accordance with the CBDT Instruction No. 1 of 2022 dated 11.05.2022 issued for the purpose of implementation of the Hon'ble Supreme Court ruling in the case of Union of India & Ors. v. Ashish Agarwal (supra). It was also not brought to our notice that the Ld. AO has passed any order under section 148A(d) of the Act as per the new provisions amended by the Finance Act, 2021 w.e.f. 01.04.2021. Considering the above facts and circumstances of the case including the unamended old sections 147 to 151 of the Act, as it stood as on 31.03.2021 which is prior to the enactment of the Finance Act, 2021 and present substituted sections 147 to 151 including the newly inserted sections 148A of the Act without having any savings clause for the old provisions relating to reassessment proceedings Section 3 of TOLA Notification No. 20 of 2021 dated 31.03.2021 subsequently amended by notification No. 38/2021 dated 27.04.2021 issued by the CBDT for aiding the old provisions relating to the

reassessment proceedings which remained in force till 31.03.2021, non-issuance of impugned notice under the newly inserted section 148A(b) of the Act relating to A.Y. 2013-14 which in the instant case has been issued on or after 01.04.2021 by extending the time of limitation by CBDT for issuance of notice under 148 of unamended provisions of the Act by exercising the power under section 3 of TOLA is unauthorized and hence such impugned notice are barred by limitation and subsequent proceedings on the basis of the aforesaid impugned notice are not sustainable in law. The unamended provision of section 148 which was applicable upto 31.03.2021 has been repealed by substituting new provisions vide Finance Act, 2021 w.e.f. 01.04.2021. In view of the relaxation granted by the Hon'ble Supreme Court in Union of India & Ors. v. Ashish Agarwal (supra) validity of such notice under the old regime has to be necessarily tested under the provisions of the substituted regime. If the unamended provisions of section 148 including TOLA are applied to the new regime applicable from 01.04.2021 it would also necessarily mean that the provision repealed by the Parliament without any savings and exception clause is applied by the Revenue even after its life has come into end which is not permissible in law. If the validity of the notices issued on or from 01.04.2021 to 30.06.2021 is tested on the basis of re-amended provisions including TOLA and notification issued thereafter it shall result in direct conflict of the two provisions. The Hon'ble Supreme Court in Union of India & Ors. v. Ashish Agarwal (supra) has categorically held that the defence available to the assessee

including the limitation period as available under the amended provisions including the amended section 149 shall be available and therefore the application of old law will decline the rights specifically recognised the Hon'ble Supreme Court available to the assessee. Various High Courts and coordinate benches of the Tribunal have held that if the procedure prescribed under the new provisions amended by the Finance Act 2021 not followed by the Ld. AO would render the re-assessment proceedings as invalid.

10. In the case on hand, Ld. AO was of the opinion that the income escaping assessment is more than Rs. 50 lakhs and hence the time limit specified under section 149 r.w.s. 3(1) of the TOLA is applicable and hence proceeded to frame the assessment order without following the due procedure laid down under the amended Finance Act, 2021. It was held in the case of Union of India & Ors. v. Rajeev Bansal by the Hon'ble Supreme Court that section 3(1) of TOLA overrides section 149 of the Act only to the extent of relaxing the time-limit for issuance of re-assessment notice under section 148 of I.T.Act. Therefore, we are of the considered view, since the Ld. AO has not followed the prescribed procedures laid down by the Finance Act, 2021 and also the directions of the Hon'ble Supreme Court in the case of Union of India & Ors. v. Ashish Agarwal (supra), we are of the opinion that in relation to the impugned assessment year notice under section 148 as per the unamended provisions and by converting the same to a show-cause notice under newly inserted section 148A of the Act in

exercise of power under TOLA is barred by limitation and hence the subsequent proceedings on the basis of aforesaid impugned notice being not sustainable in law are quashed. We therefore quash the re-assessment order passed by the Ld.AO dated 28.03.2022 and thus allow the legal grounds raised by the assessee. Since the legal grounds are adjudicated in favour of the assessee by quashing the re-assessment order the other grounds raised by the assessee on merits are not adjudicated.

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

Order pronounced in the open court on 04th July, 2025.

Sd/-
(रवीश सूद)
(RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

Dated:04.07.2025

Giridhar, Sr.PS

Sd/-
(एस बालाकृष्णन)
(S. BALAKRISHNAN)
लेखा सदस्य/ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to:-

1. निर्धारित/ The Assessee : **Murali Mohan Reddy Bonthu**
14/4, FlatNo. 503
Sree SatyaSai Towers
Main RoadNunna
Andhrapradesh - 521212
2. राजस्व/ The Revenue : **Income Tax Officer – Ward – 3(1)**
CR Building, 1st Floor Annex
M.G. Road, Vijayawada – 522002
Andhra Pradesh
3. The Principal Commissioner of Income Tax
4. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR,ITAT, Visakhapatnam
5. The Commissioner of Income Tax
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam