

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER
आयकर अपील सं./ITA Nos.946 & 947/SRT/2024**

**Assessment Year: 2017-18
(Hybrid hearing)**

Tulsi Jewellers 7-8, Saibaba Complex Gauaarbag, Nr LMP School Chikhli Roa Bilimora, Tal: Gandevi-396 321	बनाम/ Vs.	Income Tax Officer, Ward-5, Navsari, 204, 2 nd Floor, Income Tax Office, Charpool, Awabaug, Navsari-396 445
स्थायी लेखासं./जीआइआरसं./PAN/GIR No: AAKFT 8368 G		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Appellant by	Shri Suresh K. Kabra, CA
राजस्व की ओर से /Respondent by	Shri Ashish Pophare, CIT-DR & Shri Ajay Uke, Sr-DR
सुनवाई की तारीख/Date of Hearing	07/07/2025
उद्घोषणा की तारीख/Date of Pronouncement	29/08/2025

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

These two appeals by the assessee emanate from the separate orders passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') dated 05.08.2024 and 07.08.2024 by National Faceless Appeal Centre (NFAC), Delhi/Commissioner of Income-tax (Appeals) [in short 'Ld. CIT(A)'] for the assessment year (AY) 2017-18. One appeal is against quantum assessment and other is against penalty levied u/s 271AAAC(1) of the Act. Since facts are same, with consent of the parties, the appeals were heard together and a common order is passed for the sake of convenience and brevity. The quantum appeal

in ITA No.946/SRT/2024 is treated as lead case. The assessee has raised the following grounds of appeal:-

"1. The Ld. Assessing Officer has erred in law and fact by re-opening the case under section 147 and made assessment read with section 144 of the Income Tax Act, 1961.

2. The Ld. CIT(a), NFAC, has erred in law and fact by passing the ex parte order and not providing sufficient/reasonable opportunity of being heard to the appellant.

3. The Ld. CIT(A), NFAC, has erred in law and fact by confirming the addition of Rs.13,20,000/- made by Assessing Officer under section 69A and taxing the same @ 60% u/s 115BBE of the Income tax Act, 1961.

4. With your honours pre permission, the appellant reserves the right to add, alter or amend or withdraw any ground/s of appeal."

2. Vide application dated 25.05.2025, assessee has raised the following additional ground:

"The Ld. Jurisdictional Assessing Officer has erred and was not just and proper on the facts of the case and in law in issuing notice u/s 148 dated 25.07.2022 without obtaining sanction from proper sanctioning authority in view of Rajeev Bansal decision of Hon'ble Supreme Court."

2.1 The Ld. AR submitted that the additional ground in the present appeal with respect notice issued u/s 148 on 25.07.2022 without obtaining sanction from specified sanctioning authority is a jurisdictional matter arising from the assessment proceedings and existing records. Further, the ground is also covered by the decision of the Hon'ble Supreme Court in case of Union of India vs. Rajev Bansal 469 ITR 46 (SC). He, therefore, requested to admit the additional ground. On the other hand, the Ld. CIT-DR submitted that the Bench may decide as it thinks fit. The additional ground raised by the appellant

requires the Tribunal to consider a question of law arising from the facts which are on record in the assessment proceedings. Therefore, following the decisions of Hon'ble Supreme Court in case of National Thermal Power Co. Ltd. vs. CIT (1998) 229 ITR 383 (SC) and Jute Corporation of India Ltd. vs. CIT (1991) 187 ITR 688 (SC), the additional ground of the appeal is admitted and the same will be decided in course of the present order.

3. Brief facts of the case are that the appellant is a partnership firm engaged in the business of jewellery. During the year under consideration, the assessee had deposited cash of Rs.13,20,000/- in the Prime Co-operative Bank during the demonetization period. Based on this information, case of the assessee was reopened. In the instant case, notice u/s.148 of the Act (old regime) was issued to the assessee for AY 2017-18 on 10.05.2021 (i.e., after the expiry of 3 years from end of the AY but before 30.06.2021 - extended time granted by TOLA). Subsequently, in compliance with the judgment of the Hon'ble Supreme Court in the case of the Union of India vs. Ashish Agarwal [2022] 444 ITR 1 (SC), communication dated 25.05.2022 was sent to the assessee intimating that the aforesaid notice issued u/s.148 of the Act (under old regime) would be treated as the show cause notice issued in terms of Section 148A(b) of the Act (under new regime introduced by the Finance Act, 2021 w.e.f. 01.04.2021). The AO also shared with the assessee material/information on the basis of which he had formed a belief that income had escaped assessment. Thereafter, order u/s.148A(d) of the Act was

passed on 20.07.2022 after taking approval from the Principal Commissioner of Income tax, Valsad on 20.07.2022. This was followed by issuance of notice on 25.07.2022 u/s. 148 of the Act (new regime).

4. During the assessment proceeding, assessee was requested to furnish details vide notices u/s.142(1) of the Act and show cause notices, however, no reply/response was received from the assessee. The assessee neither filed return of income in response to notice u/s.148 nor gave any reply or explained the source of cash deposited in demonetized currency. Therefore, the aforesaid cash deposits of Rs.13,20,000/- was treated as unexplained money and accordingly, the addition of Rs.13,20,000/- was made u/s.69A of the Act. The total income of the assessee was assessed at Rs.13,20,000/- and the order u/s.147 r.w.s.144B of the Act was passed on 11.05.2023.

5. Aggrieved by the addition made by the Assessing Officer, appellant preferred appeal before Ld. CIT(A). The appellant failed to respond to any of the notices u/s 250 of the Act. He condoned the delay and held that the reopening of the assessment u/s.147 was valid and based on a reasonable belief that income had escaped assessment. He also upheld the addition of Rs.13,20,000/- u/s.69A of the Act. Aggrieved by the order of CIT(A), the appellant has filed present appeal before the Tribunal.

6. Let us first take up the additional ground raised by the appellant regarding the invalid sanction of the notice issued u/s 148 of the Act dated 25.07.2022. The Ld. AR of the appellant has filed synopsis of the case and

relied on decisions of Hon'ble Supreme Court, High Courts and Tribunals. He submitted that in the present case pertaining to AY 2017-18 the AO has obtained sanction from the Principal Commissioner of Income-tax (PCIT), Valsad. The limitation of 3 years for AY 2017-18 expired on 31.03.2021 as the escaped income was Rs.13,20,000/-, which was less than the limit of Rs.50 lakh. As this limitation date of 31.03.2021 falls within the period of TOLA, 2020, the limitation period got extended to 30.06.2021. Beyond this, if any sanction was to be obtained for the AY 2017-18, it should be obtained from the Principal Chief Commissioner of Income-tax (PCCIT) as per the amended provisions of Section 151(ii) of the Act w.e.f 01.04.2021. However, the approval in the instant case was taken from the PCIT [u/s 151(i)] and not from the PCCIT. Hence, the notice issued u/s.148 of the Act dated 25.07.2022 was bad in law as the AO had not fulfilled the jurisdictional requirements of sections 147 to 151 of the Act. The Ld. A.R. has relied on following case laws in support of his ground: (i) Mrs. Thulasidass Prabavathi vs. ITO (2025) 174 taxmann.com 508 (Mad); (ii) Ganesh Dass Khanna vs. ITO [2023] 460 ITR 546 (Delhi HC) and (iii) ACIT vs. Surya Ferrous Alloys (P.) Ltd. [2024] 169 taxmann.com 736 (Mumbai Trib.); (iv) Rahat Mohammed Riyazuddin Shaikh vs. ITO and ACIT vs. Ramchand Thakurdas Jhamtani (2025) 173 taxmann.com 182 (Mumbai-Trib.)

7. On the other hand, Ld. Sr. D.R. for the revenue relied on the orders passed by the lower authorities and submitted that notice issued u/s.148 of

the Act was in accordance with the relevant provisions of the Act. He submitted that the notice was issued within the surviving period with the valid approval of PCIT. He submitted that the deemed notice u/s 148A(d) of the Act (old 148 notice) was issued on 10.05.2021 and hence, the surviving period was 51 days i.e. from 10.05.2021 to 30.06.2021. The material was supplied on 25.05.2022 and since no reply was received within two weeks, the time for the surviving period resumes from 09.06.2022. Hence, final date for issue of notice was 29.07.2022 i.e., 51 days from 09.06.2022. The AO had passed order u/s 148A(d) and issued notice u/s 148 of the Act on 20.07.2022. Therefore, notice u/s 148 was issued within surviving period with the approval from the PCIT. He submitted that approval of PCIT is valid as per para-77 of the decision in case of Rajeev Bansal (supra).

8. We have heard the both the parties and perused the materials available on record. We have also deliberated the decisions relied upon by Ld. AR of the appellant. It is noticed that as per the old provisions of section 149 of the Act, the case of the assessee could be reopened within 4 or 6 years from the end of the respective AY, as the case may be. In case of the assessee, the limitation under old provisions of 4 years expired on 31.03.2022. If the escapement is Rs.1 lakh or more, the limitation would expire on 31.03.2024. Both these limitations were beyond the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (in short, 'TOLA') period of 20.03.2020 to 31.03.2021. The TOLA *inter alia* provided for extension of

actions to be taken under the Act during the period of 20.03.2020 to 31.03.2021 upto 30.06.2021. Subsequently, the provisions related to reopening of the cases u/s 147 of the Act also stood amended by the Finance Act, 2020, w.e.f., 01.04.2021.

8.1 The issue regarding the fate of reassessment notices issued under old provisions of sections 147 to 151 between 01.04.2021 to 30.06.2021 cropped up when the old provisions were amended/replaced w.e.f. 01.04.2021. This issue was resolved when Hon'ble Supreme Court in the case of Ashish Agarwal (supra), converted all these notices issued under the old regime as deemed notices u/s 148A(b) of the new regime by exercising the discretionary jurisdiction under Article 142 of the Constitution, with the direction that all the defenses available to the assessee under the new provisions of section 149 would be available to them. This direction of the Hon'ble Supreme Court created a new issue regarding the time barring date of all the notices issued during the period of 01.04.2021 to 30.06.2021 for AYs 2013-14 to 2017-18. The matter again reached the Hon'ble Supreme Court in the case of Union of India vs. Rajeev Bansal [2024] 469 ITR 46 (SC). The Hon'ble Supreme Court in Rajeev Bansal (supra) provided a calculation for finding out time barring date in case of the notices issued during this period of 01.04.2021 to 30.06.2021 and the applicability of TOLA, 2020. It has given an example at para-112 of the order as per which the time remaining upto 30.06.2021 from the date of issue of the deemed notice u/s 148A(b) (i.e., old 148 notice) will be the surviving period

which will be available for passing order u/s 148A(d) and issue of notice u/s 148 under the amended provisions of the Act. The above time is to be counted after receipt of reply from appellant upon supply of materials u/s 148A(b) of the Act by the AO. In the present case, the surviving time was 51 days and the time for counting this period started from 09.06.2022 i.e., 2 weeks from supply of material on 25.06.2022. Hence, time was available till 29.07.2022 for issue of notice u/s 148 under the amended provisions of the Act; but, the AO issued the same on 20.07.2022. Therefore, there is no infirmity regarding the time limit for issue of notice u/s 148 of the Act. The contention of the Revenue to this extent is accepted.

8.2 The second issue to be decided in the impugned ground is whether the PCIT was the specified authority to sanction issue of notice u/s 148 of the Act. The Ld. AR submitted that copy of the notice u/s 148 dated 25.07.2022, which was approved by the PCIT, Valsad on 20.07.2022 vide Reference No. Pr.CIT/VLS/HQ/Approval/148A(d)/2022-23. The Ld. AR contended that the specified authority was PCCIT and not the PCIT because period of 3 years from the end of the AY 2017-18 had expired on 31.03.2021 and the amount of escaped income was only Rs.13,20,000/-, which is less than the limit of Rs.50 lakh. For the purpose of the sanction by the higher authorities, both parties have referred to the decision of the Hon'ble Supreme Court in the case of Rajeev Bansal (supra). The Hon'ble Supreme Court has made following observations in para 77 to 81 of its order:

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 year 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.

79. Under Finance Act 2021, the assessing officer was required to obtain prior approval or sanction of the specified authorities at four stages:

a. Sanction 148A(a) – to conduct any enquiry, if required, with respect to the information which suggests that the income chargeable to tax has escaped assessment;

b. Section 148A(b) – to provide an opportunity of hearing to the assessee by serving upon them a show cause notice as to why a notice under section 148 should not be issued based on the information that suggests that income chargeable to tax has escaped assessment. It must be noticed that this requirement has been deleted by the Finance Act 2022-23

c. Section 148A(d) – to pass an order deciding whether or not it is a fit case for issuing a notice under section 148; and

d. Section 148 – to issue a reassessment notice.

80. In *Ashish Agarwal (supra)*, this court directed that Section 148 notices which were challenged before various High Courts “shall be deemed to have been issued under section 148-A of the Income-tax Act as substituted by the Finance Act, 2021 and construed or treated to be show-cause notices in terms of Section 148-A(b).” Further, this Court dispensed with the requirement of conducting any enquiry with the prior approval of the specified authority under section 148A(a). Under Section 148A(b), an assessing officer was required to obtain prior approval from the specified authority before issuing a show cause notice. When this court deemed the Section 148 notices under the old regime as Section 148A(b) notices under the new regime, it impliedly waived the requirement of obtaining prior approval from the specified authorities under section 151 for Section 148A(b). It is well established that this Court while exercising its jurisdiction under Article 142, is not bound by the procedural requirements of law *High Court Bar Association v. State of UP* [2024] 160 taxmann.com 32/299 Taxman 21 (SC)/[2024] 6 SCC 267.

81. This Court in Ashish Agarwal (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 under Section 148 of the new regime **“after following the procedure as required under section 148-A.”** Although this court waived off the requirement of obtaining prior approval under section 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 under section 148A(d) or issuing a notice under section 148. These notices ought to have been issued following the time limits specified under section 151 of the new regime read with TOLA, where applicable. (emphasis supplied).

8.3 The present case pertains to AY 2017-18, where the sanction to issue notice u/s 148 of the Act under the new regime was obtained by the AO from the PCIT, Valsad on 20.07.2022 and not from the PCCIT or CCIT. The limitation of 3 years for AY 2017-18 expired on 31.03.2021 as the escaped income of Rs.13,20,000/- was less than the limit of Rs.50 lakh. As this limitation date of 31.03.2021 falls within the period of TOLA, 2020, the limitation date got extended upto 30.06.2021. The PCIT was empowered to grant sanction to issue notice u/s 148 till 30.06.2021 u/s 151(i) of the Act. Beyond this, if any sanction was to be obtained for the AY 2017-18, it should be from the PCCIT as per the amended provisions of Section 151(ii) of the Act w.e.f. 01.04.2021.

8.4 On perusal of the notice u/s.148 of the Act dated 25.07.2022, it is seen that the same has been issued after obtaining the prior approval of the Pr. CIT, Valsad on 20.07.2022 vide Reference No. Pr.CIT/VLS/HQ/Approval/148A(d)/2022-23. Since the approval was obtained on 20.07.2022, after the extended time upto 30.06.2021, the specified authority u/s 151(ii) of the Act was the PCCIT or the CCIT and not the PCIT. Thus, the sanction from the PCIT was in clear violation of the statutory

provisions as well as the decision of the Hon'ble Supreme Court (supra). Accordingly, notice u/s 148 dated 25.07.2022 and the consequential reassessment order u/s 147 r.w.s 144B dated 11.05.2023 are quashed, being violative of the provisions contained in Sections 148A(d), 148 and 151(ii) of the Act. This view is also supported by the decisions of the Tribunal in cases of Surya Ferrous Alloys (P.) Ltd. (supra), Ramchand Thakurdas Jhamtani (supra) and Rahat Mohammed Riyazuddin Shaikh (supra). In case of Surya Ferrous Alloys (P.) Ltd. (supra) the Tribunal held that where AO issued notice u/s 148 for AY 2017-18 on 30.07.2022, after obtaining necessary approval from the PCIT, since notice was issued beyond period of 3 years from end of relevant AY, case of the assessee fell within provisions of Section 151 (ii) of the amended law whereby specified authority for grant of approval was PCCIT or PGIT or CCIT or DGIT, and thus, impugned notice was invalid. In case of Ramchand Thakurdas Jhamtani (supra), it was held that where order u/s 148A(d) was passed after expiry of 3 years from end of AY 2017-18, as per new regime, authority specify u/s 151(ii) of the Act was required to grant approval. In case of Rahat Mohammed Riyazuddin Shaikh (supra), it was held that where reopening notice issued on 29.07.2022 for AY under new regime was beyond period of 3 years, however, approval was obtained by the PCIT which was not a proper sanction as per provisions of section 151(ii) of amended law, said notice was invalid and was to be quashed. In view of the facts discussed above and following the decisions cited supra, we hold that the notice issued

u/s 148 dated 25.07.2022 is invalid and consequently the order passed u/s 147 r.w.s. 144B of the Act on 11.05.2023 is also bad in law. Hence, same is quashed. The ground is accordingly allowed.

8.5 Since we have already quashed the impugned assessment order, in terms of our observations and findings as stated above, merits of the case are not dealt with.

9. In the result assessee's appeal is allowed.

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10. Since the reassessment has been quashed, there is no basis at all for levy of penalty u/s 271AAC of the Act. Therefore, the impugned penalty u/s 271AAC would not survive. In the result, the grounds of appeal raised by the assessee is allowed.

11. In the result, assessee's appeal is allowed.

12. In combine result, both appeals of the assessee are allowed.

Order pronounced in accordance with Rule 34 of ITAT Rules, 1963
on 29/08/2025 in the open court.

Sd/-
(SIDDHARTHA NAUTIYAL)
न्यायिक सदस्य/JUDICIAL MEMBER

सूरत /Surat

दिनांक/ Date: 29/08/2025

Dkp Outsourcing Sr.P.S*

Sd/-
(BIJAYANANDA PRUSETH)
लेखा सदस्य/ ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अद्योषित/ Copy of the order forwarded to :

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त (अपील)/ The CIT(A)
- विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, सूरत/ DR, ITAT, SURAT
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By order/आदेश से,

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सहायक पंजीकार
आयकर अपीलीय अधिकरण, सूरत