IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH MUMBAI

BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
MS PADMAVATHY S, ACCOUNTANT MEMBER

ITA No.486/Mum/2025
(**Assessment Year :2016-17**)

ITO-34.2.1, Mumbai	Vs.	Mangal Suresh Karkhanis 302, New Shirin Lane, Vaishali Nagar Building No.2, Satrasta Mahalaxmi Mumbai- 400 011
PAN/GIR No.AQRPK5724A		
(Appellant)	..	**(Respondent)**

CO No.155/Mum/2025
(Arising out of ITA No.486/Mum/2025)
(**Assessment Year :2016-17**)

ITO-34.2.1, Mumbai	Vs.	Mangal Suresh Karkhanis 302, New Shirin Lane, Vaishali Nagar Building No.2, Satrasta Mahalaxmi Mumbai- 400 011
PAN/GIR No.AQRPK5724A		
(Appellant)	..	**(Respondent)**

Assessee by	Shri Gaurav Kabra, CA
Revenue by	Shri Annavaran Kosuri, Sr. AR
Date of Hearing	**03/07/2025**
Date of Pronouncement	**04/09/2025**

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

This appeal filed by the Revenue and the cross-objection filed by the assessee emanate from the order dated

25.11.2024 passed by the National Faceless Appeal Centre ("CIT(A)"), arising from the reassessment framed under section 147 r.w.s. 143(3) of the Income-tax Act, 1961 ("the Act") for Assessment Year 2016–17.

2. The Revenue has challenged the deletion of additions made on account of alleged penny stock transactions, whereas the assessee, in cross-objection, has questioned the very assumption of jurisdiction by the Assessing Officer to reopen the assessment.

3. At the very outset, the Learned Authorised Representative ("Ld. AR") appearing for the assessee assailed the validity of the reassessment proceedings themselves. He specifically questioned the competence of the sanction granted under section 151 of the Act, which, in the present case, had been accorded by the Principal Commissioner of Income Tax–5, Mumbai. According to the Ld. AR, such approval was without jurisdiction, having been granted mechanically and without due application of mind by an authority who is not the "specified authority" contemplated under the law for the relevant period. He explained that the year under consideration is A.Y. 2016–17. Under the statutory framework, an assessment could be reopened within six years from the end of the relevant assessment year. Thus, the period for reopening culminated on 31.03.2023. The notice under section 148 was in fact issued on 13.05.2021, i.e., within limitation. Therefore, the assessee raised no grievance as to limitation. However, since the reopening was initiated after more than three years from the end of the relevant

assessment year (31.03.2017), the requirement of law under the amended section 151(ii) was that sanction had to be granted only by the Principal Chief Commissioner or Principal Director General, or in their absence, the Chief Commissioner or Director General. In the assessee's case, however, sanction was granted by the Principal Commissioner of Income Tax–5, Mumbai, who had no jurisdiction to do so. Accordingly, it was contended that the order under section 148A(d) and the notice under section 148 are vitiated ab initio.

4. In this regard, the Ld. AR drew attention to the substituted provisions of section 151, effective from 01.04.2021, reproduced as under:

[Sanction for issue of notice.

151. *Specified authority for the purposes of section148 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 where there is no Principal Chief Commissioner or Principal Director General, Chief Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year.]***

4.1. He stressed that the provision consciously draws a line of demarcation between cases within three years and cases beyond three years, and for the latter, mandates scrutiny by the senior-most officers of the Department.

5. Reliance was placed upon the judgment of the Hon'ble Supreme Court in Union of India v. Ashish Agrawal and, more

importantly, in Rajeev Bansal v. Union of India (2024), wherein the Apex Court held that the legal fiction in Ashish Agrawal does not dilute the substantive safeguards of the substituted provisions. The Hon'ble Court clarified that once proceedings fall under the new regime, the requirements of section 151 as amended must be followed in letter and spirit.

b. Interplay of Ashish Agarwal with TOLA

108. The Income-tax Act read with TOLA extended the time limit for issuing reassessment notices under section 148, which fell for completion from 20 March 2020 to31March2021, till 30June2021. Allthereassessment noticesunderchallengeinthe present appeals were issued from April 2021 to 30 June 2021 under the old regime. Ashish Agarwal (supra) deemed these reassessment notices under the old regime as show cause notices under the new regime with effect from the date of issuance of the reassessment notices. The effect of creating the legal fiction is that this Court has to imagine as real all the consequences and incidents that will inevitably flow from the fiction. East End Dwellings Co. Ltd. v. Finsbury' Borough Council [1952]AC109.[Lord Asquith, in his concurring opinion, observed: "If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it."] Therefore, the logical effect of the creation of the legal fiction by Ashish Agarwal (supra) is that the time surviving under the Income-tax Act read with TOLA will be available to the Revenue to complete the remaining proceedings in furtherance of the deemed notices, including issuance of reassessment notices under section 148 of the new regime. The surviving or balance time limit can be calculated by computing the number of days between the date of issuance of the deemed notice and 30 June 2021.

109. If this Court had not created the legal fiction and the original reassessment notices were validly issued according to the provisions of the new regime, the notices under section148 of the new regime would have to be issued within the time

limits extended by TOLA. As a corollary, the reassessment notices to be issued in pursuance of the deemed notices must also be within the time limit surviving under the Income-tax Act read with TOLA. This construction gives full effect to the legal fiction created in Ashish Agarwal (supra) and enables both the assesses and the Revenue to obtain the benefit of all consequencesflowingfromthefiction.SeeStateofAPv.APPensioner sAssociation13 SCC 161. [This Court observed that the "legal fiction undoubtedly is to be construed in such a manner so as to enable a person, for whose benefit such legal fiction has been created, to obtain all consequences flowing therefrom."]

110. The effect of the creation of the legal fiction in Ashish Agarwal (supra)was that it stopped the clock of limitation with effect from the date of issuance of Section148 notices under the old regime I which is also the date of issuance of the deemed notices]. As discussed in the preceding segments of this judgment, the period from the date of the issuance of the deemed notices till the supply of relevant information and material by the assessing officers to the assesses in terms of the directions issued by this Court in Ashish Agarwal (supra) has to be excluded from the computation of the period of limitation. Moreover, the period of two weeks granted to the assesses to reply to the show cause notices must also be excluded in terms of the third proviso to Section 149.

111. The clock started ticking for the Revenue only after it received the response of the assesses to the show causes notices. After the receipt of the reply, the assessing officer had to perform the following responsibilities: (i) consider the reply of the assessee under section 149A(c); (ii) take a decision under section 149A(d) based on the available material and the reply of the assessee; and (iii) issue a notice under section 148 if it was a fit case for reassessment. Once the clock started ticking, the assessing officer was required to complete these procedures within the surviving time limit. The surviving time limit, as prescribed under the Income-tax Act read with TOLA, was available to the assessing officers to issue the reassessment notices under section148 of the new regime.

112. Let us take the instance of a notice issued on I May 2021 under the old regime for a relevant assessment year. Because of the legal fiction, the deemed show cause notices will also come into effect from 1 May 2021. After accounting for all the

exclusions, the assessing officer will have sixty-one days [days between I May 2021 and 30 June 2021] to issue a notice under section 148 of the new regime. This time starts ticking for the assessing officer after receiving the response of the assessee. In this instance, if the assessee submits the response on 18 June2022, the assessing officer will have sixty-one days from 18 June 2022 to issue a reassessment notice under section 148 of the new regime. Thus, in this illustration, the time limit for issuance of a notice under section148 of the new regime will end on 1 8 August 2022.

113. In Ashish Agarwal (supra), this Court allowed the assesses to avail all the defenses, including the defence of expiry of the time limit specified under section149(1).In the instant appeals, the reassessment notices pertain to the assessment years 2013-2014, 2014-2015, 2015-2016, 2016-2017, and 2017-2018. To assume jurisdiction to issue notices section148 with respect to the relevant assessment years, an assessing officer has to: ***(i) issue the notices within the period prescribed under section 149(1) of the new regime read with TOLA; and (ii) obtain the previous approval of the authority specified under section 151****. A notice issued without complying with the preconditions is invalid as it affects the jurisdiction of the assessing officer. Therefore, the reassessment notices issued under section148 of the new regime, which are in pursuance of the deemed notices, ought to be issued within the time limit surviving under the Income-tax Act read with TOLA. A reassessment notice issued beyond the surviving time limit will be time-barred.*

G. Conclusions

114. In view of the above discussion, we conclude that:

a) After I April 2021, the Income-tax Act has to be read along with the substituted provisions;

b) TOLA will continue to apply to the Income-tax Act after I April 2021 if any action or proceeding specified under the substituted provisions of the Income-tax Act falls for completion between 20 March 2020 and 31 March 2021;

c) Section3 (1) of TOLA overrides Section149 of the Income-tax Act only to the extent of relaxing the time limit for issuance of a reassessment notice under section 148;

d) 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(i) has extended time till 30 June 2021 to grant approval:

e) ***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 extended time till 31 March 2021 to grant approval****;*

f) The directions in Ashish Agarwal (supra) will extend to all the ninety thousand reassessment notices issued under the old regime during the period I April 2021 and 30 June 2021;

g) The time during which the show cause notices were deemed to be stayed is from the date of issuance of the deemed notice between 1 April 2021 and 30 June 2021 till the supply of relevant information and material by the assessing officers to the assesses in terms of the directions issued by this Court in Ashish Agarwal (supra),and the period of two weeks allowed to the assesses to respond to the show cause notices; and

h) The assessing officers were required to issue the reassessment notice under section 148 of the new regime within the time limit surviving under the Income-tax Act read with 'TOLA. All notices issued beyond the surviving period are time barred and liable to be set aside;

6. Further reliance was placed upon the judgment of the Hon'ble Bombay High Court in Gigantic Mercantile (P) Ltd. v. ACIT (2024), where it was held that sanction by a Principal Commissioner, after expiry of three years from the end of the assessment year, is patently invalid. The Court reiterated the principle laid down in Siemens Financial Services Pvt. Ltd. that sanction must be obtained in accordance with the law as it stands on the date of approval.

(i) **Gigantic Mercantile (P) Ltd vs Assistant Commissioner**

of Income Tax in Writ Petition No. 1498 of 2023, dated 26.07.2024 (Bom HC).

8. It is apparent that the sanction accorded in the instant case was required to be granted under Section 151(ii) of the Act since more than three years had lapsed from the end of the relevant Assessment Year. The period of three years would expire on 31st March, 2020 while the first notice (which now was purported to be a notice under Section 148A), came to be issued on 30th June, 2021 i.e. one year and three months after the lapse of three years. The sanction in the instant case has been granted by the Principal Commissioner of Income-tax-3. For cases where the reassessment is sought to be undertaken more than three years after the end of the relevant Assessment Year, the specified authorities who may sanction the reassessment are of a more senior and higher rank. Section 151 of the Act contains an inherent check and balance - when the reopening is sought to be initiated after a longer period, application of mind by the specific authorities who are even more senior (as compared with the authorities who are relatively subordinate, who are listed in Section 151 (i) to sanction reassessments initiated within three years) would have to be involved.

9. It is an admitted position that the sanction in the instant case had not been granted by any authority empowered under Section 151 (ii). Consequently, indeed, the matter at hand would be covered by the decision in Cipla, which inherently deals with the findings in Siemens. The following extracts would be relevant: -

9. *The record clearly indicates that the sanction in the present case was issued by the Principal Commissioner which can only be in respect of cases if three years or less than three years have elapsed from the end of the relevant assessment year, as would fall under the provisions of clause (i) of Section 151 of the Act. As in the present case the assessment year in question is 2016-17 and the impugned notice itself has been issued on 30 July. 2022, it is issued after a period more than 3 years having elapsed from the end of the said assessment year. hence, clause (ii) of Section 151 of the Act was applicable,*

which required the sanction to be issued by either Principal Chief Commissioner or Principal Director General or where there is no Principal Chief Commissioner or Principal Director General. Chief Commissioner or Director General for issuance of notice under Section 148 of the Act.

10. *As rightly pointed out at the bar, such issue fell for consideration of the Division Bench of this Court in Siemens Financial Services Pvt. Ltd. (supra), wherein the Division Bench considered the provisions of Section 151 of the Act read with the provisions of Section 148A(b), the latter provision clearly providing that prior to issuance of any notice under Section 148 of the Act, the assessing officer shall provide an opportunity of being heard to the assessee only after considering the cumulative effect of Section 148A(b) read with Section 151 of the Act and as provided under sub-clause (d), 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 by passing an order, with the prior approval of specified authority within one month from the end of the month in which the reply is received, It is held that the sanction of the specified authority has to be obtained in accordance with the law existing when the sanction is obtained and, therefore, the sanction is required to be obtained by applying the amended section 151(H) of the Act and since the sanction has been obtained in terms of section 151 (i) of the Act, the impugned order and impugned notice are bad in law and should be quashed and set aside.*

10. In this view of the matter the Petition deserves to be allowed since the decision in Cipla indistinguishably a plies to the facts of the case involved in the matter at hand. In the instant case too, Assessment Year 2016 17 is involved and the sanction is accorded by the Principal Commissioner of Income-tax. Consequently, the Writ Petition deserves to be allows, which we hereby do in terms of prayer clause (a) which reads thus:-

a. that this Hon'ble Court be pleased to issue a Writ of Certiorari or any other writ order or clirection under Article 226 of the Constitution of India calling for the records of the case leading to the issue of the ilnpugned initial notice

(Exhibit J) dated May 24, 2022, passing of the impugned order (Exhibit M) dated July 29, 2022 and the issue of the impugned notice (Exhibit N) dated July 29, 2022 and after going through the same and examining the question of legality thereof quash, cancel and set aside the impugned initial notice (Exhibit J) dated May 24, 2022, passing of the impugned order (Exhibit M) dated July 29, 2022 and the issue of the impugned notice (Exhibit N) dated July 29,2022;

7. The Ld. AR also referred to the judgment of the Hon'ble Madras High Court in Core Logistics Company v. ACIT (2025), which dealt with a similar issue. The Court there quashed reassessment proceedings where sanction had been obtained from a Principal Commissioner despite the amount of escapement exceeding ₹50 lakhs and the reopening being beyond three years. The High Court held such approval incompetent under section 151(ii), rendering the initiation of proceedings void.

i. **Core Logistics Company vs Assistant Commissioner of Income Tax in Writ Petition No. 18168 of 2023, dated 05.06.2025 (Madras HC).**

7. A perusal of the above provision would show that, before issuing any notice under Section 148, the Assessing Officer has to obtain prior approval of the specified authority to issue such notice. The specified authority is also defined in explanation of the above provision. As per the above provision, specified authority is the authority who referred to in Section 151.

8. At this juncture, it would be relevant to extract the provision of Section 151, which is as follows:

"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."

9. A perusal of Section 151(i) would show that, the specified authority for the purpose of issuing notice under Section 148 within a period of three years from the end of the relevant assessment year is, the Principal Commissioner or Principal Director or Commissioner or Director. Further, in terms of provision of Section 149, three year time period is fixed for issuance of 148 notice, in the event of the amount is below 50 lakhs. In the present case, the amount involved is Rs.3,65,09,748/-, which is more than 50 lakhs. 148 notice was issued on 25.07.2022, which is beyond the period of three years. So admittedly, the approval has to be obtained from the Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General as defined under Section 151(ii). But, in the present case, the approval was obtained from the Principal Commissioner in terms of Section 151(i) and no approval was obtained before issuance of 148 notice in terms of provision of Section 151(ii), which is mandatory. Therefore, the notice under Section 148 was issued in the present case in violation of provision of Section 151(ii) of the Income Tax Act. In view thereof, the initiation of proceedings itself is without any jurisdiction. Hence, the same is liable to be quashed.

8. On the strength of these authorities, the Ld. AR prayed that the reassessment order be struck down as void ab initio.

9. In response, the Learned Senior Departmental Representative ("Ld. DR") strongly supported the action of the Assessing Officer. He contended that no adverse inference should be drawn merely on account of a technical irregularity in the sanction process. According to him, such lapses, if any, are procedural in nature and cannot vitiate substantive reassessment proceedings where credible material of income

escaping assessment has been unearthed. He argued that the legislative intent was to prevent escapement of income, and technical objections regarding sanction ought not to defeat the substantive charge of tax. He therefore urged that the additions be examined on merits, rather than annulled on what he termed as a hyper-technical ground.

10. We have given our anxious consideration to the rival submissions, carefully perused the material available on record, and examined the binding pronouncements placed before us. The short but seminal question that arises for our adjudication is whether the reassessment proceedings initiated for A.Y. 2016–17 are vitiated for want of valid approval under section 151 of the Act. The factual matrix is not in dispute. The first notice under section 148 (old regime) was issued on 13.05.2021. In view of the law declared by the Hon'ble Supreme Court in Union of India v. Ashish Agrawal, this notice is deemed to be a show cause notice under section 148A(b) of the substituted regime. Thereafter, the Assessing Officer issued a notice under section 148A(d) on 24.07.2022, followed by a notice under section 148 (new regime) on 25.07.2022. The present reassessment order under section 147 r.w.s. 144B was framed on 11.05.2023.

11. It is, therefore, clear that the reassessment proceedings were sought to be initiated well beyond three years from the end of A.Y. 2016–17, i.e., beyond 31.03.2020. The statutory consequence of this factual position is inescapable: as per the express language of section 151(ii), only the Principal Chief Commissioner, Principal Director General, or, in their

absence, the Chief Commissioner/Director General, is the competent "specified authority" to accord approval. In the present case, however, the sanction was obtained from the Principal Commissioner of Income Tax–5, Mumbai, vide approval letter dated 20.07.2022. This fact is a matter of record and not controverted by the Revenue.

12. The legal effect of such a sanction has been settled beyond cavil by the Hon'ble Supreme Court in Rajeev Bansal v. Union of India. The Court, while interpreting the scheme of reassessment under the substituted provisions, categorically held that a notice issued without valid approval from the prescribed "specified authority" is void ab initio and non est, as it strikes at the very root of jurisdiction. The Apex Court observed that the deeming fiction in Ashish Agrawal cannot be read as a license to bypass the safeguards introduced by Parliament in sections 148 to 151. The legal fiction was meant to save notices issued during the transitory period, but it did not dilute the jurisdictional requirements of the new regime. Thus, once more than three years have elapsed from the end of the relevant assessment year, approval under section 151(ii) is sine qua non for a valid reassessment.

13. The Hon'ble jurisdictional High Court in Gigantic Mercantile (P) Ltd. v. ACIT has applied the same principle. It was held that sanction by the Principal Commissioner after three years is patently invalid, and only the Principal Chief Commissioner or equivalent authority is empowered to grant approval. The Division Bench underscored that section 151 is not a mere procedural formality but a jurisdictional

safeguard, reflecting a conscious legislative design that reopening after a longer lapse of time should be subjected to higher-level scrutiny. The earlier ruling in Siemens Financial Services Pvt. Ltd. was reiterated to emphasize that sanction must be tested against the law as it stands on the date it is accorded, and not under any prior dispensation.

14. Equally instructive is the judgment of the Hon'ble Madras High Court in Core Logistics Company v. ACIT, where the Court quashed reassessment proceedings on identical grounds. It was held that when the amount of alleged escapement exceeds ₹50 lakhs and more than three years have elapsed, approval must mandatorily emanate from the Principal Chief Commissioner/Director General. Approval granted by a Principal Commissioner in such circumstances is wholly incompetent and renders the initiation of proceedings void.

15. In the present case, the amount alleged to have escaped assessment was ₹1,00,09,980/–, which is well above the threshold of ₹50 lakhs. Thus, on both counts, first, that the reopening was after three years from the end of the assessment year, and second, that the quantum exceeded ₹50 lakhs the law mandated approval under section 151(ii). The sanction accorded by the Principal Commissioner of Income Tax–5, Mumbai, was, therefore, ex facie incompetent and without jurisdiction.

16. We are unable to accept the submission of the Ld. DR that the defect is merely procedural and curable. The requirement of prior sanction under section 151 is a

jurisdictional precondition. It conditions and limits the very assumption of power by the Assessing Officer to reopen an assessment. Absence of sanction by the correct authority strikes at the root of jurisdiction and cannot be salvaged by invoking the doctrine of substantial compliance. The Hon'ble Supreme Court in Rajeev Bansal (SC) has made it abundantly clear that such defects are fatal, and the Hon'ble Bombay High Court has consistently applied this ratio in striking down reassessment notices where the sanction emanated from a non-specified authority.

17. In view of the foregoing discussion, we hold that the reassessment order dated 11.05.2023 framed under section 147 r.w.s. 144B is invalid and liable to be quashed, having been initiated without jurisdiction for want of valid sanction under section 151(ii). The very foundation of the proceedings being void, the consequential additions made on account of alleged penny stock transactions do not survive for adjudication. The appeal filed by the Revenue is, therefore, dismissed as infructuous, while the cross-objection of the assessee is allowed.

18. In the result, the appeal filed by the Revenue is, dismissed as infructuous, while the cross-objection of the assessee is allowed.

Order pronounced on 4th September, 2025.

Sd/-	**Sd/-**
(PADMAVATHY S)	**(AMIT SHUKLA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai; Dated 04/09/2025
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai