

**IN THE INCOME-TAX APPELLATE TRIBUNAL “H(SMC)”
BENCH, MUMBAI**

**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER
&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA No.5588/MUM/2024
(A.Y. 2017-18)**

Motibhai Lallubhai Desai, Room No. 9, Ganesh Nagar, Rawal Pada, Nr. West Exp. Highway, Dahisar East, Mumbai-400068, Maharashtra	v/s. बनाम	Income Tax Officer, Ward - 42(1)(3), Kautilya Bhavan, Bandra Kurla Complex, Bandra (East), Mumbai - 400051, Maharashtra
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAMPD9491J		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Ms. Mona Solanki, CA
Respondent by :	Shri Pravin Salunkhe, (Sr. DR)

Date of Hearing	12.08.2025
Date of Pronouncement	13.10.2025

आदेश / ORDER

PER PRABHASH SHANKAR [A.M.] :-

The present appeal arising from the appellate order dated 29.08.2024 is filed by the assessee against the order passed by the Learned Commissioner of Income-tax (Appeals)/National Faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”] pertaining to the assessment order passed u/s.147 r.w.s. 144Bof the Income-tax Act, 1961 [hereinafter referred to as “Act”] dated 29.05.2023 for the Assessment Year [A.Y.] 2017-18.



2. The grounds of the appeal are as under:-

1. *On the facts and in the circumstances of the case and in law, The Income Tax Officer, hereinafter referred to as the Ld. A.O. has erred in law in assessing the total income at Rs. 2,51,18,850/- instead of returned Income of Rs. 13,59,600/-. The returned Income may please be accepted.*
2. *On the facts and in the circumstances of the case and in law, the ld. A.O. has erred in not allowing deduction of the actual cost of purchase. Your Honor is requested to allow the deduction of the original cost of purchase of the said Flat along with Indexation.*
3. *Without Prejudice to the Grounds of Appeal, on the facts and in the circumstances of the case and in law, the ld. A.O. has erred in not considering the share of the Assessee in the property as the property is co-owned between 3owners i.e. the share of the Assessee is 1/3rd.*

Additional grounds of Appeal

1. *“On the Facts & Circumstances of the case, the ld. Assessing Officer-ITO WARD 42(1)(3) hereinafter referred to as the ld. A.O. has failed to appreciate that the AO issued reopening notice beyond period of three years, approval was required to be taken as per the provisions of amended section 151 of the Act from Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General however approval is taken from PCIT”.*
2. *On the Facts & Circumstances of the case, the ld. Assessing Officer-ITO WARD 42(1)(3) hereinafter referred to as the ld. A.O. has failed to mention the section under which the Order u/s 148A(d) has been passed ie the ld. AO has not specified whether Order has been passed u/s 149(1)(a) or 149(1)(b).*

3. Brief facts of the case are that the assessee is an Individual in whose case, as a consequence of reopening of assessment u/s 147 of the Act, income was assessed at Rs. 2,51,18,850/- in place of returned income of 13,59,600/- which was also upheld by the ld. CIT(A). At the very outset, the ld. AR made a request for admission and consideration of additional grounds which relate to notice u/s 148 of the Act and the consequent assessment order passed. We find that the additional



grounds are purely legal in nature and go into the very root of the reassessment notice and consequently the validity of the assessment and for which no further facts are required to be investigated. Reliance is placed upon the decision of the hon'ble Apex Court in **Jute Corporation of India Ltd. v. CIT (187 ITR 688)** wherein the Apex Court permitted the appellant to raise an additional ground for the first time before the appellate authority claiming deduction of purchase tax liability because the same had become liable to payment subsequent to the assessment order. The Apex Court made reference to the decision of the Apex Court in **Additional Commissioner of Income Tax Vs. Gurjargravures P. Ltd. (111 ITR 1)** and held that it does not prohibit the raising of an additional ground before the appellate authority, when the ground so raised could not have been raised before the Assessing Officer or the ground now becomes available in view of changed circumstances such as a decision of a Court allowing a particular deduction. Since the grounds are purely legal in nature, the same are allowed for admission and are taken up first for adjudication as the assessee wanted to press them only before us.

4. It is submitted by the ld.AR that in the instant case, the AO issued notice for reopening **beyond a period of three years from**



the end of the relevant assessment year and approval was required to be taken u/s 151 of the Act as per the amended provisions. He has drawn attention to the page no.134 of the Paper book submitted on the basis of which it is stated that the impugned notice u/s 148 of the Act was barred by the time limitation and therefore, the consequent assessment was liable to be quashed. It is claimed that in this case, notice u/s 148 was originally issued on 15.06.2021 within the extended time as per TOLA. **However, notices u/s 148A(d) and 148 were issued only on 29.07.2022.** The sanctioning authority in this case was Pr.CIT-3, Mumbai which should have been Pr.CCIT instead as per the amended provisions of the Act. Thus, the notice u/s 148 is barred by time limitation. Reliance has been placed on the decision of hon'ble Bombay High Court in **Siemens Financial Services P.Ltd 457 ITR 647(Bom).**

4.1 The ld.DR did not controvert the arguments of the ld.AR.

5. We have carefully examined the rival contentions and have also perused the records as also the pre and post amended provisions of section 148 and 151 of the Act. It is pertinent to note that while the controversy with respect to the applicability of the changed regime of reassessment which would govern all notices issued after 01 April 2021



is no longer *res integra* and stands conclusively settled by virtue of the decision of the Supreme Court in Ashish Agrawal case, the issue here is confined to the aspect of sanction and approval as contemplated under [section 151](#) of the Act. After 01 April 2021, [section 151](#) post amendment, both its clauses specify a particular set of authorities who are liable to examine the aspect of sanction dependent solely upon whether reassessment is proposed to be initiated within or up to three years and in the alternative scenario where it is initiated beyond that period.

5.1 We find that Clauses (i) and (ii) of [section 151](#) of the amended Act clearly specify the authority whose approval can trigger the reassessment proceedings. **Thus, if three years or less have elapsed from the end of the relevant assessment year, the specified authority who would grant approval for initiation of reassessment proceedings will be the Principal Commissioner or Principal Director or Commissioner or Director. However, if more than three years from the end of the relevant assessment year have elapsed, the specified authority for according approval for the reassessment shall be the Principal Chief Commissioner or Principal Director General or, where there is no Principal Chief Commissioner or Principal Director General, Chief Commissioner or Director General.**



5.2 The Revenue normally takes the plea that that once a notice for reassessment comes to be issued after the expiry of four years by virtue of the extended period of time made available by TOLA, all the impugned notices would fall within the ken of sub-section (2) of the pre-amendment [Section 151](#) and consequently the sanction and approval accorded by the JCIT would be in accordance with law. We find that a challenge on identical lines was addressed before the hon'ble Bombay High Court in **J. M. Financial and Investments Consultancy Services Private Limited vs. ACIT, Circle.**(Writ Petition (L) No. **5496 of 2022 /26.04.2022**). While dealing with these aspects the hon'ble High Court had held as follows:-

"5 Respondents have relied upon a letter dated 18th March 2021 issued by one Income Tax Officer, who has given an opinion to the Additional Commissioner of Income Tax that in view of the Taxation and other [Laws \(Relaxation of Certain Provisions\) Act, 2020](#) (Relaxation Act), limitation, inter alia, under provisions of [Section 151\(1\)](#) and [Section 151\(2\)](#), which were originally expiring on 31st March 2020 stand extended to 31st March 2021. According to the Income Tax Officer, in view of the above, Assessment Year 2015- 2016 which falls under the category within four years as on 31st March 2020, the statutory approval for issuance of notice under [Section 148](#) of the Act for the Assessment Year 2015-2016 may be given by the Range Head as per the said provisions. Mr. Sharma clarifies that the Income Tax Officer is only conveying the view of the Principal Commissioner of Income Tax because this letter has been issued on the letterhead of Principal Commissioner of Income 9 Writ Petition No. 1050 of 2022 dated 04 April 2022 Tax.

6 Even for a moment we agree with the view expressed by the Principal Commissioner of Income Tax, still it applies to only cases where the limitation was expiring on 31st March 2020. In the case at hand, the



assessment year is 2015-2016 and, therefore, the six years limitation will expire only on 31st March 2022. Certainly, therefore, the Relaxation Act provisions may not be applicable. **In any event, the time to issue notice may have been extended but that would not amount to amending the provisions of Section 151 of the Act.**

7 In our view, since four years had expired from the end of the relevant assessment year, as provided under Section 151(1) of the Act, it is only the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner who could have accorded the approval and not the Additional Commissioner of Income Tax. On this ground alone, we will have to set aside the notice dated 31st March 2021 issued under Section 148 of the Act, which is impugned in this petition. In view thereof, the consequent orders and notices will also have to go."

5.3. It may be stated here that the decision in J M Financial came to be re-affirmed by the High Court in **Siemens Financial Services Pvt. Ltd. vs. Deputy Commissioner of Income-Tax & Ors.** in **457 ITR 647 (Bom)**. Relevant extracts are reproduced as under:

"24. As per section 151 of the Act, the "specified authority" who has to grant his sanction for the purposes of section 148 and section 148A is the Principal Chief Commissioner or Principal Director General or where there is no Principal Chief Commissioner or Principal Director General, the Chief Commissioner or Director General **if more than three years have elapsed from the end of the relevant assessment year. The present petition relates to the assessment year 2016-17, and as the impugned order and impugned notice are issued beyond the period of three years which elapsed on March 31, 2020 the approval as contemplated in section 151(ii) of the Act would have to be obtained which has not been done by the Assessing Officer. The impugned notice mentions that the prior approval has been taken of the "Principal Commissioner of Income- tax-8" ("PCIT-8") which is bad in law as the approval should have been obtained in terms of section 151(ii) and not section 151(i) of the Act and the Principal Commissioner of Income- tax-8 cannot be the specified authority as per section 151 of the Act. Further, even in the affidavit-in-reply, the Department has accepted that the approval 10 2023 SCC OnLine**



Bom 2822 obtained is of the "Principal Commissioner of Income-tax-8" and, hence, such an approval would be bad in law.

25. *The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act*, enacted on September 29, 2020 and came into force on March 31, 2020 ([2020] 428 ITR (St.) 29). It, inter alia, provided for a relaxation of certain provisions of the *Income-tax Act, 1961*. Where any time limit for completion or compliance of an action such as completion of any proceedings or passing of any order or issuance of any notice fell between the period March 20, 2020 to December 31, 2020, the time limit for completion of such action stood extended to March 31, 2021. **Thus, the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act only seeks to extend the period of limitation and does not affect the scope of section 151.**

26. *The Assessing Officer cannot rely on the provisions of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act and the notifications issued thereunder as section 151 has been amended by the Finance Act, 2021 and the provisions of the amended section would have to be complied with by the Assessing Officer, with effect from April 1, 2021. Hence, the Assessing Officer cannot seek to take the shelter of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act as a subordinate legislation cannot override any statute enacted by Parliament. Further, the notification extending the dates from March 31, 2021 till June 30, 2021 cannot apply once the Finance Act, 2021 is in existence. 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(ii) 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."*

5.4 As is evident from the aforesaid discussion, Courts appear to have consistently taken the position that TOLA does not impact the working of section 151 and that the operation of the latter would not stand amended by TOLA which merely enabled the specified authority to issue notices or accord sanction within the extended time frame



created by that legislation. TOLA authorization merely enabled the competent authority to take action within the extended time period and it does not alter or amend the structure for approval and sanction which stands erected by virtue of [section 151](#) of the Act. It merely extended the period within which action could have been initiated and which would have otherwise and ordinarily been governed and regulated by [sections 148](#) and [149](#) of the Act.

5.5 The hon'ble Bombay High Court, in a recent landmark ruling in the case of **Ramesh Bachulal Mehta & Ors. (Writ Petition No. 271 of 2023**, dated 11th August 2025), has quashed reassessment proceedings for Assessment Years **2016-17 and 2017-18** on the ground that the **Assessing Officer failed to obtain sanction from the correct authority under Section 151 of the Act**. In this case notice under section 148 was initially issued on **19th May 2021** under the old law. The AO eventually passed an order under section 148A(d) on **13th July 2022** and issued a fresh notice under section 148 on **15th July 2022**, after obtaining approval from the **Principal Commissioner of Income Tax (PCIT)**. The assessee challenged the reassessment proceedings on the ground that **approval was obtained from the wrong authority**, rendering the entire exercise without jurisdiction.



The Court relied on ***Union of India v. Rajeev Bansal*[2024] 469 ITR 46 (SC)**, which clarified that proper sanction is a **jurisdictional pre-condition** for issuing reassessment notices. TOLA (Taxation and Other Laws Relaxation Act, 2020) extended the timeline only up to **30th June 2021** for AYs where three years expired between 20th March 2020 and 31st March 2021. For AY 2016–17, the three-year period ended on 31st March 2020. By virtue of TOLA, sanction could be obtained until 30th June 2021 but not thereafter. Since the order under section 148A(d) was passed on 13th July 2022, the AO was required to obtain sanction from the PCCIT as per section 151(ii). **Instead, sanction was obtained from the PCIT, an authority under section 151(i). The sanction was obtained from an incompetent authority, vitiating the jurisdiction of the AO.** Consequently, the order under section 148A(d) dated 13th July 2022 and the notice under section 148 dated 15th July 2022 were held bad in law and quashed.

6. In the light of the position of law emerging from the cited decisions above, we are of the considered opinion that the validity of sanction for issuing the orders under section 148A(d) and the notices under [section 148](#) should be tested with reference to amended [section 151](#). If so tested, it is evident that sanction was not granted by an



authority specified under clause (ii) of [section 151](#). Hence, the orders under section 148A(d) and the notices under [section 148](#) are liable to be quashed. As a corollary, the assessment order cannot survive and is also liable to be quashed. In this case, there is no dispute that although three years had elapsed from the end of the relevant assessment year, the approval was sought from the authorities specified in clause (i), as against clause (ii) of [section 151](#). Accordingly, we allow the additional grounds of appeal holding the notice issued u/s 148 of the Act as well as the consequential assessment order as null and void and not in accordance with the amended provisions of the Act and therefore, are quashed.

7. We do not deem it necessary to delve into the other **ground no. 1 to 3** on merit as it would amount to a futile exercise since the very existence of the impugned assessment order no longer survives

8. In the result, the **appeal of the assessee is allowed.**

Order pronounced in the open court on 13/10/2025.

Sd/-

SANDEEP GOSAIN

(न्यायिक सदस्य / JUDICIAL MEMBER)

Sd/-

PRABHASH SHANKAR

(लेखाकार सदस्य / ACCOUNTANT MEMBER)



Place: मुंबई/Mumbai

दिनांक /Date. 13.10.2025

Lubhna Shaikh / Steno

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2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
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