

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.833/SRT/2024

Assessment Year: (2017-18)

(Physical hearing)

ITO, Ward – 1(2)(1), Surat	बनाम/ Vs.	Deepesh Vishnu Agarwal, A/301, Surya Plaza, Surat City, Magdalla B.O., Surat - 395007
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AISPA2948P		
(Appellant)		(Respondent)

Appellant by	Shri Ajay Uke, Sr. DR
Respondent by	Shri Ramesh Malpani, CA
Date of Hearing	01/09/2025
Date of Pronouncement	15/11/2025

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

This appeal by the revenue emanates from the order passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') dated 12.06.2024 by the Commissioner of Income-tax (Appeals), National Face Less Appeal Centre (NFAC), Delhi [in short, 'CIT(A)'] for the assessment year (AY) 2017-18.

2. The grounds of appeal raised by the assessee appeals are as under:

“i. On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in allowing the appeal of the assessee by holding notice issued u/s 148 of the Act invalid even though the notice was issued as per Instruction No. 01/2022 of the CBDT, New Delhi dated 11th May, 2022 and considering that the date of limitation of issuing notice for A.Y. 2017-18 got extended by the Taxation and Other Laws (Relaxation and Amendments of Certain provisions) Act, 2020 and further notification issued on 31.03.2021 and 27.04.2021 vide notification no. 20/2021 and 38/2021 respectively.

ii. On the facts and circumstances of the case and in law, Ld.CIT(A) has erred in not accepting the decision of Hon'ble Delhi High Court in case of Touchstone Holdings Pvt. Ltd. WPC 13102/2022 dated 09.09.2022 wherein it has been held that the notice issued between the period 01.04.2021 to 30.06.2021 as legal, valid and within the time frame.

iii. On the facts and circumstances of the case and in law, Ld.CIT(A) has erred in considering that the timeline for issuing the Notice is not extended till 30.06.2021 and only the procedure for reassessment proceedings has been amended under the Finance Act, 2021.

iv. On the facts and circumstances of the case and in law, Ld.CIT(A) has erred in accepting the judgment rendered in the case of Union of India v. Ashish Agarwal [2022] 138 taxmann.com 64/286 Taxman 183/444 ITR 1/12022] SCC Online SC 543 and held that the benefit of the Finance Act, 2021 would apply even for previous Assessment Years, which would automatically mean that the time extension provided by TOLA will allow extended reassessment notices to travel back in time to their original date when such Notices were to be issued and then Section 149 of the Amended regime is to be applied at that point of time, and the Ld CIT(A) has not appreciated that TOLA as well as provisions of the Finance Act, 2021 is applicable simultaneously.

v. On the facts and circumstances of the case and in law, Ld.CIT(A) has erred in not considering that the CBDT Instruction 01/2022 dated 11.05.2022 is in line with the judgment rendered by Hon'ble Supreme Court in the case of Union of India v. Ashish Agarwal [2022] 138 taxmann.com 64/286 Taxman 183/444 ITR 1/[2022] SCC Online SC 543 and reflects the intention of the Parliament while enacting TOLA.

vi. On the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in not appreciating that under the provisions of the Act both the JAO as well as units under NFAC have concurrent jurisdiction and the Act does not distinguish between JAO or NFAC with respect to jurisdiction over a case and section 144B of the Act lays down the role of NFAC and the units under it for the specific purpose of conduct of assessment proceedings in a specific case in a particular Assessment Year and the same does not provide for issuance of notice under section 148 there jurisdiction for issue notice u/s 148 of the Act is with JAO as held by Hon'ble Calcutta High Court in the case of Triton Overseas (P.) Ltd. v. Union of India [2023] 156 taxmann.com 318 (Cal.)

vii. On the basis of the facts and circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the Assessing Officer.

viii. It is therefore prayed that the order of the Ld. CIT(A) may kindly be set aside and that of the Assessing Officer be restored.

ix. The appellant craves leave to add, alter, amend and/or withdraw any grounds of appeal either before or during the course of hearing of the appeal."

3. Brief facts of the case are that the assessee filed his return of income for the AY 2017-18 on 30.09.2017 declaring total income at Rs.69,32,000/-. Subsequently, the AO received information from the ADIT, Unit -3, Surat regarding bogus investment in penny stock Kushal Limited during the AY 2017-18. As per the information, the assessee had traded in the scrip to the tune of Rs.84,32,905/- and declared short-term capital gain (STCG) of Rs.66,82,000/-. On the basis of this information, the case was reopened and notice u/s.148 of the Act was issued on 30.06.2021, i.e., during the extended time limit for AY 2017-18 with the approval of the Jt. Commissioner of Income tax, Range – 1(3), Surat. Thereafter, following the decision of the Hon'ble Supreme Court in the case of Union of India Vs. Ashish Agarwal and as per the requirement of new law, order u/s.148A(d) of the Act was passed on 29.07.2022 and notice u/s.148 of the Act was passed on 29.07.2022.

4. In response to the notice u/s.148 of the Act, the assessee filed his return of income on 18.08.2022 declaring total income of Rs.69,32,000/-. Notices u/s 143(2) and 142(1) of the Act and show cause notice were issued. In response to the notices, the assessee filed his reply, however, assessee could neither prove the genuineness of claim of capital gains out of sale of scrip of Kushal Ltd. nor

that the aforementioned stock/scrip was not a penny stock. Hence, the AO treated the amount transacted of Rs.84,32,905/- as unexplained investment u/s.69 r.w.s.115BBE of the Act. Further, the AO added an amount of Rs.2,52,987/- (3% of Rs.84,32,905/-) on account of commission paid to the entry provider in such trade, as unexplained expenditure and taxed as per Section 115BBE of the Act. Accordingly, the AO finalized the assessment u/s.147 rws 144B of the act on 26.05.2023 determining total income of the assessee at Rs.1,56,17,892/-.

5. Aggrieved by the aforesaid assessment order, assessee preferred appeal before CIT(A) raising the grounds of appeal that the notice issued u/s.148 of the Act was invalid and that the AO has wrongly made addition of Rs.84,32,905/- u/s 69 of the Act and presumptive commission expense of Rs.2,52,987/- u/s 69C of the Act. The CIT(A) treated the notice issued u/s 148 of the Act as invalid and allowed the appeal of the assessee vide his order dated 12.06.2024.

6. Aggrieved by the order of CIT(A), revenue filed present appeal before the Tribunal. The learned Senior Departmental Representative (Id. Sr. DR) for the revenue submitted that the Hon'ble Supreme Court in the case of Union of India vs. Ashish Agarwal, 444 ITR 1 (SC) held that the notice u/s 148 notices issued between 01.04.2021 to 30.06.2021, will be deemed to have been issued u/s 148A of the Act and therefore, the notice dated 29.06.2021 issued to the petitioner stood revived. Consequently, since the time period for issuance of reassessment notice for AY 2017-18 stood extended until 30.06.2021, the first proviso of

Section 149 (as amended by the Finance Act, 2021) is not attracted in the facts of this case. Based on the decision of Hon'ble Supreme Court in the case of Ashish Agarwal (supra), fresh notice could be issued in this case for AY 2017-18 as it was within the period of three years from the end of the relevant AY. Therefore, following the Board's Instruction No.1/2022, order u/s.148A(d) of the Act was passed and notice u/s.148 of the Act had been issued in this case for the AY 2017-18 after taking prior approval of PCIT-1, Surat as required by the provision of section 151(1) of the Act. Ld. Sr. DR relied upon the decision given by Hon'ble Delhi High Court in the case of Touchstone Holding Vs ITO, 142 taxmann.com 336 (Delhi).

6.1 The Id. Sr. DR further contended that under the provisions of the Act both the JAO as well as units under NFAC have concurrent jurisdiction. The Act does not distinguish between JAO or NFAC with respect to jurisdiction over a case. Since, section 144B of the Act does not provide for issuance of notice u/s.148 of the Act, there can be no ambiguity in the fact that the JAO still has the jurisdiction to issue notice u/s.148 of the Act. The Id. Sr. DR submitted that the CIT(A) has not appreciated that the case of the assess had emanated from the transaction in penny stock and the assessee was not able to prove the genuineness of transaction with regard to the same, therefore, he has raised technical grounds which are not having any substance. The Id. Sr. DR has stated that while deciding the appeal in the case of assessee, the CIT(A) has only relied upon the submission

of the assessee without going into the merits of the case. The Id. Sr. DR, therefore, requested to uphold the order of the AO and set aside the order of the CIT(A).

7. The learned Authorized Representative (Id. AR) of the assessee submitted that the Hon'ble Supreme Court in the case of Union of India Vs. Rajeev Bansal (2024) 167 taxmann.com 70 (SC) observed that if the time limit of three year from the end of an assessment year falls between 20.03.2020 and 31.03.2021, then the specified authority u/s.151(i) has the extended time till 30.06.2021 to grant approval. The Ld. AR contended that as per the aforesaid observation of the Apex Court, the Principal CIT had the authority to grant approval in case of AY 2017-18 only upto 30.06.2021, however, in the instant case notice u/s.148 was issued on 29.07.2022 with the approval of PCIT instead of PCCIT and hence approval of appropriate authority had not been taken u/s.151 of the Act. Ld. AR relied upon the decision of the Hon'ble Supreme Court in the case of ACIT Vs. LinkedIn Singapore Pte. Ltd., 180 taxmann.com 158 (SC) in support of his contention.

7.1 The Ld. AR further submitted that the impugned notice u/s.148 was issued beyond the period of 'surviving time' as per the direction of Apex Court in case of Rajeev Bansal (supra), therefore, such notice is invalid notice. The Id. AR furnished the working of completion of three years period after excluding 'surviving period' for approval of PCIT, in the case of assessee:

Sr. No.	Particulars	Date/Days
1.	<i>Issue of original notice u/s.148 with approval of the Jt. CIT</i>	30.06.2021
2.	<i>Notice treating above as notice u/s.148A(b) as per Supreme Court judgement in case of 'Ashish Agarwal'.</i>	30.05.2022
3.	<i>2 weeks time given in above notice u/s.148A(b)</i>	12.06.2022
4.	<i>Reply filed by the appellant against notice u/s.148A(b)</i>	02.06.2022
5.	<i>'Surviving period' as per judgement of Hon'ble Supreme Court in case of 'Rajeev Bansal'</i>	30.06.2021 to 12.06.2022
6.	<i>Date of three years period completion after excluding 'Surviving period'</i>	13.06.2022
7.	<i>Order u/s.148A(d) and notec u/s.148 issued with approval of Pr. CIT (instead of Pr. Chief CIT)</i>	29.07.2022

7.2 The Id. AR stated that even after excluding 'surviving period', 3 years had expired on 12.06.2022 while notice u/s.148 of the Act was issued in the case of assessee on 29.07.2022, i.e., after 3 years. Thus, approval of Pr. Chief CIT had to be taken in respect of above notice, however, the notice u/s.148 was issued with the prior approval of Pr. CIT in the instant case. The Id. AR, therefore, requested to uphold the order of the CIT(A).

8. We have heard both the parties and perused the materials available on record. We have also deliberated on the decisions relied upon by both sides. The sole issue for adjudication in the present appeal relates to the validity of the reassessment notice issued u/s.148 of the Act, in light of the statutory limitation prescribed u/s 149 and the judicial interpretation of the transitional provisions by the Hon'ble Supreme Court in the case of Rajeev Bansal (supra). The assessee has

contended that the notice dated 29.07.2022 is barred by limitation, having been issued beyond the “surviving time period” recognized by the Supreme Court. The Revenue, on the other hand, seeks to justify the reassessment proceedings based on observations made by Hon’ble Supreme Court in the case of Ashish Agarwal (supra).

8.1 The Hon’ble Supreme Court in case of Rajeev Bansal (supra) had occasion to examine the legal effect of reassessment notices issued during the period 01.04.2021 to 30.06.2021 in the backdrop of the amended scheme of Sections 147–151 and the TOLA extensions. The Supreme Court categorically held that where the original limitation period of three years (under amended Section 149(1)(a)) expired between 20.03.2020 and 31.03.2021, the only permissible extension available to the “specified authority” for granting approval was up to 30.06.2021, as per the authority exercised under TOLA. Applying the ratio of the Supreme Court, under the amended law effective from 01.04.2021, reassessment for this year (AY 2017-18) could be initiated only within three years from the end of the assessment year, i.e., normal limitation u/s. 149(1)(a) of the Act was 3 years from 31.03.2018, which expired on 31.03.2021. The aforesaid expiry date of 31.03.2021 falls within the period 20.03.2020 to 31.03.2021, and therefore, case of Rajeev Bansal(supra), squarely applies to the facts of the case. Accordingly, the specified authority (u/s.151(1) of the Act) retained power only up to 30.06.2021 to grant approval for issuance of a valid notice.

8.2 It is an admitted fact that although the AO originally issued a notice on 30.06.2021 under the old regime, the subsequent proceedings were required to be aligned with the new provisions, following observation made in case of Ashish Agarwal (supra). However, the Supreme Court in case of Rajeev Bansal (supra) made it abundantly clear that the deeming fiction created in case of Ashish Agarwal (supra) does not grant a fresh or extended limitation period. It only converts old notices to notices under Section 148A(b) to the extent of the “surviving period.” There is no legislative or judicial authority permitting issuance of a fresh Section 148 notice after expiry of such surviving period. The assessee has demonstrated the computation of surviving time in accordance with the Supreme Court’s interpretation. The sequence of events is undisputed:

- a) The original old-law notice dated 30.06.2021 was treated as a notice u/s.148A(b) by virtue of observation made in case of Ashish Agarwal (supra).*
- b) Two weeks’ time was required to be granted to the assessee to respond to the 148A(b) notice and such time granted ended on 12.06.2022.*
- c) The limitation clock could run only for the surviving period beyond this date.*

8.3 The three-year period (after adjusting the surviving time under case of Rajeev Bansal (supra) expired on 12.06.2022. Thus, the last date for issuance of a valid notice u/s. 148 was 12.06.2022. However, the AO issued the final notice u/s.148 only on 29.07.2022, which is beyond the limitation period by more than six weeks. Once the statutory limitation has expired, no subsequent administrative action, departmental instruction or reliance on observation made

in case of Ashish Agarwal (supra) can revive the jurisdiction. Limitation goes to the root of jurisdiction and is not a mere procedural irregularity.

8.4 Even otherwise, the notice dated 29.07.2022 suffers from an additional jurisdictional defect. When notice is issued beyond three years but within ten years, approval must mandatorily be obtained from the Principal Chief Commissioner or Principal Director General [as per amended Section 151(ii)]. However, since the notice was time barred and could not be issued within the three-year bracket, it automatically required approval from the highest specified authority. In the present case, the notice dated 29.07.2022 was approved by the Principal Commissioner of Income tax (PCIT), Surat and not by the Principal Chief Commissioner of Income tax (PCCIT). This renders the notice void ab initio, as held by the Supreme Court in ACIT v. LinkedIn Singapore Pte. Ltd. Once the limitation period elapsed on 12.06.2022, any notice issued thereafter necessarily attracts Section 151(ii). Failure to obtain approval from the competent authority is fatal to the proceedings.

8.5 The argument regarding “concurrent jurisdiction” of the JAO and NFAC is wholly irrelevant to the issue of limitation. When the very initiation of reassessment is legally incompetent, all subsequent proceedings collapse irrespective of which authority exercises jurisdiction.

9. In view of the above detailed discussion, we find no infirmity in the order of the CIT(A) in quashing the reassessment proceedings. The notice u/s.148 of the

Act was issued beyond the permissible “surviving period” and without approval of the correct specified authority and is, therefore, void in law. Accordingly, the revenue’s appeal is dismissed.

10. In the result, the appeal of the revenue is dismissed.

Order pronounced in accordance with Rule 34 of ITAT Rules, 1963 on 15/11/2025 in the open court.

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Surat

दिनांक/ Date: 15/11/2025

SAMANTA

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

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Assistant Registrar/Sr. PS/PS
ITAT, Surat