

**आयकर अपीलीय अधिकरण न्याय पीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“B” BENCH, MUMBAI**

**BEFORE SHRI PAWAN SINGH, JM &**  
**SHRI ARUN KHODPIA, AM**

**I.T.A. No. 6536/Mum/2025**  
(Assessment Year: 2016-17)

<b>Nitin Harilal Shah,</b> 701, Ghaswalla Tower, P.G. Solanki Path Lamington Road, Mumbai - 400007 <b>PAN: AAFPS2431J</b>	Vs.	<b>ITO, Ward-19(2)(4),</b> Piramal Chamber, Mumbai-400012.
<b>Assessee -अपीलार्थी / Appellant</b>	:	<b>Revenue - प्रत्यर्थी / Respondent</b>

**Assessee by** : Shri Tarang Mehta, AR  
**Revenue by** : Shri Leyaqaat Ali Aafaqui, Sr. DR  
**Date of Hearing** : 12.01.2026  
**Date of Pronouncement** : 19.01.2026

**ORDER**

**Per Arun Khodpia, AM:**

The captioned appeal is preferred by assessee to assail the order of Commissioner of Income Tax Appeals, NFAC (for short “The Ld. CIT(A)”), dated 08.09.2025, for the assessment year (AY) 2016-17, arises from assessment order passed u/s 147 of Income Tax Act, 1961 (for short “The Act”), dated 26/05/2023, by Assessment Unit, Income Tax Department, (for short “the Ld. AO”).

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

*The following grounds of appeal are without prejudice to each other:*

*1. The Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) [in short 'Ld. CIT(A)'] has erred in confirming the order passed by the National Faceless Assessment Centre (in short 'Ld. AO') u/s. 147 r.w.s. 144B of the Income Tax Act, 1961 (the Act).*

*2. The Ld. CIT(A) has erred in not appreciating that the original Notice dated 23-04-2021 issued u/s 148 of the Act bearing DIN ITBA/AST/S/148/2021-22/1032654598(1) is without taking prior approval of the Specified Authority mentioned u/s 151(ii) of the Act.*

*3. The Ld. CIT(A) has erred in not appreciating that the approval granted is in mechanical manner.*

*4. The Ld. CIT(A) has erred in not appreciating that the reassessment proceedings ought to have been initiated u/s 153C of the Act and not u/s 148 of the Act. The consequential order dated 26-05-2023 passed u/s 147 r.w.s. 144B of the Act is bad-in-law and deserves to be quashed.*

*5. The Ld. CITA erred in not holding that the Ld. AO has not followed the principle of natural justice by not granting opportunity of cross-examination and not providing the impugned seized material and statements recorded during the course of search action carried out on 06-10-2017 in the case of Mr. Nilesh Bharani partner of M/s Evergreen Enterprises.*

*6. The Ld. CIT(A) has erred in confirming the addition amounting to Rs. 1,01,00,000/- u/s 69A of the Act being alleged Cash Loan given to Mr. Nilesh Bharani.*

**Additional Ground of Appeal:**

*1. The CIT(A) has erred in not holding that the assessment order passed by the Assessing Officer is illegal and bad in law.*

*2. The CIT(A) has erred in not holding that the assessment order is invalid and illegal on account of non-mention of DIN on the notice issued u/s. 148 of the Act dated 22.07.2022 as per the CBDT Circular no. 19 of 2019 dated 14.08.2019.*

*3. The CIT(A) has erred in not holding that notice issued u/s. 148 of the Act ought to have been issued by the National Faceless Assessment Centre and not*

*by the Jurisdictional Assessing Officer as mandated by circular no. 18 of 2022 dated 29.03.2022 issued by the CBDT, thereby, rendering the entire assessment proceedings illegal, bad in law and non-est.*

3. Brief Fact as described in the order of Ld. CIT(A) are as under:

3.1 The Assessee, is an individual, has filed his return of income for the Assessment Year 2016-17 on 22/10/2016 declaring total Income of Rs. 14,80,590/-. The AO received an information from the Insight portal that a search and seizure action u/s 132 of the Income tax act was carried out in the case of M/s. Evergreen Enterprises and Mr. Nilesh Bharani is one of the partners in the partnership firm M/s. Evergreen Enterprises who has received cash loans from several individuals and business concerns. Shri Nitin Harilal Shah, one of such individuals who has provided cash loan of Rs. 1,01,00,000/- to Nilesh Bharani during the financial year 2015-16. Based on the above information, order u/s. 148A(d) was passed on 22.07.2022 and notice u/s 148 of the Act was issued on 22/07/2022. In response, the assessee filed ROI on 25.07.2022 declaring total income of Rs. 14,80,590/-. The AO has issued show cause notices to examine the source of cash loan of Rs. 1,01,00,000/- as unexplained money u/s. 69A. In the absence of proper explanation, the AO assessed source of cash loan given to Sh. Nilesh Bharani amounting to Rs. 1,01,00,000/- as unexplained money u/s 69A r.w. 115BBE of the Income-tax Act, 1961 and added to the total income of the assessee for A.Y. 2016-17. Therefore, AO completed the assessment u/s. 147 with assessed income of Rs. Rs.1,01,00,000/-. Penalty proceedings u/s. 271(1)(c) was also initiated for concealment of income.

4. Being aggrieved with aforesaid order of AO, assessee preferred an appeal before the Ld. CIT(A), but, after discussion and deliberations Appeal of assessee has been dismissed by Ld. CIT(A).

5. Aggrieved, the assessee filed present appeal before us to challenge the order of Ld. CIT(A).

6. At the outset Ld. Counsel of the assessee (for short “Ld. AR”) submitted that the present appeal is covered on the issue of challenging the validity of approval by competent authority u/s 151(ii) of the Act, in a case wherein the reopening u/s 148A was triggered after three years from the end of relevant assessment year, but approval was not obtained from the specified authority as mandated by the Act, which has been decided in various cases by Hon’ble Mumbai High Court as well as ITAT, Mumbai. Reliance was placed on following decisions:

- i. Judgment of the **Hon'ble Bombay High Court** in the case of **Ramesh Bachulal Mehta v. ITO (Writ Petition No. 271 of 2023)**, held as under:

*“5. The Petitioner has contended that in the present case, the order under section 148A(d) dated 13.07.2022 was passed beyond three years from the end of the relevant Assessment Year 2016-17. Consequently, according to the provisions of section 151(ii), when more than three years have elapsed from the end of the relevant assessment year, the specified authority for obtaining the approval was either the Principal Chief Commissioner (PCCTT) or Principal Director General (PDGIT), or where there is no PCCIT or PDGIT, the Chief Commissioner (CCIT) or the Director General (DGIT). However, in paragraph 7 of the order dated 13.07.2022 passed under section 148A(d), Respondent No.1 has stated that before passing the said order, prior approval of Respondent No.2 i.e. the Principal Commissioner of Income Tax-27, Mumbai, was obtained and the said order was passed thereafter. This aspect remains uncontroverted by the Respondents.*

*6. In these facts, the limited point to be examined is whether the order dated 13.07.2022 passed under section 148A(d) for the Assessment Year 2016-17 after obtaining approval of Respondent No.2 [i.e. the PCIT-27, Mumbai], was in accordance with the provisions of section 151.*

*9. In the present case the period of three years from the end of the Assessment Year 2016-17 fell for completion on 31 March 2020. Since*

*the expiry date fell during the time period of 20th March 2020 and 31 March 2021 contemplated under Section 3(1) of Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (for short "TOLA"), the authority specified under Section 151(i) of the new regime could have granted sanction till 30th June 2021. On perusal of the order, dated 13.07.2022, passed under Section 148A(d) of the Act, we find that the aforesaid order was passed after taking approval from Principal Commissioner of Income Tax (Respondent No.2). Since the aforesaid order was passed after the expiry of three years from the end of the Assessment Year 2016-17, as per the substituted provisions of re-assessment, the authority specified under Section 151(ii) of the Act (i.e. Principal Chief Commissioner or Chief Commissioner) was required to grant approval. Accordingly, we conclude that in the present case the approval has been obtained from the authority specified under Section 151(i) of the new regime instead of the authority specified under Section 151(ii) of the new regime.*

*12. We are clearly of the view that the present matter stands covered by the decision of Hon'ble Supreme Court in the case of UPI vs. Rajeev Bansal (supra). We accordingly hold that the order dated 13.07.2022 passed under Section 148A(d) of the Act and the consequential notice issued under section 148 dated 15.07.2022 are bad in law for being violative of the provisions of Section 151(ii) of the Act. Hence they are required to be quashed and set aside.*

*13. We, accordingly, set aside the impugned order dated 13.07.2022 passed under section 148A(d), the Notice issued under Section 148 and all other proceedings/orders emanating therefrom and allow the writ Petition in terms of Prayer Clause (a) of the petition."*

Similar findings are deriving from the following decisions also:

- ii. Order of Mumbai Bench of the Tribunal in the case of **ACIT v. Manish Financial and vice versa** for A.Y. 2015-16 and 2016-17 in ITA No. 5055 and 5050/Mum/2024 and CO No. 231 and 230/Mum/2024.
- iii. Judgment of the **Hon'ble Bombay High Court** in the case of **Vodafone Idea Limited v. DCIT (Writ Petition No. 2766 of 2022)**

iv. Order of Mumbai Bench of the Tribunal in the case of **Shabbir Taheri v. ITO for A.Y. 2018-19 in ITA No. 1574/Mum/2025**

7. Referring to the Ground 2 of the appeal, Ld. AR contended that in present case, which pertains to Assessment Year 2016-17, wherein the order u/s 148A(d) was passed on 22.07.2022, being passed after 3 years from the end of relevant assessment year (ended on 31.03.2017), thus, was to be approved by either Principal Chief Commissioner of Income Tax (PCCIT) or Principal Director General of Income Tax (PDGIT) or Director General (DGIT), whereas, the approval in present case was granted by Principal Commissioner of Income Tax (PCIT), who was not the authority, specified as per applicable clause (ii) of the provisions of section 151.

8. To substantiate the aforesaid contention with evidence, ld. AR drew our attention to the copy of order passed u/s 148A(d) of the Act placed at page 50-55 of the Assessee's Paper Book (APB). The ld. AO, wherein, has categorically mentioned that, "*This order is passed with prior approval of Pr. CIT vide approval No. Pr. CIT-19/148/2022-23 dated 20.07.2022.*". Similar facts are on record as per Notice issued U/s 148 of the Act dated 22.07.2022 (APB page 56-57). It is also mentioned by the Ld. AR that copy of approval was requested from the ITO, W-19(2)(4) on 9.12.2025 (copy of letter enclosed in APB page 117), but till now the same is awaited. Under such circumstances, it is prayed that the order passed u/s 148A(d) dated 22.07.2022, after obtaining approval of Ld. PCIT was bad in law and unsustainable, so the consequential

notice u/s 148 and assessment proceedings completed thereafter are too bad in law, liable to be quashed and set aside.

9. Per contra Ld. Sr. DR representing the revenue, though have not contradicted the aforesaid facts, had vehemently supported the impugned orders of revenue authorities below.

10. We have considered the rival submissions, perused the material available on record and case laws relied upon by the Ld. AR. Admittedly, the facts *qua* the legal issue of the present case are identical to the facts of the cases relied upon, that the reopening proceedings in the present case are initiated by passing of order u/s 148A(d) after 3 years from the end of relevant assessment year under approval from a wrong authority having no powers to do so, thus, there is no dispute *qua* the applicability of clause (ii) of section 151 in the present case instead of clause (i) of section 151 of the Act.

11. We, thus, in terms of decision of Hon'ble Apex Court in the case of ***Rajeev Bansal (supra)***, which was thereafter followed by **Hon'ble Mumbai High Court** and **ITAT Mumbai** in the decisions referred to supra, hold that in the instant case, the order u/s 148A(d) dated 22.07.2022 and consequential proceedings thereafter are bad in law for non-adherence of the provisions of section 151(ii). Hence, are liable to be quashed /set aside.

12. Other contentions raised by the assessee in the grounds / additional grounds of appeal, thus, became academic and infructuous only, since the reopening itself has been held as bad in law.

13. In result the appeal of assessee stands allowed, in terms of our aforesaid observations.

*Order pronounced in the open court on 19 -01-2026.*

*Sd/-*  
**(PAWAN SINGH)**  
**Judicial Member**  
Mumbai, Dated : 19-01-2026.  
*\*SK, Sr. PS*

*Sd/-*  
**(ARUN KHODPIA)**  
**Accountant Member**

**Copy of the Order forwarded to :**

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

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**