IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'E': NEW DELHI

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

AND

SHRI AMITABH SHUKLA, ACCOUNTNAT MEMBER

ITA No.1119/DEL/2025
[Assessment Year:2017-18]

Dy. Commissioner of Income Tax, Central Circle-1, Noida, Uttar Pradesh	Vs	M/s Rudra Buildwell Homes Pvt. Ltd. 53, Okhla Phase, Delhi-110020
		PAN AAFCR6959P
Appellant		Respondent

Cross Objection No.108/DEL/2025
[IN ITA No.1119/Del/2025]
[Assessment Year:2017-18]

M/s Rudra Buildwell Homes Pvt. Ltd. A-66, Sector-63, Noida, Uttar Pradesh-201301	Vs	Dy. Commissioner of Income Tax, Central Circle-1, Noida, Uttar Pradesh
PAN AAFCR6959P		
Appellant		Respondent

Assessee by	Shri Rohit Kapoor, Adv. Shri Virshin Aggarwal, AR
Revenue by	Ms. Amish S. Gupta, CIT DR

Date of Hearing	**19.01.2026**
Date of Pronouncement	**21.01.2026**

ORDER

PER AMITABH SHUKLA, AM,

The appeal vide ITA No.1119/Del/2025 filed by the Revenue is against order dated 18.12.2024 of the Learned Commissioner of Income Tax(Appeals)-

3, Noida, [hereinafter referred to as 'ld. CIT(A)] arising out of assessment order 31.05.2023 passed u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 pertaining to Assessment Year 2017-18. The assessee is contesting the impugned appeal of the Revenue through its Cross Objection bearing no.108/Del/2025. The word 'Act' herein this order would mean Income Tax Act, 1961.

2. We have noted that the Cross Objection of the assessee strikes at the very root of the assessment order, i.e. notice under section 148 dated 18.07.2022. The Latin legal maxim *Sublato fundamento cadit opus* that corresponds to hypothesis that a superstructure does not survive on weak foundation is essential part of jurisprudence. This maxim literally translates to, "If the foundation is removed, the superstructure falls". It is a well-established principle in law, especially in cases where the initial action or underlying basis of a legal right is found to be invalid, causing all subsequent actions dependent on it to fail. Another related maxim with a similar meaning is *Debile fundamentum fallit opus*, which translates to "Where there is a weak foundation, the work fails". Accordingly, we have decided to consider the Cross Objection of the assessee being the foundation for the super structure in this case being the order under section 143/147 dated 31.05.2023, first.

2. The assessee has raised following grounds of appeal in its Cross Objection:-

1. On the facts and in the circumstances of the case, the prior approval granted under section 148A(d) of the Income-tax Act, 1961 by the Principal Commissioner of Income-tax-7 is without jurisdiction and legally untenable, as the law mandates that such approval must be obtained from the Principal Chief Commissioner of Income-tax (PCCIT) u/s 151. The reassessment proceedings initiated on the basis of approval from an incompetent authority are invalid and liable to be quashed.

2. On the facts and in the circumstances of the case, the reassessment completed under section 147 of the Income-tax Act, 1961 is vitiated and rendered bad in law, as no notice under section 143(2) was issued or served upon the assessee prior to completion of assessment under section 143(3) r.w.s 147, which is a mandatory requirement under the law.

3. We have noted that a delay of 10 days has been identified in this case by the Registry. The assessee has pleaded that the delay was attributable to adverse medical condition of one of its Directors, Shri Mukesh Khanna. We are convinced with the justification for the delay, we therefore condone the same and proceed to adjudicate this appeal.

4. The principal argument taken by the ld. Counsel for the assessee is that notice under section 148 dated 18.07.2022 ought to have been issued by the Pr. Chief Commissioner of Income Tax as mandated under section 151 of the Act. The ld. Counsel drew our attention to the impugned notice placed at page 39 and 40 of its paper book, which indicates that the approval was accorded by the Pr. Commissioner of Income Tax-7, Delhi, on 15.07.2022. It was contended that as the notice per se issued to the assessee did not had the valid authority of law the corresponding assessment order becomes void ab initio and deserves to be quashed.

5. Per Contra, the ld. DR placed relianced upon the orders of the lower authorities.

6. We have heard rival submissions in the light of the materials available on the record. We have noted that this issue has been considered by this Tribunal in the case of Shri Anurag Pandey in ITA No.3294/Del/2024. Thus, it was held as under:-

> *".....6. We have heard rival submissions in the light of the materials available on the record. At the outset we have noted that the ld DR could not identify any distinguishment of the facts of the present case with those in the judicial precedents relied upon by the appellant assessee. The issuance of notice u/s 148 by the revenue has been a subject matter of great debate particularly those which fell in the twilight zone of new provisions of Section 148A coming in. Several contests were made before Hon'ble High Courts challenging issuance of notice by the Revenue. Hon'ble Apex Court intervened through its iconic judgment in the case of Ashish Aggarwal (supra) ruling that notices u/s 148 hitherto issued by revenue authorities shall be deemed to have been issued as show cause notices u/s 148A(b) of the Act. It was mandated that the revenue shall continue its enquiries therefrom so as to pass u/s 148A(d) and consequent notice u/s 148 if any. In the case of Rajeev Bansal (supra) Hon'ble Apex Court further mandated that apropos to its decision in Ashish Aggarwal, the notices u/s 148 shall have to be issued in compliance to the stipulations made Section 151(i) &(ii) of the Act. Hon'ble Apex Court ruled that "...grant of sanction by the appropriate authority is a pre-condition for the assessing officer to assume jurisdiction u/s 148 to issue a reassessment notice……..it links up time limits with the jurisdiction of the authority to grant sanction. Section 151(ii) of the new regime prescribed higher level of authority if more than have elapsed from the end of the relevant assessment year. Thus, a noncompliance by the Assessing Office with the strict time limit prescribed u/s 151 affects their jurisdiction to issue a notice u/s 148…."*

1. *We have noted that a Hon'ble Bench of the Mumbai Tribunal in the case of Manish Financials (supra) has ruled as under:-*

> *"11. The assessee for the year under consideration filed the return of income declaring a loss of Rs.3,37,77,313/-. The assessment was reopened by issue of notice under section 148 of the Act on 23.04.2021 and notice was deemed to be a notice issued under section 148A(b) as per the directions of the Hon'ble Supreme Court in the case Ashish Agrawal (supra). The AO issued a notice under section 148 dated 30.07.2022 after passing order under section 148A(d) of the Act. In the C.O. of AY 2016-17 one of the legal contentions raised by the assessee is that the AO has not obtained approval of the appropriate authority for the purpose of issuing under section 148 of the Act. The relevant ground in the C.O. reads as under:*
>
> *"**73.** Section 151 imposes a check upon the power of the Revenue to reopen assessments. The provision imposes a responsibility on the Revenue to ensure that it obtains the sanction of the specified authority before issuing a notice under section 148. The purpose behind this procedural check is to save the assesses from harassment resulting from the mechanical reopening of assessments. A table representing the prescription under the old and new regime is set out below:*

Regime	***Time limits***	***Specified authority***
Section 151(2) of the old regime	*Before expiry of four years from the end of the relevant assessment year*	*Joint Commissioner*
Section 151(1) of the old regime	*After expiry of four years from the end of the*	*Principal Chief Commissioner or Chief*
	relevant assessment year	*Commissioner or Principal Commissioner or Commissioner*
Section 151(i) of the new regime	*Three years or less than three years from the end of the relevant assessment year*	*Principal Commissioner or Principal Director or Commissioner or Director*
Section 151(ii) of the new regime	*More than three years have elapsed from the end of the relevant assessment year*	*Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General*

(a) The above table indicates that the specified authority is directly co-related to the time when the notice is issued. This plays out as follows under the old regime:

(i) If income escaping assessment was less than Rupees one lakh: (a) a reassessment notice could be issued under section 148 within four years after obtaining the approval of the Joint Commissioner; and (b) no notice could be issued after the expiry of four years; and

(ii) If income escaping was more than Rupees one lakh; (a) a reassessment notice could be issued within four years after obtaining the approval of the Joint Commissioner; and (b) after four years but within six years

after obtaining the approval of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.

(b) After 1 April 2021, the new regime has specified different authorities for granting sanctions under Section 151. The new regime is beneficial to the assessee because it specifies a higher level of authority for the grant of sanctions in comparison to the old regime. Therefore, in terms of Ashish Agarwal (supra), after 1 April 2021, the prior approval must be obtained from the appropriate authorities specified under Section 151 of the new regime. The effect of Section 151 of the new regime is thus:

(i) If income escaping assessment is less than Rupees fifty lakhs: (a) a reassessment notice could be issued within three years after obtaining the prior approval of the Principal Commissioner, or Principal Director or Commissioner or Director; and (b) no notice could be issued after the expiry of three years; and

(ii) If income escaping assessment is more than Rupees fifty lakhs: (a) a reassessment notice could be issued within three years after obtaining the prior approval of the Principal Commissioner, or Principal Director or Commissioner or Director; and (b) after three years after obtaining the prior approval of the Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General.

(c) Grant of sanction by the appropriate authority is a precondition for the assessing officer to assume jurisdiction under Section 148 to issue a reassessment notice. Section 151 of the new regime does not prescribe a time limit within which a specified authority has to grant sanction. Rather, it links up the time limits with the jurisdiction of the authority to grant sanction. Section 151 (ii) of the new regime prescribes a higher level of authority if more than three years have elapsed from the end of the "elevant assessment year. Thus, non-compliance by the assessing officer with the strict time limits prescribed under Section 151 affects their jurisdiction to issue a notice under Section 148.

(d) 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.

(e) 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.

(f) Under Finance Act 2021, the a sessing officer was required to obtain prior approval or sanction of the specified authorities at four stages:

a. Section 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 noted that this requirement has been deleted by the Finance Act 2022;

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.

(g) 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. 130

(h) 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 assesses 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.

13. The ld. DR on the other hand submitted that the original notice issued by the AO under the old regime was issued correctly with approvals from the appropriate authority under the erstwhile section 151 of the Act and therefore the proceedings cannot be invalidated on the ground that the approval is not obtained from appropriate authorities.

14. We heard the parties and perused the material on record. In assessee's case for AY 2016-17 pursuant to the directions of the Hon'ble Supreme Court in the case of Ashish Agrawal, the AO passed an order under section 148(d) of the Act and issued a notice under section 148 on 30.07.2022. From the above observations of the Hon'ble Supreme Court it is clear that the though the prior approval under section 148A(b) and 148(d) were waived in terms of the decision of Ashish Agarwal (supra), for issue of notice under section 148A(a) and under section 148 on or after 1 April 2021, the prior approval should be obtained from the appropriate authorities specified under Section 151 of the new regime. The provisions of section 151 of the Act under the new regime read as under:

> *Sanction for issue of notice.*
>
> *151. 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 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.*

15. In assessee's case from the perusal of para 3 of the notice issued under section 148 for AY 2016-17 we notice that the same is issued with the prior approval of Pr.CIT-19 Mumbai accorded on 29.07.2022 vide reference No.Pr.Cit-19/148/2022-23 and this fact is not contravened by the ld DR. For AY 2016-17, the period of three years have elapsed as of 31.03.2020 and the notice is issued beyond three years on 30.07.2022. Therefore as per the decision of the Hon'ble Supreme Court, the approval should have been obtained under the amended provisions of section 151(ii) of the Act i.e. the approval should have been obtained from the Principal Chief Commissioner whereas the approval has been obtained from Pr.CIT as stated in the notice under section 148 itself. Therefore we see merit in the contention of the assessee that the notice under section 148 for AY 2016-17 is issued without obtaining the prior approval from the appropriate authority. Accordingly we hold that the notice under section 148 is invalid and the consequent assessment under section 147 is liable to be quashed…."

8. Thus, Hon'ble Mumbai Tribunal, after considering decisions of Hon'ble Supreme Court in the case of Ashish Aggarwal and Rajeev Bansal (supra) have concluded that in cases where more than 3 years have elapsed noticed u/s 148 has to be approved with prior approval of Pr. CCIT only. We have also noted the decision of Hon'ble Madras High Court in the case of Core Logistic company (supra). The relevant part of the judgment are reproduced hereunder:-

"6. In the present case, the issue is pertaining to the assessment year 2016-2017. The relevant law applicable for issuance of notice under Section 148 is as follows:

> *"148. Before making the assessment, reassessment or recomputation under section 147, and subject to the provisions of section 148A. the Assessing Officer shall serve on the assessee a notice, along with a copy of the order passed, if required, under clause (d) of section 148A, requiring him to furnish within such period, as may be specified in such notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139: Provided that no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority to issue such notice:*

[Provided further that no such approval shall be required where the Assessing Officer, with the prior approval of the specified authority, has passed an order under clause (d) of section 148A to the effect that it is a fit case to issue a notice under this section.] Explanation 1 - For the purposes of this section and section 148A, the information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means,-

(1) any information [***] in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time;
(ii) any audit objection to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act, or

(iii) any information received under an agreement referred to in section 90 or section 90A of the Act; or

(iv) any information made available to the Assessing Officer under the scheme notified under section 135A or
(v) any information which requires action in consequence of the order of a Tribunal or a Court Explanation 2 For the purposes of this section, where,-

(1) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A, on or after the 1st day of April, 2021, in the case of the assessee; or

(ii) a survey is conducted under section 133A, other than under sub-section (2A) 22[***] of that section, on or after the 1st day of April, 2021, in the case of the assessee; or

(iii) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner, that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned under section 132 or section 132A in case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or

(iv) the Assessing Officer is satisfied, with the prior approval of Principal Commissioner or Commissioner, that any books of account or documents, seized or requisitioned under section 132 or section 132A in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee, the Assessing Officer shall be deemed to have information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee [where] the search is initiated or books of account, other documents or any assets are requisitioned or survey is conducted in the case of the assessee or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person.
Explanation 3. For the purposes of this section, specified authority means the specified authority referred to in section 151]."

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."

9. Thus, Hon'ble Madras High Court has also held that while issuing notice u/s 148 the ld AO has to obtain prior approval of the specified authority as defined in Section 151 and that in the cases for AY 2016-17 where more than 3 years had elapsed, compliance has to be made to mandate given in Section 151 (ii) of the Act. It has been clearly ruled that any noncompliance to above would render the notices per se, infructuous and therefore to be quashed

10. We have noted that the facts of the present case are identical to those discussed in the judicial precedents hereinabove. The revenue has not been able to point out any distinguishment. Statutory provisions of the Income Tax Act as well as judicial precedents setting by Hon'ble Apex Court in the case of Rajeev Bansal, Hon'ble Madras High Court in the case of Core Logistics and ITAT Mumbai Bench in the case of Manish Financials clearly mandate that in cases where notice u/s 148 is to be issued beyond a period of 3 years than, the ld AO is required to obtain prior approval of Pr. CCIT as provided in Section 151(ii) of the Act. We have noted that in the present case notice u/s 148 dated 16.07.2022 was issued with the prior approval of Pr. CIT. Accordingly, the impugned notice is not supported by authority of law and hence, hereby quashed. The consequent assessment order u/s 147 r.w.s. 144B dated 29.05.2023 would also not survive. The ground of appeal NO. 2 raised by the assessee is therefore allowed……."

7. We have noted that the facts of the present case are identical to those discussed in the judicial precedents hereinabove. The revenue has not been able to point out any distinguishment. Statutory provisions of the Income Tax Act as well as judicial precedents setting by Hon'ble Apex Court in the case of Rajeev

Bansal, Hon'ble Madras High Court in the case of Core Logistics and ITAT Mumbai Bench in the case of Manish Financials as well as in the case of Shri Anurag Pandey(Supra) clearly mandate that in cases where notice u/s 148 is to be issued beyond a period of 3 years than, the ld AO is required to obtain prior approval of Pr. CCIT as provided in Section 151(ii) of the Act. We have noted that in the present case notice u/s 148 dated 18.07.2022 was issued with the prior approval of Pr. CIT-7, Delhi. Accordingly, the impugned notice is not supported by authority of law and hence, hereby quashed. The consequent assessment order u/s 143(3) dated 31.05.2023 would also not survive. **The Cross Objection of the assessee is therefore allowed.**

8. As the assessee has succeeded qua its Cross Objection regarding the infirmity of notice u/s 148 dated 18.07.2022 and the consequent quashing of the assessment order u/s 143(3) dated 31.05.2023, we are of the view that the **appeal of the Revenue being ITA No.1119/Del/2025 has become infructuous and hence the same is dismissed.**

9. In the result, Cross Objection of the assessee is allowed and the appeal of the Revenue is dismissed.

Order pronounced in the open court on 21st January, 2026.

Sd/-	**Sd/-**
[SATBEER SINGH GODARA]	**[AMITABH SHUKLA]**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 21.01.2026

Shekhar

Copy forwarded to:

1. Appellant
2. Respondent
3. PCIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi,