

IN THE INCOME TAX APPELLATE TRIBUNAL “J (SMC)” BENCH, MUMBAI

**BEFORE SHRI OM PRAKASH KANT, AM
AND
MS. KAVITHA RAJAGOPAL, JM**

ITA No.70/Mum/2025
(Assessment Year: 2017-18)

M/s. Gupta Builders and Developers 1201 and 1202, Bhumiraj Costarica, Plot No. 1 and 2, Near Moraj Circle, Sector 18, Sanpada, Navi Mumbai – 400705.	Vs.	Asst. Commissioner of Income Tax, Central Circle 4(3), Mumbai
PAN/GIR No. AAJFG3066H		
(Appellant)	:	(Respondent)

Assessee by	:	Shri Ritika Agrawal
Respondent by	:	Shri Asif Karmali SR DR

Date of Hearing	:	31.10.2025
Date of Pronouncement	:	23.01.2026

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) 52, Mumbai ('ld. CIT(A)' for short), passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2017-18.

2. It is observed that the present appeal is time barred by six days for which the assessee has filed an application for condoning the delay along with an affidavit. On perusal of the same, we deem it fit to hold that the assessee has "sufficient cause" for the said delay. Delay is hereby condoned.

3. The assessee has raised the following grounds of appeal:

1. *BECAUSE, the CIT(A) has erred in law in treating the impugned assessment order as valid ignoring the subsequent proceedings undertaken by the AO u/s. 148A on the same reasons as per the order of Supreme Court in the case of Ashish Agarwal (2022) 444 ITR 1 (SC)*

2. *BECAUSE, the CIT(A) has erred in law by holding that multiple proceedings can be initiated for the same assessment year. disregarding the fact that the subsequent proceedings under Section 148A are based on the same reasons as the additions made in the impugned assessment order.*

3. *BECAUSE, the CIT(A) has erred in law in treating the impugned assessment order as valid failing to consider the decision of hon'ble Bombay High Court in the case Emcure Pharmaceuticals Limited v. ACIT and Ors, bearing WP no. 5293 of 2022, order dated 05/05/2022 which is squarely applicable in the present case wherein the Court has held that in view of the decision of Ashish Agarwal (supra), all assessment orders passed under such notices issued after 01/04/2021 stand quashed.*

4. *Without Prejudice,*

BECAUSE, notice issued u/s. 148 of the Act by the AO and approval granted by JCIT, Central Range 4, Mumbai u/s. 151 and the impugned assessment order is illegal, invalid and wholly without jurisdiction.

5. *BECAUSE the notice dated 01/04/2021 issued 148 is invalid since the same is issued without following the machinery procedure prescribed u/s. 148A of the Act as upheld by various courts including the jurisdictional Bombay High Court in the case of Tata Communications Transformation Services and other bearing Writ Petition no. 1334 of 2021. order dated 29/03/2022.*

6. *BECAUSE the AO has erred in issuing notice dated 01/04/2021 u/s. 148 without obtaining prior approval of "specified authority" under the amended section 151, as mandated under the proviso to Section 148.*

7. *BECAUSE, even the so-called approval u/s. 151 by JCIT, Central Range 4, Mumbai is also invalid since it has been granted mechanically.*

8. *BECAUSE, the impugned assessment order is bad in law since the reasons for reopening of assessment are recorded solely on "suspicion" without bringing on record any tangible material.*

9. *BECAUSE, the AO has erred in reopening of assessment on the basis of "borrowed satisfaction" of information from survey party without any independent corroborative or application of mind and preliminary enquiries.*

10. *BECAUSE, there is no failure on the part of the Appellant to disclose material facts necessary for assessment.*

11. *BECAUSE, the AO failed to deal with the specific objections raised by the Appellant against the "reasons recorded" while disposing of the objections vide order dated 30/12/2021 which go to the very root of the matter.*

12. *BECAUSE, the AO has erred in law and on facts in treating the loan from Granth Exim Pvt. Ltd. as unexplained in AY 2015-16 and accordingly disallowing interest of Rs.11,76,000/- paid on said loan in impugned assessment year simply on the ground that the Appellant failed to produce the lender before the AO ignoring the plethora of documents filed by the Appellant to prove the identity and creditworthiness of the lender and genuineness of the loan transaction.*

13. *BECAUSE, the CIT(A) has erred in law and on facts in passing an order in sub silentio without dealing with either the grounds of appeal filed by the Appellant or the statement of facts which remained unrebutted."*

4. Brief facts of the case are that the assessee firm is engaged in the business of construction and development and had filed its return of income dated 26.10.2017, declaring total income at Rs.32,32,240/-. The assessee's case was selected for scrutiny and assessment u/s. 143(3) was completed on 24.09.2018, where the Id. AO had accepted the returned income filed by the assessee. Subsequently, the assessee's case was reopened u/s. 147 vide notice u/s. 148 dated 01.04.2021, for the reason that the assessee had taken unsecured loan amounting to Rs.98,00,000/- from Granth EXIM Pvt. Ltd. during F.Y. 2014-15 for which the assessee is said to have paid interest amounting to Rs.11,76,000/- during the impugned year. Notice u/s. 143(2) and 142(1) were duly issued and served upon the assessee. The learned Assessing Officer ('Id. A.O.' for short) observed that during the survey action u/s. 133A of the Act conducted in the case of M/s. Greenscape Developers Group and M/s. Proviso Builders and Developers

Group on 26.11.2019 that seized material revealed that the assessee had taken unsecured loan from 3 different parties in different assessment years and had paid interest to one of the party viz. M/s. Granth EXIM Pvt. Ltd. amounting to Rs.11,76,000/-. During the assessment proceeding, the assessee had furnished only the loan confirmation and financial statement of M/s. Granth EXIM Pvt. Ltd. and the Id. AO made an addition/disallowance of the same to the total income of the assessee on the ground that the assessee had failed to prove the nature and source of the unsecured loan, thereby failing to establish the identity and creditworthiness of the party and genuineness of the transaction with cogent evidences. The Id. AO then passed the assessment order u/s. 147 dated 09.03.2022, determining total income at Rs.44,08,238/- after making an addition/disallowance of Rs.11,76,000/- towards the interest expenditure claimed by the assessee.

5. Aggrieved the assessee was in appeal before the first appellate authority, who vide order dated 08.10.2024, upheld the addition made by the Id. AO on the ground that the assessee had not explained the transaction with cogent documentary evidences as held by the Id. AO. The assessee had also challenged the reopening notice before the Id. CIT(A) who had also dismissed the same.
6. The assessee is in appeal before us, challenging the grounds of reopening as well as on the merits of the case.
7. We have heard the rival submissions and perused the materials available on record. The assessee has challenged the reassessment notice on the ground that the same is time barred by relying on the decision of the Hon'ble Apex Court in the case of *Ashish*

Agarwal (Civil Appeal No.3005/2022 dated 04.05.2022), and also the decision of the jurisdictional High Court in the case of **Emcure Pharmaceuticals Ltd. ACIT and Ors, WP No. 5393 of 2022, dated 05.05.2022**. The assessee has also raised the other grounds challenging the approval u/s. 151 of the Act along with grounds on merits of the disallowance of interest. The Learned Authorised Representative ('Ld. AR' for short) for the assessee commenced her arguments stating that assessment order is invalid in terms of the decision of the Hon'ble Apex Court in the case of **Ashish Agarwal** (supra) and also by the decision of the Hon'ble Jurisdictional High Court in the case of **Emcure Pharmaceuticals Limited and Ors. (supra)**. The Ld. AR further argued that though the said ground challenging the validity of the assessment order was raised before the Ld. CIT(A) the same was not considered and decided against the terms of the settled proposition of law. The Ld. AR relied on the assessee's own case for AY 2016-17 where on identical facts the Tribunal has held the assessment order to be invalid based on the proposition laid down in the abovementioned decisions.

8. The Learned Departmental Representative ('Ld. DR' for short) for the Revenue, on the other hand, controverted the same and supported the contention of the Ld. CIT(A) that the subsequent notice u/s. 148A(b) of the Act dated 25.05.2022 issued by the Ld. AO doesn't invalidate a validly concluded prior proceedings and that there can be multiple proceedings u/s 147 of the Act which has to be examined on the facts of each case and on the same note the notice u/s 148 of the Act dated 01.04.2021 cannot be said to be time barred. The Ld. DR relied extensively on the order of the Ld. CIT(A).
9. On the above factual matrix of the case, it is observed that notice u/s 148 of the Act was issued on 01.04.2021 for the year under consideration under the unamended law and subsequent to

which the assessment order u/s 147 of the Act was passed on 09.03.2022. The assessee's contention is that the subsequent proceeding initiated by the Ld. AO u/s. 148A for the same reasons will render the earlier proceedings u/s. 148 of the Act to be invalid as there cannot be two parallel proceeding on the same issue, one as per the unamended provision and another as per the amended provisions of law. Since the Ld. AO has issued fresh notice u/s. 148A(b) dated 25.05.2022 and basis which *denova* proceedings were initiated, the notice u/s. 148 dated 01.04.2021 and the subsequent assessment order will be quashed and set aside as per the decision of the Hon'ble Bombay High Court in ***Emcure Pharmaceuticals Limited and Ors. (supra)***. Pertinently, the Tribunal, in assessee's own case for AY 2016-17 on identical facts with no distinguishable facts, has held the assessment order to be invalid thereby quashing and setting aside the said order. The relevant extract of the said decision is cited herein under for ease of reference (in assessee's own case, ITA No.69/M/2025 for AY 2016-17):

"8. We have heard the rival contentions and perused the material available on record. In this case, notice u/s 148 was issued on 01-04-2021 under the un-amended law for impugned assessment year 2016-17 and the assessment order u/s 147 was passed on 09-03-2022. Following the decision of the Hon'ble Supreme Court in case of Ashish Agarwal, the AO has issued a fresh notice u/s 148A(b) of the Act dated 25/05/2022 and it would be useful to refer to the contents of the said notice and the same read as under:

"1 On perusal of records maintained in this office shows that for the above mentioned assessment year a notice u/s 148 of the Income Tax Act, 1961 was issued to you on 01.04.2021. Several Writ Petitions were filed before the Hon'ble Bombay High Court as well as other courts, challenging the validity of the said notice u/s 148 of the Act. The Hon'ble Bombay High Court has disposed of the said writ petitions vide order dated 29.03.2022.

2. Thereafter, the matter reached before Hon'ble Supreme Court. The Hon'ble Supreme Court in Civil Appeal No. 3005/2022, vide order dated 04.05.2022, has directed (in para 10 of the order) as under:

1. The impugned Section 148 notices issued to the respective assesses which were issued under unamended Section 148 of the I. T. Act,



which were the subject matter of writ petitions before the various respective High Courts shall be deemed to have been issued under Section 148A of the IT Act as substituted by the Finance Act, 2021 and construed or treated to be show-cause notices in terms of Section 148A(b). The assessing officer shall, within thirty days from today, provide to the respective assesses information and material relied upon by the Revenue, so that the assesses can reply to the show-cause notices with two weeks thereafter,"

3. Further vide order dated 05.05.2022, Hon'ble Bombay High Court in the case of Emcure Pharmaceuticals Limited V/s. Assistant Commissioner of Income Tax Central Circle 2(1), Pune and Ors, vide para 5 of the order directed as under:

"5. In view of the above, wherever the assessment order has been passed those assessment orders will stand quashed and set aside. So also the consequential orders/notices."

4. In view of the above mentioned directions, the above referred notice u/s 148 of the Act issued to you shall be construed or treated to be a show cause notice in terms of Section 148A(b) of the (amended) Act.

5. The Hon'ble Supreme Court has also directed to provide the information and material relied upon by the Revenue. The information which suggests that income has escaped assessment and the reference material which is the basis of such information, are embedded in reasons recorded (based on the law applicable before 01.04.2021) to re-open your case before issuing notice u/s 148 of the I.T. Act. The same, which had the approval of the competent authority, is attached herewith for your ready reference.

6. The information and material relied upon, suggests that income chargeable to tax has escaped assessment in your case for the above mentioned assessment year within the meaning of the provisions of Section 147 of the Income-tax Act, 1961.

7. In view of the above, you are hereby requested to furnish your explanation along with supporting documents/evidences, as to why a notice u/s 148 of the Act should not be issued in your case for the above mentioned assessment year. Your reply may be sent on or before 08.06.2022."

9. As is evident from the aforesaid notice issued u/s 148A(b), the AO himself has referred to the decision of the Hon'ble Bombay High Court in case of Emcure Pharmaceuticals (supra) and has held that in view of the directions so given by the Hon'ble Bombay High Court, earlier notice so issued under section 148 shall be treated as a show-cause in terms of section 148A(b) and the assessee explanation was sought as to why a fresh notice u/s 148 should not be issued. Thereafter, fresh notice u/s 148 has been issued on 28/07/2022 and fresh proceedings were thus initiated.



10. In light of the admitted facts, the impugned assessment order passed u/s 147 dated 09-03-2022 pursuant to original notice u/s 148 dated 01-04-2021 has no legs to stand in light of decisions of the Hon'ble Bombay High Court wherein it has been clearly held that "wherever the assessment order has been passed those assessment orders will stand quashed and set aside" and is hereby set-aside. In the result, ground no. 3 of the assessee's appeal is allowed."

10. From the above observation it can be inferred that the notice u/s 148 of the Act dated 01.04.2021 was in challenge before the Hon'ble Jurisdictional High Court as to the validity of the same in the case of Emcure Pharmaceuticals Ltd. and Ors. (supra) wherein it was held that all assessment orders passed under such notices issued after 01.04.2021 will stand quashed and set aside subsequent to the Ld. AO commencing fresh proceedings after issuing notice u/s 148A(b) of the Act dated 25.05.2022 for A.Y. 2017-18 and in view of which the impugned assessment order, which is in challenge before us, is hereby quashed and set aside.

11. In the result, ground No.3 raised by the assessee is hereby allowed and the other grounds of appeal raised by the assessee are hereby rendered academic in nature and are dismissed as infructuous.

12. In the result, the appeal filed by the assessee is hereby allowed on the above terms.

Order pronounced in the open court on 23.01.2026

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Mumbai; Dated: 23.01.2026

Karishma J. Pawar (Sr. PS)



Copy of the Order forwarded to:

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

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai