

आयकर अपीलीय अधिकरण, हैदराबाद पीठ  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad 'A' Bench, Hyderabad**  
श्री रवीश सूद, माननीय न्यायिक सदस्य एवं श्री मधुसूदन सावडिया, माननीय लेखा सदस्य  
**SHRI RAVISH SOOD, HON'BLE JUDICIAL MEMBER**  
**AND**  
**SHRI MADHUSUDAN SAWDIA HON'BLE ACCOUNTANT MEMBER**

आयकरअपीलसं./I.T.A. No. 368/Hyd/2024  
(निर्धारणवर्ष/ **Assessment Year:2005-06**)

BA Continuum India Private Limited, Hyderabad. PAN: AACCC3062D	VS.	Dy. Commissioner of Income Tax, Circle-1(1), Hyderabad.
<b>(अपीलार्थी/ Appellant)</b>		<b>(प्रत्यर्थी/ Respondent)</b>

करदाताकाप्रतिनिधित्व/ Assessee Represented by	:	Shri Nishant Thakkar, Advocate
राजस्वकाप्रतिनिधित्व/ Department Represented by	:	Ms. U. Mini Chandran, CIT-DR
सुनवाईसमाप्तहोनेकीतिथि/ Date of Conclusion of Hearing	:	20/01/2026
घोषणा की तारीख/ Date of Pronouncement	:	04/02/2026

**ORDER**

**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee company is directed against the order passed by the Commissioner of Income Tax (Appeals)-10, Hyderabad, dated 19/02/2024, which in turn arises from the order passed by the Assessing Officer (for short, "AO") under section 147 r.w.s 144C of the Income Tax Act, 1961 (for short, "the

Act”), dated 16/03/2012 for the Assessment Year (AY) 2005-06. The assessee company has assailed the impugned order of the CIT(A) on the following grounds of appeal:

“1. Erred in disregarding the submissions made, judicial precedents relied upon by the Appellant substantiating the grounds and upholding the action of the Learned Deputy Commissioner of Income-tax (hereinafter referred to as "Ld. AO"), and the Learned Assistant Commissioner of Income-tax (Transfer Pricing) (hereinafter referred as "Ld. TPO") which is bad in law and liable to be quashed.

2. Erred in holding that the impugned re-assessment carried out by the Ld. AO in the name of BACI (formerly known as CFCI) which is a non-existent entity as valid in law.

3. Erred in upholding the impugned order passed by the Ld. AO under section 147 read with 144C of the Act which is bad in law, arbitrary, contrary to facts, law, and circumstances of the case and liable to be quashed for the following reasons:

a) Satisfaction of the JCIT was not obtained before initiating the reassessment proceedings under section 147 of the Act.

b) No evidence of any new tangible material has been referred to by the Ld. AO in the reasons for re-opening the assessment and hence, it is a mere change of opinion, and the Ld. AO does not have any reason to believe that income has escaped assessment.

c) There was no income which has escaped assessment as the reimbursements made by the Company to its AEs were not liable to tax in India and thus there was no requirement to withhold tax on such reimbursement and thus the said reimbursements were not liable to be disallowed under section 40(a)(i) of the Act.

d) The Ld. AO erred to apply his mind on the nature of reimbursements and taxability of the said reimbursements in India and blindly followed the order/ decision of CIT(A) in the Company's own case for the AY 2006-07.

4. Erred in not following the decision of the Hon'ble Supreme Court in the landmark case of GKN Driveshafts (India) Ltd [(2003) 259 ITR 019] in relation to the procedure to be followed during re-assessment proceedings and thereby, the re-assessment proceedings are invalid in law and beyond jurisdiction for the following reasons:

a) The reasons for initiation of re-assessment proceedings were not provided by the Ld. AO in a reasonable time and thereby not issuing sufficient time to file the objections against the reasons for initiation of re-assessment proceedings;

b) Non-issuance of a speaking order disposing off the objections raised by the Appellant against reasons for assessment/reassessment under section 147 of the Act;

c) Notice under section 143(2) of the Act was issued without providing opportunity to the Appellant to file its objections against the reasons for reopening the assessment;

d) Notice under section 142(1) of the Act was issued without issuing the notice under section 143(2) of the Act and the reasons for reopening the assessment;

e) Reference was made by the Ld. AO to Ld. TPO on 29 November 2010 without initiating the assessment proceedings by way of issue of notice under 143(2) of the Act and without supplying the reasons for initiation of re-assessment proceedings.

5. Erred in upholding the action of the Ld. AO in disallowing reimbursement of expenses to AEs under section 40(a)(i) of the Act.

a) Erred in upholding the action of the Ld. AO in not granting deduction under section 10A of the Act on the assessed income which was enhanced due to disallowance under section 40(a) (i) of the Act against the reimbursements made to its AEs, disregarding the well settled ratio in the case of Gem Plus Jewellery India Ltd [2010] 194 Taxman 192 (Bombay).

b) Erred in upholding the flawed approach adopted by the Ld. AO in not granting deduction under section 10A of the Act which was allowed in the subsequent year i.e., AY 2006-07 by the Ld. AO, during the regular assessment proceedings under section 143(3) of the Act.

7. Erred in upholding the action of the Ld. AO invoking Section 92CA(1) by not acknowledging the fact that reason for reopening the assessment was other than for Transfer Pricing matter. Thus, the reference under section 92CA(1) by the Ld. AO is bad in law and is liable to be quashed.

8. Erred in confirming the action of the Ld. AO in referring to the Ld. TPO during the course of re-assessment proceedings despite the Ld. AO's conscious decision not to refer to the Ld. TPO during the original assessment proceedings in accordance with the guidelines provided in the Instruction no. 3/2003 dated 20 May 2003.

(a) Has grossly erred in not giving due cognizance to the fact that all international transactions were considered during the course of the proceedings under section 143(3) of the Act and were accepted to be at arm's length price; and

(b) failed in not appreciating the fact that reference to the Ld. TPO by the Ld. AO under section 92CA(1) of the Act during re-assessment proceedings is mere change of opinion and is bad in law which is liable to be quashed.

9. Has inter alia erred in accepting the order passed by the Ld. TPO under section 92CA(3) of the Act in respect of AY 2005-06

resulting in an adjustment of INR 21,85,04,408 without appreciating the fact that the impugned order under section 92CA(3) of the Act is bad in law, contrary to facts, law, and circumstances of the case and liable to be quashed for the following reasons:

- a) The order u/s 92CA(3) of the Act passed by the Ld. TPO is predated.
- b) The Ld. TPO erred by not issuing a show cause notice and further erred by not giving an opportunity of hearing to the Appellant for the proposed TP adjustment of Rs. 21,85,04,408 before passing the TP order.
- c) The Ld. TPO erred by ignoring the TP documentation already available on records at the time of passing the order u/s 92CA of the Act.

10. Erred in upholding the action of the Ld. TPO / Ld. AO in not accepting the economic analysis undertaken by the Assessee in accordance with the provisions of the Act read with the Income-tax Rules, 1962 ('the Rules') and undertaking a common economic analysis for the determination of the arm's length price of Information Technology ('IT') Services and Information Technology enabled Services ('ITeS') and holding that the aforesaid transactions are not at arm's length price.

11. Without prejudice to the above grounds, erred in confirming the action of the Ld. TPO/ Ld. AO in incorrectly computing the margin of Appellant by not treating the expenses in relation to start up and excess capacity as non-operating.

12. Without prejudice to the above grounds, erred in confirming the action of the Ld. TPO / Ld. AO in not undertaking objective comparative analysis and inter-alia selecting following companies as comparable which are functionally not comparable to the NA the Appellant:

- a) Vishal Information Technologies Limited
- b) Nucleus Net soft & GIS Limited
- c) Maple E Solutions Limited
- d) Wipro BPO Solutions Limited
- e) Progeon Limited

13. Notwithstanding anything contained in above grounds, erred in upholding the action of Ld. TPO/ Ld. AO in not adjusting the net margins of comparable companies for working capital, functional and risk differences in accordance with the provisions of rule 10B(1)(e) of the Rules and not providing for the below adjustments;

- a) Working capital adjustment
- b) Risk adjustment

c) Marketing and R&D expenditure adjustment

d) Depreciation adjustment

14. Without prejudice to argument in Ground 6, the expenses disallowed under 40(a) (i) of the Act should also be excluded from the cost base of the Appellant while computing the operating margin and transfer pricing adjustment.”

2. Also, the assessee company has raised the following additional ground of appeal, which reads as under:

“Ground No.15. On the facts and in the circumstance of the case and in law, the Ld. AO has erred in passing impugned order which is barred by limitation and void ab initio and is liable to be quashed.”

3. As the assessee company by raising the additional ground of appeal has sought our indulgence for adjudicating a legal issue, which requires looking no further beyond the facts available on record, therefore, we have no hesitation in admitting the same. Our aforesaid view is fortified by the judgment of the **Hon'ble Supreme Court** in the case of **National Thermal Power Company Ltd. Vs. CIT (1998) 229 ITR 383 (SC)**.

4. Succinctly stated, the assessee company which is engaged in the business of development and providing IT Consultancy Services had filed its return of income for AY 2005-06 on 31/10/2005, declaring a loss of Rs.18,23,52,193/-. Thereafter, the case of the assessee company was selected for compulsory scrutiny and assessment order was

passed under section 143(3) of the Act, dated 14/11/2007 determining its loss for the subject year at Rs.18,22,22,193/-.

5. Thereafter, the AO observed based on the facts, viz., (i) that the assessee company had reimbursed some expenses of Rs.6,54,33,770/- to M/s. Countrywide Finance Corporation and M/s. CW(UK) Services without any deduction of tax at source (TDS), i.e., in the violation of the provisions of section 195(1) of the Act which attracted the provisions of section 40(a)(ia) of the Act; and (ii) and though the assessee company had during the subject year carried out international transactions with its Associated Enterprises (AEs) of Rs.23,97,35,320/-, but the AO in the course of the original assessment proceedings had failed to make a reference to the Transfer Pricing Officer (TPO) for determining the Arm's Length Price (ALP) despite the fact that the value of the international transactions exceeded the threshold limit of Rs.15 crores, initiated proceedings under section 147 of the Act. Thereafter, the AO issued notice under section 148 of the Act, dated 30/03/2010. In compliance, the assessee company filed a letter on 26/04/2010, wherein it requested that its original return of income filed on 31/10/2005 be treated as a return of income filed in response to notice issued under section 148 of the Act.

6. During the course of the reassessment proceedings, the assessee company objected to the validity of the jurisdiction that was

assumed by the AO for reopening its concluded assessment for the reasons, viz., (i) that the reopening of the concluded assessment was based on a mere change of opinion; and (ii) that the reopening of assessment for applying the provisions of section 195 of the Act was barred by limitation on 31/12/2010. However, the aforesaid objections of the assessee company did not find favour with the AO who rejected the same.

7. Thereafter, the AO passed a draft assessment order (served upon the assessee on 05/01/2012) as per the mandate of section 144C(1) of the Act, wherein the assessee company was intimated about the proposals that were sought to be made to its returned income. On 03/02/2012, the assessee company filed a letter wherein it was stated that it opted to file an appeal before the CIT(A) against the purported additions/disallowances to its returned income and did not wish to approach the Dispute Resolution Panel (DRP) for dispute resolution.

8. In the meantime, on a reference made by the AO to the Additional Commissioner of Income Tax (Transfer Pricing), Hyderabad for determining the ALP of the international transactions of the assessee company with its AEs to the tune of Rs.23,97,35,320/-, the TPO suggested an adjustment of Rs.21,85,04,408/- vide his order under section 92CA(3), dated 28/10/2011 of Rs.21,85,04,408/-.

9. Thereafter, the AO vide his order under section 147 r.w.s 144C of the Act, dated 16/03/2012 determined the income of the assessee company at Rs.10,17,15,985/- after making the aforesaid additions/disallowance, viz., (i) disallowance under section 40(a)(i): Rs.6,54,33,770/-; and (ii) transfer pricing adjustment as suggested by the Additional Commissioner of Income Tax (TP), Hyderabad, dated 28/10/2011: Rs.21,85,04,408/-.

10. Aggrieved, the assessee company carried the matter in appeal before the CIT(A) but without success.

11. On perusal of the CIT(A) order, we find that though the assessee company had, inter alia, assailed the validity of the jurisdiction that was assumed by the AO for framing the assessment vide his order passed under section 147 r.w.s 144C of the Act, dated 16/03/2012 for the reason that the impugned reassessment proceedings under section 147 of the Act were wrongly initiated after obtaining the approval of the Commissioner of Income Tax-9, Mumbai instead of obtaining the approval from the appropriate authority, i.e., the Joint Commissioner of Income Tax (JCIT), but the same was rejected by the CIT(A) as he held a conviction that the approval of the Joint Commissioner of Income Tax was embedded in the approval granted by the Commissioner of Income Tax-9, Mumbai, therefore, the contention raised by the assessee was devoid and bereft of any substance. Apart from that, the other

contentions advanced by the assessee company based on which the impugned order of assessment was assailed before the CIT(A) also did not find favour with the latter who, thus, dismissed the appeal.

12. The assessee company being aggrieved with the order of the CIT(A) has carried the matter in appeal before us.

13. Shri Nishant Thakkar, Advocate, Learned Authorized Representative (for short, "Ld. AR") for the assessee company, at the threshold of hearing of the appeal, submitted that as the impugned assessment had been framed by the AO vide his order passed under section 147 r.w.s 144C of the Act, dated 16/03/2012 without obtaining a valid approval of the appropriate authority as was statutorily required under section 151 of the Act (as was then applicable during the year under consideration), therefore, the same cannot be sustained for want of valid assumption of jurisdiction and is liable to be quashed on the said count itself. Elaborating on his contention, the Ld. AR submitted that as the original assessment in the case of the assessee company for the subject year i.e., AY 2005-06 had been framed by the AO vide his order passed under section 143(3) of the Act, dated 14/11/2007, Page 200-201 of APB, therefore, as per subsection(1) of section 151 of the Act (as was available on the statute during the year under consideration) no notice under section 148 of the Act could be issued by the AO unless the Joint Commissioner of Income Tax was satisfied on

the reasons recorded by the AO that it is a fit case for issue of such notice. The Ld. AR submitted that as per section 151(1) of the Act as was applicable to the case of the assessee company before us, the AO was statutorily obligated to have obtained the approval of the Joint Commissioner of Income Tax for issuance of notice under section 148 of the Act. Carrying his contention further, Mr. Nishant Thakkar submitted that in the present case the impugned notice under section 148 of the Act, dated 30/03/2010 (before expiry of a period of 4 years from the end of the relevant assessment year, i.e., AY 2005-06) had been issued by the AO after obtaining the approval of the Commissioner of Income Tax-9, Mumbai. The Ld. AR to buttress his contention had drawn our attention to the copy of the notice issued under section 148 of the Act, dated 30/03/2010, Page 204-205 of APB. The Ld. AR submitted that as the AO in the present case had issued notice under section 148 of the Act, dated 30/03/2010 without obtaining the approval of the Joint Commissioner of Income Tax, i.e., the appropriate authority, but had rather obtained the approval of the Commissioner of Income Tax-9, Mumbai who was not vested with any jurisdiction to grant the approval in the backdrop of the facts involved in the case of the assessee company, therefore, the AO had grossly erred in assuming jurisdiction and framing the impugned assessment vide his order passed under section 147 of the Act, dated 16/03/2012.

14. Per contra, Ms. U. Mini Chandran, Ld.CIT-DR objected to the contentions raised by the assessee's counsel. The Ld.CIT-DR submitted that though a copy of the notice under section 148 of the Act, dated 30/03/2010 was available on record, but the form of approval, wherein the Commissioner of Income Tax-9, Mumbai had granted the approval, was yet to be obtained. The Ld.CIT-DR based on the aforesaid facts requested that some further time may be allowed to obtain the requisite record/report from the concerned Officer, i.e., Income Tax Officer-9(1)(2), Mumbai.

15. As the Ld. AR has assailed the validity of the jurisdiction that was framed by the AO for initiating the impugned proceedings and framing the assessment vide his order passed under section 147 r.w.s 144C of the Act, dated 16/03/2012, therefore, on 17/12/2025, in all fairness and in the interest of justice the hearing of the matter was adjourned and the Department was directed to obtain the report from the aforementioned concerned Officer, i.e., ITO-9(1)(2), Mumbai so that the factual position may be verified.

16. On the next date of hearing, i.e., on 20/01/2026, the Ld.CIT-DR had placed on record a copy of the letter, dated 19/01/2026 received by her office from the Joint Commissioner of Income Tax (In-Situ), Circle-1(1), Hyderabad, along with a copy of letter, dated 30/03/2010 of the ITO(HQ)(TECH)-9, Mumbai addressed to the ITO-9(1)(2), Mumbai

and a letter dated 25/03/2010 of the Income Tax Officer 9(1)-2, Mumbai addressed to The Commissioner of Income Tax-9, Mumbai and a copy of the form for obtaining the approval of the Commissioner of Income Tax/CBDT.

17. We have heard the Learned Authorized Representatives of both parties, perused the orders of the authorities below and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the Ld.AR to drive home his contentions.

18. Admittedly, it is a matter of fact discernible from the record that the original assessment in the case of the assessee company was framed by the AO, i.e., ACIT, Circle-15(2), Mumbai vide his order passed under section 143(3) of the Act, dated 14/11/2007. Also, it is matter of fact borne from the record that the concluded assessment of the assessee company had been reopened by the AO vide notice issued under section 148 of the Act, dated 30/03/2010, i.e., within a period of 4 years from the expiry of the relevant assessment year, i.e., AY 2005-06.

19. Before proceeding further, we may herein observe that as the provisions of section 151 of the Act contemplating the concerned authorities from whom the sanction/approval is to be taken by the AO for issuing notice under section 148 of the Act had undergone sea

change over the years, therefore, it will be apposite to cull out section 151 of the Act as was available on the statute during the relevant period, as under:-

“151. (1) In a case where an assessment under sub-section (3) of section 143 or section 147 has been made for the relevant assessment year, no notice shall be issued under section 148 "[by an Assessing Officer, who is below the rank of Assistant Commissioner for Deputy Commissioner), unless the "[Joint] Com-missioner is satisfied on the reasons recorded by such Assessing Officer that it is a fit case for the issue of such notice]:

Provided that, after the expiry of four years from the end of the relevant assessment year, no such notice shall be issued unless the Chief Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer aforesaid, that it is a fit case for the issue of such notice.

(2) In a case other than a case falling under sub-section (1), no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of [Joint] Commissioner, after the expiry of four years from the end of the relevant assessment year, unless the "[Joint] Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.]

Explanation-For the removal of doubts, it is hereby declared that the Joint Commissioner, the Commissioner or the Chief Commissioner, as the case may be, being satisfied on the reasons recorded by the Assessing Officer about fitness of a case for the issue of notice under section 148, need not issue such notice himself.]”

20. On a perusal of subsection (1) of section 151 of the Act, we find that the same therein contemplates that where an assessment under sub-section (3) of section 143 of the Act had been made for the relevant assessment year, then no notice shall be issued under section 148 of the Act by an Assessing Officer, who is below the rank of Assistant Commissioner of Income Tax or Deputy Commissioner of Income Tax unless the Joint Commissioner of Income Tax is satisfied on the

reasons recoded by such Assessing Officer that it is a fit case to issue of such notice.

21. Admittedly, it is a matter of fact that the notice under section 148 of the Act, dated 30/03/2010 had been issued before the expiry of 4 years from the end of the relevant assessment year. Also, it is a fact discernible from the record that the notice under section 148 of the Act, dated 30/03/2010 had been issued by the ITO-9(1)-2, Mumbai, i.e., an Assessing Officer below the rank of Assistant Commissioner of Income Tax or Deputy Commissioner of Income Tax. Further, as observed by us herein above, original assessment in the case of the assessee company was framed by the AO vide his order passed under section 143(3) of the Act, dated 14/11/2007.

22. Considering the aforesaid facts cumulatively, we are of firm conviction that notice under section 148 of the Act, dated 30/03/2010 in the case of the present assessee company could have been issued by the ITO-9(1)-2, Mumbai only after obtaining the approval of the Joint Commissioner of Income Tax as contemplated in Section 151(1) of the Act (as was then available on the statute). In case, the notice under section 148 of the Act was to be issued after the expiry of a period of 4 years from the end of the relevant assessment year, i.e., on or after 01/04/2010 then, the approval would have been required to have been obtained either from the Chief Commissioner of Income Tax or

Commissioner of Income Tax as contemplated in the “proviso” to section 151(1) of the Act.

23. Be that as it may, we are of firm conviction that the ITO-9(1)-2, Mumbai, i.e., the Assessing Officer in the present case had wrongly assumed jurisdiction by issuing notice under section 148 of the Act, dated 30/03/2010 for reopening the concluded assessment of the assessee company after obtaining the approval of the Commissioner of Income Tax-9, Mumbai instead of Joint Commissioner of Income Tax.

24. At this stage, we may herein observe that the Joint Commissioner of Income Tax(In-Situ), Circle-1(1), Hyderabad vide his letter/report, dated 19/01/2026 had clearly admitted, viz., (i) original assessment in the case of the assessee company was completed under section 143(3) of the Act on 14/11/2007 by the Assistant Commissioner of Income Tax, Circle-15(2), Mumbai; and (ii) that the concluded assessment of the assessee company was reopened by the Assessing Officer, i.e., ITO-9(1)-2, Mumbai by obtaining the approval of the Commissioner of Income Tax-9, Mumbai. For the sake of clarity, we deem it apposite to cull out the aforesaid report, dated 19/01/2026 of the Joint Commissioner of Income Tax(In-Situ), Circle-1(1), Hyderabad, as under:-



आयकर उपायुक्त, सर्कल-1(1) के कार्यालय  
Office of the Deputy Commissioner of Income Tax, Circle-1(1),  
कमरा नं.724, सातवीं मंजिल, बी-ब्लॉक, आयकर शिखर, ए.सी. गार्ड्स, हैदराबाद  
Room No.724, Block-7B, 7<sup>th</sup> floor, I.T.Tower, A.C.Gaurds, Hyderabad

F.No. DCIT-1(1)/ITAT/2025-26

दिनांक/Date: 19.01.2026

To,

The Commissioner of Income Tax (DR),  
ITAT "A" Bench, Hyderabad.

Madam,

Sub: Appeal proceedings before the Hon'ble ITAT in the case of M/s BA Continuum India Private Limited (formerly known as CFC India Services Pvt. Ltd., Mumbai) A.Y 2005-06 report on additional grounds filed by the assessee before the Hon'ble ITAT Reg.

Ref: Mail received from the ITO (HQrs), 0/0 CIT(DR)-1, ITAT "A" Bench, Hyderabad on 14.10.2024.

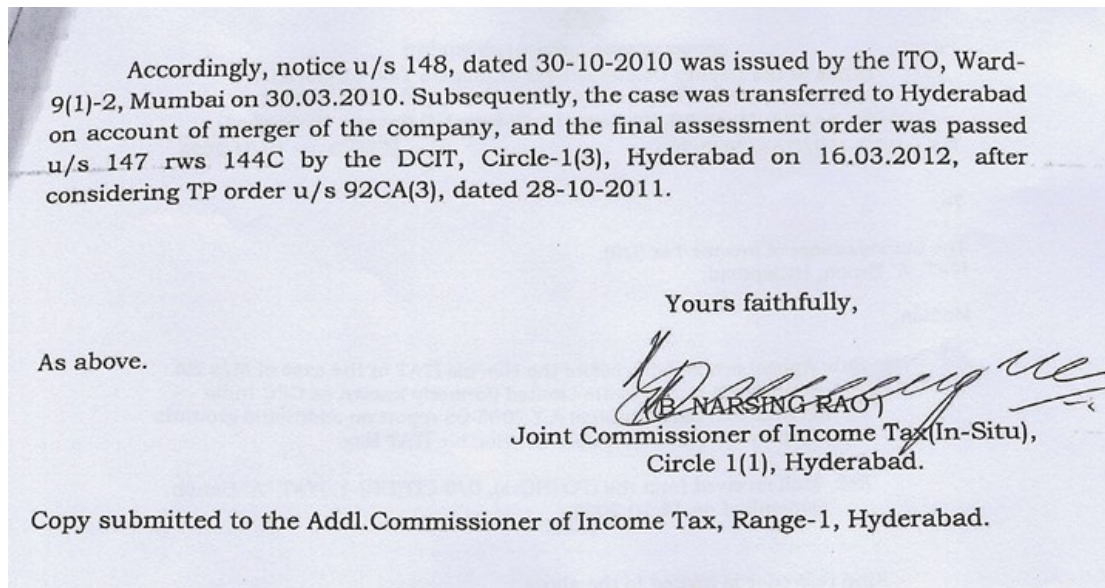
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Kind reference is invited to the above.

A factual report has been called for with regard to prior sanction obtained by the Assessing Officer for re-opening of assessment u/s 147 of the L.T.Act as per provisions of section 151 of the Act, in the case of above mentioned assessee. Brief facts of the case are as under:

Scrutiny assessment In the case of the assessee M/s B.A.Continuum India Pvt Ltd. (formerly known as CFC India Services Pvt. Ltd., Mumbai got merged with M/s BA Continuum solutions Pvt. Ltd., Hyderabad) for the A.Y.2005-06 was completed u/s 143(3) of the Act on 14.11.2007 by the ACIT, Circle-15(2), Mumbai. Subsequently, the assessment was re-opened u/s 147 by the Assessing Officer, ITO, Ward-9(1)-2, Mumbai by obtaining prior approval of the CIT-9, Mumbai.

As seen from the record for A.Y.2005-06, in the process of seeking approval, the Assessing Officer submitted proposals for re-opening of assessment proceedings 147 of the I.T.Act., in the prescribed form after recording reasons to the Commissioner of Incometax-9, Mumbai, through the Addl.CIT, Range-9(1), Mumbai on 25.03.2010. (Copy enclosed vide **Annexure-A**). After considering the facts of the case and recommendations of the Additional Commissioner of Income Tax, Range-9, Mumbai, the Commissioner of Incometax-9, Mumbai, u/s 151 of the I.T.Act., of the I.T.Act., vide letter in No.CIT-9/Audit/2009-10, dated 30-03-2010, accorded approval for proposed action u/s 147 of the I.T.Act., (Copy enclosed vide **Annexure-B**) with a copy marked to the Addl.Commissioner of Incometax-9, Mumbai.



25. Apart from that, we find that the Joint Commissioner of Income Tax(In-Situ), Circle-1(1), Hyderabad along with his aforementioned report, dated 19/01/2026, had enclosed a letter dated 25/03/2010 of Income Tax Officer 9(1)-2, Mumbai addressed to The Commissioner of Income Tax-9, Mumbai, wherein the said Assessing Officer has solicited approval of the Commissioner of Income Tax-9, Mumbai for reopening the case of the assessee company. Also, a copy of the form seeing approval of the CIT/CBDT, which is signed by the Assessing Officer, i.e., Income Tax Officer-9(1)-2, Mumbai refers to the obtaining of the approval of the CIT/CBDT. Last but not least, the notice issued under Section 148 of the Act, dated 30/03/2010 clearly mentions that the same was being issued after obtaining the necessary satisfaction of the Commissioner of Income Tax-9, Mumbai.

26. Be that as it may, we concur with the Ld. AR that the impugned reassessment proceedings had been initiated by the Income Tax Officer-9(1)-2, Mumbai vide notice that was issued by him under section 148 of the Act, dated 30/03/2010 based on the approval which he had taken from the Commissioner of Income Tax-9, Mumbai.

27. Coming to the validity of the reassessment proceedings and the consequential reassessment order passed by the Assessing Officer vide his order under section 147 r.w.s 144C of the Act, dated 16/03/2012 based on the notice issued under section 148 of the Act, dated 30/03/2012, which, as observed by us herein above, had been issued after obtaining the approval of the Commissioner of Income Tax-9, Mumbai, i.e., not the appropriate authority, we find that the same is clearly covered by the judgment of the **Hon'ble High Court of Bombay** in the case of **Ghanshyam K. Khabrani vs. Assistant Commissioner of Income Tax (2012) 346 ITR 443 (Bombay)**. In the said case, the Hon'ble High Court had observed that as section 151(2) mandates satisfaction of Joint Commissioner of Income Tax for issuance of notice under section 148 of the Act in certain cases, therefore, reopening of an assessment in such a case with the approval of the Commissioner of Income Tax is unsustainable. For the sake of clarity, we deem it apposite to cull out the observations of the Hon'ble High Court, as under:

“6. The second ground upon which the reopening is sought to be challenged is that the mandatory requirement of election 151(2) has not been fulfilled. Section 151 requires a sanction to be taken for the issuance of a notice under Section 148 in certain cases. In The present case, an assessment had not been made under Section 143(3) or Section 147 for AY: 2004-05. Hence, under sub-section 2 of Section 151, no notice can be issued under Section 148 by an Assessing officer who is below the rank of Joint Commissioner after the expiry of 4 years from the end of the relevant Assessment Year unless the Joint Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice. The expression "Joint Commissioner" is defined in Section 2(28C) to mean a person appointed to be a Joint Commissioner of Income Tax or an Additional Commissioner of Income Tax under section 117(1). In the present case, the record before the Court indicates that the Assessing Officer submitted a proposal on 28 March 2011 to the CIT(1) Thane through the Additional Commissioner of Income Tax Range (1) Thane. On 218 March 2011, the Additional CIT forwarded the proposal to the CIT and after recording a gist of the communication of the Assessing Officer Mated that

"As requested by the A.O. Necessary approval for issue of notice u/s. 148 may kindly be granted in case, if approved”.

On this a communication was issued on 29 March 2011 from the office of the CIT(1) conveying approval to the proposal submitted by the Assessing officer. There is merit in the contention raised on behalf of the Assessee that the requirement of Section 151(2) could have only been fulfilled by the satisfaction of the Joint Commissioner that this is a fit case for the issuance of a notice under Section 148. Section 151(2) mandates that the satisfaction has to be of the Joint Commissioner. That expression has a distinct meaning by virtue of the definition infection 2(2C). The Commissioner-of Income Tax is not a Joint Commissioner within the meaning of Section 2(28C). In the present case, the Additional Commissioner of Income Tax forwarded the proposal submitted by the Assessing Officer to the Commissioner of Income Tax approval which has been granted is not by the Additional Commissioner of Income Tax but by the Commissioner of Income Tax. There is no statutory provision hereunder which a power to be exercised by an officer can be exercised by a superior officer. When the statore mandates the satisfaction of a particular functionary for the exercise of a power, the satisfaction must be of that authority. Where a statute equires something to be done in a particular manner, it has to be done in that manner. In a similar situation the Delhi High Court in CIT V. SPE'S-Siddhartha Ltd. (20121 204 Taxman 115/17-texmann.com.138 (Delhi) held that powers which are conferred-upon-a-particular authority have to be exercised by that authority and the satisfaction which the statute mandates of a distinct authority cannot be substituted by the satisfaction of another. We are in respectful agreement with the judgment of the Delhi High Court

In view of the findings which we have recorded on submissions (i), (ii) and (iv), it is not necessary for the Court to consider submission (iii) which has been urged on behalf of the Assessee. Once the Court has

come to me conclusion that there was no compliance of the mandatory requirements of Section 147 and 151(2) notice reopening the assessment cannot be sustained in law.”

28. Apart from that, we find that the **Hon’ble High Court of Delhi in Commissioner of Income Tax-8 (Erstwhile CIT-III) vs. Soyuz Industrial Resources Ltd (2015) 58 taxmann.com 336 (Delhi)** had observed that where the reassessment proceedings were initiated after expiry of 4 years from the end of the relevant assessment year, sanction for issuance of notice for reassessment proceedings was to be granted by Joint Commissioner of Income Tax and not by Commissioner of Income Tax as per the provisions of section 151(2) of the Act. The Hon’ble High Court while rejecting the claim of the revenue that a Commissioner or a Chief Commissioner of Income Tax is unarguably ranked higher than the Joint Commissioner of Income Tax, the plain words of the statute unambiguously stated that the competent authority from whom the approval is to be obtained is the Joint Commissioner of Income Tax (and not the Chief Commissioner or the Principal Commissioner of Income Tax), therefore, now when the statute mandates that something is to be done in a particular manner, the same without any choice should be in that manner or not at all.

29. Also, our aforesaid view that now when the statute cast a mandatory obligation for seeking an approval from the Joint Commissioner of Income Tax, then, the same has to be granted by the

said authority alone is justified by the judgment of the **Hon'ble Supreme Court** in the of **Union of India vs. Rajeev Bansal (2024) 469 ITR 46 (SC)**. In the said case, it was observed by the Hon'ble Apex Court that if a statute expressly confers a power or imposes a duty on a particular authority, then such power or duty must be exercised or performed by that authority itself. Elaborating further, it was observed that the exercise of power by the statutory authorities inconsistent with the statutory prescription is invalid.

30. We thus, in terms of our aforesaid deliberations concur with the Ld. AR that as the Assessing Officer, i.e., Income Tax Officer-9(1)-2, Mumbai had issued the notice under section 148 of the Act, dated 30/03/2010 without obtaining the approval of the appropriate authority, i.e., Joint Commissioner of Income Tax, and had initiated the impugned proceedings based on the approval taken from the Commissioner of Income Tax-9, Mumbai who was not vested with of any jurisdiction for granting the said approval, therefore, the impugned proceedings and the consequential assessment order passed by the Assessing Officer under section 147 r.w.s 144C of the Act, dated 16/03/2012 cannot be sustained and is liable to be quashed for want of valid assumption of jurisdiction. The **Ground of appeal No.3** is allowed in terms of our aforesaid observations.

31. As we have quashed the impugned assessment for want of valid assumption of jurisdiction on the part of the Assessing Officer, therefore, we refrain from adverting to and adjudicating the other grounds of appeal based on which the validity of the reassessment and the impugned additions made by the Assessing Officer have been assailed before us, which, thus, are left open.

32. Resultantly, the appeal filed by the assessee company is allowed in terms of our aforesaid observations.

Order pronounced in the open court on 04<sup>th</sup> February, 2026.

<b>Sd/-</b> <b>(मधुसूदन सावडिया)</b> <b>(MADHUSUDAN SAWDIA)</b> <b>लेखासदस्य/ACCOUNTANT MEMBER</b>	<b>Sd/-</b> <b>(रवीश सूद)</b> <b>(RAVISH SOOD)</b> <b>न्यायिकसदस्य/JUDICIAL MEMBER</b>
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Hyderabad, dated: 04/02/2026.  
OKK/sps

**आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to:-**

1.	निर्धारित/ The Assessee	:	BA continuum India Private Limited, Building No.5, Mindspace-Raheja IT Park, Hitech City, Madhapur, Telangana-500081.
2.	राजस्व/ The Revenue	:	Dy. Commissioner of Income Tax, Circle-1(1), B-Block, 7 <sup>th</sup> Floor, IT Towers, AC Gua4rds, Masab Tank, Telangana-500004.
3.	The Principal Commissioner of Income Tax, Hyderabad.		
4.	विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण /DR,ITAT, Hyderabad.		
5.	The Commissioner of Income Tax		
6.	गार्डफाईल / Guard file		

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Hyderabad.