

IN THE INCOME TAX APPELLATE TRIBUNAL “ D ” BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT AND
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER

ITA No. 7007/Mum/2025
(Assessment Year: 2017-18)

Devanshi Sharma Sagar Jyoti, Plot No. 18, 6 th Road, JVPD Scheme, Vile Parle (W), Mumbai-400 056	Vs.	ITO, Ward 34(1)(1) 216, 2 nd Floor, Kautaliya Bhawan, G-Block, Bandra Kurla Complex, Bandra (E), Mumbai-400 051
PAN/GIR No. CMVPK 6007 Q		
(Appellant)	:	(Respondent)
Appellant by	:	Shri Shashank Mehta
Respondent by	:	Shri Annavaram Kosuri
Date of Hearing	:	05.02.2026
Date of Pronouncement	:	10.02.2026

ORDER

Per Saktijit Dey, Vice President:

This is an appeal by the assessee against order dated 27.10.2025, passed by National Faceless Appeal Centre (‘NFAC’ for short), Delhi for the assessment year (A.Y. for short) 2017-18.

2. In ground no. 1, the assessee has raised a pertinent legal issue, challenging the validity of the order passed u/s. 148A(d) of the Income Tax Act, 1961 (‘the Act’ for short) as also the notice issued u/s. 148 of the Act. Since, the aforesaid issue raised by the assessee is a purely legal and jurisdictional issue going to the root of the matter and affecting the validity of the proceedings initiated u/s. 147 of the Act, we are inclined to address the issue at the very outset.

3. For deciding this issue, few relevant facts need to be discussed. The assessee is a resident individual. For the assessment year under dispute, the assessee had filed her return of income on 01.08.2017, declaring income of Rs.8,24,000/-.

4. Subsequently, the Assessing Officer (A.O. for short) noticed that in the return of income filed for the impugned assessment year, the assessee had offered Long Term Capital Gain ('LTCG' for short) against sale consideration of Rs.1,44,59,603/-, received on sale of shares of M/s. Kushal Limited, listed with Bombay Stock Exchange (BSE for short) and claimed exemption u/s. 10(38) of the Act. As per the report of the Investigation Wing, M/s. Kushal Limited is used to facilitate introduction of unaccounted income of beneficiaries in the form of exempt Short Term Capital Gain ('STCG' for short) or Short Term Capital Loss ('STCL' for short). Based on such information, the A.O. reopened the assessment u/s. 147 of the Act under the old regime by issuing a notice u/s. 148 of the Act on 28.04.2021. By virtue of the decision of Hon'ble Supreme Court in case of *Union of India & Ors v Ashish Agarwal* (in Civil Appeal No. 3005/ 2020), the said notice was treated as a show cause notice u/s. 148A(b) of the Act under the new regime. In response to the said show cause notice, the assessee furnished its reply. After considering the reply of the assessee, the A.O. passed an order u/s. 148A(d) of the Act., as also issued a notice u/s. 148 of the Act on 29.07.2022, after obtaining approval of Principal Commissioner of Income Tax (PCIT)-17, Mumbai. Ultimately, the A.O. passed the order of assessment on 16.05.2023, determining the total income at Rs.1,52,83,803/-, after adding back the sale consideration received from the sale of shares of M/s. Kushal Limited, by treating it as fictitious LTCG.

5. Against the assessment order so passed, the assessee preferred an appeal before the first appellate authority *inter alia* on the ground that the assessment order is invalid due to lack of proper sanction in terms of section 151 of the Act for issuance of order u/s. 148A(d) of the Act and notice u/s. 148 of the Act.

6. Ld. First appellate authority, however, rejected the submissions of the assessee on the issue and upheld the validity of reopening of assessment.

7. Before us, ld. Counsel appearing for the assessee submitted that in terms with section 151(ii) of the Act, the competent authority who can grant approval/sanction for passing order u/s. 148A(d) of the Act and issuing notice u/s. 148 of the Act, after expiry of more than three years from the end of the relevant assessment year is the Principal Chief Commissioner of Income Tax (PCCIT for short). Whereas, he submitted, the A.O. has passed the order u/s. 148A(d) of the Act and issued notice u/s. 148 of the Act after obtaining approval/sanction of PCIT. Thus, he submitted, due to lack of proper sanction, the entire proceeding is vitiated. Hence, the assessment order should be quashed. In support of such contention, ld. Counsel relied upon the following decisions:

- 1) *Alag Property Construction (P.) Ltd. vs. ACIT* [2025] 179 taxmann.com 578 (Bom)
- 2) *Jay Rajesh Kedia vs. ITO* (in ITA No. 6565/Mum/2024 vide order dated 31.07.2025)

8. Ld. Departmental Representative (ld. DR for short) strongly relied upon the observations of ld. first appellate authority.

9. We have considered rival submissions in light of the judicial precedents cited before us and perused the materials on record. There is no dispute between the parties that the order u/s. 148A(d) of the Act was passed on 29.07.2022. It is also undisputed that the notice

u/s. 148 of the Act was issued on 29.07.2022. Admittedly, both, the order u/s. 148A(d) and notice u/s. 148 of the Act were issued after expiry of three years from the end of the assessment year under dispute. A careful perusal of the order passed u/s. 148A(d) of the Act and notice issued u/s. 148 of the Act, clearly reveals that they were issued after obtaining prior approval of PCIT-17. Whereas, section 151(ii) of the Act mandates that after expiry of three years from the end of the relevant assessment year, action can be taken u/s. 148A(d) and 148 of the Act, after obtaining approval/sanction of PCCIT or Principal Director General of Income Tax or Chief Commissioner of Income Tax or Chief Director General of Income Tax. In the facts of the instant case, approval/sanction for taking action u/s. 148A(d) and 148 of the Act have not been taken from the authorities mentioned in section 151(ii) of the Act. Thus, it needs to be examined in what way lack of sanction of competent authority will affect the validity of the proceeding u/s. 147 of the Act. In case of *Alag Property Construction (P.) Ltd.* (supra), the Hon'ble Jurisdictional High Court (supra), while dealing with identical nature of dispute has held as under:

"7. In these facts, the limited point to be examined is whether the order dated 18/08/2022 passed under section 148A(d) and the notice dated 23.08.2022 issued under section 148 of the Act for A.Y. 2017-18, after obtaining approval of Respondent No.2 [i.e. the PCIT-6, Mumbai], was in accordance with the provisions of section 151. In this regard, the Petitioner has drawn our attention to the decision of Hon'ble Supreme Court in the case of *Union of India v. Rajeev Bansal* [2024] 167 taxmann.com 70 (SC)/[2024] 301 Taxman 238 (SC)/[2024] 469 ITR 46 (SC). The Hon'ble Supreme Court, while dealing with the issue of approval of the specified authority in terms of Section 151 of the Act, made the following observations:

"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 assessee from harassment resulting from the mechanical reopening of assessments. (*Sri Krishna Pvt. Ltd v. ITO* [(1996) 221 ITR 538 (SC); (1996) 9 SCC 534.]) 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 relevant assessment year	Principal Chief Commissioner or Chief 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

74. 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.

75. After April 1, 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 *Union of India v. Ashish Agarwal* [[2022] 138 taxmann.com 64 (SC)/[2022] 286 Taxman 183 (SC)/[2022] 444 ITR 1 (SC); (2023) 1 SCC 617.], after April 1, 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.

76. 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 relevant 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.

77. Parliament enacted *Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020* to ensure that the interests of the Revenue are not defeated because the Assessing Officer could not comply with the preconditions due to the difficulties that arose during the covid-19 pandemic. Section 3(1) of the *Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020* relaxes the time limit for compliance with actions that fall for completion from March 20, 2020 to March 31, 2021. The *Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020* will accordingly extend the time limit for the grant of sanction by the authority

specified under section 151. The test to determine whether Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 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 March 20, 2020 and March 31, 2021, then the specified authority under section 151(i) has an extended time till June 30, 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 March 20, 2020 and March 31, 2021, then the specified authority under section 151(2) has time till March 31, 2021 to grant approval. The time limit for section 151 of the old regime expires on March 31, 2021 because the new regime comes into effect on April 1, 2021.

78. For example, the three-year time limit for the assessment year 2017-2018 falls for completion on March 31, 2021. It falls during the time period of March 20, 2020 and March 31, 2021, contemplated under section 3(1) of the Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020. Resultantly, the authority specified under section 151(i) of the new regime can grant sanction till June 30, 2021.

79. Under the Finance Act, 2021 ((2021) 432 ITR (Stat) 52), the Assessing 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 ([2022] 442 ITR (Stat) 91) [Section 45, 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.

80. In *Union of India v. Ashish Agarwal* [[2022] 138 taxmann.com 64 (SC)/[2022] 286 Taxman 183 (SC)/[2022] 444 ITR 1 (SC); (2023) 1 SCC 617.], this court directed that section 148 notices which were challenged before various High Courts "shall be deemed to have been issued under section 148A of the Income-tax Act as substituted by the Finance Act, 2021 ((2021) 432 ITR (Stat) 52) and construed or treated to be show-cause notices in terms of section 148A(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) notices. It is well established that this court while exercising its jurisdiction under article 142, is not bound by the procedural requirements of law. (*High Court Bar Association, Allahabad v. State of Uttar Pradesh* [(2024) 6 SCC 267.])

81. This court in *Union of India v. Ashish Agarwal* [[2022] 138 taxmann.com 64 (SC)/[2022] 286 Taxman 183 (SC)/[2022] 444 ITR 1 (SC); (2023) 1 SCC 617.] directed the Assessing Officers to "pass orders in terms of section 148A(d) in respect of each of the assessee 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

148A". 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 the Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, where applicable.

(emphasis supplied)

8. On bare reading of the above extract of the judgment of the Hon'ble Supreme Court in the case of *Rajeev Bansal* (supra), we find that the Hon'ble Supreme Court had clarified as under:

(a)	Under the substituted provisions of re-assessment as introduced by the Finance Act, 2021, the Assessing Officer is required to obtain prior approval or sanction of the 'specified authority' at four stages - at the first stage under Section 148A(a), at the second stage under Section 148A(b), at the third stage under Section 148A(d), and at the fourth stage under Section 148. In the case of <i>Ashish Agarwal</i> (supra) the Hon'ble Supreme Court waived off the requirement of obtaining prior approval under section 148A(a) and Section 148A(b) of the Act only. 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 for issuing a notice under Section 148.
(b)	Under the new regime, if income escaping assessment is more than Rupees 50 lakhs, a reassessment notice could be issued after the expiry of three years from the end of the relevant previous year only after obtaining the prior approval of the Principal Chief Commissioner or the Principal Director General or the Chief Commissioner or the Director General.
(c)	Section 151(ii) of the new regime prescribes an approval of a higher authority, if more than three years have elapsed from the end of the relevant assessment year. Thus, non-compliance by the assessing officer with the strict time limits prescribed under section 151 vitiates their jurisdiction to issue a notice under section 148.
(d)	Grant of sanction by the specified authority is a precondition for the assessing officer to assume jurisdiction under section 148 to issue a reassessment notice.

9. In the present case, the period of three years from the end of the A.Y. 2017-18 fell for completion on 31st March 2021. As the expiry date fell during the time period of 20th March 2020 and 31st March 2021, under Section 3(1) of the 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 only till 30th June 2021.

10. On perusal of the order dated 18.08.2022, 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, as well as the notice under section 148 was issued, after the expiry of three years from the end of A.Y. 2017-18, 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.

11. The Hon'ble Supreme Court in the above case has drawn an illustration in para 78 of its order in the context of A.Y. 2017-18 (which is also the relevant Assessment year in the present Writ Petition) wherein it is categorically held that the authority specified under section 151(i) can

accord sanction only upto 30.06.2021. This illustration makes it absolutely clear that when the period of three years from end of relevant Assessment Year expired between 20.03.2020 and 31.03.2021, the extension by virtue of TOLA was upto 30.06.2021 and not beyond. Thus, it can be said that the period of three years from the end of the relevant Assessment Year (in the present case A.Y. 2017-18) expired on 30.06.2021, whereas Respondent No.1, despite passing order under section 148A(d) on 18.08.2022, and issuing notice under section 148 on 23.08.2022 [in respect of Assessment Year 2017-18], has obtained approval of Respondent No.2 who is not the authority as prescribed under section 151(ii).

12. *Non-compliance by Respondent No.1 with the provisions contained in Section 148A(d) read with Section 151(ii) vitiates the jurisdiction of Respondent No.1 to issue a notice under Section 148 of the Act.*

13. *We are clearly of the view that the present matter stands covered by the decision of Hon'ble Supreme Court in the case of Rajeev Bansal (supra) and we are bound by it. Accordingly, we hold that the order dated 18.08.2022 passed under Section 148A(d) of the Act and the consequential notice issued under section 148 dated and 23.08.2022 are bad in law, and hence, are required to be quashed and set aside.*

14. *We accordingly set aside the impugned order dated 18.08.2022 passed under Section 148A(d) of the Act and the consequential notice issued under section 148 dated 23.08.2022, and all other proceedings/orders emanating therefrom."*

10. The ratio laid down by Hon'ble Jurisdictional High Court, noted above, would apply in full force to the facts of the present appeal as well, as it relates to the very same A.Y. 2017-18. The proviso u/s. 151 of the Act introduced w.e.f. 01.04.2023, since will apply prospectively, will not come to the rescue of the department.

11. Thus, respectfully following the binding ratio of Hon'ble Jurisdictional High Court in the cited judicial precedent (supra), we hold that the order passed u/s. 148(d) of the Act and notice issued u/s. 148 of the Act are invalid due to lack of proper sanction. Hence, the consequential proceeding based on such order /notice would also be without jurisdiction, hence, invalid. Accordingly, we quash the impugned assessment order. The order passed by the first appellate authority is set aside.

12. Since, the appeal is decided on this primarily issue, rest of the grounds raised by the assessee, being of academic nature, do not require adjudication for the present, hence, kept open.

13. In the result, the appeal is allowed as indicated above.

Order pronounced in the open court on 10.02.2026

Sd/-

(Makarand V. Mahadeokar)
Accountant Member

Mumbai; Dated : 10.02.2026

Roshani, Sr. PS

Sd/-

(Saktijit Dey)
Vice President

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai