IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI

BEFORE SMT. BEENA PILLAI (JUDICIAL MEMBER)
&
SHRI JAGADISH (ACCOUNTANT MEMBER)

I.T.A. No. 7945/Mum/2025
Assessment Year: 2017-18

Adarsh Developers B/1, Sukhsagar Co.op Hsg. Soc. Golibar Road Santacruz (E) Mumbai - 400055 **[PAN: AANFM3760A]**	Vs.	**ITO, Ward-22(3)(1), Mumbai**
(Appellant)		**(Respondent)**

Assessee by	Shri Prakash Jhunjhunwala & Shri Saiprasad Ghosh, A/Rs
Revenue by	Shri Limbasiya Kavan Nareshkumar, Sr. DR

Date of Hearing	10.02.2026
Date of Pronouncement	16.02.2026

ORDER

Per Smt. Beena Pillai, JM:

The present appeal filed by the assessee arises out of the order dated 23/10/2025 passed by the NFAC, Delhi [hereinafter the "Ld.CIT(A)"] for A.Y. 2017-18 on following grounds of appeal:-

"1. On the facts and circumstances of the case and in law, the learned CIT(A)NFAC has erred in dismissing the appeal ex-parte, without providing adequate opportunity of being heard and without considering the written submissions on record, thereby violating the principles of natural justice. The order passed is bad in law and liable to be quashed.

2. The learned CIT(A) erred in summarily upholding the additions without adjudicating the specific grounds and submissions filed, particularly regarding valuation, FMV, and correctness of invoking Section 50C. The order is non-speaking, mechanical, and deserves to be set aside.

3. On the facts and circumstances of the case and in law, the learned CIT(A) erred in upholding the addition of R69,40,767/- under Section 50C without appreciating that the assessee had disputed the stamp duty valuation and had submitted a valuation report, thereby obligating the AO to make a reference to DVO under Section 50C(2).

4. The learned CIT(A) erred in upholding the Section 50C addition without considering the valuation report submitted by the appellant demonstrating that the stamp duty value did not represent the correct fair market value.

5. The learned CIT(A) erred in confirming the addition of R2,42,590/- towards estimated gross profit without granting any opportunity, without any basis, and without any discussion

6. The learned CIT(A) erred in holding that the AO had considered the assessee replies, whereas the AO had ignored the detailed submissions filed by the appellant during reassessment, thereby rendering the assessment order perverse, arbitrary and contrary to law.

7. The learned CIT(A) erred in upholding the reassessment order u/s 147 when:

(a) there was no failure to disclose material facts,

(b) the reasons recorded were incorrect and based on mere

"information", and

(c) the reopening was based on change of opinion and without any tangible material.

8. Stamp Duty Value Cannot Be Adopted when Property is Stock-in-Trade. Without prejudice, the learned authorities failed to appreciate that the property sold represented stock-in-trade of the construction business, and therefore Section 50C is not applicable.

9. The appellant craves leave to add, alter or amend any of the grounds at the time of hearing.

2. Assesse has also raised additional grounds challenging the validity of notice u/s 148 and the consequent re-assessment proceedings, which are as under:-

"1.0 On facts and circumstances of the case and in Law, the notice issued u/s.148 and order passed u/s 148A(d) are bad in law, since had been issued in violation of 1st Proviso to Sec 149(1), thereby the notice issued u/s 148 and consequential reassessment order passed u/s 147 are bad in law;

2.0 On facts and circumstances of the case and in law, the notice issued u/s.148 after lapse of 3 years is bad in law, since had been issued without obtaining the approval from Specified authority viz. Pr. CCIT prescribed u/s. 151(ii), thereby violating the law settled by Hon'ble Apex Court in the case of UOI vs. Rajeev Bansal (167 taxmann.com 70);

3.0 On facts and circumstances of the case and in law, the order passed u/s 148A(d) and notice issued u/s.148 is bad-in-law, since had not been issued by Faceless Assessing Officer (FAO) and been issued by

Jurisdictional Assessing Officer (JAO), on violating the provision of Sec. 151A of the Act;

The appellant craves leave to add, amend, alter and/or withdraw any of the grounds of appeal at the time of hearing."

2.1. After hearing both sides and considering the nature of the additional grounds, the *Tribunal* finds that the same are purely legal in nature and do not require investigation of any fresh facts. The *Hon'ble Supreme Court* in the case of *NTPC Ltd. v. CIT* reported in *(1998) 229 ITR 383 (SC)* and in the case of *Jute Corporation of India Ltd. v. CIT* reported in *(1991) 187 ITR 688 (SC)* has held that an appellate authority is empowered to admit additional grounds involving question of law arising from facts already on record. Respectfully following the aforesaid decisions and considering that the additional grounds go to the root of the matter, the additional grounds raised by the assessee are admitted for adjudication.

3. <u>Brief facts of the case are as under</u>:

The assessee is a partnership firm engaged in the business of real estate development. For A.Y. 2017–18, the assessee filed its return of income declaring Nil income. Based on information available on record, the Ld. AO noticed that the assessee had sold two immovable properties during the year for a total consideration of ₹72,85,000, whereas the value adopted by the Stamp Duty Authority was ₹1,42,25,767. Accordingly, it was alleged that the assessee had not offered the differential amount of ₹69,40,767 to tax. Consequently, notice u/s 148 of the Act was issued and reassessment proceedings were initiated. During the reassessment proceedings, the assessee submitted that the properties had been sold in earlier financial years and that the agreements were registered in F.Y. 2016–17. However, the Ld. AO observed that the

assessee failed to furnish adequate documentary evidence regarding the year of sale and bifurcation of transactions. The Ld. AO held that the provisions of section 43CA were applicable and that the difference between the stamp duty value and the declared consideration represented income chargeable to tax. The Ld. AO further observed that the assessee had not properly disclosed the sales in its return and, treating the sale consideration of ₹72,85,000 as undisclosed sales, estimated gross profit at 3.33% based on the audit report and made an addition of ₹2,42,590. In addition, the difference between the stamp duty value and the declared consideration amounting to ₹69,40,767 was added as deemed income u/s 43CA. The reassessment was completed u/s 147 r.w.s. 144B determining the total income at ₹71,83,357.

Aggrieved by the order of Ld.AO, assessee preferred an appeal before the Ld. CIT(A).

4. The Ld.CIT(A) passed an *ex-parte* order holding that in view of the provisions of section 50C of the Act, the stamp duty value adopted by the Stamp Valuation Authority is required to be treated as the deemed full value of consideration for the purpose of computation of income. That, in the present case, the assessee sold two immovable properties for ₹72,85,000, whereas the stamp duty value was ₹1,42,25,767. Since the assessee failed to offer the differential amount of ₹69,40,767 to tax and did not claim that the stamp duty value exceeded the fair market value or seek a reference to the Valuation Officer, the Assessing Officer was justified in mandatorily adopting the stamp duty value. The Ld.CIT(A) further observed that the assessee had responded to notices during reassessment proceedings and the Assessing

Officer completed the assessment after considering the replies. No contrary material or fresh evidence was produced by the assessee during appellate proceedings to rebut the findings of the Assessing Officer. Accordingly, the addition of ₹69,40,767 on account of difference between the sale consideration and stamp duty value was upheld. The Ld.CIT(A) also sustained the addition of ₹2,42,590 being gross profit estimated at 3.33% on undisclosed sales of ₹72,85,000, noting that the assessee had not raised any specific ground or argument challenging this addition. The Ld.CIT(A) dismissed the appeal of the assessee.

Aggrieved by the order of Ld.CIT(A), the assessee is in appeal before this *Tribunal.*

5. The Ld.AR submitted that, assessee raised legal issue vide Ground Nos. 2 - 3, challenging the validity of the notice issued u/s 148 of the Act under the new regime for reopening of the assessment. He submitted that original notice u/s 148 issued under the old regime was dated 30/06/2021, to reopen the assessment. Thereafter, the said notice was treated as a deemed notice as per the decision of the *Hon'ble Supreme Court* in the case of *Union of India vs Ashish Agrawal*, reported in *(2022) 444 ITR 1.* The Revenue after following the procedure as per the new regime u/s 148A issued notice u/s 148 of the Act on 29/07/2022, which was approved by the Principal Commissioner of Income Tax–20, Mumbai. The Ld.AR submitted that the notice issued under section 148A(b) and the order passed u/s 148A(d) of the Act are beyond three years.

4.1. The Ld. AR submitted that in present facts, the appropriate authority who has to approve the issuance of notice u/s 148 of the new regime, as per section 151 of the Act, would be the Principal Chief Commissioner of Income Tax or the Chief Commissioner of Income Tax. The Ld. AR placed reliance on the decision of the *Hon'ble Supreme Court* in the case of *Union of India v. Rajeev Bansal*, reported in *[2024] 469 ITR 46,* wherein it has been held that the sanctioning authority has to be in accordance with the provisions of section 151 of the Act, based on the new provisions u/s 148A of the Act.

4.2. On the contrary, the Ld. DR relied on the orders passed by the authorities below.

I have perused the submissions advanced by both sides in the light of the records placed before this *Tribunal*.

5. The limited issue that has been raised by the assessee is to examine whether the notice issued u/s 148 of the Act under the new regime dated 29/07/2022, based on the order passed u/s 148A(d) passed on the even date, is after obtaining approval of the appropriate authority, in accordance with the provisions of section 151 of the Act.

5.1. The Ld. AR relied on the following observations from the decision of the Hon'ble Supreme Court in the case of *Union of India v. Rajeev Bansal* (supra):

> *"iii. Sanction of the specified authority*
>
> *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 assessees from harassment resulting from the mechanical reopening of assessments Sri krishna (P.) Ltd. v. ITO [1996] 87 Taxman 315/221 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 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.

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 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 20th March 2020 to 31st 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 20th March 2020 and 31st March 2021, then the specified authority under section 151(i) has an extended time till 30th 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 20th March 2020 and 31st March 2021, then the specified authority under section 151(2) has time till 31st March 2021 to grant approval.

The time limit for Section 151 of the old regime expires on 31st March 2021 because the new regime comes into effect on 1st April 2021.

78. For example, the three year time limit for assessment year 2017-2018 falls for completion on 31st March 2021. It falls during the time period of 20th March 2020 and 31st 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 30th June 2021.

79. Under Finance Act 2021, 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;

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 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 High Court Bar Association v. State of UP [2024] 160 taxmann.com 32/299 Taxman 21 (SC)/[2024] 6 SCC 267.

81. 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."

5.1.1. On a bare reading of the above extract from the decision, it is noted that under the new provisions of Section 148A introduced by the Finance Act, 2021, the Ld. AO is required to obtain prior approval or sanction of the specified authority at four stages, namely:-

a. Section 148(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.

5.2. Thus, the Ld. AO was required to obtain prior approval of the specified authority u/s 151 of the Act under the new regime before passing an order under section 148A(d) and issuing a notice u/s 148 of the Act.

5.3. The appropriate authority who could sanction the said notice, issued beyond a period of three years, should have been the Principal Chief Commissioner or the Principal Director General or the Chief Commissioner or the Director General. In the present facts of the case, the said notice has been approved by the Principal Commissioner, which does not satisfy the condition prescribed under section 151(ii)(b) of the Act.

6. This Tribunal is, thus, of the opinion that non-compliance with the provisions of section 151 renders the notice issued under section 148 of the Act dated 29/07/2022 to be bad in law and, hence, the same deserves to be quashed and set aside. As a

consequence, the reassessment proceedings initiated thereafter also become bad in law.

Accordingly, Ground Nos. 2-3 stand allowed.

As the assessment proceedings stand quashed, the issues raised by the assessee on merits become academic at this stage.

In the result, the appeal filed by the assessee stands allowed.

Order pronounced in the open court on 16/02/2026

Sd/-	***Sd/-***
(JAGADISH)	**(BEENA PILLAI)**
Accountant Member	**Judicial Member**

Mumbai
Dated: 16/02/2026
SC Sr. P.S.

Copy of the order forwarded to:

(1)The Appellant
(2) The Respondent
(3) The CIT
(4) The CIT (Appeals)
(5) The DR, I.T.A.T.

True Copy
By order

(Asstt. Registrar)
ITAT, Mumbai