IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI RAHUL CHAUDHARY (JUDICIAL MEMBER)

ITA No. 2559/MUM/2025
Assessment Year: 2018-19

Shailesh Asalraj Jain, 904, 9th floor, Rushabh Tower, Tarabaug Compound, Lovelane, Mazgaon, Mumbai-400010. **PAN NO. AACPJ 2952 N** **Appellant**	***Vs.***	Pr. CIT, Mumbai 20, Room No. 418, 4th floor, Piramal Chambers, Lalbaug, Parel, Mumbai-400012. **Respondent**

Assessee by	:	Mr. Devendra Jain
Revenue by	:	Mr. Solgy Jose T. Kottaram, CIT-DR

Date of Hearing	:	03/12/2025
Date of pronouncement	:	24/02/2026

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against the revisionary order dated 31.03.2025 passed by the Ld. Principal Commissioner of Income-tax -20, Mumbai [in short the Ld. 'PCIT'] for assessment year 2018-19, raising following grounds:

> *1. The Principal Commissioner of Income Tax - 20, Mumbai (hereinafter referred to as PCIT) erred in passing the order under Section 263 of the I.T. Act, 1961 ('the act') and remitting the matter back to the Income- tax Officer (hereinafter referred to as*

the 'AO') for de-novo consideration and pass a speaking assessment order in accordance with the Act.

The Appellant submits that the order passed by the PCIT u/s 263 of the Act is bad in law, illegal, ultra-virus, in excess of and/or in want of jurisdiction and otherwise void as no valid order of the AO was passed in the case of the Appellant to justify the revision proceedings by the PCIT.

2. The PCIT erred in holding that that the AO did not make any detailed inquiry and verification which should have been made to examine the issue of escapement of income and that the action of dropping of the proceedings by the AO before allocation of the case to the Faceless Assessing Officer by the DGIT (Systems) as per the SOPs issued on various dates is erroneous and prejudicial to the interest of the revenue.

The Appellant submits that he had submitted all the detailed facts along with supporting evidences pertaining to the issue pursuant to the Notice under Section 148A(b) of the Act and also after initiation of reassessment proceedings under Section 147 of the Act. The Appellant further submits that the dropping of the proceedings by the AO (as mentioned in your Notice) cannot be termed as erroneous or prejudicial to the interest of the revenue so as to attract provisions of Section 263 of the Act since all the details / evidences / supporting were on record and the AO has applied his mind, deliberated, and considered the issue in the light of the material available with him and has then reached a finding for not taking any further action in the reassessment proceedings / or dropping the same (as intimated by the AO).

2. Before us, the assessee also raised additional legal grounds challenging the very validity of the reassessment proceedings, inter alia, contending that:

1. On the facts and circumstances of the case of the Appellant and in law, the Principal Commissioner of Income Tax - 20, Mumbai ['PCIT'] erred in assuming jurisdiction and passing the order under Section 263 of the I.T. Act, 1961 without appreciating and inspite of the fact that the reassessment proceeding u/s 148 of the Act undertaken in the case of Appellant itself is bad in law, without jurisdiction and ultra-vires to the provisions of the Act and hence no proceeding u/s 263 of the Act can be initiated in the case of the Appellant.

2. On the facts and circumstances of the case of the Appellant and in law, the PCIT erred in assuming jurisdiction and passing the order under Section 263 of the Act without appreciating and inspite of the fact that there is no valid order existing or passed by the AO which can be subjected to revision u/s 263 of the Act; hence in absence of a valid order by the AO, assumption of jurisdiction and order passed by the PCIT is bad in law, without jurisdiction and ultra-vires to the provision of the Act and same shall be quashed.

3. Since the additional grounds raised by the assessee are purely legal in nature, go to the root of jurisdiction, and require no fresh investigation of facts, the same were admitted for adjudication.

4. Briefly stated, facts of the case are that the assessee filed return of income for the year under consideration on 03.10.2018 declaring total income at Rs.7,04,780/-. Subsequently, information was received through the Insight Portal indicating that the assessee had, during a statement recorded on oath before the Investigation Wing, Mumbai admitted ownership of gold jewellery weighing **3281.5 grams**, valued at approximately Rs. **90,00,000/-**, without supporting documentary evidence. On the basis of such information, proceedings under the amended reassessment regime were initiated. An order under section **148A(d)** was passed, followed by issuance of notice under section **148** on **19.04.2022**.

4.1 In response, the assessee filed a return reiterating the income originally declared. The ld PCIT, upon examination of records, observed that the Jurisdictional Assessing Officer (JAO) had dropped the reassessment proceedings without conducting enquiry

and even prior to allocation under the Faceless Assessment Scheme by the DGIT system as per standard operating procedure (SOP) issued on various dates in regard to reassessment proceedings. Holding such action to be erroneous and prejudicial to the interests of the Revenue, the Principal Commissioner invoked section **263** and set aside the reassessment proceedings for fresh consideration observing as under:

> *"7. The above explanation at clause (c) clearly provides that the instruction by the Board u/s 119 has to be complied with. The contention of the assessee that he had furnished the response before the JAO which was considered for dropping the assessment proceeding by the JAO is however not in accordance with the Faceless Assessment Scheme introduced w.e.f. 13.08.2020 and therefore, the dropping of assessment proceeding is erroneous and prejudicial to the interest of revenue. Further, it is also noted that the AO did not issue notice u/s 133(6), notice u/s 142(1), summons u/s 131 and did not make any detailed inquiry and verification which should have been made to examine the issues of escapement of income.*
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> *8. In view of the above discussion from Para 1 to 7, it is evident that this is a case where the assessing officer has without application of mind and without making any enquiry or verifying the details of the case and before allocation of the case to the Faceless Assessing Officer by the DGIT(Systems) as per the SOPs issued on various dates by the DGIT(Systems), dropped the proceedings on the ITBA portal. The action of dropping of the proceedings by the JAO without verifying the fact of the case before allocation of the case to the Faceless Assessing Officer by the DGIT(Systems) as per the SOPs issued on various dates is erroneous and prejudicial to the interest of the revenue. Therefore, in exercise of the powers conferred upon the undersigned under Section 263 of the Income-tax Act, 1961, the order of the AO dropping the proceedings on the ITBA is hereby set aside. The matter is remitted back to the AO for de- novo consideration to undertake a detailed inquiry and verification in this case and pass speaking assessment order in accordance with the Income Tax act, 1961 by following extant SOPs in this regard after giving due opportunity of being heard to the assessee."*

5. The primary legal contention advanced by the assessee in additional ground is that the notice under section **148** was issued without sanction from the competent authority as mandated under section **151** of the Act. The Ld. counsel for the assessee referred to page 72 and submitted that the notice under section 148 was issued beyond **three years** from the end of the relevant assessment year, therefore, sanction ought to have been obtained from the **Principal Chief Commissioner of Income-tax (PCCIT)** or **Chief Commissioner of Income-tax (CCIT)** in terms of section **151(ii)** as existed during the relevant period, however, approval was obtained from the **Principal Commissioner of Income-tax (PCIT)**-20, Mumbai, who was not the specified authority for such cases. According to him the approval obtained from wrong authority has vitiated entire reassessment proceedings

5.1 The Ld. counsel for the assessee referred to the decision of the Co-ordinate Bench of the Tribunal in the case of Shabbir Taheri in ITA No. 1574/Mum/2025 for assessment year 2018-19 wherein the Hon'ble Vice President concurred with the Ld. AM and passed a separate order explaining as from whom the approval u/s 151 of the Act should have been taken. In said case also, the assessment year involved is AY 2018-19 which is in the case of the present appeal.

5.2 On the contrary, the Departmental Representative (DR) submitted that approval had been granted as per the rules and the

assessee cannot be allowed to rack up the issue of reassessment in the proceeding u/s 263 of the Act.

6. We have heard rival submissions of the parties and perused the relevant materials on record. The objection raised by the Revenue that the validity of reassessment cannot be examined in proceedings arising from section 263 is devoid of merit. It is well-settled that a jurisdictional defect strikes at the foundation of proceedings and can be examined at any stage. In the case proceedings u/s 148 of the Act was dropped by the Assessing Officer and therefore, there was no occasion for the assessee to challenge said proceedings before appellate authority and only opportunity got to challenge said proceedings u/s 148 in the present proceedings u/s 263 of the Act.

6.1 In the present case, it is undisputed that the notice under section **148** was issued on **19.04.2022**, i.e., beyond three years from the end of assessment year **2018-19**., Under section **151**, as it stood at the relevant time, where more than three years had elapsed from the end of the relevant assessment year, prior sanction was required from the **PCCIT / CCIT**. The assessee relied on the finding of the Co-ordinate Bench of the Tribunal in the case of Shabbir Taheri (supra) wherein the Hon'ble Vice President in his separate order has observed as under:

> *"4. At this stage, it is necessary to examine the provisions contained u/s. 149 of the Act. Prior to its substitution by Finance Act, 2021*

effective from 01.04.2021, sub section (1) of Section 149 of the Act provided that no notice u/s. 148 shall be issued for the relevant assessment year after expiry of four years from the end of the relevant assessment year. However, it further provided that in a case where the quantum of escaped income is Rs.1,00,000/- or more, instead of four years, six years limitation would be available. It further provided that if the escaped income relates to any asset located outside India, the limitation would get extended to sixteen years. The aforesaid provision was substituted by Finance Act 2021 w.e.f. 01.04.2021. As per section 149(1) of the Act under the new regime, no notice u/s. 148 of the Act shall be issued for the relevant assessment year if three years have elapsed for the relevant assessment year. However, in a case where the income escaping assessment is Rs.50,00,000/- or more then the limitation for issuance of notice u/s. 148 of the Act will get extended to ten years. The third proviso to Section 149(1) of the Act provided that for the purpose of computing the period of limitation, the time or extended time allowed to the assessee as per show cause notice issued u/s. 148A(b) of the Act or the period during which proceeding u/s. 148 is stayed by an order of injunction of any court shall be excluded. The fourth proviso to Section 149(1) of the Act provided that immediately after exclusion of period referred in third proviso, if the period of limitation available to the AO for passing an order under Section 148A(d) of the Act is less than seven days, such remaining period shall be extended to seven days and accordingly the period of limitation for issuance of notice u/s. 148 shall be deemed to have been extended.

5. Interestingly, sub section (2) to Section 149 of the Act provides that the limitation prescribed under sub section (1) of Section 149 of the Act for issuance of notice shall be subject to the provisions of Section 151 of the Act. The use of word 'shall' in sub section (2) of Section 149 of the Act makes it clear that the limitation prescribed u/s. 149 of the Act for issuance of notice u/s. 148 of the Act is subject to the timeline prescribed u/s. 151 of the Act. In other words, the limitation prescribed u/s. 149(1) of the Act would not override the timeline prescribed for grant of approval by the specified authority u/s. 151 of the Act. Section 151 of the Act as it stood after substitution of earlier Section 151 of the Act by Finance Act, 2021 effective from 01.04.2021 and before its amendment by Finance Act, 2023 w.e.f. 01.04.2023 reads as under:

> *"151. Specified authority for the purposes of section 148 and section 148A shall be,-*
>
> *(i) Principal Commissioner or Principal Director or Commissioner or Director, if three years or less than three years have elapsed from the end of the relevant assessment year;*

(ii) Principal Chief Commissioner or Principal Director General or 33[***] Chief Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year:"

6. As could be seen from the provision contained u/s. 151 of the Act reproduced above, as per clause (i), in a case where action u/s. 148 and Section 148A of the Act is initiated before expiry of three years from the end of the relevant assessment year, the specified authority who can grant sanction/approval is the Principal Commissioner or Principal Director General or Commissioner or Director of Income Tax. However, as per clause (ii), if more than three years have elapsed from the end of the relevant assessment year, the specified authority, who can grant sanction is the Principal Chief Commissioner or Principal Director General or where no Principal Chief Commissioner or Principal Director General is available then Chief Commissioner or Director General of Income Tax. It is noteworthy, akin to third and fourth provisos, which were incorporated in Section 149(1) of the Act under the new regime effective from 01.04.2021, no corresponding amendment was made to Section 151 of the Act. By virtue of Finance Act, 2023 effective from 01.04.2023, the following proviso was added to Section 151 of the Act.

"Provided that the period of three years for the purposes of Clause (i) shall be computed after taking into account, the period of limitation as excluded by the third, fourth and fifth provisos or extended by the sixth proviso to sub section (1) of Section 149 of the Act."

7. Thus, as per Section 151 of the Act as it stood prior to its amendment by Finance Act, 2023, the limitation prescribed under Clause (i) of Section 151 of the Act was prior to expiry of three years from the end of the relevant assessment year and without benefit of further extension in terms with third, fourth or fifth proviso under sub section (1) of Section 149 of the Act.

8. Therefore, keeping in view the provision contained under sub section (2) of Section 149 of the Act, which makes the limitation provided u/s. 149(1) of the Act subject to the timeline provided u/s. 151 of the Act, the limitation provided u/s. 149(1) of the Act including the provisos cannot get imported for the purpose of extending the limitation u/s. 151(i) of the Act prior to the amendment of section 151 of the Act by Finance Act, 2023. That being the case, the timeline for sanction by specified authority fixed u/s. 151 of the Act has to be scrupulously followed.

9. At this stage, it is to be noted that the Hon'ble Jurisdictional High Court in the decisions referred to by my learned brother Accountant

Member in his order has specifically held that the proviso inserted to Section 151 of the Act by Finance Act, 2023, effective from 01.04.2023 will not apply prior to its effective date. Pertinently the line of argument taken by the Department in the case of Albert Joseph Rozario vs. ITO (Supra) was not for the first time. Identical argument was advanced by the Department in following two cases dealt by the Coordinate Benches:

(i). Davos International Fund Vs. ACIT, Mumbai, ITA No. 1190/Mum/2024 dated 13.01.2025.

(ii). ACIT vs. Asha P. Kedia [2025] 174 taxmann.com 99 (Mumbai-Trib.)

10. While dealing with the contentions of learned Departmental Representative in case of Davos International Fund (Supra), the Coordinate Bench has held as under:

"7. We heard the parties and perused the material on record. In assessee's case the 148A notice for AY 2017-18 was issued on 12.03.2022 and the order disposing the objections of the assessee was passed on 04.04.2022 under section 148A(d) of the Act. The AO issued notice under section 148 dated 04.04.2022. On perusal of the order under section 148A(d) of the Act and 148 (page 42 to 46 and 47 of PB) we notice that the impugned notices are issued after obtaining the prior approval of CIT (IT), Mumbai-2. The case of the revenue is that the notice dated 04.04.2022 is issued within three years since as per the 5th proviso to section 149, the AO has got additional 9 days for issue of notice under section 148 i.e. upto 09.04.2022. since the extended time of 9 days i.e. from 22.03.2022 to 31.03.2022 was given to the assessee. Therefore, it is argued by the revenue that notice issued on 04.04.2022 is within period of three years and the approval has been correctly obtained by the authority as specified in section 151(i) of the Act. The assessee is contending that the 5th proviso to section 149 under which the revenue is taking cover is inserted w.e.f. 01.04.2023 and therefore not applicable to assessee's case. In this regard, we notice that the Hon'ble Bombay High Court iln the case of Vodafone Idea Ltd (supra) has held that-

"1. Petitioner is impugning a notice dated 19th March 2022 issued under Section 148A(b) of the Income Tax Act, 1961 ("the Act"), the order passed under Section 148A(d) of the Act and the notice both dated 7th April 2022 issued under Section 148 of the Act. One of the grounds raised is that the sanction to pass the order under Section 148A(d) of the Act and issuance of notice under Section 148 of the Act is invalid inasmuch as the sanction has been admittedly issued by the Principal Commissioner of Income Tax ("PCIT") and not by the Principal Chief Commissioner of Income Tax (PCCIT"). 2. Petitioner's request for a copy

of the sanction has also been denied. Even in the affidavit in reply, the Department is refusing to give the sanction which makes us wonder what is the national secret involved in that, that Assessee is being refused what he is rightfully entitled to receive from the Department. In the affidavit in reply, the stand taken by the Revenue is it will be made available during the re- assessment proceeding. 3. The impugned order and the impugned notice both dated 7th April 2022 state that the Authority that has accorded the sanction is the PCIT, Mumbai 5. The matter pertains to Assessment Year ("AY") 2018-19 and since the impugned order as well as the notice are issued on 7th April 2022, both have been issued beyond a period of three years. Therefore, the sanctioning authority has to be the PCCIT as provided under Section 151 (ii) of the Act. The proviso to Section 151 has been inserted only with effect from 1" April 2023 and, therefore, shall not be applicable to the matter at hand. 4. In this circumstances, as held by this Court in Siemens Financial Services Private Limited Vs. Deputy Commissioner of Income Tax & Ors., the sanction is invalid and consequently, the impugned order and impugned notice both dated 7th April 2022 under section 148A(d) and 148 of the Act are hereby quashed and set aside."

8. Similar view is held by the jurisdictional High Court also in other cases as listed herein above. In the decision of the Vodafone Idea (supra), the Hon'ble High Court has given a specific finding that the proviso to section 151 extending the time limit as per the third, fourth or fifth proviso to section 149 is not applicable for AY 2018-19 as the same is inserted only w.e.f. 01.04.2023. When we apply the said ratio to assessee's case, in our considered view, the claim of the revenue that the period of 3 years expires only on 09.04.2022 is not correct and that revenue cannot take shelter under the proviso to section 151 which came into effect only from 01.04.2023. Accordingly the notice issued on 04.04.2022 by the AO is issued beyond three years and therefore the approval should have been obtained by the authorities as specified under section 151(ii) Principle Chief Commission. As already stated the approval in assessee's case is obtained from CIT(IT) and therefore we are inclined to agree with the contention of the assessee that the notice under section 148 has been issued without obtaining the approval from the correct authority as specified under section 151. Respectfully following the above decisions of the Hon'ble Bombay High Court we hold that the notice issued by the AO under section 148 without obtaining approval from correct appropriate authority is invalid and the assessment done under section 147 r.w.s. 144(13) of the Act is liable to be quashed."

11. Similar view was reiterated by the Coordinate Bench in case of ACIT vs. Asha P. Kedia (Supra). It is relevant to observe, though the aforesaid decisions of the Coordinate Benches were rendered at a

prior point of time and were available when the appeal of Albert Joseph Rozario (Supra) vs. ITO (Supra) was taken up before another Coordinate Bench, however, either knowingly or unknowingly, these decisions of the Coordinate Benches were not brought to the notice of the learned Bench. It appears so, because, there is no reference of these decisions in case of Albert Joseph Rozario vs. ITO (Supra). Had these decisions of Coordinate Benches been brought to the notice of learned Bench deciding the case of Albert Joseph Rozario (Supra), a different view might have been taken. In any case of the matter, the point of time from which the proviso to Section 151 of the Act would be applicable was considered by the Hon'ble Jurisdictional High Court in at least four judgments. Three of these judgments have already been referred to in the decision of my learned brother Accountant Member. Even in case of Agnello Oswin Dias vs. ACIT [2014] 161 taxmann.com 16 (Bombay), the Hon'ble Jurisdictional High Court, while reiterating the view that after expiry of three years from the end of the relevant assessment year, the specified authority in terms of Section 151(ii) of the Act is PCCIT, has held that the proviso to Section 151 of the Act having been inserted w.e.f. 01.04.2023 shall not be applicable prior to 01.04.2023. Meaning thereby, the proviso will not have retrospective effect. These decisions of the Hon'ble Jurisdictional High Court, being directly on the issue, constitute binding precedents.

12. In any case of the matter, Sections 149 and 151 of the Act have been enacted for different purposes and operate in different situations. While Section 149 of the Act, prescribes limitation for issuance of notice u/s. 148 and 148A of the Act, Section 151 of the Act prescribes the timeline for the specified authority to grant sanction for Section 148 and 148A of the Act. At the cost of repetition, it needs to be observed that prior to insertion of proviso u/s. 151 of the Act by Finance Act, 2023 w.e.f. 01.04.2023, the specified authority who can grant sanction for initiating proceedings u/s. 148A and issuing notice u/s. 148 of the Act after expiry of three years from the end of the assessment year is PCCIT/CCIT in terms with Section 151(ii) of the Act. Hence, in absence of any enabling provision u/s. 151 of the Act, the 3rd, 4th and 5th or 6th provisos of Section 149(1) of the Act cannot be read into Section 151 of the Act to extend the time limit u/s. 151(i) of the Act."

6.2 The Coordinate Bench (supra), while interpreting the statutory framework, has categorically held that (i) the time limits under section **149** cannot dilute or override the sanction requirements under section **151**; (ii) sanction by an authority not prescribed

under section 151 renders the notice invalid; and (iii) the proviso inserted by the Finance Act, 2023 has no retrospective application.

6.3 Respectfully following the binding judicial precedents and the reasoning adopted therein, we hold that sanction obtained from the **PCIT**, instead of the **PCCIT / CCIT**, is not in conformity with section **151(ii)**. Consequently, the notice issued under section **148** is invalid in law.

6.4 Once the very initiation of reassessment proceedings is held to be void for want of proper jurisdictional sanction, the consequential revisionary proceedings under section **263** cannot survive. An order passed under section 263 cannot stand independently when the foundational proceeding itself is legally unsustainable. Accordingly, the impugned order passed under section **263** is set aside.

6.5 In view of the above conclusion, other grounds raised by the assessee become academic and do not require separate adjudication.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 24/02/2026.

Sd/-	**Sd/-**
(RAHUL CHAUDHARY)	**(OM PRAKASH KANT)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai;
Dated: 24/02/2026
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

//True Copy//

(Assistant Registrar)
ITAT, Mumbai