

| आयकर अपीलीय अधिकरण न्यायापीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, HON'BLE VICE PRESIDENT
&
SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
I.T.A. No. 1651/Mum/2025
Assessment Year: 2017-18

Manisha Nitin Brahmbhatt 711 May Fair Gardens Azad Lane S.V. Road Mumbai - 400058 [PAN: AABPB7462J]	Vs	National Faceless Assessment Centre, Delhi
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri K. Gopal Akhilesh, A/Rs
Revenue by :	Shri Govindrao J. Ninawe, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 08/05/2025
घोषणा की तारीख /Date of Pronouncement: 14/05/2025

आदेश/O R D E R

PER NARENDRA KUMAR BILLAIYA, AM:

This appeal by the assessee is preferred against the order dated 31/01/2025 by NFAC, Delhi [hereinafter "the Id. CIT(A)"] pertaining to AY 2017-18.

2. The challenge of the assessee is two-fold. Firstly, the assessee has challenged the reopening of the assessment claiming that the notice issued u/s 148 of the Act is bad in law and subsequently on merits of the case, the assessee has challenged the addition of Rs. 3,77,29,617/- made u/s 68 of the Act.

3. Before us, the Id. Counsel for the assessee took a new plea that the notice issued u/s 148 of the Act is not approved by appropriate authority as provided in provisions of Section 151 of the Act.

4. Briefly stated, the facts of the case are that the assessee is an individual assessee who filed his return of income on 07/11/2017 declaring total income of Rs.14,97,250/-.

5. On the basis of information received from ACIT Central Circle - 2(1), Mumbai, the case of the assessee was reopened and accordingly notice u/s 148 of the Act was issued dated 27/07/2022 which reads as under:-

To
Manisha Nitin Brahmbhatt
Andheri (W), Mumbai-400058.

PAN: AABPB7462J A.Y. 2017-18 Dated 27.07.2022 DIN&NoticeNo.

Notice under section 148 of the Income-tax Act, 1961

Sir/Madam/ M/s.

1. (A) I have the following information in your case or in the case of the person in respect of which you are assessable under the Income Tax Act, 1961 (herein after referred to as "the Act") for Assessment Year A.Y. 2017-18.

☐ Information flagged by the risk management strategy formulated in this regard;

☐ Final objection has been raised by the Comptroller and Auditor General of India to the effect that the assessment has not been made in accordance with the provisions of Act;

☐ A survey was conducted under section 133A of the Act, other than under section 133A(2A) or section 133A(5) of the Act,

☒ Information which requires action in consequence of the judgement of the Hon'ble Supreme Court in the case Union of India Vs. Ashish Agarwal, Civil Appeal 3005/2022, dated 4th May, 2022

suggesting that income chargeable to tax has escaped assessment with in the meaning of section 147 of the Act. Order under sub-section(d) of section 148A of the Act has been passed in such case vide DIN ITBA/COMF/17/2022-23/1044153581(1) dated 27/07/2022 and annexed herewith for reference,



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- B. ☐ I have information that a search was initiated under section 132 of the Act in your case or in the case of the person in respect of which you are assessable under the Act on the date _____
- C. ☐ I have information that books of accounts, other documents or any assets have been requisitioned under section 132A of the Act in your case or in the case of the person in respect of which you are assessable under the Act.
- D. ☐ I am satisfied, with the approval of Principal Commissioner or Commissioner, that money, bullion, jewelry or other valuable article or thing, seized or requisitioned under section 132 or section 132A of the Act in case of _____ relate to you or the person in respect of which you are assessable under the Act.
- E. ☐ I am satisfied, with the approval of Principal Commissioner or Commissioner, that books of accounts or documents, seized or requisitioned under section 132 or section 132A of the Act in case of _____ Pertains or pertain to, or any information contained therein, relate to you or the person in respect of which you are assessable under the Act.
- F. I, therefore, propose to assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for the Assessment Year **2017-18** and I, hereby, require you to furnish, within 30 days from the service of this notice, a return in the prescribed form for the Assessment Year **2017-18**.
- G. This notice is being issued after obtaining the prior approval of the Pr. CIT-20 Mumbai, accorded on date 24.07.2022 vide Reference No. PCIT20/148/Approval/2022-23/452.

(S.S.PRASAD)
ITO-24(2)(1), Mumbai.



[Handwritten signature]
TRUBOOPY

6. As can be seen from point G that the notice is being issued after obtaining the prior approval of the Pr. CIT-20, Mumbai dated 24/07/2022. The quarrel revolves around the validity of this notice.

7. We heard the parties and perused the material on record. In assessee's case for AY 2016-17 pursuant to the directions of the Hon'ble Supreme Court in the case of *Ashish Agrawal (supra)*, the AO passed an

order under section 148(d) of the Act and issued a notice under section 148 on 30/07/2022. From the above observations of the Hon'ble Supreme Court it is clear that the though the prior approval under section 148A(b) and 148(d) were waived in terms of the decision of Ashish Agarwal (*supra*), for issue of notice under section 148A(a) and under section 148 on or after 1 April 2021, the prior approval should be obtained from the appropriate authorities specified under Section 151 of the new regime. The provisions of section 151 of the Act under the new regime read as under:

Sanction for issue of notice.

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 where there is no Principal Chief Commissioner or Principal Director General, Chief Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year.

8. As mentioned elsewhere, in the case of the assessee, the impugned notice is issued with the prior approval of the Pr. CIT-20, Mumbai accorded on 24/07/2022 and this fact has not been controverted by the Id. D/R. The period of three years has elapsed on 31/03/2021. Thus, the notice is issued beyond three years, therefore, as per the decision of the Hon'ble Supreme Court (*supra*), the approval should have been obtained under the mandated provisions of Section 151(ii) of the Act i.e., the approval should have been obtained from the Principal Chief Commissioner whereas, the approval has been obtained from Principal Commissioner as stated in the notice u/s 148 of the Act exhibited elsewhere.

9. Thus, we find force in the contention of the Id. Counsel for assessee that the notice u/s 148 of the Act for AY 2017-18 is issued without obtaining prior approval from the appropriate authority and, therefore, deserves to be quashed. Since we have quashed the notice, we do not find it necessary to delve into the merits of the case.

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

Order pronounced in the Court on 14th May, 2025 at Mumbai.

Sd/-

(SAKTIJIT DEY)
VICE-PRESIDENT

Sd/-

(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated 14/05/2025

30.5.25

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

1. □ पीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (□ पील)/ The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai