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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 271 OF 2023

Ramesh Bachulal Mehta

.. Petitioner

Versus

Income Tax Officer Ward-27(3)(1),
Mumbai & Ors.

.. Respondents

Adv. Devendra H. Jain a/w. Adv. Shashank Ajay Mehta i/b. Adv. Kashyap Chothani for the Applicant.

Adv. Devvrat Singh (through V.C) for the Respondents.

**CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.**

DATE: AUGUST 11, 2025

P. C.

1. Rule. Respondents waive service. With the consent of the parties Rule made returnable forthwith and heard finally.

2. The present writ petition *inter-alia* challenges the notice dated 15.07.2022 issued under section 148 of the Income Tax Act, 1961 (for short the “Act”) for the Assessment Year 2016-17.

3. Among several jurisdictional grounds challenging the re-opening

of assessment for the relevant Assessment Year in the present Writ Petition, the Petitioner has *inter-alia* contended [in Ground B of this petition] that the order passed under section 148A(d) is bad in law because Respondent No.1 has not obtained appropriate prior approval/sanction mandated under section 151 and has sought relief in terms of prayer clause (a) of the Writ Petition which reads as under:

"(a) that this Hon'ble Court may be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ, Order or direction, calling for the records of the Petitioners case and after going into the legality and propriety thereof, to quash and set aside the notice dated 19.05.2021 issued u/s 148 [now treated as a notice u/s 148A(b) by the Respondents] (Exhibit B). issue letter dated 23.05.2022 (Exhibit C), order dated 13.07.2022 passed under section 148A(d) (Exhibit E-1) and the notice dated 15.07.2022 issued under section 148 of the Act (Exhibit F)"

4. Initially, Respondent No.1 had issued notice under section 148 (under the erstwhile law of re-assessment) on 19.05.2021 [placed at Exhibit B of the Petition] for Assessment Year 2016-17. Subsequently, in consequence of the judgment of the Hon'ble Supreme Court in the case of ***Union of India vs. Ashish Agarwal (2022) 444 ITR 1 (SC)***, the communication dated 23.05.2022 [placed at Exhibit C of the Petition], was sent to the Petitioner intimating that the aforesaid notice issued under Section 148 of the Act (under old regime) would be treated as a show-cause notice issued in terms of Section 148A(b) of the Act (under new regime introduced by the Finance Act, 2021 w.e.f. 01.04.2021). It is claimed by the Petitioner that when the said

notice was issued, he was travelling and was unaware about the issuance thereof. Thereafter, Respondent No.1 passed an order under section 148A(d) on 13.07.2022 [placed at Exhibit E1 of the Petition] along with the notice dated 15.07.2022 issued under section 148 of the Act (Exhibit F of the Petition]. Undisputedly, the above referred order under section 148A(d) and notice under section 148 were passed/issued in pursuance of the provisions of the substituted law of re-assessment as amended by the Finance Act, 2021 and which came into force from 01.04.2021.

5. The Petitioner has contended that in the present case, the order under section 148A(d) dated 13.07.2022 was passed beyond three years from the end of the relevant Assessment Year 2016-17. Consequently, according to the provisions of section 151(ii), when more than three years have elapsed from the end of the relevant assessment year, the specified authority for obtaining the approval was either the Principal Chief Commissioner (PCCIT) or Principal Director General (PDGIT), or where there is no PCCIT or PDGIT, the Chief Commissioner (CCIT) or the Director General (DGIT). However, in paragraph 7 of the order dated 13.07.2022 passed under section 148A(d), Respondent No.1 has stated that before passing the said order, prior approval of Respondent No.2 i.e. the Principal Commissioner of Income Tax-27, Mumbai, was obtained and the said order was passed thereafter. This aspect

remains uncontroverted by the Respondents.

6. In these facts, the limited point to be examined is whether the order dated 13.07.2022 passed under section 148A(d) for the Assessment Year 2016-17 after obtaining approval of Respondent No.2 [i.e. the PCIT-27, Mumbai], was in accordance with the provisions of section 151.

7. The Petitioner has drawn our attention to the decision of the Hon'ble Supreme Court in the case of *Union of India vs. Rajeev Bansal* [2024] 167 taxmann.com 70 (SC)/[2024] 301 Taxman 238 (SC)/[2024] 469 ITR 46 (SC) and we deem it appropriate to refer to the said judgment where the Hon'ble Supreme Court has, while dealing with the issue of approval from the specified authority in terms of Section 151 of the Act, made the following observations:

"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 assesses 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

<i>Section (1) of the old regime</i>	<i>After expiry of four years from the end of the relevant assessment year</i>	<i>Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner</i>
<i>Section 151 (i) of the new regime</i>	<i>Three years or less than three years from the end of the relevant assessment year</i>	<i>Principal Commissioner or Principal Director or Commissioner or Director</i>
<i>Section 151 (ii) of the new regime</i>	<i>More than three years have elapsed from the end of the relevant assessment year</i>	<i>Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General</i>

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."*

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

8.1 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: (i) at first stage under Section 148A(a); (ii) at second stage under Section 148A(b); (iii) at third stage under Section 148A(d); and (iv) at fourth stage under Section 148. In the case of *Ashish Agarwal (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.

8.2 Under 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 assessment year only after obtaining the prior approval of the Principal Chief

Commissioner or Principal Director General or Chief Commissioner or Director General.

8.3 Section 151(ii) of the substituted provisions prescribes a higher level of authority if more than three years have elapsed from the end of the relevant assessment year. Thus, non-compliance with the provisions of section 151 vitiates the jurisdiction of the Assessing Officer to issue a notice under section 148.

8.4 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.

9. In the present case the period of three years from the end of the Assessment Year 2016-17 fell for completion on 31st March 2020. Since the expiry date fell during the time period of 20th March 2020 and 31st March 2021 contemplated under Section 3(1) of 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 till 30th June 2021. On perusal of the order, dated 13.07.2022, 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 after the expiry of three years from the end of the Assessment Year 2016-17, 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.

10. The Hon'ble Supreme Court in the above case has drawn an illustration in paragraph 78 of its order in the context of Assessment Year 2017-18, 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 (here AY 2016-17) expired on 30.06.2021, whereas the Respondent No.1, despite passing the order on 13.07.2022 in respect of Assessment Year 2016-17, has obtained approval of Respondent No.2 who is

not the authority as prescribed under section 151(ii).

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

12. We are clearly of the view that the present matter stands covered by the decision of Hon'ble Supreme Court in the case of *UPI vs. Rajeev Bansal (supra)*. We accordingly hold that the order dated 13.07.2022 passed under Section 148A(d) of the Act and the consequential notice issued under section 148 dated 15.07.2022 are bad in law for being violative of the provisions of Section 151(ii) of the Act. Hence they are required to be quashed and set aside.

13. We, accordingly, set aside the impugned order dated 13.07.2022 passed under section 148A(d), the Notice issued under Section 148 and all other proceedings/orders emanating therefrom and allow the writ Petition in terms of Prayer Clause (a) of the petition.

14. Rule is made absolute in the aforesaid terms and the Writ Petition is also disposed of in terms thereof. No order as to costs.

15. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.]

[B. P. COLABAWALLA, J.]