

*Esha***IN THE HIGH COURT OF BOMBAY AT GOA****WRIT PETITION NO. 443 OF 2024**

Prabhakar Nerulkar, aged 49 years,
residing at House No. 208, near
Hanuman Temple, Verem, Bardez, Goa. ... PETITIONER

Versus

1. Principal Commissioner of Income
Tax, Panaji, having office at Aaykar
Bhavan, Plot No. 5, EDC Complex, Patto
Plaza, Panaji, Goa — 403 001.

2. National Faceless Assessment Centre,
Delhi, having office at 2nd Floor, E-
Ramp, Jawaharlal Nehru Stadium,
Delhi — 110 003.

3. Income-tax Officer, Ward 2(1),
Panaji, having office at Aaykar Bhavan,
Plot No. 5, EDC Complex, Patto Plaza,
Panaji, Goa — 403 001.

4. The Union of India, Through the
Secretary, Ministry of Finance,
Government of India, North Block, New
Delhi - 110 001. ... RESPONDENTS

Mr. Dhiren Gandhi with Ms. Shweta Parulekar, Advocates for the
Petitioner.

Ms. Susan Linhares, Standing Counsel with Ms. Swati Kamat
Wagh, Advocate for Respondent Nos. 1, 2 and 3.

CORAM:

**BHARATI DANGRE &
NIVEDITA P. MEHTA, JJ.**

RESERVED ON:

25th JUNE 2025

PRONOUNCED ON:

21st JULY 2025

JUDGMENT: (per BHARATI DANGRE, J.)

1. The Petitioner, a resident of Goa, assessed under the Income Tax Act, 1961, is aggrieved by the notice issued under Section 148 of the Income Tax Act by the Income Tax Department on 31.03.2021 for the Assessment Year (AY) 2014-15 and 2016-17. He is also aggrieved by the order dated 21.03.2022 passed by the Income Tax Department under Section 147 read with Section 144 and Section 144B of the Income Tax Act and consequential action taken, including an order passed under Section 264 of the Act on 14.11.2023.

A writ of mandamus is prayed for quashing and setting aside the aforesaid orders and restraining the Respondents from taking any steps whatsoever, in implementation of the notice under Section 148 as well as the assessment order and also the order passed under Section 264 by the Income Tax Act.

2. We have heard Mr. Dhiren Gandhi for the Petitioner and Advocate Ms. Susan Linhares for the Revenue.

While issuing notice on 10.06.2024, this Court had directed that till the next date, no cohesive steps shall be taken against the Petitioner.

On the pleadings being completed, we deem it appropriate to issue 'Rule' and have taken up the Petition for final hearing.

3. The Petitioner, engaged in real estate business and during the course of his business activity, purchases plot/plots and develop the same for its sale.

Upto the AY 2010-11, the Petitioner regularly filed his Income Tax Returns, however, for the subsequent years from AY 2011-12 till 2016-17, the Tax Returns on his behalf were not filed as the Petitioner plead that though the Petitioner submitted his Books of Account to the Tax Consultant, the process of filing the Returns was not complete and the Petitioner was under the belief that the Returns on his behalf were regularly filed. The Petitioner, therefore, engaged a new Tax Consultant in the year 2016 and as the time limit for filing the Returns for the previous years had elapsed, the Petitioner availed the opportunity to make disclosures under the Income Disclosure Scheme (IDS), 2016.

4. The Petitioner offered his income under the IDS, including his income from the real estate business. Since he was covered under Section 5A of the Income Tax Act, half of his income was subjected to tax in the name of his wife, Mrs. Madhuri Prabhakar Nerulkar and they opted for presumptive taxation scheme under Section 44AD of the Income Act, which gives an option to an Assessee to offer his income from the business at the rate of 8% of the gross receipts or higher sum to tax. Taking advantage of the said provision, the Petitioner, along with his Wife, offered their

income from the real estate business to tax under Section 44AD of the Income Tax Act for the AY 2011-12 to AY 2015-16.

It was accompanied by a declaration that the amount of undisclosed income offered under the IDS was credited to the Bank Account, the details of which were also furnished. According to the Petitioner, he had disclosed the transactions in immovable properties involving sale and purchase, and this included the disclosure by his wife.

The Petitioner, therefore, took benefit of the IDS in 2016, which permitted any person to make a declaration on or after the commencement of the scheme i.e. 01.06.2016, but before 30.09.2016, to be accompanied with a declaration of undisclosed income chargeable to tax prior to the Financial Year 2016-17 to be made to the jurisdictional Principal Commissioner or Commissioner in such form as prescribed in the Income Declaration Scheme Rules, 2016.

5. The assessment of the Petitioner for the AY 2011-12, AY 2012-13 and AY 2013-14 was reopened by the Assessing Officer in relation to his business of real estate involving the purchase and sale of properties, in which, the Petitioner participated through his Tax Consultant.

For the AY 2015-16, the Income Tax Officer, Panaji, issued a notice under Section 148 of the Income Tax Act on 31.03.2021 and two other notices were issued on 08.10.2021 and 25.11.2021.

Similarly, notices were also issued for the AY 2014-15 and AY 2016-17. The Petitioner filed his Return of Income under Section 148 on 01.02.2022, which resulted in issuance of notice under Section 143(2) on 11.02.2022, which disclose that the assessment was reopened on account of the fact that the Petitioner had entered into some transactions of purchase and sale of property, but he had not filed his Return of Income and therefore, his Returns did not take into consideration his income in the declaration filed under the IDS.

This was followed by a show cause notice in form of draft assessment order dated 22.02.2022, alleging that the Petitioner had failed to comply with the notices and therefore, the Income Tax Officer proposed to make the best judgment assessment by adding all the amounts which were the basis of reopening the assessment and five days time was given to file his Returns, but the Petitioner failed to respond.

This resulted in passing of the final assessment order by Respondent No. 2 to the best of his judgment on 21.03.2022, to be followed by a notice of demand issued by Respondent No. 1 under Section 156 of the Income Tax Act. A notice was also issued under Section 274 asking the Petitioner to show cause as to why a penalty should not be imposed.

6. Being aggrieved, the Petitioner filed an Application under Section 264 of the Income Tax Act on 21.09.2022, alleging that his

income declared under the IDS was not taken into consideration.

The Petitioner also made an attempt to explain the source of the purchase of the property, and also alleged that in respect of sale transactions, deduction of the cost of acquisition has not been allowed, apart from the fact that the stamp duty value of the property, which did not depict the true fair value of the property, has been accepted as the basis.

Upon a notice of hearing being issued to the Petitioner, by order dated 14.11.2023, Respondent No. 1, disposed of the Application, by partially rejecting the Application, by referring to the income declared by the Assessee and his Spouse under the IDS for AY 2013-14 and AY 2014-15. However, the objection raised by the Assessee regarding the sale consideration came to be rejected by directing the Assessing Officer to pass the consequential order, which resulted in passing of the order by Respondent No. 1 on 11.03.2024.

7. The learned Counsel for the Petitioner, Mr. Dhiren Gandhi while raising the challenge to the order dated 31.03.2021, to be followed by the consequential orders, would submit that the notice under Section 148 of the Income Tax Act, 1961, suffers from a gross error as the same is issued after obtaining necessary satisfaction of the Principal Commissioner of Income Tax (PCIT), Panaji.

Inviting our attention to Section 151 of the Income Tax Act as substituted by the Finance Act, 2015 w.e.f. 01.06.2015, he would submit that his case is covered by sub-section (2) of Section 151 and according to him, under the said clause, no notice shall be issued by an Assessing Officer, unless the Joint Commissioner is satisfied on the reasons recorded by such Assessing Officer that it is a fit case for issuance of a notice. Submitting that the order issued under Section 148 on 31.03.2021 for the AY 2015-16, with the applicability of Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (TOLA, 2020), as the new regime came into effect from 01.04.2021, he would submit that the provisions of grant of sanction in operation from the said date is covered by the decision of the Apex Court in **Union of India Vs. Rajeev Bansal**¹.

He would also place reliance on the decision of the Bombay High Court in the case of **Ghanshyam K. Khabrani Vs. Assistant Commissioner of Income Tax Circle-1**², in support of his submission that when the Income Tax Act has conferred the power of sanction by according the satisfaction of the distinct Authorities, then the mandate of the statute must be strictly followed and when the statute mandates the satisfaction of a particular functionary for exercise of the power, the satisfaction must be of that Authority alone.

¹ [2024] 167 taxmann.com 70 (SC)

² [2012] 20 taxmann.com 716 (Bom)

Reliance is also placed upon a further decision of the Bombay High Court in the case of **Commissioner of Income Tax, Central-4 Vs. Aquatic Remedies (P) Ltd.**³

8. Contesting the stand of the Petitioner, Ms. Linhares for the Revenue, has placed before us the approval under Section 151 of the Income Tax Act with respect to the assessment of the Petitioner for AY 2015-16 and according to her, from the said document, it is evident that for the income escaping assessment computed at Rs.2,05,90,000/- and the date of proposal is mentioned as 27.03.2021 and the recommendation remarks in Column No. 3, record as below:-

“The reasons recorded by the A.O. is seen. I am satisfied that it is a fit case for reopening the assessment. Accordingly, recommended for approval.”

9. The approving Authority in the said approval order is Mr. Amrapalli Das, PCIT, Panaji, and the approval order record that information having been received by the DIT (Intelligence & Criminal Investigation), Bengaluru through system for AY 2015-16, in respect of immovable properties transaction, cash deposit in case of Prabhakar Gajanan Nerulkar, who had sold and purchased various properties.

³ [2018] 96 taxmann.com 609 (Bom)

The information received was verified by the ITO (I & CI) on the basis of the sale deeds from various Sub-Registrars, Bank Statements from the Bank and it was noted that the Assessee had gone for IDS in the F.Y. 2014-15 and had shown negligible income and has also admitted that they are not maintaining any Books of Account and are unable to furnish the sources of purchase and explain whether income on sales has been accounted or not.

10. In the wake of this, the PCIT, Panaji, recorded thus:-

“(4) In view of the above, I have reason to believe that Rs.2,05,90,000/- assessable in respect of AY 2015-16 has escaped assessment within the meaning of Section 147 read with Explanation 2(b) of the Income Tax Act, 1961, which needs to be brought to tax and hence, it is a fit case to invoke the provisions of Section 147 of the Income Tax Act, 1961.

(5) In this case more than four years have lapsed from the end of the assessment year under consideration. Hence, necessary sanction to issue notice under Section 148 has been obtained separately from the Principal Commissioner of Income Tax, Panaji, as per the provision of Section 151 of the Income Tax Act, 1961.”

11. According to Ms. Linhares, the case of the Petitioner, including that of his Wife, is governed by the old regime and as per

clause (1) of Section 151 of the Income Tax Act, and therefore, the approval is obtained by the PCIT.

By relying upon the affidavit of the Income Tax Officer i.e. Respondent No. 3, she would submit that the Petitioner is an individual and governed by Section 5A under the Portuguese Civil Code and the Petitioner's case for AY 2015-16 was reopened under Section 148 of the Income Tax Act, 1961, on 31.03.2021, after obtaining approval from the competent Authority as the Petitioner had entered into financial transactions of Rs.2,05,90,000/- and declared a negligible income of Rs.2,65,721/- under the IDS for AY 2015-16. By referring to the financial transactions carried out by the Petitioner and his Spouse during the FY 2014-15, an income of Rs.2,05,90,000/- was found to have escaped assessment, according to her, the assessment under Section 147 read with Section 144 along with Section 144B of the Income Tax Act for the AY 2015-16 was completed by the National Faceless Assessment Centre on 21.03.2022. This was preceded by issuance and service of notices on the Petitioner and thereafter, in absence of no response from the Petitioner, by order dated 21.03.2022, the income was assessed at Rs.20,89,65,850/- after the addition of Rs.2,05,90,000/- under Section 69A of the Income Tax Act.

12. An exhaustive reply is filed on the merits of the matter, but since Mr. Gandhi has restricted his case only on the point as to

whether the case of the Petitioner would be governed by sub-section (1) or sub-section (2) of Section 151 of the Income Tax Act, an additional affidavit in reply is filed, wherein it is stated that the notice was issued on 31.03.2021 for the AY 2015-16, after expiry of four years from the relevant assessment year and therefore, sanction was obtained under Section 151(1) of the Income Tax Act before notice was issued under Section 148, as per the law in force as on that date. It is categorically stated in the affidavit that for AY 2015-16, six years limitation expired on 31.03.2022 and therefore, the provisions of the Relaxation Act are not applicable and the time to issue notice may have been extended under the TOLA, but it would not amount to amending the provisions of Section 151 of the Act.

13. Without prejudice to the aforesaid contention, a specific statement is made on affidavit by stating thus:

6. Without Prejudice to the above, I say that in the petitioner's case, on 27.03.2021, the reasons recorded by the A.O were seen by the Range-I, Panaji that is the Additional Commissioner/Joint Commissioner and upon satisfaction it was found to be a fit case for re-opening the assessment. Accordingly, it was recommended for approval. On 30.03.2021, the PCIT, Panaji, the approving authority found it to be fit case for issue of Notice u/sec. 148 of the IT Act.

In short, the case of the Respondents that notice under Section 148 is issued after expiry of four years from the end of relevant assessment year with the satisfaction of the PCIT in accordance with Section 151 of the Income Tax Act and Section 151(2) is not applicable and therefore, the satisfaction of the Joint Commissioner was not required.

14. In order to appreciate the counter arguments advanced, it is necessary to reproduce Section 151 as it stood substituted in the Income Tax Act, 1961 by the Finance Act, 2015 w.e.f. 01.06.2015.

151. (1) No notice shall be issued under section 148 by an Assessing Officer, after the expiry of a period of four years from the end of the relevant assessment year, unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice.

(2) In a case other than a case falling under sub-section (1), no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of Joint Commissioner, unless the Joint Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.

(3) For the purposes of sub-section (1) and sub-section (2), the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner or the Joint Commissioner, as the case

may be, being satisfied on the reasons recorded by the Assessing Officer about fitness of a case for the issue of notice under section 148, need not issue such notice himself.]

15. Section 148 is the provision pertaining to issuance of notice where income has escaped assessment and provision 148, prior to its amendment by Finance Act, 2024 reads thus:

148. Issue of notice where income has escaped assessment.—Before making the assessment, reassessment or recomputation under section 147, and subject to provisions of Section 148A, the Assessing Officer shall serve on the assessee a notice, along with a copy of the order passed, if required, under clause (d) of Section 148A, requiring him to furnish within a period of three months from the end of the month in which such notice is issued, or such further period as may be allowed by the Assessing Officer on the basis of an application made in this regard by the assessee, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139:

Provided that no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to

tax has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority to issue such notice.

Provided further that no such approval shall be required where the Assessing Officer, with the prior approval of the specified authority, has passed an order under clause (d) of section 148A to the effect that it is a fit case to issue a notice under this section.

Provided also that any return of income, required to be furnished by an assessee under this section and furnished beyond the period allowed shall not be deemed to be a return under section 139.

16. By Finance (No. 2) Act of 2024, amended Section 148 and Section 148A read thus:

148. Issue of notice where income has escaped assessment.—(1) Before making the assessment, reassessment or recomputation under Section 147, the Assessing Officer shall, subject to the provisions of Section 148-A, issue a notice to the assessee, along with a copy of the order passed under sub-section (3) of Section 148-A, requiring him to furnish, within such period as may be specified in the notice, not exceeding three months from the end of the month in which such notice is issued, a return of his income or income of any other person in respect of whom he is assessable under this Act during the previous year corresponding to the relevant assessment year:

Provided that no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year:

Provided further that where the Assessing Officer has received information under the scheme notified under Section 135-A, no notice under this section shall be issued without prior approval of the specified authority.

(2) The return of income required under sub-section (1) shall be furnished in such form and verified in such manner and setting forth such other particulars, as may be prescribed, and the provisions of this Act shall, apply accordingly as if such return were a return required to be furnished under Section 139:

Provided that any return of income required under sub-section (1), furnished after the expiry of the period specified in the notice under the said sub-section, shall not be deemed to be a return under Section 139.

(3) For the purposes of this section and Section 148-A, the information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means,—

(i) any information in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time; or

(ii) any audit objection to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act; or

(iii) any information received under an agreement referred to in Section 90 or Section 90-A of the Act; or

(iv) any information made available to the Assessing Officer under the scheme notified under Section 135-A; or

(v) any information which requires action in consequence of the order of a Tribunal or a Court; or

(vi) any information in the case of the assessee emanating from survey conducted under Section 133-A, other than under sub-section (2-A) of the said section, on or after the 1st day of September, 2024.

148-A. Procedure before issuance of notice under Section 148.—(1) Where the Assessing Officer has information which suggests that income chargeable to tax has escaped assessment in the case of an assessee for the relevant assessment year, he shall, before issuing any notice under Section 148 provide an opportunity of being heard to such assessee by serving upon him a notice to show cause as to why a notice under Section 148 should not be issued in his case and such notice to show cause shall be accompanied by the information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year.

(2) On receipt of the notice under sub-section (1), the assessee may furnish his reply within such period, as may be specified in the notice.

(3) The Assessing Officer shall, on the basis of material available on record and taking into account the reply of the assessee furnished under sub-section (2), if any, pass an order with the prior approval of the specified authority determining whether or not it is a fit case to issue notice under Section 148.

(4) The provisions of this section shall not apply to income chargeable to tax escaping assessment for any assessment year in the case of an assessee where the Assessing Officer has received information under the scheme notified under Section 135-A.

17. Section 148A prescribe the procedure to be followed before issuance of notice under Section 148 and contemplate the information received by the Assessing Officer, suggesting that the income chargeable to tax has escaped assessment for the relevant Assessment Year and in such a case, he shall, before issuing any notice, provide opportunity of hearing to such Assessee by serving upon him a notice to show cause as to why a notice under Section 148 should not be issued and this shall be accompanied with the information, suggesting which income chargeable to tax had escaped assessment in his case for the relevant years. Upon receipt of the reply from the Assessee and on the basis of the material available, it is open for the Assessing Officer to pass an order with

the prior approval of the specified Authority, determining whether or not it is a fit case to issue notice under Section 148.

18. Another provision which was amended is Section 149, setting out the time limit for the notices under Sections 148 and 148A, which reads thus:

149. Time limit for notices under Sections 148 and 148-A.—(1) No notice under Section 148 shall be issued for the relevant assessment year,—

(a) if three years and three months have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);

(b) if three years and three months, but not more than five years and three months, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence related to any asset or expenditure or transaction or entries which show that the income chargeable to tax, which has escaped assessment, amounts to or is likely to amount to fifty lakh rupees or more.

(2) No notice to show cause under Section 148-A shall be issued for the relevant assessment year,—

(a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);

(b) if three years, but not more than five years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment, as per the information with the Assessing Officer, amounts to or is likely to amount to fifty lakh rupees or more.

19. Section 151, which is substituted w.e.f. 01.09.2024 now reads thus:

151. Sanction for issue of notice.—Specified authority for the purposes of Sections 148 and 148-A shall be the Additional Commissioner or the Additional Director or the Joint Commissioner or the Joint Director, as the case may be.

20. It is necessary to take into account the regime, which was enforced by introducing a statute to provide for amendments and relaxations of certain Acts and matters connected therewith in form of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 which came into force on 31.03.2020 and granted relaxation, where any time limit had been specified, prescribed or notified under specified Act, which included the Income Tax Act, 1961, which fall during the period between 20.03.2020 till 31.12.2020, or such other date after 31.12.2020, which the Central Government may by Notification may specify for completion or compliance of the contemplated action.

21. Chapter III of the said Act incorporated the amendments to the Income Tax Act, 1961, and it has enumerated various provisions of the Income Tax Act, which were substituted in the wake of the enactment of the Act of 2020 in view of the *COVID* pandemic. It also introduced a provision for faceless jurisdiction of Income Tax Authorities w.e.f. 01.11.2020 and also introduced a provision of faceless inquiry or valuation in the form of Section 142B w.e.f. 01.11.2020.

The Hon'ble Apex Court in the case of **Rajeev Bansal** (supra) had an occasion to deal with the provisions of the Income Tax Act including Section 148 and Section 148A, Section 149, Section 151 being juxtaposed against Section 3 of TOLA Act, 2020 and in the background of the Finance Act, 2021, which amended the provisions dealing with reassessment procedure w.e.f. 01.04.2021.

The background facts disclose that the Notifications dated 23.01.2021 and 27.04.2021, issued by the Central Government under Section 3(1) of TOLA contain an explanation declaring that the provisions under the old regime shall apply to the reassessment proceedings initiated under them and directed the Assessing Officers to apply the provisions of the old regime for reassessment notices issued after on 01.04.2021 and accordingly, the Assessing Officer issued reassessment proceedings between 01.04.2021 to 30.06.2021 by relying upon the provisions under Section 148 under the old regime.

When these reassessment notices were challenged by the Assessee before the various High Courts, the High Court allowed the Writ Petitions and quashed the reassessment notices, issued between 01.04.2021 and 30.06.2021 under the old regime on the ground that Sections 147 to 151 were substituted by the Finance Act, 2021 w.e.f. 01.04.2021 and in the absence of any saving clause, the Revenue could initiate proceedings after 01.04.2021 only in accordance with the provisions of the new regime since they were more beneficial to the Assessee.

22. In **Union of India Vs. Ashish Agarwal**⁴, the Apex Court held that it was in agreement with the view taken by various High Courts in holding that the benefit of the new provisions shall be made available even in respect of the proceedings relating to past assessment years, provided Section 148 notice has been issued on or after 01.04.2021. However, it was held that the Revenue issued the reassessment notices, under a bonafide belief that the amendments may not have been enforced and therefore, by exercising jurisdiction under Article 142 in order to balance the interest of the Revenue and the Assessee, it was directed that the reassessment notices issued under the old regime shall be deemed to have been issued under Section 148A(b) of the new regime.

⁴ [2022] 138 taxmann.com 64/286

23. However, on 11.05.2022, the Central Board of Direct Taxes issued instructions for the implementation of the decision in **Ashish Agarwal** (supra) and clarified that the decision will apply to all cases where extended reassessment notices have been issued, irrespective of the fact whether notices have been challenged or not. The instructions issued were based on the presumption that notices issued under Section 148 of the new regime, travel back in time with their original date i.e. the actual date on which the Section 148 notice under the old regime was issued. Based on this, the Assessing Officers considered the replies furnished by the Assessee and passed orders under Section 148A(d). The notices were thereafter issued under Section 148 of the new regime between July and September 2022 for the AY 2013-14, 2014-15, 2015-16, 2016-17 and 2017-18. These notices came to be challenged before several High Courts, which declared the notices to be invalid on the ground that they were time-barred and issued without the appropriate sanction of the specified authority.

24. The aforesaid decisions included the decision of the Bombay High Court in **J.M. Financial and Investment Consultancy Services Private Limited Vs. Assistant CIT, Circle 3(2)(1) & Others**⁵ (Writ Petition No. 1050 of 2022). The Petition came to be allowed by setting aside the notice dated 31.03.2021 issued

⁵ [2023] 451 ITR 205 (Bom)

under Section 148 for the AY 2015-16, by expressing that since four years have expired from the end of the relevant assessment year as provided under Section 151(1), it is only the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner, who could have accorded the approval and not the Additional Commissioner of Income Tax.

25. The Three-Judges Bench of the Apex Court in **Rajeev Bansal** (supra) considered the provisions of TOLA as introduced in the Income Tax Act and clarified that a notice could be issued under Section 148 of the new regime for the AY 2021-22 and before, only if the time limit for issuance of such notice continued to exist under Section 149(1)(b) of the old regime. It was clarified that the notices have to be judged according to the law, existing on the date the notice is issued and Section 149 of the old regime provided two time limits; (i) four years for all situations and (ii) beyond four years and within six years, if the income that escaped assessment amounted to Rupees One Lakh or more.

After 01.04.2021, the time limit prescribed under the new regime came into force, when the ordinary time limit of four years was reduced to three years and therefore, in all situations, reassessment notices could be issued under the new regime if not more than three years have elapsed from the end of the relevant assessment year.

26. Specifying that the first proviso requires the determination of whether the time limit prescribed under Section 149(1)(b) of the old regime continues to exist for the assessment year 2021-22 and before. Resultantly, a notice under Section 148 of the new regime cannot be issued if the period of six years from the end of the relevant assessment year has expired at the time of issuance of the notice which ensured that the new time limit of ten years prescribed under Section 149(1)(b) of the new regime applies prospectively. In absence of the proviso to Section 149(1)(b) of the new regime, the Revenue could have had the power to reopen assessment for the year 2012-13, if it had escaped assessment amounting to Rupees Fifty Lakhs or more, but the proviso had limited the retrospective operation of Section 149(1)(d) to protect the interests of the Assessee. As such by a conjoint reading of the proviso along with Section 149(1)(b), reassessment notices could be issued after three years only if the income charged is more than Rupees Fifty Lakhs and the proviso to Section 149(1)(b) limits the retrospectivity of that provision with respect to the time limits specified in Section 149(1)(b) of the old regime.

27. In paragraph 73 of the decision, with reference to Section 151, as regards obtaining the sanction of the specified Authority so as to save the Assessee from harassment, resulting from the mechanical reopening of assessment, by representing the

prescription under the old regime and the new regime, has categorically set out as under:

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 (Srikrishna Private Ltd v. ITO), (1996) 9 SCC 534 [4]. A table representing the prescription under the old and new regime is set out below:

<i>Regime</i>	<i>Time limits</i>	<i>Specified authority</i>
<i>Section 151(2) of the old regime</i>	<i>Before expiry of four years from the end of the relevant assessment year</i>	<i>Joint Commissioner</i>
<i>Section 151(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>

28. In paragraph 74, the correlation of the Authority with the time when the notice is issued is clearly set out as below:

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.*

29. The test to determine whether the provisions of TOLA apply to Section 151 of the new regime was set out by stating as below:

“If the time limit of four years from the end of an assessment year falls between 20.03.2020 and 31.03.2021, then the specified Authority under Section 151(i) has an extended time till 30.06.2021 to grant approval. In case of Section 151 of the old regime, the test is, “if the time limit of four years from the end of the assessment year falls between 20.03.2020 and 31.03.2021, then the specified Authority under Section 151(2) has the time till 31.03.2021 to grant approval. The time limit for Section 151 of the old regime expires on 31.03.2021 because the new regime comes into effect on 01.04.2021.”

30. The case before us clearly falls within the aforesaid time line as the AY 2015-16 and the period of four years from the end of the assessment year clearly fell between 20.03.2020 and 31.03.2021 and therefore, the case is governed by the old regime as the new regime came into effect from 01.04.2021.

Hence, the case of the Petitioner is governed by clause (2), where it is the Joint Commissioner, who should be satisfied with the reasons recorded by the Assessing Officer that it is a fit case for issuance of notice, and it is not a case governed by clause (1) of Section 151. However, the notice under Section 148 records that it is being issued after obtaining the satisfaction of the PCIT, Panaji, who is not the competent Authority.

31. The observations in the case of **Ghanshyam K. Khabrani** (supra) clearly come into play where it was observed thus:

“There is merit in the contention raised on behalf of the assessee that the requirement of section 151(2) could have only been fulfilled by the satisfaction of the Joint Commissioner that this is a fit case for the issuance of a notice under section 148. Section 151(2) mandates that the satisfaction has to be of the Joint Commissioner. That expression has a distinct meaning by virtue of the definition in section 2(28C). The Commissioner of Income-tax is not a Joint Commissioner within the meaning of section 2(28C). In the present case, the Additional Commissioner of Income-tax forwarded the proposal submitted by the Assessing Officer to the Commissioner of Income-tax. The approval which has

been granted is not by the Additional Commissioner of Income-tax but by the Commissioner of Income-tax. There is no statutory provision here under which a power to be exercised by an officer can be exercised by a superior officer. When the statute mandates the satisfaction of a particular functionary for the exercise of a power, the satisfaction must be of that authority. Where a statute requires something to be done in a particular manner, it has to be done in that manner. In a similar situation the Delhi High Court in CIT v. SPL's Siddhartha Ltd. (ITA No. 836 of 2011 decided on September 14, 2011)—since reported in (2012) 345 ITR 223 (Delhi) held that powers which are conferred upon a particular authority have to be exercised by that authority and the satisfaction which the statute mandates of a distinct authority cannot be substituted by the satisfaction of another. We are in respectful agreement with the judgment of the Delhi High Court.”

32. In the wake of the above, since we are of the view that the Authority at whose satisfaction must have issued the notice under Section 148 was not the PCIT, Panaji, but the Joint Commissioner as contemplated under sub-section (2) of Section 151, the notice issued under Section 148 on 31.03.2021 at Annexure D-1, is liable to be quashed and set aside as a consequence, the assessment order passed under Section 147 dated 21.03.2022 as well as the order dated 14.11.2023 under Section 264 of the Income Tax also cannot be sustained and are liable to be quashed and set aside.

33. The Petition is made absolute in terms of prayer clause (a).
No order as to costs.

NIVEDITA P. MEHTA, J. BHARATI DANGRE, J.