IN THE INCOME TAX APPELLATE TRIBUNAL, 'SMC' BENCH, KOLKATA

BEFORE
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.1615/KOL/2026
Assessment Year: 2015-16

Golam Sadique Dhali Tegharia Kashinathpur PS-Rajarhat Barasat West Bengal-700135 **[PAN: BZPPD7120R]**	Vs.	**ITO, Ward-50(1), Kolkata**
APPELLANT		**RESPONDENT**

Appellant by	:	Shri Sunil Surana & Shri Harunal Rasid, ARs
Respondent by	:	Shri Amit Kumar Barua, DR
Date of hearing	:	06.10.2026
Date of Pronouncement	:	22.10.2026

O R D E R

PER LAXMI PRASAD SAHU, ACCOUNTANT MEMBER:

This is an Appeal filed by the Assessee against the order of the NFAC, Delhi ["the Ld. CIT(A)", for short], dated 28.02.2026 with DIN & Order No. ITBA/NFAC/S/250/2025-26/1086695551(1), passed u/s 250 of the Income Tax Act, 1961 ("the Act", for short) for the Assessment Year 2015-16, arising out of the Assessment order dated 06.03.2024 passed u/s 147 r.w.s. 144B of the Act on the following Grounds of Appeal:-

> *"1. For that the reopening of assessment for the assessment year 2015-16 by issue of notice u/s 148 after 01.04.2022 was barred by limitation having been issued after 6 years from the end of the assessment year.*
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> *2. For that the reassessment proceedings initiated beyond three years from the end of assessment year are invalid and bad in law since there*

is no finding by the Assessing Officer that the conditions of section 149(1)(b) have been fulfilled.

3. For that the notice issue u/s 148 giving less time to furnish the return than that allowed under the law is invalid, bad in law and therefore the entire reassessment made is liable to be quashed.

4. For that CIT(A) erred in confirming the validity of the reassessment proceedings initiated beyond the three year period when the final escaped amount which was determined was less than 50 lakhs.

5. For that the Ld. CIT(A) erred in confirming the action of in adding back cash deposit of Rs.20,00,000/- when the said deposit was covered by earlier cash withdrawals and nothing was brought on record by the Assessing Officer that the assessee had utilized the cash withdrawn earlier."

2. Briefly stated, the facts of the case are that, as per the information uploaded on the Insight Portal of the Income Tax Department, it was noticed that the Assessee had deposited cash of Rs.20,00,000/- and carried out a transaction in immovable property at a sale price of Rs.64,29,024/-. It was noticed that the Assessee had not filed a return of income. Accordingly, after following the due procedure for reopening the case of the Assessee, a notice was issued to the Assessee u/s 148 of the Act on 21.04.2022, observing that the amount of Rs.84,29,024/- (Rs.64,29,024/- plus Rs.20,00,000/-) was treated as escaped income. Further, the Assessing Officer noted from the perusal of the reply and documentary evidence of the Assessee that the property in question was SHALI LAND, which means agricultural land in the state of West Bengal and was also covered under the definition of Section 2(14)(iii) of the Act, which is exempted

from taxation, and no adverse view was taken on the sale of agricultural land. Further, in respect of cash deposits of Rs.20,00,000/- in the savings bank account, the submission of the Assessee was considered but not found acceptable, and the Assessee did not furnish any documentary evidence to prove the explanation for the cash deposit of Rs.20,00,000/-. Accordingly, the same was added as income u/s 69A of the Act. Aggrieved by the order, the Assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A), considering the submission of the Assessee and the observations of the Assessing Officer, the documents available before him, and relying on various judgments, confirmed the addition made by the Assessing Officer and dismissed the appeal of the Assessee. Being aggrieved by the order of the Ld. CIT(A), the Assessee is in appeal before this Tribunal.

3. The Learned Counsel reiterated the submissions before the Lower Authorities, and the Learned Counsel further argued on the legal issues raised by the Assessee at Ground Nos. 3 & 4 noted (supra), wherein it was raised that the notice u/s 148 of the Act, issued by the Assessing Officer on 21.04.2022, was barred by limitation, i.e., beyond the period of 3 years, and finally, the escaped income determined is less than Rs.50,00,000/-. Accordingly, as per the amended provisions in Sections 147 to 151 of the Act, w.e.f. 01.04.2021, the assessment completed by the Assessing Officer was

not sustainable. In this case, the escaped income was less than Rs.50,00,000/- lakhs, and as per Section 149(1)(b) of the Act, the Assessing Officer had issued notice to the Assessee beyond the period of 3 years, which is not sustainable in the eyes of law. In support of his argument, the Ld. AR relied on the following judgments:

In the case of Ratan Bej Vs. The PCIT, Ranchi, Jharkhand, The ITO, Ward-1(1), Jamshedpur, East Singhbhum, Jharkhand, in W.P(T) No.3589 of 2023, wherein it has been held that:

> *"12. Before parting, it is necessary to observe that in the instant case the deed (Annexure-1) would transpire that the Petitioner and his brother upon demise of their father became joint owners of the property under consideration with respective share of 50% each and both being joint vendors in the said transaction are entitled to equal share of the consideration amount, viz., 32,68,000/- each; since the income escaping assessment is less than 50 lakhs, Section 149(1)(b) of the Act could not have been invoked.*
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> *Accordingly, one of the contentions of the Revenue that the petitioner can very well explain the facts in the Assessment proceedings and the writ application is not maintainable; does not appear to be impressive as we are of the view that directing the petitioner to explain the facts before the Assessing Officer will be a futile exercise by the Assessee in view of the specific provision enshrined under Section 149(1)(b) of the Act since the income escaping assessment is less than 50 lakhs, and Section 149(1)(b) of the Act could not have been invoked.*
>
> *13. Having regard to the aforesaid discussion, it can be construed that the assessment proceeding initiated by the Department is barred by limitation, as also, is beyond jurisdiction. Hence, the entire enquiry proceeding along with impugned order under section 148A(d) of the Act along with Notice issued under Section 148 of the Act deserves to be quashed.*
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> *Consequently, the Notices issued under Section 148A(a) of the Act dated 09.02.2023 bearing DIN ITBA/AST/F/17/2022-23/1049577609(1) (Annexure-2) and Notice under Section 148A(b) of the Act dated 21.03.2023 bearing DIN ITBA / AST / F / 148A (SCN) /*

2022-23/1051031490(1) (Annexure-3) and the Order passed by Respondent No. 2 purportedly under Section 148A(d) dated 30.03.2023 bearing DIN ITBA/ AST/ F/ 148A/2022-23/1051688162(1) (Annexure-6) and Notice dated 31.03.2023 bearing DIN ITBA / AST / S / 148_1/ 2022-23/1051720987(1) issued under Section 148 of the Income Tax Act, 1961, (Annexure-7), are hereby, quashed and set aside."

He further relied on the decision of the Co-ordinate Bench of the Tribunal of Kolkata Bench in the case of Raj Kumar Agarwal vs. ACIT, Circle-1(1), Kolkata, wherein it has been held that:-

"5. After hearing the rival contentions and perusing the materials available on record, we find that in this case the reopening has been made apparently after a period of 3 years from the end of the relevant assessment year and therefore, the same can only be made if the income chargeable to tax amounts to or is likely to amounts to Rs.50 lacs or more and. So, therefore the very condition for reopening beyond three years fails in this case as the additions was made only to the tune of ₹7,81,703/- whereas, the order u/s 148A(d) of the Act was passed that income to the tune of ₹20,37,22,320/- as escaped. Therefore, we quash the reopening of assessment as well as the order framed by the ld. lower authorities to be barred by limitation."

4. On the other hand, the Ld. DR relied on the orders of the Lower Authorities and submitted that, at the time of issuance of notice, the escaped income was determined at Rs.84,29,024/-. The provisions of Section 149(1)(b) of the Act are applicable at the time of reopening, but not at the time of making the assessment. Therefore, the argument made by the Learned Counsel for the Assessee is not tenable. The reopening has been made correctly by the Assessing Officer after obtaining proper approval from the competent authority.

5. Considering the rival submissions and perusing the material available on record, and the orders of the Authorities below, it is noted

that the Assessee did not file a return of income u/s 139 of the Act. Accordingly, after obtaining due approval from the competent authority, the notice u/s 148 of the Act was issued on 21.07.2022 under the new regime. However, the escaped income is only Rs.20,00,000/-. The case is for A.Y. 2015-16, and the notice was issued u/s 148 of the Act on 21.04.2022, which is beyond the period of three years as per the amended provisions of the Act. W.e.f. 01.04.2021. Accordingly, as per Section 149(1)(b) of the Act, which states as under:

"...149. (1) No notice under section 148 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 ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of accounts or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year:

Provided that no notice under section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if such notice could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of this section, as they stood immediately before the commencement of the Finance Act, 2021"

6. On going through the above section, it is clear that if the escaped income is less than Rs.50,00,000/-, the Assessing Officer has time to reopen the case only for up to three years, and in this case the period of issuance of notice as per the new provisions of amended Sections 147 to 151 of the Act is not covered. Accordingly, the notice

was issued after the expiry of the limitation period as provided in the above referred Section. Accordingly, the Assessing Officer had no right to reopen the case beyond the period of three years, and this issue has been settled by various Judicial forums and followed by the judgment relied upon by the Learned Counsel. In support of my view, I rely on the judgment of the High Court of Karnataka in the case of Sanath Kumar Murali vs ITO reported in [2023] 152 taxmann.com 231 (Karnataka) in which it has been held as under:-

> *14. It is clear that the notice is issued in the context of sale consideration from sale of immoveable property for an amount of Rs. 55,77,700/-. As noted above, the reply to the show cause notice, copy of which is enclosed at Annexure-'Fl' would reveal the details of sale consideration and the cost of acquisition would be the indexed cost of acquisition in light of the sale leads to accrual of long-term capital gain.*
> *15. In the present case on hand, clearly, the income that has escaped assessment is the proceeds from the sale as made out from perusal of the Annexure to the show cause notice at Annexure-'C. In case of income arising from the sale of property which may fall within the purview of section 48 so as to amount to capital gains, it is relevant to notice that section 48 provides for mode of calculation of income chargeable under the head 'Capital Gains'. Section 48 reads as follows:-*
>
> *"48. The income chargeable under the head "Capital gains" shall be computed, by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset the following amounts, namely :-*
>
> *(i) expenditure incurred wholly and exclusively in connection with such transfer,*
>
> *(ii) the cost of acquisition of the asset and the cost of any improvement thereto;*
>
> *(iii) in case of value of any money or capital asset received by a specified person from a specified entity referred to in sub-section (4) of section 45, the amount chargeable to income-tax as income of such specified entity under that sub-section*

which is attributable to the capital asset being transferred by the specified entity, calculated in the prescribed manner:

** ** **

Provided further that where long-term capital gain arises from the transfer of a long-term capital asset, other than capital gain arising to a non-resident from the transfer of shares in, or debentures of, an Indian company referred to in the first proviso, the provisions of clause (ii) shall have effect as if for the words "cost of acquisition" and "cost of any improvement", the words "indexed cost of acquisition" and "indexed cost of any improvement" had respectively been substituted:....

** ** **

16. The words used in section 149(1)(b) is that the 'income chargeable to tax' which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year. The income chargeable under the head of 'capital gains' which would arise in case of sale transaction is as provided under section 48, which provides that income chargeable under the head of 'capital gains' shall be computed by deducting from the full value of the consideration, the cost of acquisition and in the event, the property purchased has been held for a period beyond three years in terms of second proviso to section 48, the words, 'cost of acquisition' is to be substituted by the words, 'indexed cost of acquisition'. This material is pointed out in the reply at Annexure-'Fl' furnished to the show cause notice, which ought to be taken note of prior to the issuance of notice under section 148A of I.T. Act.

17. It must be noticed that before issuance of notice under section 148 to reopen the proceedings with respect to the Assessment Year 2016-2017. Section 148A provides:

"148A. The Assessing Officer shall, before issuing any notice under section 148, -

(a) conduct any enquiry, if required, with the prior approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;

(b) provide an opportunity of being heard to the assessee, with the prior approval of specified authority, by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days and but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under

section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a);

(c) consider the reply of assessee furnished, if any, in response to the show-cause notice referred to in clause (b);

(d) decide, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under section 148, by passing an order, with the prior approval of specified authority, within one month from the end of the month in which the reply referred to in clause (c) is received by him, or where no such reply is furnished, within one month from the end of the month in which time or extended time allowed to furnish a reply as per clause (b) expires:

** ** **"

Clearly when the procedure is followed culminating in an order passed under section 148(A)(d), the Authority is required to apply its mind and consider the reply of the assessee and pass a considered order. In the present case, the respondent Authority has not applied its mind to the reply filed, nor noticed the legal position while deciding as to the application of the extended period under section 149(1)(b) of the I.T. Act.

18. Accordingly, in the present case, the words found in section 149 which is 'income chargeable to tax' must be read in terms of 'income' as arising out of the 'Capital Gains' as provided under section 48 and this is the only manner of understanding the words, 'income chargeable to tax under section 149(1)(b) of I.T. Act.

19. The contention of the Revenue that under section 149 what is required to be taken note of, is the 'income that has escaped assessment' being the entirety of sale consideration of Rs. 55,77,700/- cannot be accepted, in light of the express words in the statutory provision '..... income chargeable to tax. which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more'. It cannot be stated that since the stage at which the notice is issued is at a premature stage, the entirety of consideration of Rs. 55,77,700/-ought to be taken note of. A plain reading of section 48 would provide that the entirety of sale consideration does not constitute 'income'. The memorandum explaining the provisions of Finance Act, 2021 does not in any way lead to giving a different interpretation to the words, 'income chargeable to tax'. The words used under section 149 for the purpose of extended time limit is to be interpreted in terms of the

plain wordings of section 149 and cannot be construed differently while relying on any executive instruction.

20. Learned counsel appearing for the Revenue has relied on the judgment of Rajasthan High Court in the case of Abdul Majeed v. ITO [2022] 140 taxmann.com 485/289 Taxman 304/447 ITR 698 passed in Civil Petition No. 7853 of 2022. However, a close reading of the said judgment does not support the interpretation sought to be placed and the High Court of Rajasthan has also reiterated the same position as laid down above.

21. Accordingly, the order at Annexure-'A' dated 21-3-2023 passed under section 148A(d) of the I.T. Act is set aside and the notice at Annexure-'B' dated 21-3-2023 issued under section 148 of the I.T. Act by the respondent No. l for the Assessment Year 2016-2017 is set aside.

The Writ Petition is accordingly allowed."

Respectfully following the above judgement and facts of the case of the Assessee, the legal Ground No.4 raised by the Assessee is allowed. Since, I have allowed the Appeal of the assessee on legal issue in above terms, there is no need to go on merits of the case.

7. In the result, the Appeal of the Assessee is allowed in the above terms, and the Assessing Officer is directed to delete the addition.

Order pronounced on 22.10.2026.

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Dated: 22.10.2026
DP, PS

Copy of the order forwarded to:

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. CIT(DR)

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