

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.2396/Bang/2018
Assessment Year: 2008-09

Deputy Commissioner of Income-tax Circle-6(2)(1) Bangalore	<b>Vs.</b>	Sri C. Gangadhara Murthy No.322, 3 <sup>rd</sup> A Cross 2 <sup>nd</sup> Block 3 <sup>rd</sup> Stage, Basaveshwaranagar Bangalore 560 079.  <b>PAN NO : AGPIG2668N</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri Narendra Sharma, A.R.
<b>Respondent by</b>	:	Shri Sumer Singh Meena, D.R.

<b>Date of Hearing</b>	:	13.07.2022
<b>Date of Pronouncement</b>	:	13.07.2022

**O R D E R**

**PER CHANDRA POOJARI, ACCOUNTANT MEMBER:**

This appeal by revenue is directed against the order of Ld. CIT(A) dated 26.4.2018. The revenue has raised following grounds of appeal:-

- 1. The order of the CIT (Appeals) is opposed to law and the facts and circumstances of the case.*
- 2. On the facts and circumstances of the case, whether the Ld CIT(A) is justified in holding entire proceedings initiated u/s.147 ab- initio void as there was no sanction from the Joint Commissioner of Income Tax (JCIT), whereas , the assessee has never raised the prior sanction by the JCIT for issue of notice u/s.148 at the time of the assessment proceedings.*

3. *On the facts and circumstances of the case, whether the Ld CIT(A) is justified in holding entire proceedings initiated u/s.147 ab- initio void whereas, the assessee has co-operated in the assessment proceedings initially and raised the issue of noncompliance of provision u/s.151(2) after expiry of 03 years from the date of service of notice. As per the provisions of section 292BB "where an assessee has appeared in any proceedings or co-operated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provision of this Act, which is required to be served upon him, has been duly served upon him in time in accordance with the provisions of this Act".*
4. *For these and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order of the CIT(A), in so far as relates to the above grounds may be reversed and that of the Assessing Officer be restored.*
5. *The appellant craves leave to add, to alter, to amend or delete any of the grounds that may be urged at the time of hearing of the appeal.*

2. Facts of the case are that assessee is an individual, a landlord, an investor in mining firms as well as urban properties and other activities. The assessee had filed his return of income for Asst. Year 2008-09 declaring total income of Rs.1,01,33,850/- The return was processed u/s 143(1) of the Income-tax Act, 1961 ['the Act' for short]. Information regarding cash deposits made by assessee into his bank accounts was received as per AIR and CIB information database. Subsequently, notice u/s 142(1) of the Act dated 21/03/2014 had been issued and served on the assessee. Also notice u/s 148 of the Act was issued on 11/02/2014.

3. The assessee carried the appeal before Ld. CIT(A) with regard to various issues including challenging of the reopening of assessment on the reason that the reason recorded do not have the approval of JCIT, hence, bad in law. The Ld. CIT(A) observed on this issue as follows-

**LEGAL ISSUE ON OPENING OF ASSESSTMENT ORDER- The Reasons Recorded do not have the approval of the Joint Commissioner of Income Tax and hence Bad in Law:**

3.1 In its Written Submission the assessee contended that no approval or sanction was obtained by AO prior to re-opening of his case u/s 148 of the Act. Therefore, this issue is being taken up for adjudication. The moot question is whether the AO ought to have obtain sanction of the Joint Commissioner u/s 151 of the Act before initiating proceeding u/s 147 and issuing a notice u/s 148 of the Act. It is clear from the provisions of the Act that sub section (2) of Section 151 of the Act mandates that an AO. who is below the rank of a JCIT must take a sanction before issuing a notice u/s 148 of the Act in a case where more than 4 years have lapsed from the end of the relevant assessment year. In the instant appeal, it is noted that an ACIT, who is below the rank of a JCIT has initiated proceedings in respect of AY 2008-09 and the notice is issued on 11/02/2014, which is clearly after a period of 4 years from the end of AY 2008-09 and a sanction from the JCIT is necessary before issue of notice u/s 148 of the Act.

3.2 In this context, it may be noted that para 5 of Remand Report dated 20/02/2018 reads as under:-

"..for AY 2008-09, the sanction was required to be taken. The copy of the sanction is not readily available in the records and efforts are being made to locate the same from the available records received on transfer. The CIT(A) may kindly grant more time to produce the same."

3.3 It may be noted that till date, no further report has been filed nor copy of sanction report submitted. A copy of notice issued u/s 148 by AO is made part of this order. It is observed that the said notice u/s 148 dated 11/02/2014 was issued by Asst. Comm. of Income Tax.

3.4 In this context, it may be noted that when necessary sanction u/s 151 is not obtained, notice issued has been held to be bad in law and the assessment orders were

cancelled/annulled as held in the following judicial pronouncements:-

- (i) *Maruti Clean Coal & Power Ltd. Vs. ACIT (Chattisgarh HC) in WP No.346 of 2017, order dated 3.1.2018 (2018) 89 taxmann.com 340 (Chattisgarh)/(2018) 400 ITR 397 (Chattisgarh) (2018) 300 CTR 358 (Chattisgarh)*
- (ii) *Ghanshyam Khabrani vs ACIT 249 CTR 370 (Bombay HC);(2012) 20 taxmann.com 716 (Bombay)/ (2012) 210 Taxman 75 (Bombay) (MAG)/ (2012) 346 ITR 443 (Bombay) / (2012) 249 CTR 370 (Bombay)*
- (iii) *CIT vs Suman Waman Chaudhary 321 ITR 495 (Bombay HC);(2010) 321 ITR 495 (Bombay)*

3.5 The above decisions are clear that a sanction of the relevant higher authority, if required u/s 151, has to be mandatorily obtained before issue of notice u/s 148 and any initiation of proceedings in the absence of sanction as mandated by section 151, will render the whole proceeding void ab initio and the consequent assessment order made will have to be necessarily cancelled as Bad in Law. In the case of Smt. Suman Waman Chaudhary 321 ITR 495 (Bombay HC);(2010) 321 ITR 495 (Bombay) , the Hon'ble High Court of Bombay held that under section 151 (2), prior approval of the concerned authority before issuance of notice is required. In the case of Ghanshyam K Khabrani 249 CTR 370 (Bombay HC), (2012) 20 taxmann.com 716 (Bombay)/ (2012) 210 Taxman 75 (Bombay) (MAG)/ (2012) 346 ITR 443 (Bombay) / (2012) 249 CTR 370 (Bombay) the Hon'ble High Court of Bombay held that when statute mandates satisfaction of a particular functionary for exercise of power, satisfaction must be of that authority. In the case of Maruti Clean Coal & Power Ltd vs ACIT (Chattisgarh HC) in WP NO.346 of 2017, order dated 03/01/2018 (2018) 89 taxmann.com 340 (Chattisgarh)/(2018) 400 ITR 397 (Chattisgarh) (2018) 300 CTR 358 (Chattisgarh), the Hon'ble High Court of Chhatisgarh held

that under section 148 after four years from end of relevant assessment year without sanction of Commissioner was unjustified.

3.6 In the instant appeal, it is noted that there was no sanction obtained from the Joint Commissioner and thus the entire proceeding, initiated u/s 147 of the Act will be rendered ab initio void. Therefore, in view of the above facts, and based on the remand report dated 20/02/2018, one is constrained to hold the assessment order passed u/s 144 r.w.s. 148 of the Act dated 20/8/2014 as unsustainable. Reliance is also placed on above judicial pronouncements cited in para 13 supra.

3.7 Since, the initiation of proceedings u/s 148 has been found to be unsustainable. merits of the case have not been adjudicated by the Ld. CIT(A). Against this revenue is in appeal before us.

4. We have heard the rival submissions and perused the materials available on record. The argument of the Ld. D.R. is that the Ld. CIT(A) without verifying the records quashed the assessment on the reason that there was no approval from the competent authority.

5. On the other hand, Ld. A.R. submitted that in this case the assessment was framed by Additional Commissioner (Range)-9, Bengaluru. The reopening has been done by Assistant Commissioner of Income Tax, Circle-9(1), Bengaluru. Being so, there is mandatory requirement of seeking the approval from as required u/s 151 of the Act. Hence, the Ld. CIT(A) has quashed the assessment. Same to be upheld. In our opinion, the argument of the assessee's counsel is devoid of merit in view of the fact that Ld. CIT(A) has not at all verified

whether there is an approval from the competent authority in terms of section 151 of the Act. He has observed in para 9 of his order as follows:-

*“9. In this context, it may be noted that para 5 of Remand report dated 20.2.2018 reads as under:-*

*“for AY 2008-09, the sanction was required to be taken. The copy of the sanction is not readily available in the records and efforts are being made to locate the same from the available records received on transfer. The CIT(A) may kindly grant more time to produce the same.”*

6. In our opinion, it is appropriate to remit the issue to the file of Ld. CIT(A) to examine whether there is an approval from the competent authority in terms of section 151 of the Act or not and decide accordingly. The other grounds of revenue raised by the revenue are infructuous in view of the fact that we have remitted the issue of seeking approval from the competent authority in terms of section 151 of the Act. Accordingly, the appeal of the revenue is partly allowed for statistical purposes.

7. In the result, the appeal filed by the revenue is partly allowed for statistical purposes.

Order pronounced in the open court on 13<sup>th</sup> Jul, 2022

**Sd/-**  
**(Beena Pillai)**  
**Judicial Member**

**Sd/-**  
**(Chandra Poojari)**  
**Accountant Member**

Bangalore,  
Dated 13<sup>th</sup> Jul, 2022.  
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

**Asst. Registrar,  
ITAT, Bangalore.**