

**IN THE INCOME TAX APPELLATE TRIBUNAL  
JODHPUR BENCH, JODHPUR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. Nos. 13 to 14/Jodh/2022  
Assessment Years: 2011-12 to 2012-13**

Preeti Naveen Mehta, 118, Hotel, Aashish palace Ki Gali Chetak Marg, Udaipur, Raj. [PAN: AIXPM5948A] <b>(Appellant)</b>	<b>Vs.</b>	Income Tax Officer, Ward-1(4), Udaipur.  <b>(Respondent)</b>
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**I.T.A. Nos. 15 to 16/Jodh/2022  
Assessment Years: 2011-12 to 2012-13**

Tej Prakash Bahnwar Lal Mehta, 118, Hotel, Aashish palace Ki Gali Chetak Marg, Udaipur, Raj. [PAN: AGNPM0758N] <b>(Appellant)</b>	<b>Vs.</b>	Income Tax Officer, Ward-1(4), Udaipur.  <b>(Respondent)</b>
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<b>Appellant by</b>	<b>Sh. Shrawan Kumar Gupta, Adv.</b>
<b>Respondent by</b>	<b>Ms. Nidhi Nair, Sr. DR</b>

<b>Date of Hearing</b>	<b>11.12.2023</b>
<b>Date of Pronouncement</b>	<b>15 .12.2023</b>

**ORDER**

**Per: Bench:**

A batch of four appeals of the two different assesseees were filed against the order of the Id. Commissioner of Income Tax (Appeals) NFAC, Delhi, [in brevity

the 'CIT (A)'] order passed u/s 250 of the Income Tax Act 1961, [in brevity the Act] for A.Ys. 2011-12 to 2012-13. The impugned orders were emanated from the order of the Id. Income Tax Officer, Ward-1(4), Udaipur, (in brevity the AO) order passed u/s 143(3)/148 of the Act.

2. At the outset, all the appeals are common and have a same nature of fact. Therefore, all the appeals are taken together, heard together and disposed of together. For the sake of convenience, **ITA No. 13/Jodh/2022** is taken as the lead case.

**ITA No. 13/Jodh/2022**

3. The assessee has taken the following grounds which are reproduced as below:

*“1. Ground 1.1 AND 1 .2: The impugned order u/s 148/143(3) dated 30,06.2015, as well as the action taken u/s 147/148 and notices are bad in law. illegal, invalid, void-ab-intio on facts of the case, for want of jurisdiction, without proper approval and satisfaction of higher authorities u/s 151 of the Act, and also barred by limitation and various other reasons and hence the same may kindly be quashed.*

*2. Ground2. Rs.4,00,000/-: The Id. CIT(A) has grossly erred in law as well as on the facts of the case in sustaining*

*the addition of Rs.4.00.000.- made by the Id. AO u/s 68 on account of alleged accommodation entries of unsecured loans taken from creditors, also erred in not considering the material in their true perspective and stance. Hence the addition so made by the Id. AO and confirmed by the Id. CIT(A) is being totally contrary to the provisions of law and facts on the record and hence the same may kindly be deleted in full.*

*3. Ground3. Rs. 15,649.;-: The Id. CIT(A) has also grossly erred in law as well as on the facts of the case in sustaining the addition of Rs. 1 5.649A- made by the Id. AO on account of interest payment made to the creditors on the above alleged accommodation entries of unsecured loan.;, taken from creditors, also erred in not considering the material in their true perspective and sance. Hence the addition so made by the Id. AO and confirmed by the Id. CIT(A) is being totally contrary to the provisions of law and facts on the record and hence the same may kindly be deleted in full.*

*4. Ground4. The Id. AC) has grossly erred in law as well as on the facts of the case in charging interest u/s 234A ,B,C. The appellant totally denies it liability of charging of any such interest. The interest, so charged, being contrary to the provisions of law and facts, may kindly be deleted in full.*

5. *Ground5. The appellant prays your honors indulgence to add, amend or alter all or any of the grounds of the appeal on or before the date of hearing.”*

4. The assessee has also taken the additional grounds which reproduced as below:

*“1.1 The impugned order u/s 148/143[ dated 30.06.2015, as well as the act/on taken u/s 147/148 and notices are bad in law, illegal, invalid, void-ab-initio on facts of the case, for want of jurisdiction, without proper approval and satisfaction of higher authorities u/s 151 of the Act, and also barred by limitation and various other reasons and hence the same may kindly be quashed.*

*“1.2 : The impugned order u/s 148/143(3) dated 30.06.2015, as well as the action taken u/s 147/148 and notices are bad in law, illegal, invalid, void-ab-initio on facts of the case, due to the reasons that*

*[a] Notice has been issued u/s 148 in place of 153C and the assessment has also been made u/s 148 in place of 153C.*

*[b] Assessment has also been passed without issuing the Notice u/s 143(2) after filling the ITR u/s 148.*

*[c] No approval from the Jurisdictional authorities u/s 151 and hence the same may kindly be quashed.”*

5. Brief fact of the case is that the assessee filed the return and was processed the return u/s 143(1). On basis of information received from Investigation Wing, it is found that the assessee has filed accommodation entries Rs. 4 lac from M/s Tringular Infocom Ltd. The notice u/s 148 was issued to the assessee on 24.02.2015 related to assessment year 2011-12 asking the assessee to file the return in relation to notice u/s 148. The ld. AR for the assessee filed a letter on 10.06.2015 and stated that the return filed u/s 139(1) should be treated as return filed u/s 148. The notice was issued u/s 142(1) and the addition was confirmed the amount of Rs.4,15,649/- u/s 68 of the Act. Aggrieved, the assessee challenged both the legal and factual grounds before the ld. CIT(A). The ld. CIT(A) upheld the order of the ld. AO. Being aggrieved assessee filed an appeal before us.

6. The ld. AR filed the written submissions which are kept in the record. The ld. AR first invited our attention in additional ground which is filed before the ITAT afresh. All the additional grounds are legal in nature. The assessee has challenged the application of section 151 related to approval for issuance of notice u/s 148 which is more than two years from the impugned assessment years. The ld. AR invited our attention in copy of recorded reasons in **APB page no.1**. The recorded reason is duly reproduced as below:

*“Reasons for issue Of notice u/s 148 of the*

*I.TAct.*

*As per information's received from the office of the DGIT Mumbai a search operation was carried at the preemies of Praveen Kumar Jain group, certain incriminating documents were found related to providing of bogus accommodation entries. According to theabovesaid search, Shri Praveen Kumar Jain has provided bogus accommodation entries ofRs.4.00 Lacs to the assessee through Triangular InfocomLtd.(Lexus Infotech Ltd.) operatedby Sh. Praveen Kumar Jain during the assessment year 2011-12.*

*In view of these facts, I am satisfied that the income has escaped assessment for theAsstt.Year 2011-12.*

*Dated:- 20.02.2015*

*Place: - Udaipur*

*Sd/-*

*(P.B. Chaturvedi)  
Income Tax Officer  
Ward-1,(4), Udaipur.”*

6.1 The ld. AR vehemently argued and placed that the entire proceedings of the ld. AO iscaused nullity and has no legs to stand as because no approval was taken U/s 151 of the Act. The issuance of notice is bad in law.

7. The ld. DR vehemently argued and accepted that there is no approval in the file of the assessee.

8. We heard the rival submission and considered the documents available in the record. First the additional grounds of appeal are taken for adjudication. The additional grounds of the assessee are accepted & the ld. DR has not made any objection. On perusal of the recorded reason, it reveals that the ld. AO has not taken any approval u/s 151 of the Act from higher authorities. In detailed reading of section 151 is as follows:

*<sup>1</sup>[Sanction for issue of notice.*

*151. (1) In a case where an assessment under sub-section (3) of section 143 or section 147 has been made for the relevant assessment year, no notice shall be issued under section 148<sup>2</sup> [by an Assessing Officer, who is below the rank of Assistant Commissioner<sup>3</sup> [or Deputy Commissioner], unless the<sup>4</sup> [Joint] Commissioner is satisfied on the reasons recorded by such Assessing Officer that it is a fit case for the issue of such notice] :*

*Provided that, after the expiry of four years from the end of the relevant assessment year, no such notice shall be issued unless the 8[Principal Chief Commissioner or] Chief Commissioner or*

*8[Principal Commissioner or] Commissioner is satisfied, on the reasons recorded by the Assessing Officer aforesaid, 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<sup>5</sup>[Joint] Commissioner, after the expiry of four years from the end of the relevant assessment year, unless the<sup>6</sup>[Joint] Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.]*

*<sup>7</sup>[Explanation.-For the removal of doubts, it is hereby declared that the Joint Commissioner, the<sup>8</sup>[Principal Commissioner or] Commissioner or the<sup>8</sup>[Principal Chief Commissioner or] Chief 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]"*

8.1 On perusal of the recorded reason in the notice, the revenue was unable to show the any of the documents related to approval taken by the ld. AO before issuing the notice u/s 148 r.w.s. 151 of the Act. The question was raised that whether the mistake is curable U/s 292B of the Act. The reply is against the revenue. The order was delivered by the Hon'ble **Rajasthan High Court** in the case of **M/S Dhadda Exports Versus Income Tax Officer, Ward 1 (1), Jaipur, [2015] 377 ITR 347 (Raj)**

*“The objection to show cause-notice under Section 148 of the IT Act has been rejected by the Income Tax Officer by impugned order dated 15.01.2015 citing, apart from various reasons, also the reason that required sanction of Commissioner of Income Tax was not taken due to oversight that assessment of the assessee firm had already been completed under Section 143(3). It was stated that mistake was committed inadvertently and is curable by recourse to Section 292B of the IT Act. That plea is liable to be rejected because when specific provision has been inserted to the proviso to Section 151 (1), as a prerequisite condition for issuance of notice, namely, sanction of the Commissioner or the Chief Commissioner, the assessing officer cannot find escape route for not doing so by relying on Section 292B. The Delhi High Court in CIT Vs. SPL's Siddhartha Limited, has while holding that when a particular authority has been designated to record his/her satisfaction on any particular issue, then it is that authority alone who should apply his/her independent mind to record his/her satisfaction and satisfaction so recorded should be 'independent' and not 'borrowed' or 'dictated' satisfaction, rejected contention of the revenue that obtaining approval from the authority other than the one who was competent to grant such approval, was mere irregularity committed by the Income Tax Officer. And that it was rectifiable under Section 292B of the IT Act cannot be accepted as such irregularity is not curable under Section 292B.*”

*In the opinion of this court also, resort to Section 292B of the IT Act cannot be made to validate an action, which has been rendered illegal due to breach of mandatory condition of the sanction on satisfaction of Chief Commissioner or Commissioner under proviso to sub-section (1) of Section 151. This is an inherent lacunae affecting the very correctness of the notice under Section 148 and is such which is not curable by recourse to Section 292B of the IT Act.*

*In view of above discussion, present writ petition succeeds and is allowed. The impugned notice dated 27.03.2014 (Annexure-4) and order dated 15.01.2015 (Annexure-10) are quashed and set aside. This also disposes of stay application.”*

8.2 In our considered view, the issue is purely legal and Id. DR is also accepted that there is no approval in the file of the revenue. We respectfully relied on the **M/S Dhadda Exports** (supra). Issuance of notice without approval has been rendered illegal due to breach of mandatory condition of the sanction on satisfaction of higher authority under proviso to Section 151 of the Act. Considering this, we set aside the impugned appeal order. Accordingly, the assessment order passed U/s 147 of the Act for impugned assessment order is quashed. Appeal of the assessee bearing ITA No. 13/Jodh/2022 is allowed.

Considering the additional grounds, the appeal of the assessee is allowed. The adjudication of grounds of appeal are only remained for academic purposes.

9. As our observation in the **ITA No 13/Jodh/2022** is *mutatis mutandis* applicable to **ITA Nos. 14 to 16/Jodh/2022** and will be followed accordingly.

10. In the result, the appeals of the assessee bearing **ITA Nos. 13 to 16/Jodh/2022** are allowed.

**Order pronounced in the open court on 15.12.2023**

**Sd/-**

**(Dr. M. L. Meena)**  
**Accountant Member**

**Sd/-**

**(ANIKESH BANERJEE)**  
**Judicial Member**

**AKV**

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy  
By Order