IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "A", BANGALORE

Before Shri George George K, Vice-President &
Shri Laxmi Prasad Sahu, Accountant Member

ITA No.1034/Bang/2023 : Asst.Year 2009-2010

Bharath Hi-Tech Builders Pvt. Ltd. 304 & 306 Gold Tower, 3rd Floor Gold Residency Road Bangalore – 560 025. **PAN : AAACK8043N.**	v.	The Deputy Commissioner of Income-tax, Circle 1(1)(2) Bangalore.
(Appellant)		(Respondent)

Appellant by : Sri.Inder Paul Bansal & Sri.Vivek Bansal
Respondent by : Sri.Nilanjan Dey, Addl.CIT-DR

Date of Hearing : 07.03.2024		**Date of Pronouncement : 11.03.2024**

O R D E R

Per George George K, Vice-President :

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 22.11.2023 passed u/s.250 of the Income-tax Act, 1961 ("the Act" hereinafter). The relevant assessment year is 2009-2010.

2. The grounds raised read as follows:-

> *"1. That under the facts and circumstances of the case, Ld.NFAC (National Faceless Appeal Centre) has erred in law as much as in facts in upholding the validity of initiation of reassessment proceedings without discussing the facts ad without taking into consideration specific grounds of appeal and also without taking into consideration the written submissions.*
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> *2. That under the facts and circumstances of the case, the order passed by NFAC upholding the validity of reassessment proceedings is bad in law on the ground that issue regarding invalidity of initiation of reassessment proceedings as per*

notice dated 29.03.2016 is bad in law on account of non-culmination and pendency of earlier notice issued u/s.148 of the Income Tax Act, 1961 ("the Act") which was dated 26.03.2013 which could not be automatically considered as null and void as has been held by the AO.

3. That under the facts and circumstances of the case, the Ld.NFAC has failed to appreciate that the reasons recorded with regard to notice issued u/s.148 of the Act dated 29.03.2016 have no mention of earlier notice dated 26.03.2013 and any disposal thereof or the fact that the notice dated 29.03.2016 is being issued for the reason that earlier notice dated 26.03.2013 has become infructuous due to assessment to be framed in pursuance thereto has become time barred, therefore, the initiation of reassessment proceedings is bad in law as without recording such fact in the reasons the second notice could not have been issued and would be based on non-application of mind and bad in law.

4. That under the facts and circumstances of the case, Ld, NFAC has failed to appreciate that the initiation of reassessment proceedings is bad in law on the ground that no valid approval u/s 151 of the Act has been granted by the PCIT as such approval was communicated to the AO by ACIT (H.Qrs.) as per letter dated 24-03-2016 and such approval is not under the self-signature of PCIT. Also, there is complete absence of recorded satisfaction by the PCIT himself under his own signatures which fact is apparent from the documents supplied in this regard to the assessee by the AO. Therefore, the impugned assessment order is bad in law on account of invalid.

5. That under the facts and circumstances of the case, Ld. NFAC has failed to appreciate that the reassessment is bad in law on the ground that the objections filed by the assessee as per letter dated 07.11.2016 have not been disposed of by a speaking order and the reassessment order is passed without considering the objections of the assessee. It is pertinent to note that letter dated 03-11-2016 is considered as objections and till that the copy of reasons was not provided to the assessee and in this very letter the assessee was asking for the copy of reasons. The Copy of reasons was provided only on 04-11-2016 and all these facts are recorded in the so-called order dated 07-11-2016 passed for disposing of the objection of the assessee. Without receiving the copy of reasons, the assessee is not supposed to file objections against initiation of reassessment proceedings. Therefore the reassessment order is liable to be quashed.

> *6. That under the facts and circumstances of the case, Ld. NFAC has failed to appreciate that the initiation of reassessment proceedings is also bad in law as the same is based on incriminating material found during the course of search carried out on 14-09-2010 in the case of Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain and proceedings ought to have been initiated u/s 153A/153C of the Act instead of initiating the same u/s 147 of the Act.*
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> *7. That under the facts and circumstances of the case, that the addition of Rs.1,37,30,000/- has been wrongly upheld by Ld. NFAC, particularly in view of the fact that it is a case where the shares have been allotted to the respective share applicant during the year under consideration itself and the amount has been received in the bank account of the assessee from existing corporate entities whose existence cannot be denied and whereabouts are ascertainable and these facts are sufficient to discharge the onus laid upon the assessee as assessee was not under legal obligation' to prove the source of source in a case where shares have been allotted in respect of share application money in the relevant financial year itself.*
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> *8. That under the facts and circumstances of the case, Ld. NFAC has failed to appreciate that the addition of Rs.1,37,30,000/- was liable to be deleted on the ground that the assessee was not provided with the opportunity of cross-examining the persons whose statements were recorded and the assessee was not provided with the copy of seized material on the basis of which the inference was drawn that the income has escaped in the hands of the assessee. The addition is liable to be deleted on the ground that the same is in violation of principles of natural justice.*
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> *9. That appellant craves to leave, alter, amend or modify the grounds of appeal before or during the hearing of the appeal.*
>
> *10. That each ground is independent and without prejudice to each other."*

3. The brief facts of the case are as follows:

The assessee is a company. For the assessment year 2009-2010, the return of income was filed on 30.09.2001 declaring loss of Rs.6,46,341. Notice u/s.148 of the Act was issued on 26.03.2013. However, no reassessment was

completed for the notice issued u/s.148 of the Act dated 26.03.2013. Thereafter, a fresh notice u/s.148 of the Act was issued on 29.03.2016. The reasons recorded for issuance of the fresh notice u/s.148 of the Act are as follows:-

> *"A search & survey action was conducted by DDIT(Inv.), Unit-VI(2), New Delhi in the case of Shri. Surendra Kumar Jain and Shri.Virendra Jain on 14.09.2010. Various incriminating documents were seized and impounded. During the post search investigation of seized / impounded documents it was revealed that Shri.Surendra Kumar Jain and Shri.Virendra Jain were engaged in the business of providing accommodation entries by providing RTGS/cheque/PO/DD in lieu of cash, to a large number of beneficiary companies through various paper and dummy companies floated and controlled by them.*
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> *M/s.Bharath Hi-Tech Builders P. Ltd. (PAN:AAACK8043N) is one of those beneficiaries companies who have obtained the accommodation entries from Shri.S.K.Jain Group via dummy companies named as M/s.Virgin Capital Services P.Ltd., M/s.VIP Leasing & Finance P. Ltd., M/s.Zenith Automotive P.Ltd., and M/s.Lotus Realcon P.Ltd. During the financial year 2008-09 to the tune of Rs.1,17,50,000.*
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> *The share capital/share premium/loan received by M/s.Bharath Hi-Tech Builders Pvt. Ltd. Through Shri.Surendra Kumar Jain and Shri.Virendra Jain is nothing but Bharat Hi-Tech's own undisclosed income introduced as bogus share capital / share premium. During the year Rs.1.31 cr. has been introduced as share capital and Rs.1.19 cr. as share premium as per the balance sheet of the assessee. Scruting assessment has not been done in the case of assessee for AY 2009-10. Further, unsecured loans taken by the assessee also needs to be verified. In the light of the above information, I have reason to believe that income amounting to Rs.1,17,50,000/- has escaped assessment in the hands of M/s.Bharath Hi-Tech Builders Pvt. Ltd. for the A.Y.2009-10.*
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> *As per proviso to sec.147, four years have elapsed from the end of the A.Y. 2009-10 and the assessee has failed to disclose fully and truly all material facts necessary for assessment. Further, the amount escaped assessment is more than Rs.1 lakh.*

> *As, four years have elapsed since the end of the A.Y. 2009-10, kind approval is sought for issue of Notice u/s.148 in case of M/s.Bharath Hi-Tech Builders Pvt. Ltd. for A.Y. 2009-10 as per proviso to sec.151 of the I.T.Act, 1961."*

4. In response to the notice issued u/s.148 of the Act, the assessee vide letter dated 11.04.2016 submitted that the original return filed may be taken as a return filed in response to the said notice. The assessee objected to the fresh notice issued u/s.148 of the Act (dated 29.03.2016). It was submitted that the first notice dated 26.03.2013 u/s.148 of the Act was still pending and did not culminate in an assessment. Therefore, it was contended that second notice issued on 29.,03.2016 would be invalid. The assessee also objected as regards assumption of the jurisdiction for the issue of notice u/s.148 of the Act in a search related case. It was the contention of the assessee that the assessment proceedings ought to have been initiated u/s.153C r.w.s. 153A of the Act. The Assessing Officer, however, rejected the objections of the assessee and completed the assessment determining the total income at Rs.1,30,83,669 instead of loss declared of Rs.6,46,331 in the return of income. The A.O. held that the addition of Rs.1,37,30,000 represents fictitious share allotment of Rs.18,05,000 and share premium of Rs.1,19,25,000. The A.O. concluded the share allotment amount and share premium amount was chargeable to tax as unexplained credit u/s.68 of the Act.

5. Aggrieved by the order of reassessment completed u/s.143(3) r.w.s. 147 of the Act (order dated 05.03.2017), the

assessee filed appeal before the first appellate authority. Before the first appellate authority, the assessee had raised legal ground with regard to validity of reassessment. On the merit also, the assessee had raised the grounds stating that the addition made u/s.68 is not justified since the assessee had discharged its initial onus of proving the identity and the genuineness of the transaction. It was stated that the assessee for the relevant assessment year was not obliged to prove the source of source. The CIT(A) by broadly classifying the legal grounds, rejected the contentions of the assessee. The relevant finding of the CIT(A) rejecting legal grounds reads as follows:-

> "*6.1 The appellant in its Grounds of Appeal No. 1 to 4 assailed the AO in initiating the proceedings u/s 147 of the Act and proceedings to complete the re-assessment u/s 143(3) r.w.s 147 of the Act without appreciating the facts and submissions of the appellant. The submission of the appellant is examined, the assessment order is perused. In Ankit Agrochem (P.) Ltd. Vs JCIT, 89 taxmann.com 45 it was held that where DIT informed that assessee-company had received share application money from several entities which were only engaged in business of providing bogus accommodation entries to beneficiary concerns, reassessment on basis of said information was justified. In Eureka Stock and Share Broking Services Ltd. Vs CIT, 82 taxmann.com 10 (SC) it was held that where investigation wing of department had during course of investigation in case of a third party found that he was indulged in providing accommodation entries and bogus bills, and assessee had made sizeable purchases from him, reopening notice against assessee was justified. In Avirat Star Homes Venture (P.) Ltd. Vs ITO, 102 taxmann.com 60 it was held that where information was received from investigation wing about certain companies that they were involved in giving accommodation entries of various natures to several beneficiaries and assessee was one of them, information supplied by investigation wing to Assessing Officer, thus, formed a prima fade basis to enable Assessing Officer to form a belief of income chargeable tax having escaped assessment. Further in In Vasudev Fatandas Vaswani Vs ITO, 2018-TIOL-*

2305-HC-AHM-IT, it was held that when issuing notice for re-opening assessment, the AO is only required to show reasonable belief that income escaped assessment & is not required to establish the same beyond reasonable doubt.

6.1.2 The facts of the case are examined in the light of the above decisions; I find no inadvertence in the reopening of the case by the AO. All the principles as enunciated by the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Limited v. 170(2003)259 ITR19(SC), has been followed by the AO. In view of the above discussion, the appeal on Ground No. 1 to 4 are dismissed.

6.2 The appellant further in its Grounds of Appeal No. 5 to 8 assailed the AO in making addition of Rs.13730000/- received as share allotment and share premium as unexplained cash credit u/s 68 of the Act without providing the opportunity to cross examine and providing the seized material.

6.2.1 The submission of the appellant is examined; the assessment order is perused. The AO has elaborately discussed the factual position in the reasons recorded and the order disposing the objections u/s 148 of the Act and the legal position with regard to the application of the provisions of section 68 of the Act. The Hon'ble Delhi High Court in the case of Udit Kalra 220/2019 dated 08.03.2019 has dealt with the argument that the appellant was denied the right of cross examination of individuals whose statements was used by the revenue and did not find it to be relevant in view of other adverse findings of poor financial worth of the company whose shares were traded at abnormal high price. Further reliance is placed upon the decision of Hon'ble Delhi ITAT in the case of Nokia India Pvt. Ltd. vs. DCIT (2015) 59 taxmann.com 212 (Delhi). It has been held by the Hon'ble Bench in the said case that statements were duty provided to assessee during proceedings before Assessing Officer, however, assessee never asked for cross-examination, hence this plea of cross examination raised at such a later stage of proceedings was not justified. Further reliance is placed on the decisions of Hon'ble Supreme Court in the case of ITO vs. M. Pirai Choodi (2012) 20 taxmann.com 733 (SC)/(2011) 334 ITR 262 and M/s Pebble Investment and Finance Ltd. vs. ITO (2017-TIOL-238-SC-ITI), Hon'ble Delhi High Court in the case of CIT vs. Kuwer Fibers (P) Ltd. (2017) 77 taxmann.com 345 (Delhi). Further, I find that such right as held in various decisions, is not an absolute right and depends not only the circumstances of the case but also on the statute concerned. The Hon'ble Supreme Court has held in the case of State of J&K vs. Bakshi GuiamMohd. AIR 1967 (SC) 122, and in the case of Nath International Sales vs. UOI AIR 1992 Del 295 that the right of hearing does not include a right to cross examine. The right to cross examine must depend upon the

> *circumstances of each case and also on the statute concerned. In the case of T. Devasahaya Nadar vs. CIT (1965) 51 ITR 20 (Mad) it was held that "it is not a universal rule that any evidence upon which the department may rely should have been subjected to cross-examination. If the AO refuses to produce an informant for cross examination by the assessee there cannot be any. violation of natural justice. In the case of GTC Industries ltd. Vs ACIT (1998) 60 TTJ(Bomb-Trib) 308, it was held that where statement and report of third parties are only the secondary and subordinate material which were used to buttress the main matter connected with the amount of addition, denial of opportunity to cross examine third did not amount to violation of natural justice. In the present case, as discussed above, there is overwhelming evidences as discussed in details in the assessment order on which adverse views have been taken are sham transactions. In light of the above discussion the objection of the appellant with regard to not providing the opportunity to cross examine is hereby rejected and dismissed."*

6. The contentions raised by the assessee on merits was also rejected by the CIT(A). The relevant finding of the CIT(A) in rejecting the contentions on merits reads as follows:-

> *"6.2.2Adverting to the ground of appeal of addition of Rs.13730000/-, the submission of the appellant and the assessment order is examined. In PCIT Vs Bikram Singh Delhi High Court [2017] 85 taxmann.com 104 (Delhi)/[2017] 250 Taxman 273 (Delhi)/[2017] 399 ITR 407 (Delhi), it was held that even if a transaction of loan is made through cheque, it cannot be presumed to be genuine in the absence of any agreement, security and interest payment. Mere submission of PAN Card of creditor does not establishes the authenticity of a huge loan transaction particularly when the ITR does not inspire such confidence. Mere submission of ID proof and the fact that the loan transactions were through the banking channel, does not establish the genuineness of transactions. Loan entries are generally masked to pump in black money into banking channels and such practices continue to plague Indian economy. In CIT Vs Empire Builtech (P.) Ltd Delhi High Court [2014] 43 taxmann.com 269 (Delhi)/[2015] 228 Taxman 346 (Delhi)(MAG.)/[2014] 366 ITR 110 (Delhi), it was held that u/s 68 it is not sufficient for assessee to merely disclose address and identities of shareholders; it has to show genuineness of such individuals or entities. In Rick Lunsford Trade & Investment Ltd Vs CIT Calcutta High Court [2016] 385 ITR 399 (Cal)T it was held that when assesses failed to establish the bonafide of the shareholders unexplained share*

> *application money was rightly treated as assessee's income. Finally in Roshan Di Haiti v. CIT Supreme Court [1992] 2 SCC 378, it was held that if the assessee fails to discharge the onus by producing cogent evidence and explanation, the AO would be justified in making the additions back into the income of the assessee."*

7. Aggrieved by the order of the CIT(A), the assessee has filed the present appeal before the Tribunal. The assessee has filed two sets paper book. One set of paper book comprising of 101 pages and the other set of paper book comprising of 34 pages. In the first paper book of 101 pages, the assessee has enclosed the written submissions, notices u/s.148 of the Act issued on 26.03.2013 and 29.03.2016, assessee's objections to the same, the order of the A.O. dated 07.11.2016 purporting to dispose of the assessee's objection to the reasons recorded, copy of the letter dated 03.02.2021 issued by the A.O. in respect of request of the assessee for providing copy of sanction u/s.151 of the Act, etc. In the paper book of 34 pages, the assessee has filed case laws relied on. The learned AR has filed written submissions challenging the reopening of assessment and also on merits. The gist of the written submissions on the validity of reassessment are as follows:-

(i) *Order dated 07.11.2016 cannot be considered as order disposing of objection of the assessee which were duly filed on 07.11.2016 and the order dated 07.11.2016 is disposing of the objections purportedly filed on 03.11.2016 when the copy of reasons was given to the assessee on 04.11.2016, therefore, it is a case where the objections filed by the assessee are not disposed of by way of speaking order and reassessment order is bad in law according to decision of Hon'ble jurisdictional High Court in the case of Deepak*

Extrusions (P.) Ltd., v. DCIT 80 Taxmann.com 77 (Karnataka).

(ii) Without culmination of reassessment proceedings initiated as per notice dated 26.03.2013. Second notice dated 29.03.2016 issued u/s.148 of the Act was invalid.

(iii) The reassessment proceedings are invalid on account of non-application of mind by the AO.

(iv) The reassessment proceedings are invalid on account of no approval obtained u/s.151 of the Act as mandated by law.

(v) The assessment is based on incriminating material found during the search conducted on 14.09.2019 in the case of Sri. Surendra Kumar Jain and Sri.Virendra Kumar Jain. Therefore assessment ought to have been completed u/s.153C / 153A of the Act instead of 148 of the Act.

8. On merits, the AR submitted that for the relevant assessment year, the assessee cannot be called to explain the source of source u/s.68 of the Act (amendment was applicable only from A.Y. 2013-14). It was submitted that the assessee had provided PAN of investors and all the amounts were received through banking channel. Therefore, the assessee had discharged initial onus that lay on it. It was further stated that the assessee was not provided with material relied on by the A.O. for rebutting the same and was not provided with opportunity to cross examine the persons from whom statements were recorded.

9. The learned Departmental Representative, on the other hand, submitted that post-search investigation in the case of Sri.Surendra Kumar Jain and Sri.Virendra Jain had clearly established that the assessee had taken the benefit of

accommodation entries from them and share capital / share premium was introduced. It was submitted that the assessee has not proved the ingredients of section 68 of the Act. As regards the contentions raised on the validity of the reassessment, the learned DR relied on the finding of the CIT(A).

10. We have heard the rival submissions and perused the material on record. The A.O. has passed order dated 07.11.2016 (refer pages 39 to 43 of the paper book-101) purportedly disposing of the objections of the assessee against initiation of reassessment proceedings. As per order dated 07.11.2016, the copy of reasons recorded were supplied to the authorized representative of the assessee on 04.11.2016 and objections were filed on 03.11.2016. Thus, what the A.O. is disposing as per order dated 07.11.2016 cannot be the objections raised in letter dated 03.11.2016 as the copy of the reasons, according to own admissions of the A.O. was provided to the assessee only on 04.11.2016. In other words, it would mean that assessee has submitted the objections prior to the supply of copy of reasons which is total non-application of mind. The relevant portion of the order dated 07.11.2016 showing that the copy of reasons was provided only on 04.11.2016 and what has been disposed of is alleged objections filed on 03.11.2016 are reproduced below:-

> "*4. This office received a letter from the assessee on 03.11.2016 (assessee has mentioned 31.10.2016 in the letter head, which is not relevant) though last date for submission of the requisite details was on or before 02.11.2016.*

> *Though assessee submitted the letter on 03.11.2016 which is after the due date mentioned in the show cause notice, however the Authorised Representative (AR) Mr.Guruswamy H appeared for the hearing on 04.11.2016 at 11.30 AM (the date of hearing fixed vide show cause notice). During the course of hearing he asked the copy of the reasons recorded for the reopening the assessment by quoting case law laid down by Honourable Supreme Court in the case of M/s.GKN Driveshaft v. ITO (2003) 259 ITR 19.*
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> *The copy of the reasons recorded by the DCIT, Central Circle 2(3), has been given to the Authroised Representative (AR) Mr.Guruswamy H on 04.11.2016 during course of hearing.*
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> *9. For reasons mentioned above, the assessee's objections filed in this office on 03.11.2016 (though due date for submission was on 02.11.2016 as per show cause notice but accepted in view of the natural justice) are overruled, the reopening of the assessment and notice issued u/s.148 on 29.03.2016 is held to be in order and which is sustainable in law.*
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> *The assessee is therefore, kindly requested to co-operate in the assessment proceedings and produce the required details within a week (A.R. during the hearing on 04.11.2016 assured to file details within couple of days). Nonetheless the assessment would be completed based on the merits and facts of the case."*

11. From the above facts, it can be seen from the reply dated 31.10.2016 of the assessee, it did not submit any objection with regard to reassessment proceedings initiated as per notice dated 29.03.2016 as by that time copy of reasons recorded in pursuance to notice dated 29.03.2016 were not supplied to the assessee. On these facts the disposal of objections for initiating reassessment proceedings by an order dated 07.11.2016 is a non-judicious attempt of the AO to dispose the proceedings in a manner not known in law. Therefore, the reassessment proceedings are bad in law as the AO did not follow the mandatory procedure laid down in the

case of GKN Driveshaft v. ITO reported in (2003) 259 ITR 19 (SC). This proposition of law has also been followed by the Hon'ble jurisdictional High Court in the case of Deepak Extrusions (P.) Ltd. v. DCIT reported in (2017) 80 taxmann.com 77 (Karnataka). The relevant observations are reproduced below:-

> "*11. If the facts of the present case are examined in the light of aforesaid legal position, it is an admitted position that the reasons for re-opening of the assessment by issuing of the notice under Section 148 of the Act were supplied to the appellant assessee. It is also admitted position that the appellant assessee after receipt of such reasons raised objections. It is also undisputed position that the Assessing Officer did not dispose of the objections prior to proceedings with the assessment further and proceeded to pass the order for assessment. Under the circumstances, it can be said that the mandatory procedure of disposal of the objection by the Assessing Officer before proceeding with the assessment has not been followed and exercise of power can be said as not only vitiated, but the order of assessment cannot be sustained."*

12. It is to be mentioned that the assessee had filed its objections to the reasons recorded for notice issued dated 29.03.2016 only on 07.11.2016. However, the order of the A.O. dated 07.11.2016 does not dispose off the above objection of the assessee, but refers to objections dated 31.10.2016 (filed on 03.11.2016).

13. The reassessment proceedings are also invalid on the ground that no sanction under section 151 of the Act has been granted by the PCIT. After repeating requests submitted to the AO, the copy of sanction u/s.151 of the Act was provided to the assessee as per letter dated 03.02.2021 (refer pages 51 to 54 of the paper book if 101 pages). It can be seen

that the sanction has been granted only as per letter dated 24.03.2016 which does not bear the signature of PCIT and it is only a letter wherein ACIT is informing the AO that he is directed to communicate the approval given by the PCIT. The Performa attached with the same also does not bear the signature of PCIT. Thus, it is a case where no approval has been granted by PCIT u/s.151 of the Act as approval should be given only after application of mind by the approving authority. It can be seen from the wording of letter the so called approval has been given subject to recording of reasons. The reasons are recorded after approval letter dated 24.03.2016. The reasons recorded and provided to the assessee also not bearing any date and there is only typed date in Performa which is 17.03.2016. No proper approval has been given by the approving authority, which would render the initiation of reassessment proceedings as invalid in the eyes of law. In this context, reliance is placed on the judgment of the Hon'ble Delhi High Court in the case of Synfonia Tradelinks (P) Ltd. v. ITO, Ward 22(4) (2021) 435 ITR 642 (Delhi). The relevant findings are as under:-

> *"9.9 The provisions of Section 151(1) of the Act required respondent no.2 to satisfy himself as to whether it was a fit case in which sanction should be accorded for issuance of notice under section 148 of the Act and, thus, triggering the process of reassessment under section 147. The sanction-order passed by respondent no.2 simply contains the endorsement `approved'.*
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> *10. In our view, the sanction-order passed by respondent no.2 presents, metaphorically speaking `the inscrutable face of sphinx' (See: Breen v. Amalgamated Engineering Union (1971) 2 QB 17500; Also see: State of H.P. v. Sardara Singh*

> *(2008) 9 SCC 392. In our view, the satisfaction arrived at by the concerned officer should be discernible from the sanction-order passed under section 151 of the Act…….”*

14. Similar view has also been held by the Hon'ble jurisdictional High Court in the case of CIT v. H.M.Constructions reported in (2014) 43 taxmann.com 105 (Karnataka), wherein it has been held that provisions contained in section 151 of the Act are mandatory in nature. It was further held by the Hon'ble Court that it has to be established by the Revenue that sanction has to be obtained for initiation of reassessment otherwise the benefit of doubt will be given to the assessee. The relevant observation of the Hon'ble High Court at para 8 reads as follows:-

> “*8. On the other hand, Mr. K. V. Aravind, learned counsel appearing for the Revenue invited our attention to certain observations made by the Assessing Officer and the Tribunal and submitted that it is possible to draw an inference that approval of the Commissioner under section 151 of the Act was obtained by the Assessing Officer before issuing notice under section 148 thereof. Though he made feeble attempt to invite our attention to the orders of the Tribunal and of the authorities below in support of this contention, he could not and did not point out any such observation so as to hold that approval under section 151 was obtained before issuing notice under section 148 of the Act. He fairly submitted that there is no finding recorded by either of the authorities below including the Tribunal that approval as contemplated by section 151 of the Act was either referred to or mentioned in the orders. The Tribunal has, at length, considered the issue whether the reasons recorded by the Assessing Officer for reopening of the assessment were in proper format, and held that no such reasons were recorded. The Tribunal recorded such finding and further observed that the note sent to the Commissioner by the Assessing Officer was not sanctioned/approved under section 151 of the Act. In the absence of the order granting approval by the Commissioner under section 151 or in the absence of any indication in the orders passed by the authorities below including the order of the Tribunal or the materials on record that such approval*

> *was obtained, it would not be possible to assume that such approval under section 151 of the Act was obtained. The provisions contained in section 151 of the Act are indubitably mandatory in nature and since compliance thereof was either not made or could be established by the Revenue, in our opinion, the benefit will have to be given to the assessee. Though we do not agree with all the reasons recorded by the Tribunal in the order, it has rightly decided the second question in favour of the assessee. We do not find any reason to interfere with the findings recorded by the Tribunal on the second question and, hence, the appeal will have to be dismissed on this ground alone. Order accordingly."*

15. In the light of the aforesaid reasoning and judicial pronouncements, cited supra, we hold that the reopening of assessment is bad in law. Since we have found that the reassessment is invalid on account of the aforesaid reasoning, we allow ground Nos.4 and 5. As we have quashed the reassessment on legal grounds, we refrain from adjudicating the issue on merits. It is ordered accordingly.

16. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced on this 11th day of March, 2024.

Sd/- **(Laxmi Prasad Sahu)** **ACCOUNTANT MEMBER**	**Sd/-** **(George George K)** **VICE-PRESIDENT**

Bangalore; Dated : 11th March, 2024.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Bengaluru.
4. The Pr.CIT, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore