

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F": NEW DELHI**

**BEFORE  
SHRI S RIFAUH RAHMAN, ACCOUNTANT MEMBER  
AND  
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA No. 103/Del/2024  
Asstt. Year: 2015-16

Picasa Facility Management C/o D D Nagpal, Chartered Accountant, GH Gopala Tower, 25, Rajendra Place New Delhi – 110 008 PAN AAMFP00803A	Vs.	ACIT, Central Circle-2, New Delhi.
(Appellant)		(Respondent)

Assessee by:	Shri J.S. Kochar, CA
Department by:	Ms. Mayuri, Sr. DR
Date of Hearing:	22.04.2024
Date of pronouncement:	03.05.2024

**ORDER**

**PER VIMAL KUMAR, JM**

The appeal is against order dated 24.11.2023 of the Learned Commissioner of Income Tax (Appeals) partly allowing appeal by holding exclusion of expenses of Rs. 2,56,702/- and Rs. 2,11,191/- from the order dated 26.03.2022 of the Learned Assessing Officer computing total income of assessee as Rs. 52,71,817/- rounded off as Rs. 52,71,820/-.

2. Brief facts of case are that on information with the Department proceedings under section 147 of the Income Tax Act, 1961 were initiated after recording reasons by the Assessing Officer. Notice under section 148 of the Act was issued on 31.03.2021. The reassessment under section 147/144B was completed on 26.03.2022 by assessing income of Rs.52,71,820/-.

3. Being aggrieved, appellant assessee preferred appeal before the Learned CIT(A) which was partly allowed vide order dated 26.03.2022.

4. Appellant/assessee preferred present appeal. Appellant pleaded that Commissioner of Income Tax (Appeals) erred in not holding the assessment order as void ab initio against the settled law, when the proceedings under section 147/148 of the Income Tax Act, 1961 had not been validly initiated as no sanction was obtained under section 151 of the Income Tax Act, 1961 from the competent authority after four years from end of relevant assessment year.

5. Learned Assessee's representative submitted that although more than four years had elapsed from the end of relevant assessment year the sanction for issuance of notice under section 148 was neither sought nor obtained from the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner of Income Tax who were the only authorities competent to grant approval as per provisions of section 151 of the Act. On contrary approval was sought and obtained from the Additional Commissioner of Income Tax, Range 34, Delhi

(hereinafter referred to as the Addl. CIT). Learned AO issued notice dated 31.03.2021 under section 148 of the Act. The notice specifically records that it is being issued after obtaining necessary satisfaction. Hon'ble Bombay High Court in Writ Petition No. 1050 of 2022 in the case of JM Financial and Investment Consultancy vs. ACIT dated 4<sup>th</sup> April, 2022 has held as under:-

*“In our view, since four years had expired from the end of the relevant assessment year as provided under section 151(1) of the Act, it is only the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner who could have accorded the approval and not the Additional Commissioner of Income Tax. On this ground alone, we will have to set aside the notice dated 31<sup>st</sup> March, 2021 issued under section 148 of the Act, which is impugned in this petition.”*

Hon'ble High Court of Bombay in the case of Sidhmicro Equities (P.) Ltd. vs. Deputy Commissioner of Income-tax (2023) 150 taxmann.com 460 (Bombay) had held in above terms. Abovesaid judgment of Hon'ble Bombay High Court was upheld by the Hon'ble Supreme Court. Therefore the appeal may be accepted.

6. Learned Departmental Representative submitted that the impugned orders are legal and sustainable.

7. From examination of records in light of aforesaid rival contentions it is crystal clear that notice dated 31.03.2021 under section 148 of the Income Tax Act, 1961 Assessment Year 2015-16 mentioned “This notice is being issued after obtaining the necessary satisfaction of the RANGE 34, DELHI”. Since four years had expired from end of relevant assessment year 2015-16

as provided under section 151(1) of the Act, it is only the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner who could have accorded the approval and not the Additional Commissioner of Income Tax. As per the ratio of judgment in Writ Petition No. 1050 of 2022 in the case of J M Financial and Investment Consultancy Services Private Limited vs ACIT's case (supra) it is well settled that "In our view, since four years had expired from the end of the relevant assessment year as provided under section 151(1) of the Act, it is only the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner who could have accorded the approval and not the Additional Commissioner of Income Tax. On this ground alone, we will have to set aside the notice dated 31<sup>st</sup> March, 2021 issued under section 148 of the Act, which is impugned in this petition." In view of above material facts and well settled principle of law the impugned orders of Ld. Assessing Officer and Learned CIT(A) are not legal and deserves to be set aside.

8. No other point was argued.

9. In the result appeal of the assessee is allowed. Both the impugned orders of Learned Assessing Officer and Commissioner of Income Tax (Appeals) are set aside.

**Order pronounced in the open court on 3<sup>rd</sup> May, 2024.**

**sd/-**

**(S RIFAUZ RAHMAN)  
ACCOUNTANT MEMBER**

Dated: 03/05/2024

**sd/-**

**(VIMAL KUMAR)  
JUDICIAL MEMBER**

**Veena**

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi

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Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
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