

**आयकर अपीलीय अधिकरण, कटक न्यायापीठ, कटक**

**IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK**

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER  
AND**

**SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं/ITA No.87/CTK/2024

आयकर अपील सं/ITA No.86/CTK/2024

आयकर अपील सं/ITA No.90/CTK/2024

आयकर अपील सं/ITA No.91/CTK/2024

(निर्धारण वर्ष / Assessment Year : 2015-2016)

Sai Simran Infratech Pvt. Ltd., Plot No.C.P.-28, Sector-4, Niladri Vihar, Chandrasekharpur Bhubaneswar-751021	Vs	ITO, NFAC, Delhi
<b>PAN No. :AASCS 1240 F</b>		

(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
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निर्धारिती की ओर से / Assessee by	:	Shri S.K.Agrawalla, CA
राजस्व की ओर से / Revenue by	:	Shri S.C.Mohanty, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	04/06/2024
घोषणा की तारीख/Date of Pronouncement	:	04/06/2024

**आदेश / ORDER**

**Per Bench :**

Out of the four appeals filed by the assessee, appeal in ITA No.87/CTK/2024 is filed arising out of the order of the Id. CIT(A), National Faceless Centre, Delhi (NFAC), dated 07.02.2024. ITA No.86/CTK/2024 is filed by the assessee against the order of the Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, dated 01.02.2024, thereby confirming the penalty levied u/s.271(1)(b) of the Act. ITA Nos. 90&91/CTK/2024 are filed by the assessee against the separate orders of the Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, dated 07.02.2024 & 30.01.2024, thereby confirming the penalty levied

u/s.271(1)(c) & 271F of the Act, respectively. The assessment year under consideration in the above four appeals is A.Y.2015-2016.

2. First, we shall take up the appeal of the assessee in ITA No.87/CTK/2024, wherein the assessee has raised the following grounds:-

1. *That, the reopening of the assessment beyond four years after obtaining the approval of the Ld. Addl. CIT is contrary to the provisions of the law and therefore the reassessment proceeding is bad in law, not sustainable and liable to be quashed.*
2. *That, the Ld. Commissioner of Income Tax (Appeals) committed an error of law in dismissing the ground of appeal that the reassessment order was passed without complying to the mandatory requirement of the provisions of section 147 to 151 of the Act and therefore the reassessment order is liable to be quashed.*
3. *That, the Ld. Commissioner of Income Tax (Appeals) erred in facts in circumstances in confirming the additions of Rs.5,56,94,020 as short term capital gain whereas the assessee is a Real Estate developer and registered the flats valued at Rs.4,28,44,600 on which the income was recognised under the completed contract method, which had been accounted for in the financial statements of the assessee and also discharge the due tax liability, therefore the additions of Rs.5,56,94,020 is liable to be deleted.*
4. *That, the Ld. Commissioner of Income Tax (Appeals) is wrong in confirming the additions of cash deposits of Rs.11,50,000 as unexplained money u/s 69A of the Act as these cash deposits are from the earlier withdrawals and therefore the additions on 11,50,000 is liable to be deleted.*
5. *That, the appellant craves to alter, amend, modify or add any other ground that may be considered necessary in the course of appeal proceeding.*

3. In grounds of appeal No. 1 & 2, assessee has challenged the validity of reopening of the assessment. Ld. A/R of the assessee submitted that in the case of the assessee approval u/s 151 of the Act for reopening the case was given by Adl. CIT, Range-1, Bhubaneswar which

is not valid as the case of the assessee company is reopened after the expiry of four year from the end of relevant assessment year. According to the Id.A/R as per the provisions of section 151, in case notice u/s 148 is issued after the expiry of four years from the end of the relevant assessment year, approval should not be given by the officer below the rank of Commissioner of Income Tax. He drew our attention to the notice issued u/s 148 dt. 31.03.2021 for the impugned assessment year where the approval is granted by the Adl. CIT, Range1, Bhubaneswar. The said notice is available in paper book page 333. He therefore, requested that proper procedure for issue of notice u/s 148 was not followed therefore, the notice so issued u/s 148 is bad in law and the consequent reassessment order deserves to be quashed.

4. On the other hand, the Id. Sr. D.R vehemently supported the orders of lower authorities and stated that the Id.CIT(A) has dealt this issue in 10 to 10.2 of the appellate order and after due appreciation of the facts and the submission of the assessee has held that the proceedings u/s 148 were initiated by following the due procedure. However, he could not controvert the material fact that in the present case approval u/s 151 was given by the Adl. CIT and not by the Commissioner of Income Tax or any higher authority as provided in the said section.

5. We have heard the rival submissions and perused the material on record. With regard to validity of the notice issued u/s 148 as the same was issued without proper approval as per section 151 of the Act, from the perusal of the notice it is seen that the same was issued by ITO, Ward

1(1), Bhubaneswar after obtaining approval from the Adl. CIT, Range-1, Bhubaneswar. The notice u/s 148 was issued on 31.03.2021 which is admittedly after the expiry of four year from the relevant assessment year i.e. AY 2015-16, the assessment years under appeal. The Id. A/R contended that the approval given u/s 151 of the Act was not valid since the sanction after the expiry of four years from the relevant assessment year was given by Adl. Commissioner of Income Tax. At this stage we must refer the provisions as contained in pre-amended section 151 as was applicable at the time when the notice u/s.148 of the Act was issued, providing the law of sanction for issue of notice reads as under :

***[Sanction for issue of notice.***

***151.(1)No notice shall be issued under section 148 by an Assessing Officer, after the expiry of a period of four years from the end of the relevant assessment year, unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice.***

***(2) In a case other than a case falling under the sub-section (1), no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of Joint Commissioner, unless the Joint Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.***

***(3) For the purposes of sub-section (1) and sub-section (2), the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner or the Joint 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.]***

6. As observed above, in the present case there is no quarrel that the notice u/s 148 was issued after the expiry of four years from the assessment year under appeal, thus as per sub-section (1) to section 151 of the Act, sanction for issuing notice u/s 148 can only be given after

recording satisfaction by the Principal Chief Commissioner, Chief Commissioner or Principal Commissioner or Commissioner of Income Tax. In the instant case the notice u/s 148 dt. 31.03.2021 is issued after obtaining approved from the Adl., Range 1, Bhubaneswar for Assessment Year 2015-16. This clearly shows that reopening u/s 147 in the case of the assessee was made after four from the expiry of the impugned assessment year.

7. Hon'ble Bombay High Court in the case of Voltas Ltd. Vs. ACIT 141 Taxmann.com 127 (Bombay) held that as per provisions of Sec. 151(1) sanction of Commissioner or Principal Commissioner is a pre-requisite for issuance of a reopening notice under section 148 after expiry of four years from end of the relevant assessment year therefore the impugned notice issued with sanction of Addl. Commissioner and not Pr.CIT being legally invalid was liable to be set aside.

8. In view of above facts and by respectfully following the decision of Hon'ble Bombay high court in the case of Voltas Ltd. (Supra), we are of the considered view that in the instant case, the notice u/s 148 dt. 31.03.2021 was issued without following proper procedure as provided in section 151 of the Act of obtaining sanction of the higher authorities, therefore, the notice issued u/s 148 of the Act is bad in law. Consequently we quashed the impugned notice dt. 31.03.2021 issued u/s 148 and subsequent re-assessment order passed on the basis of the impugned notice also quashed. Since we have quashed the reassessment order therefore, other grounds of appeal of the assessee become infructuous.

9. Thus, the appeal filed by the assessee in ITA No.87/CTK/2024 is allowed.

10. With regard to the appeals filed by the assessee in ITA Nos.86, 90 & 91/CTK/2024, which are arising out of the separate orders of the Id. CIT(A), NFAC, Delhi, in confirming the penalties levied u/s.271(1)(b), 271(1)(c) & 271F of the Act, respectively, as we have already quashed the assessment order in the present case, therefore, the penalties levied by the AO and confirmed by the Id. CIT(A) in respective appeals, being consequential, the same are hereby deleted. We order accordingly.

11. In the result, all the four appeals of the assessee are allowed.

Order dictated and pronounced in the open court on 04/06/2024.

**Sd/-**  
**(GEORGE MATHAN)**

**न्यायिक सदस्य / JUDICIAL MEMBER**

**Sd/-**  
**(MANISH AGARWAL)**

**लेखा सदस्य/ ACCOUNTANT MEMBER**

**कटक** Cuttack; दिनांक Dated 04/06/2024

*Prakash Kumar Mishra, Sr.P.S.*

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant-  
Sai Simran Infratech Pvt. Ltd.,  
Plot No.C.P.-28, Sector-4,  
Niladri Vihar, Chandrasekharpur  
Bhubaneswar-751021
2. प्रत्यर्थी / The Respondent-  
ITO, NFAC, Delhi
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **कटक** / DR,  
ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

**आदेशानुसार/ BY ORDER,**

**(Assistant Registrar)**

**आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack**