

IN THE INCOME TAX APPELLATE TRIBUNAL

"H (SMC)" BENCH, MUMBAI

BEFORE SHRI. PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND
SHRI. SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.3660/Mum./2024

(Assessment Year :2018-2019)

Arihant Engineers

R 519 TTC Industrial Estate,
MIDC, Rabale, Navi
Mumbai – 400701.
PAN-AASFA5790P

..... Appellant

v/s

Income Tax Officer

Ward- 28(1)(1)

Tower No.6, Vashi Railway Station
Commercial Complex, Vashi,
Navi Mumbai – 400703.

..... Respondent

Assessee by : Shri Dharan Gandhi

Revenue by :Shri. Akhtar Hussain AnsariSr. DR

Date of Hearing – 04/09/2024

Date of Order –01/10/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 24/05/2024, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, New Delhi, [*learned CIT(A)*], for the assessment year 2018-19.

2. In this appeal, the assessee has raised the following grounds: –

- 1) *The assessment order u/s 147 read with section 144B of the Act dated 19.01.2024 is bad in law.*
- 2) *The notice issued u/s 148 of the Act dated 22.04.2022 is bad in law. The Ld. AO has not fulfilled the jurisdictional requirements of section 147 to 151 of the Act.*
- 3) *The Notice u/s 148 of the Act is barred by limitation.*
- 4) *The Ld. CIT(A), NFAC, erred in confirming the addition of Rs. 22,92,130/- made by the Ld. AO as long term capital gain of the appellant of AY 2018-19.*
- 5) *Without prejudice to the above, necessary directions may be given to Ld. AO to give the credit of taxes paid by the partners in this regard, to the Appellant.*
- 6) *Without prejudice to the above, necessary directions may be given to Ld. AO to reduce such income in the hands of the partners and to give consequential effect. The Ld. CIT(A), NFAC, erred in disallowing brokerage expenses of Rs. 65,000/-.*
- 7) *The Ld. AO, NeAC, has erred in the levying interest under section 234A and 234B of the Act.*
- 8) *The Ld. AO, has erred in initiating penalty proceeding u/s 274 r.w.s.270A of the Act.*
- 9) *The Appellant craves leave to add, to amend, alter/delete and/or modify the above grounds of appeal on or before the final hearing"*

3. Grounds no. 1-3, raised in assessee's appeal pertain to the validity of reassessment proceedings initiated under section 147 of the Act.

4. As far as the issue relating to the validity of reopening under section 147 of the Act, the brief facts are that the assessee is a firm. Since the assessee was a non-filer of the return for the year under consideration and in the assessee's PAN, certain high-value transactions were captured by the system, proceedings under section 148A of the Act were initiated and show cause notice under section 148A(b) of the Act was issued to the assessee requiring the assessee to show cause as to why notice under section 148 of the Act should not be issued for the year under consideration. In response,

the assessee submitted its reply and the necessary explanations. The Jurisdictional Assessing Officer did not agree with the submissions of the assessee and vide order dated 22/04/2022 passed under section 148A(d) of the Act held that the purchase cost as per the copy of the order of MIDC dated 13/03/2008 vide which the plot of land was allotted to the assessee is seen at Rs. 19,84,500 whereas the purchase cost adopted by the assessee in the statement of computation is at Rs. 21,19,405. Thus, it was held that the assessee was not able to reconcile the purchase cost of the property. Since the assessee could not furnish the copy of the sale agreement to substantiate that the property under consideration is the same property, which was allotted to it by MHADA and the assessee also did not furnish any proof in respect of the claim of brokerage expenses of Rs. 65,000, the Jurisdictional Assessing Officer held that the income chargeable to tax amounting to Rs. 65 lakh has escaped assessment and this is a fit case for issue of notice under section 148 of the Act for the assessment year 2018-19. Thereafter, on 22/04/2022 notice under section 148 of the Act was issued by the Jurisdictional Assessing Officer. The assessment order was passed under section 147 r/w section 144B of the Act computing long-term capital gains at Rs. 22,92,130 and adding the same to the total income of the assessee.

5. During the hearing, the learned Authorised Representative ("*learned AR*") submitted that the reopening of assessment under section 147 of the Act, in the present case, is bad in law as the order dated 22/04/2022 was passed under section 148A(d) of the Act, after the grant of approval by the

Principal CIT-27, Mumbai. It was submitted that as per the provisions of section 151(ii) of the Act if more than three years have elapsed from the end of the relevant assessment year, the Specified Authority for the purpose of sections 148 and 148A of the Act is Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General.

6. On the contrary, the learned Departmental Representative ("learned DR") vehemently relied on the order passed by the lower authorities.

7. We have considered the submissions of both sides and perused the material available on the record. Before proceeding further, it is pertinent to note the provisions of the Act, which are relevant for deciding the issue at hand. The relevant provisions of section 148 of the Act, as amended by Finance Act 2021, read as follows: –

"148. Before making the assessment, reassessment or recomputation under section 147, and subject to the provisions of section 148A, the Assessing Officer shall serve on the assessee a notice, along with a copy of the order passed, if required, under clause (d) of section 148A, requiring him to furnish within a period of three months from the end of the month in which such notice is issued, or such further period as may be allowed by the Assessing Officer on the basis of an application made in this regard by the assessee, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139:

Provided that no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority to issue such notice:

Provided further that no such approval shall be required where the Assessing Officer, with the prior approval of the specified authority, has passed an

order under clause (d) of section 148A to the effect that it is a fit case to issue a notice under this section:

.....

Explanation 3.—For the purposes of this section, specified authority means the specified authority referred to in section 151.”

8. Therefore, as per the first proviso to section 148 of the Act, it is evident that for issuing notice under the section the AO is required to obtain prior approval of the Specified Authority. The second proviso to section 148 further provides that no such approval shall be required where the AO with the prior approval of the Specified Authority has passed the order under section 148A(d) of the Act. Further, Explanation 3 clarifies that the Specified Authority for the purpose of section 148 shall be the Specified Authority as referred to in section 151 of the Act.

9. Further, section 151 of the Act deals with the Specified Authority for section 148 and section 148A of the Act, and the same reads as follows: –

"151. Specified authority for the purposes of section 148 and section 148A shall be,—

(i) Principal Commissioner or Principal Director or Commissioner or Director, if three years or less than three years have elapsed from the end of the relevant assessment year;

(ii) Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year.”

10. Therefore, from the plain reading of section 151 of the Act, it is evident that in the case where more than three years have elapsed from the end of the relevant assessment year, the Specified Authority for the purpose of granting prior approval, as required under section 148 of the Act, is

Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General.

11. We find that while considering a similar issue the Hon'ble Jurisdictional High Court in Siemens Financial Services (P.) Ltd. v/s DCIT, (2023) 457 ITR 647 (Bom.) held that where the Assessing Officer issued a reopening notice beyond the period of three years, approval was required to be taken as per provisions of amended section 151 from the Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General. The relevant observations of the Hon'ble High Court, in the aforesaid decision, are reproduced as follows: –

"20. Under Section 151 "specified authority" for the purposes of section 148 and section 148A shall be, if three years or less than three years have elapsed from the end of the relevant assessment year, Principal Commissioner or Principal Director or Commissioner or Director. If more than three years have elapsed from the end of the relevant assessment year, then Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General.

21. Admittedly, in this case, the approval/sanction for order under section 148A(d) of the Act has been granted by the Principal Commissioner of Income Tax-8. The entire controversy is, therefore, (a) whether the Principal Commissioner was the specified authority, who could have granted the approval/sanction ?, (b) if not, the effect thereof?

22. In our view, the approval is not valid. Hence, the impugned order passed under section 148A(d) read with notice issued under section 148 of the Act dated 31st July 2022 is not valid and has to be quashed and set aside.

23. The first proviso to section 148 of the Act refers to the approval of the specified authority being obtained before a notice under section 148 of the Act can be issued. Explanation 3 to section 148 of the Act specifies that the meaning of the term 'specified authority' as provided for in section 151 of the Act is to apply for the purpose of section 148.

Section 148A(d) of the Act also requires the Assessing Officer to pass an order after considering the reply of the assessee as to whether or not it is a fit case to issue a notice under section 148 of the Act and such an order under section 148A(d) of the Act has to be passed with the prior approval of the specified authority. The Explanation to section 148A of the Act also

incorporates the meaning of 'specified authority' as provided for in section 151 of the Act.

24. As per section 151 of the Act, the 'specified authority' who has to grant his sanction for the purposes of section 148 and section 148A is the Principal Chief Commissioner or Principal Director General or where there is no Principal Chief Commissioner or Principal Director General, the Chief Commissioner or Director General if more than three years have elapsed from the end of the relevant assessment year. The present petition relates to the AY 2016-17, and as the impugned order and impugned notice are issued beyond the period of three years which elapsed on 31st March, 2020 the approval as contemplated in section 151(ii) of the Act would have to be obtained which has not been done by the Assessing Officer. The impugned notice mentions that the prior approval has been taken of the 'Principal Commissioner of Income-tax - 8' ('PCIT-8') which is bad in law as the approval should have been obtained in terms of section 151(ii) and not section 151(i) of the Act and the PCIT-8 cannot be the specified authority as per section 151 of the Act. Further, even in the affidavit-in-reply, the department has accepted that the approval obtained is of the 'Principal Commissioner of Income-tax - 8' and, hence, such an approval would be bad in law.

25. TOLA, enacted on 29th September 2020 and came into force on 31st March 2020. It inter alia, provided for a relaxation of certain provisions of the Income-tax Act, 1961. Where any time limit for completion or compliance of an action such as completion of any proceedings or passing of any order or issuance of any notice fell between the period 20th March 2020 to 31st December 2020, the time limit for completion of such action stood extended to 31st March 2021. Thus, TOLA only seeks to extend the period of limitation and does not affect the scope of section 151.

26. The Assessing Officer cannot rely on the provisions of TOLA and the notifications issued thereunder as section 151 has been amended by Finance Act, 2021 and the provisions of the amended section would have to be complied with by the Assessing Officer, w.e.f., 1st April 2021. Hence, the Assessing Officer cannot seek to take the shelter of TOLA as a subordinate legislation cannot override any statute enacted by the Parliament. Further, the notification extending the dates from 31st March 2021 till 30th June 2021 cannot apply once the Finance Act, 2021 is in existence. The sanction of the specified authority has to be obtained in accordance with the law existing when the sanction is obtained and, therefore, the sanction is required to be obtained by applying the amended section 151(ii) of the Act and since the sanction has been obtained in terms of section 151(i) of the Act, the impugned order and impugned notice are bad in law and should be quashed and set aside."

12. Therefore, respectfully following the aforesaid decision of the Hon'ble Jurisdictional High Court as, in the present case, the period of three years has elapsed from the end of the relevant assessment year and the order

dated 22/04/2022 was passed under section 148A(d) of the Act after obtaining the approval of the Principal CIT-27, Mumbai, we are of the considered view that the Revenue has not followed the mandatory provisions of the Act while initiating the reassessment proceedings and sanction of the Specified Authority is not in conformity with the law prevalent at the time of grant of sanction.

13. Thus, in the present case, it is discernible that the notice under section 148 of the Act was issued on 22/04/2022 in contravention of the provisions of section 151 as the sanction of the concerned Specified Authority was not obtained. Accordingly, we are of the considered view that the notice issued under section 148 of the Act is void *abinitio* and bad in law and therefore is quashed. Consequently, the entire reopening proceedings and assessment order passed under section 147 r/w section 144B of the Act is also quashed.

14. Since the relief has been granted to the assessee on the aforementioned jurisdictional aspect, the other grounds raised by the assessee in the present appeal on merits as well as on jurisdiction are rendered academic and therefore are left open.

15. In the result, the appeal by the assessee is allowed.

Order pronounced in the open Court on 01/10/2024

Sd/-
PRASHANT MAHARISHI
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 01/10/2024
Poonam Mirashi, (Stenographer)