

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"I" BENCH, MUMBAI**

**BEFORE SMT BEENA PILLAI, JM &  
MS PADMAVATHY S, AM**

**I.T.A. No. 1190/Mum/2024  
(Assessment Year: 2018-19)**

<b>Davos International Fund,</b> C/o Harel Mallac Global Services Ltd., Harel Mallac Building, 18 Edith Cavell Street, Port Louis, Mauritius / C/s V.B. Desai Financial Services Ltd., Cama Building, 1 <sup>st</sup> Floor, 24/26 Dalal Street, Fort, Mumbai-400001. <b>PAN : AADCD7742G</b>	Vs.	<b>ACIT (T)-2(1)(2),</b> Room No. 1612, 16 <sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai-400021.
<b>Appellant)</b>	:	<b>Respondent)</b>

**Appellant / Assessee by** : Shri Vijay Mehta / Shri Dhaval  
Jariwala, AR

**Revenue / Respondent by** : Shri Krishna Kumar, Sr. DR

**Date of Hearing** : 07.01.2025

**Date of Pronouncement** : 13.01.2025

**ORDER**

**Per Padmavathy S, AM:**

This appeal by the assessee is against the final order of assessment passed under section 147 r.w.s 144C(13) by the Asstt. Commissioner of Income Tax (International Tax) Circle-2(1)(2), (in short "the AO" dated 18.01.2024 for Assessment Year (AY) 2018-19.

2. The assessee is a company incorporated in Mauritius and is registered with Securities and Exchange Board of India (SEBI) as a foreign portfolio investor. The assessee filed the return of income for AY 2018-19 declaring a total income of Rs. 47,42,370/-. The AO received information that the assessee is the beneficiary of bogus Long Term Capital Gains (LTCG) in scrip M/s Kushal Ltd. based on a search conducted under section 132 carried out in the case of Kushal Group, Ahmadabad. The AO noticed that the assessee has declared LTCG which included the sale of scrip M/s Kushal Ltd. The AO called on the assessee to furnish various details pertaining to the impugned transactions. After perusal of the details furnished by the assessee, the AO treated the Capital Gain on one of the scrips M/s Kushal Ltd. as bogus and made addition under section 68 towards the same to the tune of Rs. 43,30,958/-. The assessee raised several grounds contending the issue on the additions made by the AO on merits. The assessee also raised the following additional ground of appeal, raising legal contentions with regard to notice issued u/s. 148.

*“1. The initiation of reassessment proceedings by the Assessing Officer is illegal and bad in law in as much as the approval of the PCCIT has not been obtained as required u/s. 151(ii) of the Income-tax Act while (1) passing an order u/s 148A(d) of the Act dated 04-04-2022 and (ii) issuing a notice u/s. 148 of the Act dated 04-04-2022.”*

3. The additional grounds raised are pure legal issue, which does not require investigation of new facts. Hence placing reliance on the judgment of the Hon’ble Apex Court in the case of National Thermal Power Co. Ltd. v. CIT (1998) 229 ITR 383 (SC), we admit the additional grounds. We will first consider the additional ground for adjudication.

4. The ld. AR submitted that the order passed under section 148A(d) and the notice issued by the AO under section 148 both dated 04.04.2022 are issued without obtaining the approval from the correct appropriate authority as required under section 151(ii) of the Act. The ld. AR further submitted that the notice in assessee's case is issued after period of three years and therefore the approval should have been obtained from Principle Chief Commissioner of Income Tax as per the provisions of section 151(ii) whereas the approval has been obtained from the Commissioner of Income Tax (International Tax) (in short "CIT(IT)"). Therefore, the ld. AR submitted that the order passed under section 148(d) and the notice under section 148 is not valid and liable to be quashed.

5. The ld. DR presented arguments based on the written submissions as extracted –

*“1. In this case, notice u/s 148A(b) was issued to the Assessee on 22.03.2022 and the Assessee was given time till 31.03.2022 to reply to the notice. Assessee's reply was considered and order u/s 148A(d) was passed on 04.04.2022. Notice u/s 148 was also issued on 04.04.2022.*

*2. Specified authority for the purposes of section 148 and section 148A has been provided in section 151, which reads as under -*

*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:]*

*[Provided that the period of three years for the purposes of clause (i) shall be computed after taking into account the period of limitation as excluded*

*by the third or fourth or fifth provisos or extended by the sixth proviso to sub-section (1) of section 149.] Relied proviso 3 to section 149(1) of the I.T. Act.*

*(Emphasis supplied)*

*3. Section 151 provides that Specified Authority shall be Commissioner, if three years or less than three years have elapsed from the end of the relevant assessment year. However, this period of 3 years has to be computed after taking into account the period of limitation as excluded by the fifth proviso to section 149, which reads as under-*

*Provided also that for the purposes of computing the period of limitation as per this section, the time or extended time allowed to the Assessee, as per show-cause notice issued under clause (b) of section 148A or the period during which the proceeding under section 148A is stayed by an order or injunction of any court, shall be excluded:*

*4. In the present case, the time allowed to the Assessee as per SCN issued u/s 148A(b) is to be excluded while computing the period of limitation. Therefore, the time allowed to the Assessee, from 22.03.2022 to 31.03.2022 (9 days) was excluded. This meant that notice u/s 148 could have been issued up to 09.04.2022. The notice u/s 148 in this case was issued on 04.04.2022, which was well within the period of 3 years, making CIT the Specified Authority as per section 151 of the Act.”*

6. The ld. AR to counter the above submissions argued that the 5<sup>th</sup> proviso to section 149 which gives the additional time to the AO during which section 148A is stayed by the order of the Court was inserted from 01.04.2023 and cannot be applied in assessee's case for AY 2018-19. The ld. AR further submitted that the similar issue has been considered in various decision of the Hon'ble Bombay High Court as listed below –

(i) Holiday Developers Pvt. Ltd. v. ITO – [(2024) 159 taxmann.com 178 (Bom.)]

(ii) Siemens Financial Services Pvt. Ltd. v. DCIT [(2023) 154 taxmann.com 159 (Bom.)]

(iii) Agnello Oswin Dias vs ACIT [(2024) 161 taxmann.com 16 (Bom)]

(iv) Vodafone Idea Limited vs DCIT – [WP No.2768 of 2022 dated 06.02.2024]

7. We heard the parties and perused the material on record. In assessee's case the 148A notice for AY 2017-18 was issued on 12.03.2022 and the order disposing the objections of the assessee was passed on 04.04.2022 under section 148A(d) of the Act. The AO issued notice under section 148 dated 04.04.2022. On perusal of the order under section 148A(d) of the Act and 148 (page 42 to 46 and 47 of PB) we notice that the impugned notices are issued after obtaining the prior approval of CIT (IT), Mumbai-2. The case of the revenue is that the notice dated 04.04.2022 is issued within three years since as per the 5<sup>th</sup> proviso to section 149, the AO has got additional 9 days for issue of notice under section 148 i.e. upto 09.04.2022. since the extended time of 9 days i.e. from 22.03.2022 to 31.03.2022 was given to the assessee. Therefore, it is argued by the revenue that notice issued on 04.04.2022 is within period of three years and the approval has been correctly obtained by the authority as specified in section 151(i) of the Act. The assessee is contending that the 5<sup>th</sup> proviso to section 149 under which the revenue is taking cover is inserted w.e.f. 01.04.2023 and therefore not applicable to assessee's case. In this regard, we notice that the Hon'ble Bombay High Court in the case of Vodafone Idea Ltd (supra) has held that -

*“1. Petitioner is impugning a notice dated 19th March 2022 issued under Section 148A(b) of the Income Tax Act, 1961 ("the Act"), the order passed under Section 148A(d) of the Act and the notice both dated 7th April 2022 issued under Section 148 of the Act. One of the grounds raised is that the sanction to pass the order under Section 148A(d) of the Act and issuance of notice under Section 148 of the Act is invalid inasmuch as the sanction has*

*been admittedly issued by the Principal Commissioner of Income Tax ("PCIT") and not by the Principal Chief Commissioner of Income Tax (PCCIT").*

*2. Petitioner's request for a copy of the sanction has also been denied. Even in the affidavit in reply, the Department is refusing to give the sanction which makes us wonder what is the national secret involved in that, that Assessee is being refused what he is rightfully entitled to receive from the Department. In the affidavit in reply, the stand taken by the Revenue is it will be made available during the re- assessment proceeding.*

*3. The impugned order and the impugned notice both dated 7th April 2022 state that the Authority that has accorded the sanction is the PCIT, Mumbai 5. The matter pertains to Assessment Year ("AY") 2018-19 and since the impugned order as well as the notice are issued on 7th April 2022, both have been issued beyond a period of three years. Therefore, the sanctioning authority has to be the PCCIT as provided under Section 151 (ii) of the Act. The proviso to Section 151 has been inserted only with effect from 1" April 2023 and, therefore, shall not be applicable to the matter at hand.*

*4. In this circumstances, as held by this Court in Siemens Financial Services Private Limited Vs. Deputy Commissioner of Income Tax & Ors., the sanction is invalid and consequently, the impugned order and impugned notice both dated 7th April 2022 under section 148A(d) and 148 of the Act are hereby quashed and set aside."*

8. Similar view is held by the jurisdictional High Court also in other cases as listed herein above. In the decision of the Vodafone Idea (supra), the Hon'ble High Court has given a specific finding that the proviso to section 151 extending the time limit as per the third, fourth or fifth proviso to section 149 is not applicable for AY 2018-19 as the same is inserted only w.e.f. 01.04.2023. When we apply the said ratio to assessee's case, in our considered view, the claim of the revenue that the period of 3 years expires only on 09.04.2022 is not correct and that revenue cannot take shelter under the proviso to section 151 which came into effect only from 01.04.2023. Accordingly the notice issued on 04.04.2022 by the AO is issued

beyond three years and therefore the approval should have been obtained by the authorities as specified under section 151(ii) Principle Chief Commission. As already stated the approval in assessee's case is obtained from CIT(IT) and therefore we are inclined to agree with the contention of the assessee that the notice under section 148 has been issued without obtaining the approval from the correct authority as specified under section 151. Respectfully following the above decisions of the Hon'ble Bombay High Court we hold that the notice issued by the AO under section 148 without obtaining approval from correct appropriate authority is invalid and the assessment done under section 147 r.w.s. 144(13) of the Act is liable to be quashed.

9. Since we have adjudicated the legal contentions raised through additional ground in favour of the assessee, the grounds raised on merits have become academic and not warranting any specific adjudication.

10. In result, appeal of the assessee is partly allowed.

*Order pronounced in the open court on 13-01-2025.*

**Sd/-**  
**(BEENA PILLAI)**  
**Judicial Member**

*\*SK, Sr. PS*

**Sd/-**  
**(PADMAVATHY S)**  
**Accountant Member**

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**