



IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, V.P.
AND
SHRI GIRISH AGRAWAL, A.M.

ITA Nos.4018/Mum/2024		A.Y.2014-15
Rajkumar Tukaram Choudhari, 924, Room No.10, Kalyan Road, Temghar, Bhiwandi-421302	Vs.	Income Tax Officer, National Faceless Centre, Ashar I.T. Park, Wagle Industrial Estate, Thane West, Thane
(Appellant)		(Respondent)
PAN		AOPPC 9336N
Assessee by		Shri Ravindra Poojari
Revenue by		Shri R.R. Makwana, Addl. CIT
Date of hearing		16.01.2025
Date of pronouncement		28.01.2025

ORDER

PER SAKTIJIT DEY, V.P.:

1. This is an appeal by the assessee against order dated 03.05.2024 passed by National Faceless Appeal Centre (NFAC), Delhi for the Assessment Year (AY) 2014-15.
2. At the outset, we must observe, the Registry has notified delay of 41 days in filing the present appeal. The assessee has filed an affidavit explaining the reason for delay and seeking condonation thereof.



3. After going through the contents of the said affidavit, we are satisfied that the delay in filing the appeal was due to bona-fide reasons. Accordingly, we condone the delay and admit the appeal for adjudication on merits.

4. One of the grounds in the memorandum of appeal is challenging the validity of reopening of assessment u/s. 147 of the Act. Further, vide letter dated 23.12.2024, the assessee has raised an additional ground, specifically, raising the issue of jurisdictional error affecting the validity of notice issued u/s. 148 of the Act.

5. We have heard the parties and perused the materials on record. It is the say of learned counsel for the assessee that prior to issuance of notice u/s. 148 of the Act, no sanction of the competent authority, as envisaged u/s. 151 of the Act, was obtained. In this context, learned counsel has placed on record copy of notice dated 31.03.2021 issued u/s. 148 of the Act and copy of approval granted by Principal Commissioner of Income Tax (PCIT), Thane-1, dated 08.04.2021 u/s. 151 of the Act.

6. Without controverting the aforesaid factual position, learned Departmental Representative (DR) submitted that after issuance of approval u/s. 151 of the Act by the competent authority, the AO has issued another notice u/s. 148 of the Act on 09.04.2021. A copy of the said notice was also placed on record.



7. Having considered rival submissions and perused the materials on record, we find, in the impugned assessment order, the AO has referred to the notice issued u/s. 148 of the Act on 31.03.2021. There is absolutely no reference in the assessment order, in so far as notice issued u/s. 148 of the Act allegedly issued on 09.04.2021. Further, approval granted u/s. 151 of the Act by the PCIT, Thane-1 reveals that the AO has sent proposal for reopening to the competent authority on 30.03.2021 and approval for issuance of notice was granted on 08.04.2021. The aforesaid facts clearly demonstrate that prior to grant of approval by the competent authority on 08.04.2021, the AO had issued the notice u/s. 148 of the Act on 31.03.2021. Thus, in our view, the subsequent notice dated 09.04.2021, allegedly issued u/s. 148 of the Act by the AO is merely a futile attempt to validate an otherwise invalid proceeding.

8. Thus, having gone through the facts on record, we are of the considered opinion that prior to issuance of notice u/s. 148 of the Act on 31.03.2021, there was no approval of the competent authority u/s. 151 of the Act. The approval u/s. 151 of the Act being a mandatory condition for issuance of notice u/s. 148 of the Act, any violation thereof is a grave jurisdictional error affecting the validity of the proceedings. In view of the aforesaid, we have no hesitation in holding that the notice issued u/s. 148 of the Act, which culminated in passing of the impugned assessment order is



invalid being without jurisdiction. Hence, notice issued u/s. 148 of the Act being unsustainable deserves to be quashed. Accordingly, we do so. Consequently, the assessment order passed in pursuance thereof is quashed and the impugned order of the First Appellate Authority is set aside.

9. In view of our decision above, the grounds raised on merits having been reduced to academic importance, does not require adjudication.

10. In the result, appeal is allowed as indicated above.

Order pronounced in the open court on 28/01/2025.

Sd/-
(GIRISH AGRAWAL)
(ACCOUNTANT MEMBER)

Sd/-
(SAKTIJIT DEY)
(VICE PRESIDENT)

Mumbai, Dated: 28.01.2025

Aks/-

Copy of the Order forwarded to :

The Appellant, The Respondent, The CIT, The DR ITAT & Guard File

BY ORDER,

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai