



आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "A" :: PUNE

BEFORE DR.DIPAK P. RIPOTE, ACCOUNTANT MEMBER
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.2048/PUN/2024

निर्धारण वर्ष / Assessment Year: 2017-18

Dinesh Dilip Mehta, 936 3, Irvin Road, New Nana Peth, Opp.M Phule High School, Pune – 411002.	V s	The Income Tax Officer, Ward-7(1), Pune.
PAN: ABBPM0414G		
Appellant/ Assessee		Respondent / Revenue

Assessee by	Shri Nikhil S Pathak – AR
Revenue by	Shri Vidya Ratna Kishor - DR
Date of hearing	25/03/2025
Date of pronouncement	30/04/2025

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This appeal filed by the assessee is against the order of
ld.Commissioner of Income Tax(Appeals)[NFAC], passed under
section 250 of the Income Tax Act, 1961; dated 01.08.2024 for
Assessment Year 2017-18. The assessee has raised the following
grounds of appeal :

*“1] The learned CIT(A) erred in confirming an addition of
Rs.69,10,300/- on account of alleged commission income u/s 56 of the
Act.*



2] The learned CIT(A) erred in holding that the appellant had failed to prove that he had earned net commission income of Rs.8,19,700/- and therefore, the addition made by the learned A.O. was justified.

3] The learned CIT(A) failed to appreciate that the assessee had taken help of other persons in exchanging the currency notes and had paid passed on the commission to the said persons and accordingly, the net commission income offered by Rs.8,19,700/- was correct and the addition made of Rs.69,10,300/- may kindly be deleted.

4] The learned CIT(A) erred in not appreciating that the entire transaction of exchange of currency notes was not recorded in the books and hence, question of submitting the confirmation, PAN, cheque No., etc. etc. of the persons to whom the commission was passed on simply did not arise and accordingly, the addition confirmed is not justified and the same may kindly be deleted.

5] The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.”

1.1 The assessee has raised the Legal Ground as under :

“1] The assessee submits that the notice issued u/s148 and u/s 148A(d) invalid in law since the approval as envisaged u/s 151 has not been obtained from the Pri.Chief Commissioner of Income Tax and therefore, the reasst. Order passed u/s 147 be declared null and void.”

Submission of Id.AR :

2. Ld.AR for the assessee filed the written submissions as under :

“2] In this case, the notice u/s 148 under the old provisions was issued on 07.04.2021. Subsequently, as per the decision of Hon'ble Supreme Court in the case of Union of India v. Ashish Agarwal dated 04.05.2022, the learned A.O. issued a letter on 26.05.2022 as per the provisions of section 148A(b). Subsequently, he passed an order u/s 148A(d) on 14.07.2022 and issued notice u/s 148 on 15.07.2022.

3] The assessee submits that in the present case, the notice u/s 148 has been issued on 15.07.2022. The copy of the notice issued by the learned A.O. is enclosed on page 2 of the Paper Book. Further, the copy of the order passed u/s 148A(d) dated 14.07.2022 is on pages 3-4 of the Paper Book.



4] The assessee submits that in the order passed u/s 148A(d), the learned A.O. in para 7 of the said order has stated that the said order has been passed after seeking approval of Pr. CIT-4, Pune. The assessee submits that from the said para, it is clear that the learned A.O. had passed the order u/s 148A(d) after seeking approval of Pr. CIT-4, Pune.

5] The assessee submits that the concerned asst. year is A.Y. 2017-18 and hence, the notice u/s 148 has been issued after three years from the end of the concerned asst. year. Now, as per section 151, the specified authority for the purposes of section 148 and 148A are -

a. Pr. Commissioner or Pr. Director or Commissioner or Director if three years or less than three years have elapsed from the end of the relevant asst. year.

b. Pr. Chief Commissioner or Pr. Director General or Chief Commissioner or Director General if more than three years have elapsed for the end of the relevant asst. year.

Now, in the present case, the notice u/s 148 as well as the order passed u/s 148A(d) is beyond three years from the end of the asst. year. The learned A.O. has obtained the approval of the Pr. CIT(4), Pune. The assessee submits that the learned A.O. has not obtained the approval of Pr. Chief Commissioner or Chief Commissioner or Pr. Director General or Director General as the case may be as mentioned in section 151. Accordingly, it is submitted that the order passed by the learned A.O. u/s 148A(d) and the notice issued u/s 148 is bad in law.

In this context, the assessee submits that Hon'ble Supreme Court in the case of Rajeev Bansal has held that the learned A.O. was required to obtain prior approval of the specified authority as mentioned in section 151 of the new regime before passing an order u/s 148 or issuing a notice u/s 148. The relevant para 81 of the order of Hon'ble Supreme Court is as under -

"8] This Court in Ashish Agarwal (supra) directed the assessing officers to "pass orders in terms of Section 148-A(d) in respect of each of the assesses concerned." Further, it directed the assessing officers to issue a notice under Section 148 of the new regime "after following the



procedure as required under section 148-A." Although this Court waived off the requirement of obtaining prior approval under section 148A(a) and Section 148A(b), it did not waive the requirement for Section 148A(d) and Section 148. Therefore, the assessing officer was required to obtain prior approval of the specified authority according to Section 151 of the new regime before passing an order under section 148A(d) or issuing a notice under section 148. These notices ought to have been issued following the time limits specified under section 151 of the new regime read with TOLA, where applicable."

Considering the above decision of Hon'ble Supreme Court, it is submitted that the notice issued by the learned A.O. is invalid in law. It is submitted that Hon'ble Supreme Court has held that the A.O. ought to have obtained approval of the specified authority as mentioned in section 151 of the new regime. In this case, the learned A.O. has not obtained the approval of the specified authority mentioned u/s 151 of the new regime and therefore, the order passed u/s 148A(d) and the notice issued 148 is bad in law.

9] Similar view has been taken by Hon'ble Bombay High Court in the case of Gigantic Mercantile Pvt. Ltd. [165 taxmann.com 646]. The assessee further submits that Hon'ble ITAT, Pune in the case of M/s. Arthbharti Nagari Sahakari Patsanstha Maryadit v. ITO [ITA No. 1848/PN/24] has also held that where the approval is not taken as per the provision of section 151, the notice issued u/s 148 is bad in law. Similar view has been taken by ITAT, Pune in the case of ITO v. Rajaram Ramswarup Jaju [ITA No. 1882/PN/24].

10] Accordingly, the assessee submits that the order passed u/s. 148A(d) and the notice issued u/s. 148 is bad in law and hence, the reasst. Order passed u/s. 147 be declared null and void."

Submission of ld.DR :

3. Ld.DR for the Revenue relied on the order of the Assessing Officer and ld.CIT(A).

Findings & Analysis :



4. We have heard both the parties and perused the records. Both the parties have pleaded only the legal ground. In this case, order u/s.148A(d) was passed on 14.07.2022 for A.Y.2017-18. It is noted that said order has been passed with the approval of Pr.Commissioner of Income Tax-4, Pune vide the PCIT 4, Pune's letter No.PN/Pr.CIT-4/148/Proposal/2022-23/1130 dated 12/07/2022. This fact is noted in the paragraph 7 of the said order.

4.1 The notice u/s.148 for A.Y.2017-18 was issued on 15.07.2022 with the approval of Pr.Commissioner of Income Tax-4, Pune vide the PCIT 4, Pune's letter No.PN/Pr.CIT-4/148/Proposal/2022-23/1130 dated 12/07/2022.

4.2 Thus, it is an admitted fact that notice u/s.148 and order u/s.148A(d) of the Act was passed with the approval of Pr.Commissioner of Income Tax.

4.3 Section 151 of the I.T.Act is reproduced here as under :

[Sanction for issue of notice.

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 where there is no Principal Chief Commissioner or Principal Director General, Chief Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year.]

5. In this case, it is an admitted fact that more than three years have been lapsed from the end of the Assessment Year. Therefore, as per Section 151 of the Act, the Competent Authority to approve the notice u/s.148 and order u/s.148A(d) of the Act, is the Id.Principal Chief Commissioner of Income or Id.Chief Commissioner of Income Tax. However, in this case, notice has been approved by Id.Principal Commissioner of Income Tax.

5.1 The Hon'ble Jurisdictional High Court in the decision of Holiday Developers (P.) Ltd, Vs. ITO [2024] 159 taxmann.com 178 (Bombay) dated 29.01.2024 has held as under :

Quote "1. Petitioner is impugning a order under section 148A(d) and the notice, both dated 7th April 2022 passed under section 148 of the Income Tax Act, 1961 ("Act"). Of-course Petitioner has also impugned the notice dated 17th March 2022 issued under section 148A(b) of the Act. Various grounds have been raised but one of the primary grounds for challenging the notice under section 148A(d) and the notice under section 148 of the Act both dated 7th April 2022 is that order as well as the notice both mention the authority that has granted approval, is the Principal Commissioner of Income Tax ("PCIT"), Mumbai 5 and the approval has been granted on 7th April 2022.

2. Mr. Gandhi is correct in saying that the Assessment Year ("AY") is 2018-19 and, therefore, since more than three years have expired from the end of the assessment year, Sanctioning Authority under section 151(ii) of the Act should be the Principal Chief Commissioner of Income Tax ("PCCIT") and not the PCIT. Mr. Gandhi says, as held in Siemens Financial Services (P.) Ltd. v. Dy. CIT [2023]



154 taxmann.com 159/457 ITR 647 (Bom.) the sanction is invalid and consequently, the order and the consequent notice under section 148A(d) and section 148, respectively, of the Act should be quashed and set aside.

3. In view of these facts and circumstances, we do not see any reason to just grant Rule and keep the matter pending.

4. As held in Siemens (Supra), the order passed under section 148A(d) and notice issued under section 148 of the Act both are quashed and set aside.” Unquote.

5.2 Similarly, the Hon’ble Bombay High Court in the case of Pradeep Himatlal Shah Vs. ITO [2025] 170 taxmann.com 471(Bombay) has held as under :

“4. The impugned order and the impugned notice both dated 7th April 2022 state that the Authority that has accorded the sanction is the PCIT, Thane-1. The matter pertains to Assessment Year ("AY") 2018-2019 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 of the Act has been inserted only with effect from 1st April 2023 and, therefore, shall not be applicable to the matter at hand.

*5. In the circumstances, as held by this Court in Siemens Financial Services (P) Ltd v. Dy. CIT [2023] 154 taxmann.com 159/457 ITR 647 (Bombay)., the sanction is invalid and consequently, the impugned order and impugned notice both dated 7th April 2022 under Sections **148A(d) and 148 of the Act are hereby quashed and set aside.**”(emphasis supplied)*

5.3 The Hon’ble Jurisdictional High Court in the case of Agnello Oswin Dias Vs. ACIT [2024] 161 taxmann.com 16 (Bombay) has held as under :

“4. The impugned order and the impugned notice both dated 22nd April 2022 state that the Authority that has accorded the sanction is the PCIT, Mumbai-5. The matter pertains to Assessment Year ("AY") 2018-2019



andsince the impugned order as well as the notice are issued on 22nd April 2022, both have been issued beyond aperiod of three years. Therefore, the sanctioning authority has to be the PCCIT as provided under Section151(ii) of the Act. The proviso to Section 151 of the Act has been inserted only with effect from 1st April2023 and, therefore, shall not be applicable to the matter at hand.

5. In the circumstances, as held by this Court in Siemens Financial Services (P.) Ltd. v. Dy. CIT [2023] 154taxmann.com 159/457 ITR 647 (Bom.), the sanction is invalid and consequently, the impugned order andimpugned notice both dated 22nd April 2022 under sections 148A(d) and 148 of the Act are hereby quashedand set aside.”

5.4 Thus, Hon’ble Bombay High Court explained the Amendment made in 2023 is applicable w.e.f. 01.04.2023.

5.5 ITAT Pune in the case of Hareshkumar Dungarmal Jain vs. DCIT in ITA No.1933/PUN/2024, quashed the Notice u/s.148 of the Act, dated 13.04.2022 for A.Y.2018-19.

6. In the above referred decision of Hon’ble Bombay High Court, Pradeep Himmatlal Shah vs. ITO(supra) the assessment year involved is A.Y.2018-19 and order under section 148A(d) of the Act, was passed on 07.04.2022. In the case of the assessee, Dinesh Dilip Mehta, the assessment year is A.Y.2017-18 and order under section 148A(d) of the Act, is dated 14.07.2022. Therefore, the facts are absolutely identical. Hence, respectfully following the decision of Hon’ble Bombay High Court(supra) and ITAT Pune(supra), the order under Section 148A(d) of the Act, and notice under section



148 are quashed. Accordingly, the legal ground raised by the assessee is allowed. Since we have decided the Legal Ground in favour of the assessee, the other grounds becomes academic in nature. We have already mentioned that both parties only argued on the legal ground, hence, the remaining grounds are dismissed as unadjudicated. Accordingly, grounds of appeal raised by the assessee are partly allowed.

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

Order pronounced in the open Court on 30th April, 2025.

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

Sd/-
(DIPAK P.RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 30th April, 2025/ SGR

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्डफाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.