

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, MUMBAI
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER
& SMT. RENU JAUHRI, ACCOUNTANT MEMBER
ITA No. 2131/MUM/2025 (AY : 2016-17)**

(Physical hearing)

Saif Ali Mansoor Ali Khan Pataudi Flat No. 1001/02, Fortune Heights, 29 th Road, Bandra West, Mumbai-400050. [PAN No. AAHPK0520E]	Vs	CIT(A), NFAC, Delhi/ ACIT, Circle-16(1), Mumbai
Appellant / Assessee		Respondent / Revenue

Assessee by	Shri K.K. Lalkaka, CA
Revenue by	Ms. Sujatha Iyengar, Sr. DR
Date of institution of appeal	28.03.2025
Date of hearing	02.06.2025
Date of pronouncement	11.06.2025

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER;

1. This appeal by assessee is directed against the order of NFAC/ Id. CIT(A) dated 05.02.2025 for A.Y. 2016-17. The assessee has raised the following revised grounds of appeal:

"1. On the facts and circumstances of the case and in law, the assessment framed by the CIT(Appeals) for the A.Y. 2016-17 is bad in law, illegal, in excess of and/or in want of jurisdiction and/or otherwise void.

2. On the facts and circumstances of the case and in law, the CIT(Appeals) has erred in directing the disallowance of TDS credit of Rs.50 lakhs without appreciating facts of the case.

3. On the facts and circumstances of the case and in law, the CIT(Appeals) failed to consider the following legal grounds raised in the Grounds of Appeal.

a) Reassessment proceedings u/s.149(1)(b) can only be initiated if the information and material suggest that income chargeable to tax represented in the form of an ASSET which is amounting to or likely to amount to more than Rs.50 lakhs has escaped assessment. The term ASSET has been defined to include immovable property, land or building, shares or securities, deposit in bank accounts. By no process of interpretation, can TDS booked in the books be considered as an ASSET.

- b) *Further, the information with the A.O. on the basis of which Notice u/s.149(1)(b) has been issued is not the one covered under Explanation 1(ii) to Section 148. On perusal of the said Show cause Notice, it is noticed that the information to reassess the income has been received from the Internal Audit Department whereas in accordance to Finance Act, 2021, the information should originate from Comptroller and Auditor General.*
- c) *The law requires approval to be taken u/s. 151(ii) from Pr. Chief Commissioner of Income tax / Pr. Director General of Income tax. However, the approval is taken from C.C.I.T. (OSD), Mumbai H/C of Pr. CIT-8 Mumbai u/s 151(i). Further, the name of the Sanctioning Authority is not mentioned.*
- d) *The reopening of the assessment by the impugned notice dated 24th August 2022 is merely on the basis of change of opinion of the Assessing Officer from that held earlier during the course of assessment proceedings.*
- e) *The notice issued under section 148 dated 24th August 2022 is beyond the period of limitation and is nullity in the eyes of law and is non est.*
- f) *Reliance is placed on the ITAT Mumbai decision of ACIT vs Munish Financials delivered on 02.12.2024 and Siemens Financial Services (P) Ltd. Vs DCIT &Ors. [(2023) 457 ITR 647 (Bom)].*

4. On the facts and circumstances of the case and in law, the CIT (Appeals) before enhancing the assessment failed to give a show cause notice as required under sub-section (2) of section 251 of the Income-tax Act and hence the Appellant was denied an opportunity of being heard."

2. Rival submissions of Learned Authorised Representative (Id. AR) of the assessee and learned Senior Departmental Representative (Id. Sr. DR) for the Revenue have been heard and record perused. The Id. AR of the assessee submits that apart from challenging the validity of addition, the assessee has challenged the validity of issuance of notice under section 148 and its approval under section 151 of Income Tax Act. The Id. AR of the assessee submits that case of assessee for assessment year (A.Y.) 2016-17 was reopened by issuing notice under section 148 dated 24.08.2022. Copy of

notice under section 148 is filed on record. The Id. AR of the assessee by referring contents of para 3 of notice under section 148 submits that such notice was issued with prior approval of Principal Commissioner of Income Tax (Pr.CIT)-8, Mumbai, which accorded on 22.02.2022 vide letter bearing no. PCIT-8/148 Approval/2022-23 dated 22.08.2022. Since, the case of assessee relates to AY-2016-17, which was reopened beyond three years from the end of relevant assessment year, thus, the approval of Pr. CIT is not valid. As per mandate of section 151(ii) the approval should not have been obtained from Principal Chief Commissioner of Income tax (Pr. CCIT) in term of section 155(ii) and not of section 151(i). Thus, if notice under section 148 is issued without proper approval, it is bad in law and subsequent action initiated thereon has become *void ab initio*. To support his submission, the Id. AR of the assessee relied on a number of decision, however, at the time of making his submission mainly relied on the decision of Mumbai Tribunal in ACIT vs Manish Financial in ITA No. No. 5055/M/2024 dated 02.12.2024 and the decision of jurisdictional High Court in Siemens Financial Services (P) Ltd. vs DCIT (2023) 457 ITR 647 (Bom).

3. On the other hand, Id. Sr. DR for the Revenue submits that she would like to confirm the issuance of notice under section 148, if it was approved by Pr CIT or Pr. CCIT. On her objection, the bench appraised her by the contents of notice under section 148 itself, which clearly bear the reference of approval of Pr. CIT-8, Mumbai, still she allowed to submit her response within three working days.
4. We have considered the rival submissions of both the parties and have gone through the orders of lower authorities. On careful perusal of assessment

order, we find that case of assessee for AY 2016-17 was reopened under section 147, by issuing notice under section 148 dated 24.08.2022. On careful perusal of notice under section 148, we find that said notice was issued prior approval of PCIT-8. However, as per amended provision of section 151 substituted by Finance Act 2023, w.e.f. the assessing officer was required to obtain prior approval of Pr. CCIT, if more than three years elapsed from the end of relevant assessment year. Copy of notice under section 148 is extracted below:

	<p>GOVERNMENT OF INDIA OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE- 16(1), Room No.439, Aayakar Bhavan, Churchgate, Mumbai - 400020 ☎ 022-22120140 ; E-mail : mumbai.dcit16.1@incometax.gov.in</p>
No.ACIT- 16(1)/Notice u/s.148/2022-23	Date:24.08.2022

NOTICE UNDER SECTION 148 OF THE INCOME-TAX ACT, 1961

SAIF ALI MANSUR ALI KHAN PATAUDI FLAT NO 1001/02 FORTUNE HEIGHTS, 29TH ROAD, BANDRA WEST MUMBAI 400050, Maharashtra India	
PAN-AAHPK0520E	A.Y.2016-17

Sir/Madam,

1. (A) I have the following information in your case or in the case of the person in respect of which you are assessable under the Income Tax Act, 1961 (hereinafter referred to as "the Act") for Assessment Year 2016-17:-

information flagged by the risk management strategy formulated in this regard;

final objection has been raised by the Comptroller and Auditor General of India to the effect that the assessment has not been made in accordance with the provisions of Act;

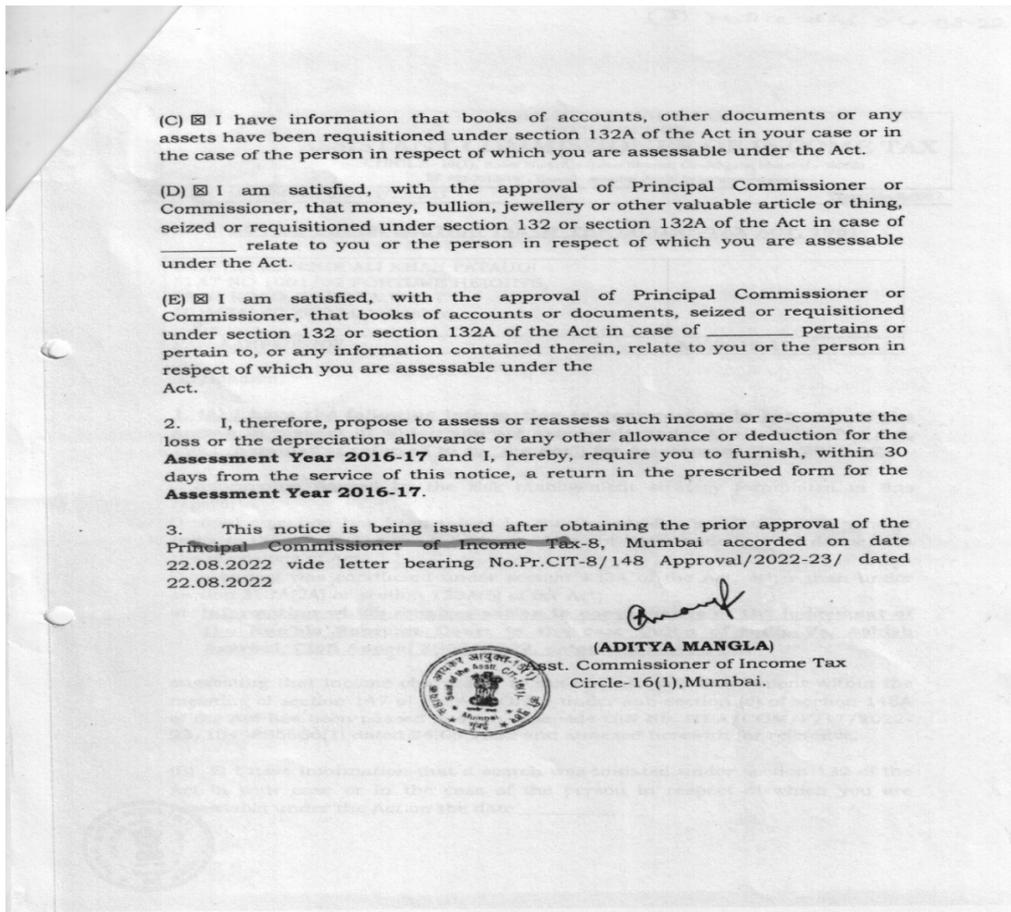
a survey was conducted under section 133A of the Act, other than under section 133A(2A) or section 133A(5) of the Act,

information which requires action in consequence of the judgement of the Hon'ble Supreme Court in the case Union of India Vs. Ashish Agarwal, Civil Appeal 3005/2022, dated 4th May, 2022

suggesting that income chargeable to tax has escaped assessment within the meaning of section 147 of the Act. Order under sub-section (d) of section 148A of the Act has been passed in such case vide DIN No. ITBA/COM/F/17/2022-23/1044885666(1) dated 24.08.2022 and annexed herewith for reference,

(B) I have information that a search was initiated under section 132 of the Act in your case or in the case of the person in respect of which you are assessable under the Act on the date _____.





5. Considering the aforesaid factual position, we find that notice under section 148, which is issued with prior approval of Pr.CIT is not valid; therefore, consequent action initiated thereon has become *void ab initio*. In the result, the assessee succeeded on primary submission of Id. AR of the assessee. Further, considering the fact that assessee has succeeded on legal issue, therefore, adjudication of merit have become academic.
6. In the result, the appeal of assessee is allowed.

Order pronounced in the open Court on 11/06/2025.

Sd/-

RENU JAUHRI
ACCOUNTANT MEMBER

Sd/-

PAWAN SINGH
JUDICIAL MEMBER

MUMBAI, Dated: 11/06/2025
Biswajit

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar
ITAT, Mumbai