

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'A' BENCH, CHENNAI
श्री एस.एस. विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री एस.आर. रगुनाथा, लेखा सदस्य के समक्ष
Before Shri S.S. Viswanethra Ravi, Judicial Member &
Shri S.R. Raghunatha, Accountant Member

आयकर अपील सं./I.T.A. No.398/Chny/2025
निर्धारण वर्ष/Assessment Year: 2016-17

Sridhar Kumari,
No. 12-B, First Street, Ellappa Nagar,
Kanchipuram 631 502.

Vs. The Assistant Commissioner of
Income Tax,
Non Corporate Circle 22(1),
(TBM), Chennai.

[PAN:ANPPK2206G]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri Y. Sridhar, FCA
प्रत्यर्थी की ओर से/Respondent by : Ms. Deeptha, Addl. CIT
सुनवाई की तारीख/ Date of hearing : 30.04.2025
घोषणा की तारीख /Date of Pronouncement : 17.06.2025

आदेश / O R D E R

PER S.S. VISWANETHRA RAVI, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order dated 09.12.2024 passed by the Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi for the assessment year 2016-17.

2. The Id. AR Shri Y. Sridhar, FCA drew our attention to the additional ground raised vide application dated 29.04.2025 and submits that the additional ground is a legal ground, may be heard as a

preliminary issue as it goes to the root of the matter. He submits that the assessee raised the same for the first time based on the same set of facts and no new set of facts are involved. He submits that this Tribunal has jurisdiction to entertain any legal ground for the first time and prayed to admit and adjudicate the said legal ground.

3. The Id. DR Ms. Deeptha, Addl. CIT reports no objection in adjudicating the legal ground.

4. Having heard both the parties, we note that as admitted by the Id. AR that the legal ground was not raised before both the authorities below and it is raised for the first time before this Tribunal. The Hon'ble Supreme Court in the case of NTPC v. CIT 229 ITR 383 (SC) held the Tribunal has jurisdiction to entertain any legal ground for the first time. Since no new facts are to be verified and thus, proceed to adjudicate the legal ground as a primary issue.

5. The Id. AR submits that the Id. CIT(A) confirmed the addition made by the Assessing Officer. The Assessing Officer initiated reassessment proceedings without there being proper prior approval from the specified authorities as contemplated in section 151 of the Income Tax Act, 1961 ["Act" in short]. He argued that in the absence of

proper prior approval, the reassessment order dated 25.05.2023 passed by the Assessment Unit, Income Tax Department is bad in law. The Id. AR drew our attention to the first para of reassessment order and submits that the Assessing Officer issued notice dated 30.06.2021 under section 148 of the Act, which is barred by limitation. He submits that the proper specified authority is Principal Chief Commissioner of Income Tax [“PCCIT” in short] and drew our attention to the order dated 21.07.2022 passed under section 148A(d) of the Act, argued that the para 7 of the said order clearly shows that prior approval was accorded by the Principal Commissioner of Income Tax, Chennai-1 [“PCIT” in short] instead of PCCIT as contemplated under section 151 of the Act. The Id. AR drew our attention to the decision of the Hon’ble High Court of Madras in the case of FIVES India Engineering & Projects (P) Ltd. v. ITO 464 ITR 760 (Madras) and argued that in the present case since more than 3 years have elapsed, the approval was to be granted by the PCCIT, who is specified authority under clause (ii) of section 151 of the Act. Further, he submits that in the present case since approval was given by the PCIT-1, Chennai, who is not a specified authority as contemplated under section 151 of the Act, the

reassessment made, is bad in law. The Id. AR prayed to allow the additional ground and quash the reassessment proceedings.

6. The Id. DR strongly relied on the order of the Id. CIT(A).

7. Heard both the parties and perused the material on record. We note that the assessee is an individual derives income under the head "income from other sources". Facts as emanating from the record are that the assessee's husband was engaged in real estate activity and passed away on 04.10.2017. After his demise, a portion of his real estate activity was carried out in the name of the assessee. However, it is noticed that the real estate activity was limited to the extent of name-lending only. Basing on the same compliance, the Department carried out investigation into the business of the assessee's family. According to the assessee, a consensus was arrived with the Department, therefore, an additional income of ₹.3,00,00,000/- was declared as total income for the year under consideration. Accordingly, the assessee filed return of income on 17.02.2017 admitting a total income of ₹.3,02,10,960/-. The said return of income was selected for scrutiny and an order under section 143(3) of the Act was passed accepting the income returned vide order dated 24.12.2018. As matter stood thus,

the Assessing Officer issued notice dated 30.06.2021 under section 148 of the Act stating that the assessee has purchased a property for a consideration of ₹.47,40,000/- from Ganapathy Chinnaraju, who deposed that he sold the property for a consideration of ₹.1,40,40,000/-, but, however, found the sale consideration in the sale deed is at ₹.47,40,000/-. Therefore, the Assessing Officer reopened the assessment basing on the statement of another assessee in the case of Ganapathy Chinnaraju, stating that ₹.93,00,000/- escaped assessment being the difference between actual sale consideration paid and sale consideration reflecting in the sale deed. He held ₹.93,00,000/- [₹.1,40,40,000 – ₹.47,40,000] shall be chargeable to tax. The assessee objected to the reopening notice stating that the additional income declared vide return of income demonstrates that all the discrepancies highlighted by the Investigation Wing, including the issue under consideration. The Assessing Officer did not accept the submissions of the assessee and accordingly, he proceeded to add the said difference to the total income of the assessee. The undisputed facts being so, since the Id. AR advanced his arguments in legal issue, we deem it proper to adjudicate the legal issue as primary issue.

8. While considering the submissions of the Id. AR, we find the short point to be adjudicated in the present case is as to whether the reassessment order dated 25.05.2023 is valid or not?

9. We note that the main contention of the Id. AR is that there is no proper prior approval from the specified authority as contemplated under section 151 of the Act. We note that Clause (ii) of section 151 of the Act clearly explains that the Principal Chief Commissioner of Income Tax or Principal Director General is the specified authority for the purpose of section 148 and 148A of the Act for sanction of issue of notice, if more than three years have elapsed from the end of the relevant assessment year. The year under consideration before us, is 2016-17, being end of assessment year 31.03.2017. However, the Assessing Officer issued notice under section 148 of the Act on 30.06.2021, which is clear that three years have elapsed and therefore, the specified authority for sanction of issue of notice as contemplated under clause (ii) of section 151 of the Act is PCCIT or Principal Director General. On examination of the record, we note that the Assessing Officer obtained prior approval to issue notice under section 148 of the Act is only from Principal Commissioner of Income Tax, Chennai-1, in our opinion, is not the specified authority as contemplated under clause

(ii) of section 151 of the Act. Since no proper prior approval has been obtained before initiating reassessment proceedings, the reassessment order passed under section 147 r.w.s. 144 read with section 144B of the Act dated 25.05.2023, is liable to be quashed.

10. The Hon'ble High Court of Madras in the case of FIVES India engineering & amp; Projects (P.) Ltd. v. ITO (supra) held that clause (i) under section 151 of the Act is applicable for issuance of notice in those cases if less than three years have elapsed and clause (ii) under section 151 of the Act is applicable for issuance of notice in those cases if more than three years have elapsed. As discussed above, in the present case, notice under section 148 of the Act dated 30.06.2021 was issued after lapse of three years from the end of relevant assessment year, therefore, the provision of clause (ii) of section 151 of the Act is applicable and the specified authority to sanction issuance of notice for the purpose under section 148 and 148A of the Act is PCCIT, but, not PCIT. Since the Assessing Officer has taken prior approval from PCIT-1, Chennai for issuance of notice vide order under section 148A(d) of the Act dated 21.07.2022, the reassessment made thereon, is invalid and quashed. Thus, the additional ground raised by the assessee is allowed.

11. In view of our decision in additional ground raised by the assessee, all other grounds raised in Form 36 become academic and dismissed as infructuous.

12. In the result, the appeal filed by the assessee is allowed.

Order pronounced on 17th June, 2025 at Chennai.

Sd/-
(S.R. RAGHUNATHA)
ACCOUNTANT MEMBER

Sd/-
(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Chennai, Dated, 17.06.2025

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant,
2. प्रत्यर्थी/ Respondent,
3. आयकर आयुक्त/CIT, Chennai/Madurai/Coimbatore/Salem
4. विभागीय प्रतिनिधि/DR &
5. गार्ड फाईल/GF.