

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI**

**BEFORE SHRI ANIKESH BANERJEE, JM &
MS PADMAVATHY S, AM**

**I.T.A. No. 3450/Mum/2025
(Assessment Year: 2018-19)**

Lunar Gems, DE 5090, Bharat Diamond Bourse, Bandra Kurla Complex, Bandra (E), Mumbai-400051. PAN: AAAFL0147K	Vs.	ACIT, Circle-23(1), Room No. 113, 1 st Floor, Matru Mandir, Tardeo Road, Mumbai-400007.
Appellant)	:	Respondent)

Assessee / Appellant by : Shri Ajay Singh, AR
Revenue / Respondent by : Shri Surendra Mohan, Sr. DR
Date of Hearing : 06.11.2025
Date of Pronouncement : 11.11.2025

ORDER

Per Padmavathy S, AM:

This appeal by the assessee is against the order of the Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre (NFAC), Delhi [In short 'CIT(A)'] passed under section 250 of the Income Tax Act, 1961 (the Act) dated 31.03.2025 for Assessment Years (AY) 2018-19. The grounds raised by the assessee are as under:

“I. Addition of Rs. 1,71,51,300/-

1. The learned CIT(A) erred in upholding the addition of Rs. 1,71,51,300/-treating the purchases of cut diamonds from three parties namely; Tanman Jewels Pvt Ltd. Antique Exim Pvt Ltd and Saffron Gems Pvt Ltd as non- genuine without considering the submission and primary documents i.e. stock register, purchase invoices, bank statement, export invoices, MCA portal status. GST portal status etc. furnished by the assessee, therefore the purchases cannot be treated as non-genuine and addition ought to be deleted.

2. The Ld. CIT(A) failed to considered that the purchases made from three parties are duly confirmed and supported by all the primary documents, therefore merely because the parties failed to appear before AO cannot lead to addition u/s. 69C of the Act more so when goods purchased are exported.

3. Without prejudice to the above, the AO failed to state and provide to the Appellant, copy of statements of the alleged parties, enquiry report of department nor provided cross examination, thus completing the assessment in pre-determined mind.”

2. The assessee is a partnership firm and filed the return of income for AY 2018-19 on 21.09.2018 declaring a total income of Rs. 1,64,380/-. The Assessing Officer (AO) received an information that the assessee has taken accommodation entries towards bogus purchases. Accordingly, the AO issued a notice u/s 148A(b) dated 25.03.2022. The AO subsequently passed an order u/s. 148A(d) dated 20.04.2022 and issued notice u/s. 148 on the same date. The AO completed the assessment u/s. 147 by making an addition of Rs. 1,71,51,300/- u/s. 68 of the Act towards bogus purchases. Aggrieved the assessee filed further appeal before the CIT(A) who confirmed the addition made by the AO. Aggrieved the assessee is in appeal before the Tribunal.

3. The assessee raised additional grounds raising the legal contention that the notice u/s. 148 dated 20.04.2022 issued by the AO is not valid for the reason that the AO has not obtained the approval from the appropriate authority as per section

151 of the Act. The ld. AR submitted that if the additional ground is admitted and allowed then the grounds raised on merits would become academic. The additional ground raised is purely legal issue, which does not require investigation of any 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.

4. We heard the parties and perused the material on record. The ld. AR submitted that the notice under section 148 dated 20.04.2022 is beyond the period of 3 years and therefore as per the provisions of Section 151 of the Act the AO should have obtained the approval from Principle Chief Commissioner of Income Tax (PCCIT). The ld AR further submitted that in the present case the AO has obtained approval from Principle Commissioner of Income Tax (PCIT) while issuing notice under section 148 and therefore the notice is invalid. The ld. DR rebutted the said argument stating that the AO initiated the proceedings by issue of notice u/s. 148A(b) on 25.03.2022 which is within 3 years and therefore the AO has rightly obtained the approval from PCIT. In this regard, we notice that the Hon'ble Bombay High Court in the case of *M/s. Vodafone Idea Limited Vs DCIT (WP No. 2768 of 2022 dated 06.02.2024)* has considered and identical issue and 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 7 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 provisio 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.

5. The ratio laid down by the Hon'ble Jurisdictional High Court in the above case is that even in cases where the notice u/s. 148A(b) was issued before completion of 3 years, if the notice u/s. 148 is issued beyond 3 years the approval needs to be obtained from PCCIT as per Section 151(ii) of the Act.

6. In assessee's case though the notice under section 148A(b) was issued on 25.03.2022, the order u/s. 148A(d) and the notice u/s. 148 has been issued on 20.04.2022. On perusal of the notice u/s. 148 we notice that the approval has been obtained from PCIT Mumbai-19. The relevant extract of the notice u/s. 148 is as under –

 GOVERNMENT OF INDIA MINISTRY OF FINANCE INCOME TAX DEPARTMENT OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 23(1), MUMBAI			
To, LUNAR GEMS 15 PRATIK ARCADE , TATA ROAD NO 2 OPERA HOUSE MUMBAI 400004 , Maharashtra India			
PAN: AAAF0147K	A.Y: 2018-19	Dated: 20/04/2022	DIN & Notice No: ITBA/AST/S/148_1/2022- 23/1042787886(1)
Notice under section 148 of the Income-tax Act, 1961			
Sir/Madam/ M/s.			
<ul style="list-style-type: none"> • 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 (here in after referred to as "the Act") for Assessment Year 2018-19 <ul style="list-style-type: none"> • information flagged by the risk management strategy formulated in this regard 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 ITBA/AST/F/148A/2022-23/1042787655(1) dated 20/04/2022 and annexed herewith for reference, 2. I, therefore, propose to assess or reassess such income or recompute the loss or the depreciation allowance or any other, allowance or deduction for the Assessment Year 2018-19 and I, hereby, require you to furnish, within 30 days from service of this notice, a return in the prescribed form of the Assessment Year 2018-19. 3. This notice is being issued after obtaining the prior approval of the PCIT, Mumbai-19 accorded on date 19/04/2022 vide Reference No. 100000028888963. 			
MAHITA JAYACHANDRAN NAIR CIRCLE 23(1), MUMBAI			
(In case the document is digitally signed please refer Digital Signature at the bottom of the page)			
<p><small>Note: If digitally signed, the date of digital signature may be taken as date of document. ROOM NO:113,1st Floor, MATRU MANDIR, TARDEO ROAD, MUMBAI Maharashtra, 400007 Email: MUMBAI.DCIT23.1@INCOMETAX.GOV.IN, Office Phone:0223889286 The website address of the e-filing portal has been changed from www.incometaxindiaefiling.gov.in to www.incometax.gov.in. Document Identification No.</small></p>			
This document is digitally signed, Signer: MAHITA JAYACHANDRAN NAIR Date: 21 April 2022 Location: MUMBAI			

7. From the perusal of these facts, we are of the considered view that the ratio laid down by the Hon'ble High Court is applicable to the present case. Accordingly respectfully following the above decision of the Hon'ble Bombay High Court we

hold that the notice issued by the AO u/s.148 beyond 3 years on 27.04.2022 with the approval of PCIT instead of PCCIT as per the provisions of section 151(ii) is not valid. Consequently the assessment completed based on the invalid notice is liable to be quashed.

8. Since we have considered the legal ground and allowed the appeal the rest of the grounds raised by the assessee have become academic and left open accordingly.

9. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 11-11-2025.

Sd/-
(ANIKESH BANERJEE)
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