

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

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

**I.T.A. No. 3484/Mum/2025
(Assessment Year: 2018-19)**

ITO-17(1)(1), 233, Kautilya Bhavan, Mumbai-400051.	Vs.	Ashok Amritlal Nayak, 103, Old Sharda Chamber, Masjid Bunder, Mumbai-400009. PAN: AAAPN7882M
Appellant)	:	Respondent)

**C. O. No. 169/Mum/2025
(Assessment Year: 2018-19)**

Ashok Amritlal Nayak, 103, Old Sharda Chamber, Masjid Bunder, Mumbai-400009. PAN: AAAPN7882M	Vs.	ITO-17(1)(1), 233, Kautilya Bhavan, Mumbai-400051.
Appellant)	:	Respondent)

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

ORDER

Per Padmavathy S, AM:

This appeal by the revenue and the C.O. by the assessee are 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 03.03.2025 for Assessment Years (AY) 2018-19. The grounds raised by the revenue and the C.O. by the assessee are as under:

Revenue's grounds

"1. Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not confirming the addition of fictitious sales of Rs. 7,20,57,399/- as undisclosed income u/s 68 of the Act under the provision of section 115BBE of IT Act as the assessee failed to establish the genuineness of the sales made.

2. Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has failed to appreciate the findings of the AO that except ledger no documentary evidences submitted by the assessee to prove the genuineness of the said transaction made with three parties i.e. M/s Jash Dealmark Limited, Cannonball trading Pvt. Ltd., Germanium Trading Private Limited?

3. Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was not justified in deleting the addition made by the Assessing Officer on account of fictitious sales ignoring the fact that the appellant has taken accommodation entries amounting to Rs. 7,20,57,399/- in the form of fictitious sales made to three parties i.e. M/s Jash Dealmark Limited, Cannonball trading Pvt. Ltd., Germanium Trading Private Limited which were engaged in providing accommodation entries.

4. Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was not justified in deleting the addition made by the Assessing Officer in the light of recent decision of Hon'ble Bombay High Court in Drisha Impex Pvt. Ltd. in ITA No. 1240 of 2018 with ITA No. 2087 of 2018 dated 07.04.2025 and Kanak Impex (India) Ltd. in ITA No. 791 of 2021 dated 03.03.2025."

Grounds of CO**Reopening is bad in law**

1. The learned CIT(A) failed to appreciate that the reopening of assessment u/s 148 is bad in law.

2. *The learned CIT(A) failed to appreciate that the reopening is bad in law as it was done on the basis of borrowed satisfaction, and there was no independent application of mind by the Assessing Officer before reopening.*

3. *The learned CIT(A) failed to appreciate that the reopening is bad in law as it is in contravention of Section 151A of the Income Tax Act, since the reopening was conducted by the Jurisdictional Assessing Officer and not under the Faceless Assessment Scheme, as required.*

On Merits-Addition of Rs. 15,63,645/- is Bad in Law:

4. *The learned CIT(A) erred in confirming the addition u/s 68 of 15,63,645/- on sales of Rs. 6,18,67,249/- to M/s Jash Dealmark Limited, Rs.93,42,692/- to M/s Germanium Trading P. Ltd., and Rs.8,47,458/- to Cannonball Trading P. Ltd [totaling to Rs.7,20,57,399/-] being 2.17% of ₹ 7,20,57,399/-, without appreciating that the appellant had fully discharged his burden by furnishing GST returns, sales invoices, GSTR-1 filings, ledger extracts, confirmation from the party, and proof of payment through banking channels. The GST Department had accepted these transactions, and the books of accounts were not rejected. Therefore, the addition u/s 68 of ₹ 15,63,645/- deserves to be deleted.*

5. *The learned CIT(A) failed to appreciate that the said sales were already offered to tax in the profit and loss account, and hence, the addition u/s 68 amounts to double taxation, which is not permissible under law.*

6. *The learned CIT(A) failed to appreciate that the addition of ₹ 15,63,645/- is bad in law as no copy of third-party statements was provided and no opportunity for cross-examination was granted to the assessee, thereby violating principles of natural justice. Hence, the addition is unsustainable.”*

2. The assessee is an individual and filed the return of income for AY 2018-19 on 18.06.2018 declaring a total income of Rs. 39,61,400/-. The return was processed u/s. 143(1) of the Act. The Assessing Officer (AO) received an information that the assessee has taken accommodation entries aggregating to Rs. 7,20,57,399/- towards bogus sales. Accordingly, the AO issued a notice u/s 148A(b) dated 30.03.2022. The AO subsequently passed an order u/s. 148A(b)

dated 11.04.2022 and issued notice u/s. 148 dated 12.04.2022. The AO completed the assessment u/s. 147 r.w.s. 144 making an addition of Rs. 7,20,57,399/- u/s. 68 of the Act. Aggrieved the assessee filed further appeal before the CIT(A). The CIT(A) gave partial relief to the assessee by restricting the addition to 2.17% of the alleged bogus sales thereby reducing the addition to Rs. 15,63,645/-. Aggrieved the revenue is in appeal before the Tribunal.

3. The ld. AR submitted that in the C.O. the assessee has raised the contentions that the notice u/s. 148 issued by the AO beyond 3 years is without obtaining the approval from the appropriate authority as per section 151 of the Act. The ld. AR further submitted that if the said C.O. of the assessee is considered and allowed the appeal of the revenue on merits would become infructuous. Accordingly, we will first consider the C.O. filed by the assessee.

4. We heard the parties and perused the material on record. The ld. AR submitted that the notice under section 148 which is dated 12.04.2022 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 30.03.2022 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 30.03.2022, and the notice u/s. 148 has been issued on 12.04.2022. On perusal of

the notice u/s. 148 we notice that the approval has been obtained from PCIT Mumbai-2. 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 5(3)(1), MUMBAI			
To, ASHOK AMRITLAL NAYAK 103, 1ST FLOOR 103, 1ST FLOOR , SHARDA CHEMBER BHAT BAZAR MASJID BANDER 400009 , Maharashtra India			
PAN: AAAPN7882M	A.Y: 2018-19	Dated: 12/04/2022	DIN & Notice No: ITBA/AST/S/148 1/2022- 23/1042718690(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/2022-23/1042698435(1) dated 11/04/2022 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-5 accorded on date 11/04/2022 vide Reference No. 10000030136877. 			
DHEERENDRA KUMAR CIRCLE 5(3)(1), MUMBAI			
(In case the document is digitally signed please refer Digital Signature at the bottom of the page)			
Note: If digitally signed, the date of digital signature may be taken as date of document. ROOM NO:573,5th Floor, AAYAKAR BHAVAN, MAHARISHI KARVE ROAD, MUMBAI, Maharashtra, 400020 Email: MUMBAI.DCIT5.3.1@INCOMETAX.GOV.IN , Office Phone:02222001245 This document is digitally signed Note:- The website address of the e-filing portal has been changed from www.incometaxindiaefiling.gov.in to www.incometax.gov.in . DIN-Document identification No. Signer: DHEERENDRA KUMAR Date: 12 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 12.04.2022 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 raised in the C.O. and have quashed the assessment the appeal of the revenue contending the issues on merits has become infructuous.

9. In the result, appeal of the revenue is dismissed and the C.O. 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