

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, KOLKATA

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND

SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

आयकर अपील सं/ITA No.1325/KOL/2024

(निर्धारण वर्ष / Assessment Year : 2016-2017)

The Royal Bank of Scotland N.V.-India Branch(amalgamated with NatWest Markets Plc-India Branch) 907, Regus, 9 th floor, PS Arcadia, 4A, Abanindra Nath Thakur Sarani, Kolkata-16	Vs	DCIT, International Taxation- 2(1), Kolkata
PAN No. :AACCA 6818 K		

(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
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निर्धारिती की ओर से /Assessee by	:	Shri Percy Pardiwala, Sr. Counsel
राजस्व की ओर से /Revenue by	:	Shri Praveen Kishore, CIT-DR
सुनवाई की तारीख / Date of Hearing	:	29/01/2026
घोषणा की तारीख/ Date of Pronouncement	:	30/01/2026

आदेश / O R D E R

Per Rajesh Kumar, AM:

This is an appeal filed by the assessee against the order of the Id. Assessing Officer dated 22.04.2024 passed u/s.147 r.w.s.144C of the Act arising out of the order passed by the Id. DRP-2, new Delhi, dated 26.02.2024 for the assessment year 2016-2017.

2. At the time of hearing the Id. Counsel for the assessee pressed ground no.8 raised as additional ground vide letter dated 7th November, 2024 , which is extracted as under:-

"6. That the Id. AO did not obtain the approval from the specified authority u/s 151(ii) i.e Principal Chief Commissioner of Income Tax of

the Act before passing the orders u/s 148A(d) Act and issuing notice u/s 148 of the Act.”

3. After hearing the rival contentions and perusing the material on record, we find that the assessee has raised the above additional ground of appeal challenging the jurisdiction of the AO to make addition. In our opinion the issue raised in the additional ground is a purely a legal issue qua which all the facts are available in the appeal folder and no further verification of facts are required from any quarter whatsoever. In our considered view the assessee is at liberty to raise any legal issue before any appellate authority for the first time even when the same has not been raised before the lower authorities. The case of the assessee is squarely covered by the decisions of the Apex court in the case of i) Jute Corporation of India Ltd. Vs CIT in 187 ITR 688 , ii) National Thermal Power Co. Ltd v. CIT [1998] 229 ITR 383 and also by the decision of Hon'ble Calcutta High Court in PCIT vs. Britannia Industries Ltd. [2017] 396 ITR 677 (Cal). Therefore, we are inclined to admit the same for adjudication.

4. The facts in brief are that the AO issued original notice u/s 148 of the Act on 30.06.2021 .The assessee was given notice u/s 148A(b) of the Act on 23.05.2022 . Thereafter, the order u/s 148A(d) of the Act was passed on 25.07.2022 after taking into account the submissions of the assessee and notice was finally issued u/s 148 of the Act on 25.07.2022 to the assessee after obtaining the approval from the competent authority i.e. CIT(IT & TP), Kolkata dated 19.07.2022 as mentioned in last Para of the

order passed u/s 148A(d) of the Act copy of which is available from page no.192 to 195 of the paper book.

5. At the time of hearing the Id. Senior Counsel for the assessee submitted that the reopening of the assessment is not sustainable as the approval accorded u/s.151 of the Act was not in accordance with law.

6. On the other hand, Id. CIT-DR supported the orders of the authorities below.

7. After hearing the rival contentions and perusing the materials available on record, we find that the assessment was reopened after a period of four years from the end of the relevant assessment year as the notice u/s 148 of the Act was issued on 30.06.2021, whereas the assessment year involved is 2016-2017 and thus is beyond four years from the end of the relevant assessment year. Therefore, in term of section 151 of the Act, the approval was required to be taken from the Id. PCCIT, whereas the assessee has taken an approval from Id. CIT(IT & TP) Kolkata. Accordingly, in our opinion, the approval has not been granted by the competent authority as prescribed under the Act under section 151(ii) of the Act. Therefore, the order passed u/s 148A(d) of the Act and notice issued u/s 148 of the Act with consequent assessment are nullity and bad in law. The issue is covered by the decision of Hon'ble Bombay High Court in Writ Petition No.3249 of 2022 in case of Agnello Oswin Dias Vs. ACIT dated 22.02.2024, wherein it has held as under:-

“4. The impugned order and the impugned notice both dated 22 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 and since the impugned order as well as the notice are issued on 22 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 1" 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 Private Limited Vs. Deputy Commissioner of Income Tax & Ors., the sanction is invalid and consequently, the impugned order and impugned notice both dated 22nd April 2022 under Sections 148A(d) and 148 of the Act are hereby quashed and set aside.”

8. Similarly, decision of Hon'ble Bombay High Court in case of Vodafone Idea Ltd. Vs. DCIT vide WP No. 2768 of 2022 dated 06.02.2024, wherein it has followed the decision of Agnello Oswin Dias (supra), as under:-

“1. Petitioner is impugning a notice dated 19 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 7th 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 these 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. *Petition disposed. No order as to costs. All rights and contentions are kept open.*

6. *For completion of record, Respondents are directed to make available to Petitioner copy of the approval form as well as the approval accorded for issuance of order under Section 148A(d) and Section 148 of the Act within one week from this order being uploaded."*

9. Similarly, in the case of Haresh Kumar Dungarmal Jain Vs. DCIT vide ITA No. 1933/PUNE/2024 vide order dated 24.02.2025 & Davos International Fund Vide ITA No.1190/MUM/2024, dated 13.01.2025 the issue is decided on the same lines. Similar ratio has been laid down in the cases as decided by the Hon'ble Bombay High Court Alag Property Construction Private Limited Vs ACIT Writ Petition No. 3938 of 2022 order dated 8.9.2025 and in Ramesh Bachulal Mehta Vs Income Tax Officer (2025) 177 taxmann.com 606 (Bom).

10. Considering the facts and circumstances of the case vis a vis the ratio laid down in the above decisions , we are inclined to quash the order

passed u/s 148A(d) of the Act and the consequent assessment framed by the Assessing Officer. The additional ground raised by the assessee is allowed.

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

Order dictated and pronounced in the open court on 30/01/2026.

Sd/-
(GEORGE MATHAN)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(RAJESH KUMAR)

लेखा सदस्य/ ACCOUNTANT MEMBER

कोलकाता Kolkata; दिनांक Dated 30/01/2026

Prakash Kumar Mishra, Sr.P.S.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **कोलकाता** / DR,
ITAT, Kolkata
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

Income Tax Appellate Tribunal, Kolkata