

आयकर अपीलीय न्यायाधिकरण, विशाखापट्टनम बेंच में,  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Visakhapatnam Bench, Visakhapatnam**

श्री संदीप सिंह करहेल, माननीय न्यायिक सदस्य एवं  
श्री ओम्कारेश्वर चिदरा, माननीय लेखा सदस्य

**SHRI SANDEEP SINGH KARHAIL, HON'BLE JUDICIAL MEMBER**  
**AND**  
**SHRI OMKARESHWAR CHIDARA, HON'BLE ACCOUNTANT MEMBER**

आयकर अपीलसं./I.T.A.No.426/Viz/2024  
(निर्धारण वर्ष/ Assessment Year: 2018-19)

Venkat Rao Pogarathi Narsaraopet PAN : CNDPP1827L (अपीलार्थी/ Appellant)	Vs.	Adjudicating Officer Ward 1 Narsaraopet (प्रत्यर्थी/ Respondent)
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करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri KVSSN Kumar, CA
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Shri Badicala Yadagiri, CIT(DR)
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	17.12.2025
घोषणा की तारीख/ Date of Pronouncement	:	13.02.2026

**ORDER**

**PER OMKARESHWAR CHIDARA, A.M :**

This appeal filed by the assessee is directed against the order of the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi in DIN & Order No.ITBA/NFAC/S/250/2024-25/1065557416(1) dated 11.06.2024, arising out of penalty

order passed by the Ld.AO u/s 147 r.w.s.144 of the Income Tax Act, 1961 (“the Act”), pertaining to the assessment year 2018-19.

2. In the above cited case, the appellant filed an appeal before ITAT with a delay of 55 days. During the hearing proceedings before ITAT, it is observed that the appellant filed an application to condone the delay as he was diagnosed with stroke in brain and undergoing treatment. Due to the same, it took some time for contacting the Authorised Representative and file appeal. The Ld.AR of appellant pleaded that the delay in filing of appeal may be condoned, because relevant evidences like medical prescriptions are also filed and hence, appeal be heard on merits. The Ld.DR opposed the condonation of delay. After hearing both sides, the Bench decides to condone the delay as there is sufficient cause and proceeds to adjudicate the matter on merits.

3. In this appeal, the main ground raised by appellant (on merits) is that Ld.AO added an amount of Rs.3.75 crores, which was withdrawn to utilise for his business purposes. The contention of Ld.AR of appellant is that Section 69, which deals with unexplained investment cannot be applied because there is no investment at all, not to speak “unexplained” because the money was withdrawn from their regular bank account and not deposited.

4. Apart from the grounds of appeal, the appellant has taken certain legal grounds as “Additional Grounds of Appeal” and emphasized on Para 7, Ground 3, which is reproduced below:

**7. Ground No. 3**

**Limitation U/Sec. 148A and Prior Approval U/Sec 151 (ii):**

The assessment period pertains to AY 2018-19 and the taxable income as per the income returns filed by the Appellant is Rs. 6,08,100/-. The said order under section 148A(d) was issued beyond three (3) years after the lapse of the relevant assessment year by the Jurisdictional Assessing Officer. The order under Sec. 148A(d) was issued on 07-04-2022 and notice under Section 148 dated 8.4.2022, which is beyond three years. As per Sec. 151 (ii), if more than three (3) years have elapsed from the end of the relevant assessment year, then the specified authority to sanction approval would be the Principal Chief Commissioner or Principal Director General. Whereas in the instant case, sanction was accorded by the Principal Commissioner only. Further, the order doesn't even mention when the permission was accorded. The lack of proper authorization also vitiated the order and consequential proceedings.

5. The Ld.AR of appellant pleaded that this additional legal ground be adjudicated first, as it goes to the root of matter. It was submitted that this legal ground is taken before ITAT for the first time and in view

of the decision of Hon'ble Supreme Court in the case of NTPC Ltd. 229 ITR 383 (SC), additional ground can be raised before ITAT for the first time, as no factual issues are involved. Accordingly, the ground raised by the appellant is admitted by the Bench u/s 254(1) of the Act.

6. During the hearing proceedings, the Ld.AR of appellant has submitted that as per section 151(ii); if more than 3 years have elapsed from the end of relevant assessment year, then, the specified authority to sanction approval would be Principal Chief Commissioner of Income Tax, whereas in the impugned case, the sanction was accorded by the PCIT only. Reliance was placed on the batch petitions in the case of Adil Aspi Engineer Vs. ITO, WP.Nos.3606, 3691, 3782, 3791,3823, 3846, 3857, 3861, 3870, 3939, 3951, 3972, 3974, 3976, 3981, 3999, 4018, 4047, 4103, 4104, 4129, 4141, 4189, 4237, 4247, 4248, 4252, 4269 a/w Interim Application No.5019 of 2022, 4272, 4290, 4295, 4319, 4487, 4536, 4554, 4581, 4585, 4626, 4633, 4666, 4725, 4851, 4864, 4903, 4908, 4929, 5016, 5191, 5197, 5217, 5226, 5234, 5261 & 5263 of 2022, where it was held that notices should be quashed. The relevant paras of Hon'ble Bombay High Court are reproduced below :

2. Counsels state that in all these Petitions the issue of improper sanction having been obtained has been raised among other grounds. Counsels state that the issue of improper sanction has been decided by this Court in the case of *Siemens Financial Services Private Limited v. Deputy Commissioner of Income Tax and Others*<sup>1</sup>, wherein the Court has held that for Assessment Year 2016-2017, the sanction should have been given under Section 151(ii) and not under Section 151(i) of the Income Tax Act, 1961 ("the Act") and consequently the sanction is invalid. The Court has stated that in view of the invalid sanction, the notice issued itself will be invalid and has to be quashed. We would also add, if the notice has to be quashed even where there is an assessment order passed subsequently, those assessment orders having been passed relying on an incorrect sanction, will also have to be quashed. Ordered accordingly.

3. In view of the above, all consequential notices/demands issued under Section 156 or 271 of the Act will also have to be quashed.

Ordered accordingly.

5. Counsels further state that the findings in *Siemens Financial Services Private Limited (supra)* will squarely apply to the Assessment Year 2017-2018 as well. Therefore, all such notices issued for Assessment Year 2017-2018, the assessment orders and the consequential orders are also quashed and set aside.

7. It was also submitted that the above ratio was affirmed by Hon'ble Supreme Court by dismissing the SLP of appellant in the case of ITO Vs.Srichand Mandhyan, SLP Appeal No.1435/2025, which is reproduced below:

UPON hearing the counsel the Court made the following  
O R D E R

1. Having heard the learned counsel appearing for the parties and having gone through the materials on record, we find no good ground to interfere with the impugned order passed by the High Court.
2. The Special Leave Petition is, accordingly, dismissed.
3. Pending application(s), if any, stands disposed of.

8. In view of the above, the notice as well as consequent assessment order should be quashed, argued the Ld.AR of appellant.

9. The Ld.DR relied on the orders of Ld.AO/Ld.CIT(A).

10. Heard both sides. There is sufficient force in the arguments of Ld.AR of appellant as they are based on the decisions of Hon'ble Bombay High Court and Hon'ble Apex Court. In the similar circumstances, in the case of Abhishek Sanjeev Nadgeri Vs. ITO, ITA No.4499/Mum/2024, A.Y.2016-17 dated 21.02.2025, Coordinate Bench of Mumbai ITAT (in which I am also a co-signatory of the order), it was held that the notice issued u/s 148 as invalid and the consequent assessment order passed u/s 147 r.w.s. 144B is liable to be quashed. The approval for issuance of notice of escapement of income should be taken from the prescribed authority only. In other words, where a period of 3 years elapsed, approval to reopen the assessment should be taken from Principal Chief Commissioner of

Income Tax, whereas, in the impugned case, approval was obtained from Principal Commissioner of Income Tax.

11. In view of the above, the notice issued by Ld.AO is held invalid and the appeal of the appellant company is allowed. As the notice itself is held invalid, all the consequent proceedings like adjudicating the issues on merits becomes mere academic.

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

Order pronounced in the Open Court on 13<sup>th</sup> February, 2026.

<p>Sd/- (संदीप सिंह करहेल) <b>(SANDEEP SINGH KARHAIL)</b> न्यायिक सदस्य/JUDICIAL MEMBER</p>	<p>Sd/- (ओम्कारेश्वर चिदारा) <b>(OMKARESHWAR CHIDARA)</b> लेखा सदस्य/ACCOUNTANT MEMBER</p>
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Visakhapatnam  
dated 13.02.2026.  
**L.Rama/sps**

**ITA No.426/Viz/2024**  
**Venkat Rao Pogarthy**

आदेशकी प्रतिलिपि अग्रेषित/ **Copy of the order forwarded to:-**

<b>1.</b>	निर्धारिती/The Assessee	:	Shri Venkat Rao Pogarthy, D.No.12-12-34, Prakash Nagar, Narsaraopet, Guntur
<b>2.</b>	राजस्व/ Revenue	The :	The Adjudicating Officer, Ward-1, Narsaraopet, Andhra Pradesh
<b>3.</b>	The Principal Commissioner of Income Tax, Visakhapatnam		
<b>4.</b>	विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापट्टनम / The DR, ITAT, Visakhapatnam		
<b>5.</b>	गार्डफ़ाईल / Guard file		

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Visakhapatnam