

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT AND
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER

ITA No. 5787/Mum/2025
(Assessment Year: 2015-16)

Durga Vijakumar Lakhani Plot No. 117, A-Lane Gokul, Near Sagar Vihar, Sector-8, Vashi, Navi Mumbai-400 703	Vs.	Principal CIT-27 Mumbai
PAN/GIR No. AAZPL 4339 E		
(Appellant)	:	(Respondent)
Appellant by	:	Ms. Ritika Agarwal, Adv.
Respondent by	:	Shri Annavarani Kosuri (Sr. DR)
Date of Hearing	:	12.02.2026
Date of Pronouncement	:	20.02.2026

ORDER

Per Saktijit Dey, Vice President:

This is an appeal by the assessee against order dated 28.07.2025 passed by National Faceless Appeal Centre (‘NFAC’ for short), Delhi for the assessment year (A.Y. for short) 2015-16.

2. At the outset, ld. Counsel appearing for the assessee drew our attention to ground nos. 1 & 3 and submitted that the appeal can be decided on the limited issue of lack of proper sanction for reopening of assessment. For deciding this issue, we may discuss few relevant facts.

3. Briefly, the facts of the case are that the assessee is a resident individual. Upon receiving information from DDIT, Investigation Kolkata, while investigating certain companies in Kolkata, it was found that without having any actual business activities they were merely acting as entry/exit providers for the beneficiaries taking bogus long term capital gain/loss (LTCG/L for short).

4. Based on such information, the Assessing Officer (A.O. for short) reopened the assessment, as, according to him the assessee is a beneficiary of bogus LTCG from sale of scrip of Ojas Asset, a penny stock company. He further found that during the year under consideration, the assessee had traded in the scrip of Ojas Asset and received an amount of Rs.19,18,000/-. Based on such information, he called upon the assessee to show cause as to why the transaction, being bogus, should not be added to the income of assessee. Alleging that the assessee failed to comply in proper manner, the A.O. added the amount of Rs.19,18,000/- to the income of the assessee, while completing the assessment to the best of his judgement u/s. 147 r.w.s. 144 r.w.s. 144B of the Act. Though, the assessee contested the aforesaid addition, both on the issue of validity of reopening of assessment as well as on merits, however, she did not succeed before the first appellate authority.

5. Before us, Id. Counsel appearing for the assessee drew our attention to section 151 of the Act, as was applicable to the assessment year under dispute and submitted that in terms with section 151(1) of the Act, after expiry of four years from the end of the relevant assessment year, the appropriate authority who could have granted approval /sanction is the Principal Chief Commissioner of Income Tax ('PCCIT' for short) or Chief Commissioner of Income Tax ('CCIT' for short) or Principal Commissioner of Income Tax (PCIT for short) or Commissioner of Income Tax (CIT for short). Whereas, she submitted, in the case of the present assessee, the A.O. has obtained the approval/sanction of Joint Commissioner of Income Tax ('JCIT' for short). Thus, she submitted, due to lack of proper sanction, the entire proceeding leading to the passing of the impugned assessment order is vitiated, hence, these are to be quashed. In support of such contention, Id. Counsel relied upon the decision of Hon'ble Jurisdictional High Court in case of *Sidhmicro Equities Pvt. Ltd. v. Dy. CIT* (2023) 453 ITR 33 (Bom).

6. The Id. Departmental Representative (Id. DR for short) submitted, the assessee having participated in the assessment proceedings cannot raise question regarding its validity post completion of assessment. Without prejudice, he submitted, the approval u/s. 151 of the Act has been validly obtained.

7. We have considered rival submissions and perused the materials available on record. Before we proceed to decide the issue, we must observe, on request of Id. DR time was allowed to furnish a brief written synopsis on or before 18.02.2026. However, no such synopsis has been filed. Hence, we proceed to decide the appeal based on submissions made by the parties at the time of hearing of appeal. A reference to the notice issued u/s. 148 of the Act, a copy of which is placed at pg. no. 9 of the paper book, indicates that it was issued on 30.03.2021, after expiry of four years from the assessment year under dispute with the prior approval of the Range Head, i.e., JCIT. Sub section (i) of section 151 of the Act applicable to the assessment year under dispute, very clearly says that no notice u/s. 148 of the Act can be issued after expiry of a period of four years from the end of the relevant assessment year, unless the PCCIT or PCIT is satisfied with the reasons recorded by the A.O. In other words, after expiry of four years from the end of the relevant assessment year, the competent authority who can grant approval u/s. 151(1) of the Act is PCCIT/CCIT/PCIT/CIT, whereas, in the facts of the present appeal, the sanction has been obtained from the JCIT. This, in our view, is in violation of section 151(1) of the Act. Thus, it is required to be examined what would be the effect of such violation. In our view, since lack of proper sanction strikes at the very root of assumption of jurisdiction u/s. 147 of the Act, it is a fundamental jurisdictional error, hence, not a curable defect. The decision relied upon by Id. Counsel for the assessee supports this view.

8. The contention of ld. DR that the extension granted under The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (TOLA) would apply to section 151 of the Act, in our view, is unacceptable.

9. In view of the aforesaid, we hold that notice u/s. 148 of the Act having been issued without proper sanction in terms with section 151(1) of the Act, is invalid. Hence, the assessment order passed in pursuance thereof is also invalid. Accordingly, we quash the notice issued u/s. 148 of the Act as also the impugned assessment order. The order of ld. First appellate authority is set aside. In view of our decision above, the other grounds having become academic are kept open.

10. In the result, the appeal is allowed.

Order pronounced in the open court on 20.02.2026

Sd/-

(Makarand V. Mahadeokar)
Accountant Member

Mumbai; Dated : 20.02.2026

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

Sd/-

(Saktijit Dey)
Vice President

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai