

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A”BENCH: BANGALORE**

**BEFORE SHRI PRASHANT MAHARISHI, VICE PRESIDENT
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.862/Bang/2025
Assessment Year : 2018-19

Gopal Anil Kumar C/o V Sudhindranath No.51/7/1, Chitrakoot, Ratna Avenue Richmond Road Bengaluru 560 025 PAN NO :ASNPA4817C	Vs.	DCIT Central Circle 1(3) Bengaluru
APPELLANT		RESPONDENT

Appellant by	:	Ms. Pooja Maru, A.R.
Respondent by	:	Sri Balusamy N., D.R.

Date of Hearing	:	16.12.2025
Date of Pronouncement	:	05.03.2026

O R D E R

PER KESHAV DUBEY, JUDICIAL MEMBER:

This Appeal at the instance of the assessee is directed against the order of Id. CIT(A)-11, Bengaluru dated 10.02.2025 vide DIN: ITBA/APL/M/250/2024-25/1073090605 (1) passed u/s 250 of the Income Tax Act, 1961 (in short “The Act”) for the AY 2018-19.

2. The assessee has raised the following Grounds of appeal: -

1. The learned Commissioner of Income Tax (Appeals) ["CIT(A)"] erred in rejecting the grounds of appeal and upholding the impugned assessment order. The order is bad in law and liable to be quashed on the following grounds:
 - a) Lack of Jurisdiction.
 - b) Erroneous assumption of jurisdiction.
 - c) Failure to comply with the principles of natural justice.
2. The learned CIT(A) failed to appreciate that the assessment order, insofar as it is against the appellant, is opposed to the law, equity, the weight of evidence, probabilities, and the facts and circumstances of the case.
3. The learned CIT(A) erred in upholding the issuance of notice under section 148 of the Income Tax Act, 1961, despite the fact that the AO did not have any tangible material or information on the date of issuance of such notice.
4. The learned CIT(A) erred in confirming the reopening of the assessment for the Assessment Year 2018-19 under section 148 without the issuance of a mandatory notice under section 148A of the Income Tax Act, 1961.
5. The learned CIT(A) erred in not considering that the impugned order was passed without specifying the section under which it was passed, making it legally unsustainable.
6. The learned CIT(A) erred in confirming the following additions without properly appreciating the facts and evidence on record:
 - a) Addition of Rs. 90,50,000/- under section 37 of the Income Tax Act, 1961, without any valid basis.
 - b) Addition of Rs. 21,08,825/- under section 68 of the Income Tax Act, 1961, despite the appellant furnishing necessary explanations and supporting evidence.
 - c) Addition of Rs. 96,90,000/- under section 68 of the Income Tax Act, 1961, without proper appreciation of the facts and documents submitted by the appellant.
 - d) Addition of Rs. 40,25,068/- under sections 28 to 44D of the Income Tax Act, 1961, without any cogent reasoning or justification.
7. The learned CIT(A) failed to appreciate that the AO did not properly examine and consider the documents and information furnished by the appellant during the assessment proceedings.
8. The learned CIT(A) erred in disregarding the valid explanations and reasoning provided by the appellant, which resulted in unjust additions to income.
9. The learned CIT(A) erred in confirming the additions made by the AO without addressing the objections raised by the appellant and without providing any detailed reasoning.

It is respectfully submitted that the appellant may be permitted to add, delete, or modify any grounds of appeal and present additional facts and arguments at the time of the hearing in the interest of justice.

3. Brief facts of the case are that the assessee is engaged in the civil works contracts by participating in tenders for Government agencies like Bruhat Bengaluru Mahanagara Palike (BBMP), Karnataka Rural Infrastructure Development Ltd. (KRIDL) under his proprietorship running in the name and style of M/s. Sri Chowdeshwari Enterprises. The assessee filed his return of income for the assessment year 2018-19 on 16.7.2018 declaring total income of Rs.83,45,360/-. A search action u/s 132 of the Act was conducted on 2.12.2021 at the premises of M/s. Sri Chowdeshwari Enterprises as well as the assessee's residence. During the course of search, certain documents and loose sheets belonging to the assessee were seized. Since a search u/s 132 of the Act was initiated in assessee case, in accordance with Exp. 2(i) to section 148 of the Act, the proceedings were reopened after obtaining prior approval of the PCIT(Central). Thereafter, the AO issued a notice u/s 148 of the Act on 28.3.2022. In response to the said notice, the assessee filed return of income on 20.4.2022. Subsequently, the AO issued notice u/s 143(2) of the Act as well as notice u/s 142(1) of the Act on various dates. During the course of assessment proceedings, the AO after considering the details furnished through ITBA portal and also through personal hearings, concluded the assessment proceedings on a total assessed income of Rs.3,32,19,253/- by making total addition of Rs.2,48,73,893/- as summarized below:-

Para No.	Particulars	Addition u/s	Addition amount	Penalty initiated u/s
7	Disallowance u/s 37 of IT Act	28 to 44D	90,50,000	270A(9)(c)
8	Unexplained credits	68	21,08,825	271AAC of the Act
9	Unexplained credits	68	96,90,000	271AAC of the Act
10	Business income	28 to 44D	40,25,068	270A(9)(c)
			2,48,73,893/-	

The Assessment was concluded as below:

Income as per ROI dated 20.4.2022	83,45,360/-
Additions as per table above	2,48,73,893/-
Assessed income	3,32,19,253/-

4. Aggrieved by the assessment completed u/s 147 of the Act on 30.3.2023, the assessee preferred an appeal before the Id. CIT(A). The Id. CIT(A) partly allowed the appeal of the assessee by holding that the AO had not pointed out any discrepancies in the audited books of account to enhance the net profit to 10% of the turnover. Further, the books of account have not been rejected by the AO to make the addition. As the assessee himself declared to admit the net profit @8% of the Turnover, the same meets the ends of the justice. However, with regards to additions U/s 68 of the Act amounting to Rs. 1,17,98,825/- and addition u/s 37 of the Act amounting to Rs. 90,50,000/-, the same were confirmed by the Id.CIT(A).

5. Again, aggrieved by the order of Id. CIT(A) dated 10/02/2025, the assessee has filed the present appeal before this Tribunal. Before us, the assessee has also filed a paper book comprising 41 pages containing therein the written submission, copy of ITR V for the AY 2018-19, copy of ledger showing cash deposit and withdrawals for the period 1.4.2017 to 31.3.2018 and signed financial statements. Further, the assessee has also submitted a copy of approval dated 24.3.2022 u/s 151 of the Act for the AY 2018-19 separately.

6. Before us, the Id. A.R. of the assessee CA. Pooja Maru at the outset, by raising the legal ground vehemently submitted that the proceedings u/s 147 of the Act were initiated on a complete wrong

assumption of facts. The ld. AR of the assessee also drew our attention to the Copy of the ITR-V for AY 2018-19 placed at page-25 of the paper book and vehemently submitted that in fact the assessee had filed his return of income for the assessment year 2018-19 on 16.7.2018 vide e-filing acknowledgement no.78892811160718 by declaring total income of Rs.83,45,360/-. The books of accounts of the assessee were also audited by a chartered accountant u/s 44AB of the Act & the same were also not rejected by the AO during the course of the assessment proceedings. Further, the ld. A.R. drew our attention to the Approval letter dated 24/03/2022 & submitted that the very basis of the approval/satisfaction of the ld. PCIT(Central) for reopening u/s 147 of the Act was that the assessee is a non filer which is absolutely baseless & absurd. Since the reassessment had been initiated on the basis of the sanction u/s 151 in a mechanical manner & without application of mind by the ld. PCIT(Central), the notice issued u/s 148 of the Act on the basis of such approval is void-ab-initio and accordingly vitiated the entire reassessment proceedings. The AR accordingly prayed that the assessment order passed u/s 147 of the Act dated 30/03/2023 may be set aside & quashed.

7. Per contra, Shri Balusamy N., ld. JCIT(DR) vehemently relied on the orders of the authorities below and vehemently submitted that the case was reopened on the basis of search action u/s 132 of the Act conducted at the premises of M/s. Shri Chowdeshwari Enterprises as well as at the assessee's residence on 2.12.2021. During the course of search, the assessee Shri Anil Kumarji admitted that he has taken the services of M/s. Arjun Shouhardha Pattina Sahakara Niyamita and Mr. Sekhar V.R. such as cash to RTGS transfers and RTGS to cash. The assessee vide statement recorded under oath stated that he used to pay a commission to Mr.

Sekhar V.R. for availing such services. The assessee Mr. Anil Kumar is a member of Arjun Souhardha since the financial year 2017-18 and has made huge transactions with the society over the period. The transactions done with Arjun Souhardha is not reported in the ITR and financials filed by the assessee. Since search was initiated u/s 132 of the Act in the case of assessee, in accordance with Explanation 2 to section 148, there was information deemed to have escaped assessment. As per the Proviso to Section 148A, the provisions of Section 148A are not applicable in case where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A in the case of the assessee on or after the 1st day of April, 2021. Further, the Id. DR submitted that merely because there is an inadvertent error in the approval, the entire reassessment proceedings cannot be quashed.


8. We have heard the rival submissions and perused the materials available on record. The assessee in the present case is engaged in the civil works contracts by participating in tenders for Government agencies like Bruhat Bengaluru Mahanagara Palike (BBMP), Karnataka Rural Infrastructure Development Ltd. (KRIDL) under his proprietorship running in the name and style of M/s. Sri Chowdeshwari Enterprises. The assessee filed his return of income for the assessment year 2018-19 on 16.7.2018 declaring total income of Rs.83,45,360/-. The copy of the ITR-V is reproduced below for ease of reference & convenience-

INDIAN INCOME TAX RETURN ACKNOWLEDGEMENT						Assessment Year 2018-19	
[Where the data of the Return of Income in Form ITR-1 (SAHAJ), ITR-2, ITR-3, ITR-4, ITR-5, ITR-6, ITR-7 transmitted electronically with digital signature]							
PERSONAL INFORMATION AND THE DATE OF ELECTRONIC TRANSMISSION	Name GOPAL ANIL KUMAR					PAN ASNPA4817C	
	Flat/Door/Block No NO.366		Name Of Premises/Building/Village 9TH CROSS			Form No. which has been electronically transmitted ITR-3	
	Road/Street/Post Office BDA LAYOUT, GIRINAGAR 2ND PHASE		Area/Locality BSK 3RD STAGE			Status Individual	
	Town/City/District BENGALURU		State Karnataka	Pin/ZipCode 560085	Aadhaar Number/Enrollment ID XXXX XXXX 70		
	Designation of AO(Ward/Circle) ITO-WARD-1, KOLAR					Original or Revised ORIGINAL	
	E-filing Acknowledgement Number 788982811160718				Date(DD/MM/YYYY) 16-07-2018		
	1	Gross total income				1	8525360
	2	Deductions under Chapter-VI-A				2	180000
	3	Total Income				3	8345360
	3a	Current Year loss, if any				3a	0
4	Net tax payable				4	2624151	
5	Interest and Fee Payable				5	130344	
6	Total tax, interest and Fee payable				6	2754495	
7	Taxes Paid	a	Advance Tax	7a	0		
		b	TDS	7b	1183822		
		c	TCS	7c	0		
		d	Self Assessment Tax	7d	1570673		
		e	Total Taxes Paid (7a+7b+7c +7d)	7e	2754495		
8	Tax Payable (6-7e)				8	0	
9	Refund (7e-6)				9	0	
10	Exempt Income	Agriculture					
		Others					
This return has been digitally signed by <u>GOPAL ANIL KUMAR</u> in the capacity of <u>ASSESSEE</u>							
having PAN <u>ASNPA4817C</u> from IP Address <u>122.172.115.13</u> on <u>16-07-2018</u> at <u>BENGALURU</u>							
Doc SI No & issuer <u>1400640889CN=(n)Code Solutions CA 2014.2.5.4.51=#13133330312c20474e46432049e666746f776572.STREET=Badakdev, S G Road, Ahmedabad.ST=Gujarat.2.5.4.17=#1306333830303534.O</u>							
DO NOT SEND THIS ACKNOWLEDGEMENT TO CPC, BENGALURU							

8.1 Thereafter, a search action u/s 132 of the Act was conducted on 2.12.2021 at the premises of M/s. Sri Chowdeshwari Enterprises as well as the assessee's residence. Since the search u/s 132 of the Act was initiated in the case of the assessee, in accordance with explanation 2 to section 148 of the Act, the proceedings were reopened after obtaining prior approval of the PCIT(Central), Bengaluru. Now the AR of the assessee before us is challenging this Approval u/s 151 of the Act by alleging to be mechanical, without application of mind & based on completely

wrong assumption of fact. Before proceeding further, it is apposite here to reproduce the copy of the approval granted u/s 151 of the Act as below-

Signed on
25/3/22


GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
PCIT (Central), Bengaluru

Approval u/s 151 of the IT Act, 1961

PAN: ASNPA4817C	AY: 2018-19	Dated: 24/03/2022	DIN & Document No : ITBA/AST/S/118/2021-22/1041447540(1)
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Name and Address of Assessee:
GOPAL ANIL KUMAR

Approving Authority Category	PCIT/CIT Assessment
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Proposal Details:

Name of Officer	GUNNU SUDHIR
Designation	CENTRAL CIRCLE 1(3), BLR
Date of Proposal	23/03/2022
Reason(s) to Believe:	As per Annexure

Recommendation Details:

Name	P RENUGA DEVI
Designation	CENTRAL RANGE 1 BANGALORE
Recommended (Yes/No)	Yes
Recommendation Date	23/03/2022
Recommendation Remarks	I concur with the view of the AO, submitted for approval.

Approval Details:

Name	GANAPATI RAMKRISHNA BHAT
Designation	PCIT (Central), Bengaluru
Approval Status	Approved
Date of Approval	24/03/2022
Remarks of approving authority	I have perused the reason recorded by the Assessing Officer for reopening of case u/s 147 of the Income Tax Act and Search Action on 02.12.2021 in the case revealed that the assessee had availed services of Arjun Souhardha for RTGS transfers and receive cash and pay commission and the entire credits and debits to the extent of Rs. 15 lakhs were not offered to tax during the FY 2017-18 and had escaped assessment. Assessee is a non-filer. In view of the above, I am satisfied that it is a fit case for reopening u/s 147 of the Income Tax Act, 1961. Sanction u/s 151 of the Income tax Act, 1961 is accorded.

GANAPATI RAMKRISHNA BHAT

Note: If digitally signed, the date of digital signature may be taken as date of document.
CENTRAL REVENUE BUILDING, QUEENS ROAD, BENGALURU, Karnataka, 560001
Email: BANGALORE.PCIT.CEN@INCOMETAX.GOV.IN.

Galaxy S25 Ultra

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.

On bare perusal of the above would show that the Id. PCIT(Central) has granted the approval on the ground that the assessee is a non-filer and accordingly the Id. PCIT(Central) was satisfied that it is a fit case for reopening u/s 147 of the Act & accordingly accorded sanction u/s 151 of the Act whereas as can be seen above the

assessee had filed his return of income for the assessment year 2018-19 on 16.7.2018 declaring total income of Rs.83,45,360/-.

8.2 Even while passing the assessment order, the AO started by asserting that the assessee is a civil contractor & filed his return of Income. The 1st page of the assessment order passed u/s 147 of the Act dated 30/03/2023 is reproduced below for ease of reference-

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE DEPUTY COMMISSIONER OF INCOME TAX
CENTRAL CIRCLE 1(3), BLR

To: GOPAL ANIL KUMAR No.68/5 Shriram Nagar, Garvebhavi Palya Hosur Road Bengaluru 560068, Karnataka India			
PAN: ASNPA4817C	AY: 2018-19	DIN & Order No: ITBA/AST/S/147/2022-23/1051712002(1)	Dated: 30/03/2023
Name of the assessee	GOPAL ANIL KUMAR		
Address of the assessee	No.68/5 Shriram Nagar, Garvebhavi Palya Hosur Road, Bengaluru 560068, Karnataka, India		
Status	INDIVIDUAL		
Range/Circle/Ward	CENTRAL CIRCLE 1(3), BLR		
Resident/Resident but not Ordinary resident/ Non-resident	Resident		
Date of Hearing	08/07/2022, 17/01/2023, 24/01/2023, 03/02/2023, 09/02/2023, 13/02/2023, 06/03/2023, 17/03/2023, 21/03/2023		
Section/Sub-section under which assessment is made	147		
Date of Order	30/03/2023		

ASSESSMENT ORDER

The assessee, GOPAL ANIL KUMAR proprietor of M/s. Sri Chowdeswhari Enterprises is a civil contractor filed its return of income for AY 2018-19 on 16/07/2018 declaring income of Rs. 83,45,360/.

2. A search action u/s.132 of the Income-tax Act, 1961 was conducted in the case of Mr. Anil Kumar G, on 02.12.2021 at No.366, 9th Cross, BDA Layout, Giri Nagar, Second

Note: If digitally signed, the date of digital signature may be taken as date of document.
CENTRAL REVENUE BUILDING, QUEENS ROAD, BENGALURU, Karnataka, 560001
Email: BANGALORE.DCIT.CEN1.3@INCOMETAX.GOV.IN.

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.

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Thus, as can be seen above, in opening line of the assessment order, the AO himself recorded that the assessee had filed his

return of income for the Assessment year 2018-19 on 16/07/2018. The very basis of the sanction/approval u/s 151 of the Act is contrary to the facts recorded in the assessment order. We are of the considered opinion that the ld. PCIT(Central)'s sanction/approval is purely based on wrong assumption of facts. Further, on going through the approval u/s 151 of the Act dated 24/03/2022 we also take note of the fact that the ld. PCIT(Central) had granted the approval on the ground that the assessee is a non-filer and accordingly the ld. PCIT(Central) was satisfied that it is a fit case for reopening u/s 147 of the Act which in our opinion is completely baseless.

8.3 We are of the considered opinion that for issue of notice u/s 148 of the Act by the AO, sanction is required as provided u/s 151 of the Act. The necessity for such sanction was considered by the legislature so as to protect the taxpayers from the arbitrary and reckless reopening of the assessment proceedings. The sanction u/s 151 was considered equivalent to approval by the Higher Authority of the action of the AO in reopening the assessment. However, the language of the provision does not confine the duty of the sanctioning authority to merely approve the proposed action of the AO in reopening the assessment but puts some more burdens before granting such sanction/approval. The use of the word "satisfied" cast greater duty on such authority. The sanctioning authority has to satisfy himself that necessary prerequisite of section 147 of the Act that there is an escapement of income stood fulfilled; however in the present case the satisfaction itself was clearly on the wrong foundation that the assessee is a non filer. On going through the provisions of erstwhile section 151 of the Act applicable for the assessment year 2018-19, we are of the considered opinion that in the body of the section two expressions are important. One is "**being satisfied on the reasons recorded**"

and other is, "**that it is a fit case for the issue of such notice**". The first expression indicates a process by which a conclusion is to be arrived at that it is a fit case. Therefore, the process as well as conclusion both must be reflected from the sanction.

8.4 We are also of the considered opinion that the provisions contained in section 151 of the Act are undoubtedly mandatory in nature. Such sanction is a jurisdictional prerequisite. In the absence of such sanction, the proceedings would fall to the ground for want of jurisdiction. This provision provides an important procedural safeguard against the arbitrary exercise of power of issuing a notice for reopening of assessment especially previously framed after scrutiny. This additional safe guard not only involves the application of mind on the part of the Chief Commissioner or the Commissioner whose satisfaction, should be based on the reasons recorded by the Assessing Officer, and such satisfaction should be that it is a fit case for issuance of the notice. Section 151 of the Act provides a supervisory check on the functioning of the AO and is not a mere formality. The Sanctioning Authority is required to apply his mind to the proposal put up to him for sanction in the light of the material relied upon by the AO. The said power cannot be exercised casually and in a routine manner. He has to examine whether facts mentioned in the reasons are correct, whether income has actually escaped assessment, whether such income would be taxable and it will be taxable whether the assessee has filed the return of income or not, and whether such alleged escaped income would be taxable in the concerned assessment year. Such requirement is envisaged in view of the word "satisfied" used in section 151 of the Act. The requirement is not mere mechanical approval but an objective satisfaction which warrant application of mind by the superior authority. Exercising power u/s 151 of the Act in a casual and routine or mechanical manner while granting

sanction would show non-application of mind and such sanction cannot be upheld. The note about satisfaction while granting sanction must show which material; information; documents and which other aspects have been gone through and examined by the sanctioning authority.

8.5 The Hon'ble High Court of Gujarat in the case of **Sagar Enterprises v. Assistant Commissioner of Income-tax** reported in (Guj-HC) :(2002) 257 ITR 335 has held as under-

*"4. On going through the entire reasons recorded, it can be seen that in the penultimate paragraph, the respondent has further recorded as under :
"Further, the assessee was required to file the return of the income for assessment year 1991-92 which the assessee has failed. Moreover, it was the duty of the assessee to declare this transaction and to file the return of income for assessment year 1991-92. The assessee has failed on both these counts. Therefore, the escapement of assessment of income is solely attributable to the assessee."
Therefore, it is apparent that the factor of non-filing of the return for the assessment year 1991-92 has overbearingly weighed with the respondent for arriving at the satisfaction about the failure on the part of the assessee and escapement of assessment of income. On the basis of the same, even for the sake of argument, if the contention raised by Mr. Joshi is taken into consideration, the settled legal position is that in such circumstances, it would not be possible to say with certainty as to which factor would have weighed with the officer concerned and once it is shown that an irrelevant fact has been taken into consideration, to what extent the decision is vitiated would be difficult to say. On this count alone, the petition requires to be accepted."*

8.6 In view of the above discussions & respectfully following the decision of the Hon'ble High Court of Gujarat, we are inclined to hold that since the action of the PCIT(Central) was based on a factually erroneous premise, we are of the view that the approval accorded u/s 151 of the Act for the AY 2018-19 is not sustainable in law. The proceedings arising from such invalid approval are also vitiated. In view of the above, the notice issued u/s 148 of the Act on 28/03/2022 & the corresponding order passed u/s 147 of the Act dated 30/03/2023 is hereby quashed.

9. In the result the appeal filed by the assessee is allowed.

Order pronounced in the open court on 5th March, 2026

Sd/-
(Prashant Maharishi)
Vice President

Sd/-
(Keshav Dubey)
Judicial Member

Bangalore,
Dated 5th March, 2026.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.