

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI

**BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA No.3224/Mum/2024
(Assessment Year: 2017-18)**

Mr. Ramlal G Suthar A/704, Riddhi Siddhi Complex Near S.T. Stand, M.G. Road, Sukarwadi, Borivali (E), Mumbai-400 066 PAN :AFVPM2258J	vs	ITO, Ward 10(2)(3), Mumbai Room No.212, 2 nd Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020
APPELLANT		RESPONDENT

Assessee by : Shri Hitesh Jain
Respondent by : Shri Balasaheb Nagve (SR DR)

Date of hearing : 16/01/2025
Date of pronouncement : 27/01/2025

ORDER

PER ANIKESH BANERJEE:

Instant appeal of the assessee was filed against the order of the National Faceless Appeal Centre (NFAC), Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (for brevity, 'the Act'), date of order 22/05/2024 for A.Y. 2017-18. The impugned order was emanated from the order of the Assessment Unit, Income-tax Department (for brevity, 'Ld.AO') passed under section 147 read with section 144B of the Act, date of order 01/03/2024.

2. The assessee has taken the following grounds of appeal:-

“1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in dismissing the ground that the order passed u/s 147 r.w.s 144B of the 1. T. Act, 1961 by the Ld. A.O. which was arbitrary, unjustified and bad-in-law.

2. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in dismissing the ground that the Inquiry Proceedings u/s 148A of the 1. T. Act, 1961 was to be conducted in faceless manner without considering the facts of the case. The appellant relies on the decision of Hon'ble Bombay High Court in case of M/s Hexaware Technologies Ltd vs. ACIT, Circle 15(1)(2).

3. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in dismissing the ground that the Hon'ble PCIT has given approval u/s 151(i) of the L. T. Act, 1961 for initiation of the reassessment proceedings in mechanical manner without understanding the facts of the case and provisions of the Amended Finance Act, 2021 that no notice can be issued after a period of 3 years if the escapement of income is below an amount of Rs. 50,00,000/-.

4. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in dismissing the ground that the approval was required to be taken from Pr. CCIT u/s 151 (ii) of the 1. T. Act, 1961 as against the approval taken by the Ld. A.O. from Pr. CIT-2, Mumbai u/s 151(i) of the 1. T. Act, 1961.

5. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in dismissing the ground that the approval was required to be taken from Pr. CCIT u/s 151 (ii) of the 1. T. Act, 1961 as against the approval taken by the Ld. A.O. from Pr. CIT-2, Mumbai u/s 151(i) of the 1. T. Act, 1961.

5. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in dismissing the ground that the Ld. A.O. has erred in making addition of Rs. 20,42,000/- as deemed income u/s 56(2) (vii) (b) of the 1. T. Act, 1961 without considering the facts and circumstances of the case.

6. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in dismissing the ground that the Ld. A.O. has merely considered the value as determined by the Stamp Authority and has ignored the provisions of income tax

and judicial decisions on section 50C(1) and section 56(2)(vii) (b) of the Income Tax Act, 1961.

7. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in dismissing the ground that the DVO while giving his valuation report had given the same without doing physical verification of the property and determined the same value as determined by stamp authority.

8. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in dismissing the ground that the Ld. A.O. has erred by not accepting the government registered valuer's valuation report for the property purchased by the appellant.

9. The appellant craves leave to add, alter, amend or modify any or all grounds till the disposal of the Appeal."

3. The brief facts of the case are that the assessment was framed U/s 147 r.w.s. 144B of the Act with an addition of Rs.20,42,000 under section 56(2)(vii)(b) of the Act. The aggrieved assessee filed an appeal before the Ld. CIT(A) and challenged the addition both on legal ground as well as on merit. But the Ld.CIT(A) dismissed the appeal of the assessee and rejected the appeal on both the grounds, i.e. legal and on merits. Being aggrieved, the assessee filed an appeal before us.

4. The Ld.AR filed a written submission which is kept in the record. The Ld.AR challenged the jurisdiction for issuance of notice under section 148 / 151 of the Act. The notice was duly issued with the approval of the Principal CIT-2, Mumbai, vide reference No.Pr. Cit-19/148/ 2022-23 dated 30/07/2022. The Ld.AR further argued that the addition was made on the basis of the valuation related to the sale of the immovable property and the valuation was made on the basis of the

Valuation Officer-I, Valuation Cell, Income-tax Department, Mumbai, where the Valuation Officer mentioned that he was not able to inspect the property because of paucity of time, so the documents submitted by the assessee was found sufficient for the purpose of valuation on the basis of the modern technological tools.

The Ld.AR only focused his argument related to the jurisdiction of the Assessing Officer for issuance of notice under section 148 of the Act and the approval taken from PCIT is against the order of the Hon'ble Supreme Court in case of **UOI vsRajiv Bansal (2024) 167 taxmann.com 70 (SC)**.

The assessee challenged the validity of the sanction under Section 151 of the Act for the issuance of notices under Section 148 for assessment year 2017-18. In alleged year, the Pr. CIT-2, Mumbai, acted as the sanctioning authority under Section 151 of the Act. However, the question of whether the appropriate authority sanctioned the notices, as required under Section 151 of the Act, is central to the matter. This issue has already been addressed by the coordinate bench, **Mumbai Bench "D" of the ITAT** in the case of **ACIT-19(1) v. Manish Financials, ITA No. 5050 & 5055/Mum/2024**, decided on **2/12/2024**. The relevant paragraphs 14 & 15 are reproduced as below: -

"14. We heard the parties and perused the material on record. In assessee's case for AY 2016-17 pursuant to the directions of the Hon'ble Supreme Court in the case of Ashish Agrawal, the AO passed an order under section 148(d) of the Act and issued a notice under section 148 on 30.07.2022. From the above observations of the Hon'ble Supreme Court, it is clear that though the prior approval under section 148A(b) and 148(d) were waived in terms of the decision of Ashish Agarwal (supra), for issue of notice under section 148A(a) and under

section 148 on or after 1 April 2021, the prior approval should be obtained from the appropriate authorities specified under Section 151 of the new regime. The provisions of section 151 of the Act under the new regime read as under: Sanction for issue of notice. 151. Specified authority for the purposes of section 148 and section 148A shall be, — (i) Principal Commissioner or Principal Director or Commissioner or Director, if three years or less than three years have elapsed from the end of the relevant assessment year;

(ii) Principal Chief Commissioner or Principal Director General or where there is no Principal Chief Commissioner or Principal Director General, Chief Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year.

15. In assessee's case from the perusal of para 3 of the notice issued under section 148 for AY 2016-17 we notice that the same is issued with the prior approval of Pr.CIT-19 Mumbai accorded on 29.07.2022 vide reference No.Pr.CIT19/148/2022-23 and this fact is not contravened by the Id DR. For AY 2016-17, the period of three years have elapsed as of 31.03.2020 and the notice is issued beyond three years on 30.07.2022. Therefore, as per the decision of the Hon'ble Supreme Court, the approval should have been obtained under the amended provisions of section 151(ii) of the Act i.e. the approval should have been obtained from the Principal Chief Commissioner whereas the approval has been obtained from Pr.CIT as stated in the notice under section 148 itself. Therefore we see merit in the contention of the assessee that the notice under section 148 for AY 2016-17 is issued without obtaining the prior approval from the appropriate authority. Accordingly we hold that the notice under section 148 is invalid and the consequent assessment under section 147 is liable to be quashed.”

5. As per the provisions of Section 151(ii) under the new procedural regime, for assessment year where the notice under Section 148 is issued after more than

three years from the end of the relevant assessment year, the sanction must be obtained from the Principal Chief Commissioner or Principal Director General. The ITAT's ruling in *Manish Financials* clarified that while the Hon'ble Supreme Court in *Ashish Agarwal (supra)* allowed certain procedural relaxations for notices issued during the transition period, post-01/04/2021, the amended provisions under Section 151 must be strictly adhered to. Specifically, for cases where more than three years have elapsed, the required sanction must come from the higher authorities mentioned under Section 151(ii) of the Act.

6. The Ld.DR vehemently argued and stated that as the reopening s for three years and the concealed amount is below Rs.50 lakhs, so the approval form PCIT-2, Mumbai is correct and not violated the provisions of the Act.

7. In *Manish Financials*, for AY 2017–18, the Bench found that the notice issued under Section 148 of the Act was approved by the Principal Commissioner of Income Tax (Pr.CIT) instead of the Principal Chief Commissioner, as mandated. Consequently, the notice and the subsequent assessment order were deemed invalid.

Applying the same rationale here, it is evident that for alleged assessment year, the sanctioning authority failed to comply with the specific requirements of Section 151(ii) of the Act. Since the notices were issued under the new regime but lacked the necessary approval from the appropriate authority, the sanction process stands invalid. As a result, the notices under Section 148 are deemed to have no legal foundation.

In light of this, the assessment orders passed by the Ld. AO under Sections 147 r.w.s. 144B of the Act are quashed. This decision reinforces the principle that

procedural compliance, particularly regarding approval from the correct authority, is a fundamental requirement under the Act.

8. Accordingly, the **Ground nos-4& 5** of the appeal of the assessee is allowed. As the legal ground of the assessee is survived, the other grounds are only for academic purposes and do not require further deliberation.

9. In the result, the appeal in **ITA No.3224/Mum/2024** is allowed.

Order pronounced in the open court on 27th day of January, 2025.

Sd/-

(PRABHASH SHANKAR)
ACCOUNTANT MEMBER
Mumbai, दिनांक/Dated: 27/01/2025
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्डफाइल/Guard file.

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BY ORDER,

(Asstt. Registrar), ITAT, Mumbai