



आयकर अपीलीय अधिकरण "एस एम सी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "SMC" :: PUNE

BEFORE DR.DIPAK P. RIPOTE, ACCOUNTANT MEMBER
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1848/PUN/2024

निर्धारण वर्ष / Assessment Year: 2018-19

M/s.Arthbharti Nagari Sahakari Patsanstha Maryadit, Adarsh Colony, Old Ausa Road, Latur – 413512. PAN: AABAA2265P	V s	The Income Tax Officer, Ward-1, Latur.
Appellant/ Assessee		Respondent / Revenue

Assessee by	Shri Bhuvanesh Kankani – AR
Revenue by	Shri Manoj Tripathi - DR
Date of hearing	12/12/2024
Date of pronouncement	10/02/2025

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by the assessee against the order of
ld.Commissioner of Income Tax(Appeals)[NFAC] for
Assessment Year 2018-19dated 24.07.2024 passed u/sec.250 of



the Income tax Act, 1961. The Assessee has raised the following grounds of appeal :

“1. Without prejudice to other grounds and on the facts and circumstances prevailing in the case and as per provisions and scheme of the Income-tax Act, 1961 ('The Act') it be held that the Assessment Proceedings so completed are invalid since the addition is made on an issue different than that for which case was re-opened. Since, the issue of re-opening did not survive the Assessment Proceedings becomes void-ab-initio. Accordingly, the Assessment Proceedings so initiated and completed be kindly annulled and Appellant be granted just and proper relief in this respect.

2. Without prejudice to other grounds and on the facts and circumstances prevailing in the case and as per provisions and scheme of the Income-tax Act, 1961 ('The Act') it be held that the Assessment Proceedings initiated u/s 147 of the Act are invalid since the requisite approval/sanction u/s 151 (ii) of the Act is not taken. Accordingly, the Assessment Proceedings so initiated be kindly annulled and Appellant be granted just and proper relief in this respect.

3. Without prejudice to other grounds and on the facts and circumstances prevailing in the case and as per provisions and scheme of the Income-tax Act, 1961 ('The Act') it be held that the notices u/s 148A and 148 of the Act were issued in violation to provisions of section 151A r.w.s 1448 of the Act. Thus, the

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Assessment Proceedings so initiated be kindly held to be incorrect and illegal. Accordingly, the Assessment proceedings so initiated be kindly annulled and Appellant be granted just and proper relief in this respect.

4. Without prejudice to other grounds and on the facts and circumstances prevailing in the case and as per provisions and scheme of the Income-tax Act, 1961 ('The Act') it be held that the Assessment Proceedings initiated u/s 147 of the Act on the basis of proceedings u/s 148A of the Act are invalid since Ld. AO has erred in not properly adhering to the provisions of section 148A of the Act. Accordingly, the Assessment Proceedings u/s 147 of the Act so initiated on the basis of improper proceedings u/s 148A of the Act be kindly annulled and Appellant be granted just and proper relief in this respect.

5. Without prejudice to other grounds and on the facts and circumstances prevailing in the case and as per provisions and scheme of the Income-tax Act, 1961 ('The Act') it be held that the Assessment Proceedings completed u/s 147 of the Act are improper since the objections raised by Appellant before Ld. AO were not disposed off before passing the Assessment Order. Accordingly, the Assessment Proceedings so completed u/s 147 of the Act be kindly annulled and Appellant be granted just and proper relief in this respect.

6. Without prejudice to other grounds and on the facts and circumstances prevailing in the case and as per provisions and

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scheme of the Income-tax Act, 1961 ('The Act') it be held that the addition of Rs.14,31,884/- made by disallowing the claim u/s 80P of the Act is incorrect. Accordingly, the addition so made be kindly deleted and Appellant be granted just and proper relief in this respect.

7. The appellant prays to be allowed to add, amend, modify, rectify, delete, raise any grounds of appeal at the time of hearing.”

Brief facts of the Case :

1.1 Assessee is a Co-operative Credit Society registered under Maharashtra Co-operative Societies Act, 1960. It is observed from the assessment record that No return of Income was filed by the Assessee for A.Y.2018-19 under section 139(1) of the Act. The Assessing Officer(AO) received information that Assessee has made huge cash deposits. Therefore, Assessing Officer, ITO, Ward-1, Latur issued notice under section 148A of the Act, dated 16.03.2022. Assessee filed an elaborate reply which is at page no.11 to 13 of the paper book. Assessee pleaded that there is no escapement of income and hence no notice under section 148

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should be issued. The Assessing Officer i.e.ITO, Ward-1, Latur passed an order under section 148A(d) of the Act, dated 06.04.2022 with the approval of Principal Commissioner of Income Tax, Nashik. In the order under section 148A(d), the AO held that since Assessee has not filed KYC of its Members, List of Members etc., it is required to make verification of the facts of the case .It is a fit case for issuance of notice under section 148 of the Act. Then, Assessing Officer issued notice under section 148 of the Income Tax Act, dated 06.04.2022 with the approval of Principal Commissioner of Income Tax. In response to notice u/s.148, Assessee filed Return of Income for A.Y.2018-19 on 23.04.2022 declaring income at Rs.NIL and claiming deduction under section 80P of the Act, of Rs.14,31,884/-.Assessee filed details and Assessee also filed objections before the AO. The Assessing Officer passed an order under section 147 r.w.s. 144B of the Act on 08.03.2024. In the assessment order, the Assessing



Officer has not made any addition regarding the cash deposits, however, Assessing Officer as per Section 80AC, denied the Assessee deduction under section 80P(2)(a)(i) of the Act, on the ground that Assessee had not filed Return of Income under section 139(1) of the Act. Aggrieved by the assessment order, assessee filed appeal before the ld.CIT(A). The ld.CIT(A) confirmed the assessment order. Aggrieved by the same, assessee has filed appeal before this Tribunal.

Submission of ld.AR :

2. The ld.Authorised Representative(ld.AR) for the Assessee filed a paper book. Ld.AR submitted that order under section 148A(d) of the Act, which is at page 9 to 13 of the paper book was passed on 06.04.2022. The Assessment Year involved is A.Y.2018-19. Therefore, the order under section 148A(d) of the Act, is for an assessment year more than three years. As per

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Section 151 of the Act, approval of Principal Chief Commissioner of Income Tax is required, if period involved is more than three years from the end of the Assessment Year. Therefore, in the case of assessee for A.Y.2018-19, approval of Principal Chief Commissioner of Income Tax was required. However, approval has been given by Principal Commissioner of Income Tax, Nashik. Therefore, it is bad in law and hence, it needs to be quashed.

2.1 The notices issued under section 148A and 148 are by Jurisdictional Assessing Officer instead of Faceless Assessing Officer as required u/s.151A r.w.s 144B of the Act. Owing to which, the proceedings so initiated are without jurisdiction. The said issue has been adjudicated by Hon'ble Bombay High Court in case of Hexaware Technologies Ltd., Vs. ACIT (W.P.No.1778/2023).



2.2 The Id.AR for the Assessee relied on following case laws :

- *M/s.S V Jadhav Vs. ITO W.P. 3345 of 2022 (Bom HC)*
- *M/s.Siemens Financial Services Pvt. Ltd., Vs. DCIT W.P. 4888 of 2022 (Bom HC)*
- *M/s.Holiday Developers (P.) Ltd., Vs. ITO [W.P.3679 of 2023 (Bom HC)]*
- *UOI Vs. Rajeev Bansal (Civil Appeal No.8629 of 2024) (SC)*

Submission of Id.DR :

3. The Id.Departmental Representative(Id.DR) for the Revenue relied on the order of Assessing Officer and Id.CIT(A). Ld.DR for the Revenue submitted that in this case, notice under section 148A(b) of the Act, was issued on 16.03.2022 with the approval of Principal Commissioner of Income Tax, Nashik. The notice under Section 148A(b) was issued within a period of three years from the end of Assessment Year. Therefore, as per section 151

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of the Act, approval shall be by Principal Commissioner of Income Tax. In this case, admittedly, following provisions of Section 151, approval has been granted by Principal Commissioner of Income Tax, Nashik on 15.03.2022, and then notice under section 148A(b) was issued on 16.03.2022. The order under section 148A(d) was passed on 06.04.2022, with the approval of Principal Commissioner of Income Tax. For one assessment year, one proceedings, there cannot be approvals from two different authorities. Therefore, there is no illegality in the approval.

Findings & Analysis :


4. We have heard both the parties and perused the records. Both the parties have argued only on legal issue. Therefore, we are deciding only the legal issue. In this case, admittedly, order



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under section 148A(d) of the Act was passed on 06.04.2022 with the approval of Principal Commissioner of Income Tax, Nashik.

4.1 The relevant part of the order is scanned and reproduced as under :

		GOVERNMENT OF INDIA MINISTRY OF FINANCE INCOME TAX DEPARTMENT OFFICE OF THE INCOME TAX OFFICER WARD 1, LATUR/	
To, ARTHBHARTI NAGARI SAHAKARI PATSANSTHA M ADARSH COLONY OLD AUSA ROAD , LATUR 413512 , Maharashtra India			
PAN: AABAA2265P	A.Y: 2018-19	Dated: 06/04/2022	DIN & Notice No: ITBA/AST/F/148A/2022-23/1042572519(1)
Name of the assessee		ARTHBHARTI NAGARI SAHAKARI PATSANSTHA M	
Address of the assessee		ADARSH COLONY OLD AUSA ROAD , LATUR 413512 , Maharashtra India	
Resident/ Not Ordinarily Resident/ Non-Resident			
Date of order		06/04/2022	
Specified authority approval		Name PCIT, Nashik-1 Reference No. 100000029252587 Date	

Order under clause (d) of section 148A of the Income-tax Act,1961

4.2 Section 151 and 148A of the Act are reproduced as under :

[Conducting inquiry, providing opportunity before issue of notice under section 148.



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148A. *The Assessing Officer shall, before issuing any notice under section 148,—*

(a) conduct any enquiry, if required, with the prior approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;

(b) provide an opportunity of being heard to the assessee, with the prior approval of specified authority, by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days and but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a);

(c) consider the reply of assessee furnished, if any, in response to the show-cause notice referred to in clause (b);

*(d) decide, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under section 148, **by passing an order, with the prior approval of specified authority**, within one month from the end of the month in which the reply referred to in clause (c) is received by him, or where no such reply is furnished, within one month from the end of the month in which time or extended time allowed to furnish a reply as per clause (b) expires:*

(Emphasis supplied).

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**[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.***

(Emphasis supplied)

4.3 Thus, as per section 151 of the Act, approval of Principal Chief Commissioner or Principal Director General, Chief Commissioner or Director General is required for an order under section 148A(d) of the Act, when the order is passed beyond three years from the end of assessment year. In this case, the order under section 148A(d) of the Act, was passed 06.04.2022 for A.Y.2018-19 which is beyond a period of three years from the end of the Assessment Year, with the approval of Principal



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Commissioner of Income Tax. The Hon'ble Jurisdictional High Court in the decision of Holiday Developers (P.) Ltd, Vs. ITO [2024] 159 taxmann.com 178 (Bombay) dated 29.01.2024 has held as under :

Quote "1. Petitioner is impugning a order under section 148A(d) and the notice, both dated 7th April 2022 passed under section 148 of the Income Tax Act, 1961 ("Act"). Of-course Petitioner has also impugned the notice dated 17th March 2022 issued under section 148A(b) of the Act. Various grounds have been raised but one of the primary grounds for challenging the notice under section 148A(d) and the notice under section 148 of the Act both dated 7th April 2022 is that order as well as the notice both mention the authority that has granted approval, is the Principal Commissioner of Income Tax ("PCIT"), Mumbai 5 and the approval has been granted on 7th April 2022.

2. Mr. Gandhi is correct in saying that the Assessment Year ("AY") is 2018-19 and, therefore, since more than three years have expired from the end of the assessment year, Sanctioning Authority under section 151(ii) of the Act should be the Principal Chief Commissioner of Income Tax ("PCCIT") and not the PCIT. Mr. Gandhi says, as held in Siemens Financial Services (P.) Ltd. v. Dy. CIT [2023] 154 taxmann.com 159/457 ITR 647 (Bom.), the sanction is invalid and consequently, the order and the consequent notice under section 148A(d) and section 148, respectively, of the Act should be quashed and set aside.

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3. In view of these facts and circumstances, we do not see any reason to just grant Rule and keep the matter pending.

4. As held in Siemens (Supra), the order passed under section 148A(d) and notice issued under section 148 of the Act both are quashed and set aside.” Unquote.

4.4 In the above referred decision of Hon’ble Bombay High Court, the assessment year involved is A.Y.2018-19 and order under section 148A(d) of the Act, was passed on 07.04.2022. In the case of the assessee, Arthbharti Nagari Sahakari Patsanstha Maryadit, the assessment year is A.Y.2018-19 and order under section 148A(d) of the Act, is dated 06.04.2022. Therefore, the facts are absolutely identical. Hence, respectfully following the decision of Hon’ble Bombay High Court(supra), the order under Section 148A(d) of the Act, and notice under section 148 are quashed. Accordingly, the legal ground i.e.Ground No.2 raised by the assessee is allowed. We have already mentioned that both parties only argued on the legal ground, hence, the remaining

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grounds i.e. Ground No.1, 3, 4, 5, 6 and 7 are dismissed as unadjudicated.

5. In the result, appeal of the Assessee is Partly Allowed.

Order pronounced in the open Court on 10th February, 2025.

Sd/-

(VINAY BHAMORE)
JUDICIAL MEMBER

Sd/-

(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 10th Feb, 2025/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, “एस एम सी” बेंच, पुणे / DR, ITAT, “SMC” Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.