

[2024] 161 taxmann.com 16 (Bombay)[22-02-2024]

INCOME TAX : Where more than three years had expired from end of assessment year 2018-19, sanctioning authority under section 151(ii) should have been Principal Chief Commissioner and not Principal Commissioner and, thus, order under section 148A(d) and notice under section 148 issued on basis of approval granted by Principal Commissioner were to be quashed and set aside



[2024] 161 taxmann.com 16 (Bombay)

HIGH COURT OF BOMBAY

Agnello Oswin Dias

v.

Assistant Commissioner of Income-tax*

K.R. SHRIRAM AND DR. NEELA GOKHALE, JJ.

WRIT PETITION NO. 3249 OF 2022

FEBRUARY 22, 2024

Section 151, read with section 148, of the Income-tax Act, 1961 - Income escaping assessment - Sanction for issue of notice (General) - Assessment year 2018-19 - Whether where more than three years had expired from end of assessment year 2018-19, sanctioning authority under section 151(ii) should have been Principal Chief Commissioner and not Principal Commissioner and, thus, order under section 148A(d) and notice under section 148 issued on basis of approval granted by Principal Commissioner were to be quashed and set aside- Held, yes [Paras 4 and 5] [In favour of assessee]

FACTS

- On writ, the assessee was impugning a notice issued under section 148 and the order passed under section 148A(d) and the notice dated 29-3-2022 issued under section 148A(b) on ground that the sanction to pass the order under section 148A(d) and issuance of notice under section 148 was invalid inasmuch as the sanction had been issued by the Principal Commissioner and not by the Principal Chief Commissioner.

HELD

- The impugned order and the impugned notice both dated 22-4-2022 state that the Authority that has accorded the sanction is the PCIT. The matter pertains to assessment year 2018-19 and the impugned order as well as the notice are issued on 22-4-2022, both have been issued beyond a period of three years. Therefore, the sanctioning authority has to be the PCCIT as provided under section 151(ii) of the Act. The proviso to section 151 has been inserted only with effect from 1-4-2023 and, therefore, shall not be applicable to the matter at hand. [Para 4]
- In the circumstances, as held by the High Court in the case of *Siemens Financial Services (P.) Ltd. v. Dy. CIT* [2023] 154 taxmann.com 159/457 ITR 647 (Bom.), the sanction is invalid and consequently, the impugned order and impugned notice both dated 22-4-2022 under sections 148A(d) and 148 are hereby quashed and set aside. [Para 5]

CASE REVIEW

Vodafone Idea Ltd. v. Dy. CIT [Writ Petition No. 2768 of 2022, dated 6-2-2024] and *Siemens Financial Services (P.) Ltd. v. Dy. CIT* [2023] 154 taxmann.com 159/457 ITR 647 (Bom.) (para 5) followed.

CASES REFERRED TO

Vodafone Idea Ltd. v. Dy. CIT [Writ Petition No. 2768 of 2022, dated 6-2-2024] (para 3) and *Siemens Financial Services (P.) Ltd. v. Dy. CIT* [2023] 154 taxmann.com 159/457 ITR 647 (Bom.) (para 5).

Dr. Sunil Moti Lala and Harsh Kothari for the Petitioner. Akhileshwar Sharma for the Respondent.

ORDER

1. This petition relates to Assessment Year 2018-2019.
2. Petitioner is impugning a notice issued under section 148 of the Income-tax Act, 1961 ("the Act") and the order passed under section 148A(d) of the Act, both dated 22nd April 2022 and the notice dated 29th March 2022 issued under section 148A(b) of the Act. One of the grounds raised is that the sanction to pass the order under section 148A(d) of the Act and issuance of notice under section 148 of the Act is invalid inasmuch as the sanction has been admittedly issued by the Principal Commissioner of Income Tax ("PCIT") and not by the Principal Chief Commissioner of Income Tax (PCCIT).
3. Counsels for Petitioner state this issue is covered by the order dated 6th February 2024 passed by this Court in the case of *Vodafone Idea Ltd. v. Dy. CIT* [Writ Petition No. 2768 of 2022, dated 6-2-2024]. Counsel for Respondents agrees.
4. The impugned order and the impugned notice both dated 22nd April 2022 state that the

Authority that has accorded the sanction is the PCIT, Mumbai-5. The matter pertains to Assessment Year ("AY") 2018-2019 and since the impugned order as well as the notice are issued on 22nd April 2022, both have been issued beyond a period of three years. Therefore, the sanctioning authority has to be the PCCIT as provided under Section 151(ii) of the Act. The proviso to Section 151 of the Act has been inserted only with effect from 1st April 2023 and, therefore, shall not be applicable to the matter at hand.

5. In the circumstances, as held by this Court 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 impugned order and impugned notice both dated 22nd April 2022 under sections 148A(d) and 148 of the Act are hereby quashed and set aside.

6. Petition disposed. No order as to costs. All rights and contentions are kept open.

POOJA

*In favour of assessee.