

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
AND SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.4374/Mum/2024
Assessment Year: 2017-18**

DCIT-42(1)(1), Mumbai.	Vs.	Sunil Harischandra Keni, 201, Prakash Apartment, L.T. Road, Vazira Naka, Borivali West, Mumbai – 400 092, Maharashtra. PAN: APBPK1452J
(Appellant)		(Respondent)

Assessee by : Shri Dharan Gandhi
Revenue by : Shri Bhangapatil Pushkaraj Ramesh, Sr. DR

Date of Hearing : 14.10.2024
Date of Pronouncement : 17.10.2024

ORDER

PER AMARJIT SINGH, ACCOUNTANT MEMBER:

This appeal of the Revenue for the assessment year 2017-18 is directed against the order u/s 250 of the Income-tax Act, 1961 dated 19.06.2024 passed by the Id. Commissioner of Income-tax (Appeal), National Faceless Appeal Centre, Delhi.

2. Facts in brief are that the return of income declaring the total income of Rs.16,42,210/- was filed for the year under consideration. As per the information available, the assessee had purchased a property for Rs.70 lakhs during the financial year 2016-17 and the stamp duty value of the same was Rs.1,69,12,500/-, therefore, the difference of Rs.92,12,500/- was taxable u/s 56(2)(vii)(b) of the Income-tax Act, 1961. As per the 'reason to believe', there was escapement of income to the extent of difference amount of Rs.92,12,500/- as mentioned above. Consequently, the case of the assessee was reopened by issuing notice u/s 148 of the Act along with the order u/s 148A(d) on 11th July, 2022 after obtaining the approval from Pr. CIT-17, Mumbai. The purchase consideration of the property was taken on the basis of the market value as per the Stamp Value Authority of Rs.1,69,12,500/- and the difference amount of Rs.92,12,500/- was treated as 'Income from other sources' u/s 56(2)(vii)(b) of the Act and added to the total income of the assessee vide order u/s 143(3)/147 passed on 29th May, 2023.

3. Aggrieved, the assessee filed appeal before the Id.CIT(A).

4. The Id.CIT(A) has allowed the appeal of the assessee after following the decision of the Hon'ble High Court of Bombay in the case of the assessee in W.P. (L) No.15147 of 2024 dated 06th May, 2024, wherein it is held that the proceedings initiated against the assessee was invalid in view of the invalid sanction obtained u/s

151 (ii) and not u/s 151(i) of the Act. The relevant extract of the decision of the ld. CIT(A) is as under: -

“4.3 Subsequently notice u/s 250 was issued on 07.02.2024 requiring the appellant to submit relevant documents in support of the grounds of appeal. Responding to the same on 04.06.2024, the appellant filed the copy of the order of the Hon'ble High Court of Judicature at Bombay in W.P. (L) No.15147 of 2024 dated 06.05.2024, wherein, the appellant is the petitioner.

4.4 As per the contents of the said order, the Hon'ble Court in the appellant's own case, following the decision passed by the same court in the case of Siemens Financial Services Private Limited Vs. DCIT and others reported in (2023) 457 ITR 647 (BOM) had held that the proceedings are invalid, in view of the invalid sanction and hence has to be quashed. According to the Hon'ble Court, in the case under consideration, the assessment year is AY 2017-18 and when the same falls beyond the period of 3 years, the sanction ought to have been obtained u/s 151(ii) and not under section 151(i). Accordingly, all consequential notices, assessment orders and consequential orders, if any were quashed and set aside by the Hon'ble Court.

4.5 Since, the decision of the Jurisdictional High Court, more particularly when the same is rendered in the appellant's own case, is binding on a lower appellate authority, the assessment order passed u/s 147 rws 144B is categorized to be an order passed without jurisdiction and hence the JAO is directed to delete the addition of Rs.99,12,500/- and grant relief to the appellant.

4.6 However, the entire proceedings, would get revived if this order in W.P. (L) No. 15147 of 2024 is challenged before the Supreme Court and a Revenue favourable order gets pronounced.”

5. Heard both the sides and perused the material on record. We have perused the copy of the order of the Hon'ble jurisdictional High Court of Bombay in the case of the assessee vide W.P. (L)

No.15147 of 2024 dated 06th May, 2024, wherein the assessment has been quashed because of invalid sanction obtained u/s 151 (ii) and not u/s 151(i) of the Act as discussed, supra, in the findings of the Id.CIT(A). Therefore, following the decision of the Hon'ble jurisdictional High Court, we do not find any reason to interfere in the decision of the Id.CIT(A). Accordingly, all the grounds of the Revenue are dismissed.

6. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 17.10.2024.

Sd/-

**(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER**

Sd/-

**(AMARJIT SINGH)
ACCOUNTANT MEMBER**

Mumbai, Dated: 17.10.2024

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Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The DR

//True Copy//

By Order

Assistant Registrar
ITAT, Mumbai Benches, Mumbai