IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10442 OF 2023

Manoj Rajendra Gupta ….Petitioner

V/s.

Income Tax Officer, Ward 1(1) & Ors. ....Respondents

Mr. Devendra Jain a/w. Ms. Radha Halbe for petitioner.
Mr. Suresh Kumar for respondents.

CORAM : K. R. SHRIRAM &
KAMAL KHATA, JJ.
DATED : 29th SEPTEMBER 2023

P.C. :

1 This petition relates to Assessment Year 2016-2017.

2 Counsels state that in this petition, the issue of improper sanction having been obtained has been raised among other grounds. Counsels further state that the issue of improper sanction has been decided by this Court in the case of ***Siemens Financial Services Private Limited V/s. Deputy Commissioner of Income Tax and Others***[1], wherein the Court has held that for Assessment Year 2016-2017, the sanction should have been given under Section 151(ii) and not under Section 151(i) of the Income Tax Act, 1961 (the Act) and consequently, the sanction is invalid. The Court has stated that in view of the invalid sanction, the notice issued itself will be invalid and has to be quashed. Therefore, if the notice itself has to be quashed, the assessment order passed following the notice relying on an

1. Writ Petition No.4888 of 2022 dated 25th August 2023

incorrect sanction will also has to be quashed.

3 Counsels state that the findings in *Siemens Financial Services Private Limited* (Supra) should squarely apply to this petition as well on the issue of sanction.

4 Therefore, we hereby quash and set aside notice dated 8th April 2021 issued under Section 148 which is now treated as show cause notice under Section 148A(b) in pursuant of issue letter dated 27th May 2022 and 2nd June 2022, order dated 26th July 2022 passed under Section 148A(d), notice dated 26th July 2022 issued under Section 148, order of re-assessment dated 18th May 2023 passed under Section 147 read with Section 144B, notice of demand dated 18th May 2023 issued under Section 156 and notices dated 18th May 2023 issued proposing to levy penalty under Section 271(1)(c), 271B and 271(1)(b) of the Act.

5 At this stage, Mr. Jain states that there are various other grounds raised in the petition and also the issues in this petition would also be covered by a judgment of this Court in the matter of ***Ashok Commercial Enterprises V/s. Assistant Commissioner of Income Taxation Central Circle – 2(4)***[2].

All rights and contentions are kept open. If at all petitioner is served by fresh notice, all grounds could be raised at that stage.

2. Writ Petition No.2595 of 2021 & Ors. dated 4th September 2023

6 Petition disposed.

(KAMAL KHATA, J.) **(K. R. SHRIRAM, J.)**