

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11184 OF 2022

Desai Brothers Ltd.

...Petitioner

Versus

Assistant Commissioner of Income Tax 7 Ors.

...Respondents

Mr. Deepa Khare a/w Mr. Upendra Lokegaonkar i/b Mint & Confreres for
Petitioner.

Mr. Suresh Kumar for Respondents.

CORAM : K. R. SHRIRAM &
NEELA GOKHALE, JJ.
DATED : 23rd OCTOBER 2023

PC. :

1 This petition relates to A.Y.2017-2018. Counsel states that in this petition the issue of improper sanction having been obtained has been raised amongst other grounds. Counsel state that the issue of improper sanction has been decided by this court in *Siemens Financial Services Private Limited Vs. Deputy Commissioner of Income Tax & Ors.*¹ wherein the court has held that for A.Y. 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). 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. We would also add, if the notice has to be quashed, if there is an assessment order passed subsequently, those

1 (2023) 457 ITR 647 (BOM)

assessment orders having been passed relying on an incorrect sanction, will also have to be quashed. Ordered accordingly.

2 Counsel further state that the findings in *Siemens Financial Services Pvt Ltd.* (Supra) would squarely apply to this petition as well on the issue of sanction. Therefore, impugned notice dated 31st May 2022 issued under Section 148A(b) of the Act and impugned order and impugned notice both dated 29th July 2022 issued under Section 148 of the Act, are hereby quashed and set aside.

3 Petition disposed.

4 We clarify that all other grounds could be raised by the parties at appropriate stage in any other proceeding.

(NEELA GOKHALE, J.)

(K. R. SHRIRAM, J.)