IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12786 OF 2023

Mahadev Tukaram Gidde ...**Petitioner**
Versus
Income Tax Officer, Ward 2(2), Kalyan & Ors. ...**Respondents**

Mr. Jitendra Singh for Petitioner.
Ms. Samiksha Kanani for Respondents.

CORAM: K. R. SHRIRAM &
NEELA GOKHALE, JJ.
DATED: 25th October 2023

PC:-

1. At the outset, Mr. Singh tenders draft amendment which is taken on record and marked 'X' for identification. Leave to amend granted. Amendment to be carried out and amended Petition to be served within one week from today.

2. This Petition relates to Assessment Year 2016-2017.

3 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

1. (2023) 457 ITR 647 (Bom.)

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 incorrect sanction will also has to be quashed.

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

5 Therefore, we hereby quash and set aside order passed under Section 148A(d) of the Act and notice under Section 148 of the Act both dated 27th July 2022, impugned assessment order dated 29th May 2023 passed under Section 147 read with Section 144B of the Act along with consequential demand notice and penalty notice both dated 29th May 2023.

6 Petition disposed.

(NEELA GOKHALE, J.) **(K. R. SHRIRAM, J.)**