



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6192 OF 2024

Balkrishna Barsha Sutar

...Petitioner

*Versus*The Income Tax Officer, Ward No.28(1)(1),
Mumbai & Ors.

...Respondents

Mr. Jitendra Singh, for Petitioner.

Mr. Arjun Gupta, for Respondents/Revenue.

CORAM: K. R. SHRIRAM &
DR. NEELA GOKHALE, JJ.
DATED: 29th April 2024

PC:-

1. This petition relates to Assessment Year 2017-2018.

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 20th July 2022 and the notice dated 25th May 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. Mr. Singh, at the outset, submitted that the sanction issue in this matter would be covered by the order dated 6th February 2024 passed by this Court in the case of *Vodafone Idea Limited v. Deputy Commissioner of Income Tax, Circle-5(2)(1), Mumbai & Ors.*¹ Mr. Gupta though in fairness states that it can be covered by *Vodafone Idea Limited (supra)*, he raised the question of maintainability of petition because Assessee did not even respond to the notice issued. But we ask ourselves a question, even if Assessee has not responded would that make an invalid notice valid. The answer is 'NO'.

4. The impugned order and the impugned notice both dated 20th July 2022 state that the Authority that has accorded the sanction is the PCIT-27, Mumbai. The matter pertains to Assessment Year ("AY") 2017-2018 and since the impugned order as well as the notice are issued on 20th July 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 Private Limited Vs. Deputy Commissioner of Income Tax & Ors.*², the sanction is invalid and consequently, the impugned order

1. Writ Petition No. 2768 of 2022.

2. (2023) 457 ITR 647 (Bom.).

and impugned notice both dated 20th July 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.

(DR. NEELA GOKHALE, J.)

(K. R. SHRIRAM, J.)