



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 5456 OF 2024

Skypak Travels Private Limited

.. Petitioner

Versus

Income-tax Officer Ward – 2(3)(1)
and Ors.

.. Respondents

Adv. Dharan Gandhi, a/w Adv. Aanchal Vyas, for the Petitioner.

Adv. Abhishek R. Mishra, for the Respondent-Revenue.

**CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.**
DATE: APRIL 24, 2026

P. C.

1. Rule. Respondents waive service. Rule made returnable forthwith and with the consent of the parties, the matter is taken for final disposal.

2. The Petitioner has filed the present petition under Article 226 of the Constitution of India challenging the notice issued under Section 148A(b) of the Income-tax Act, 1961 (for short “IT ACT”), the order passed under Section 148A(d) of the IT Act, the notice issued under Section 148 of the IT

Act and the consequential reassessment order, demand notice and penalty orders for Assessment Year 2018-19.

3. The challenge in the present petition is essentially on the ground that the impugned reassessment proceedings are without jurisdiction, *inter alia*, because the approval for issuance of the notice under Section 148 and for passing the order under Section 148A(d) has been granted by an authority not competent in law, the impugned action having been taken beyond a period of three years from the end of the relevant assessment year. It is also the case of the Petitioner that none of the notices and orders forming part of the reassessment and penalty proceedings were ever served upon the Petitioner and that the proceedings were completed *ex parte* in breach of principles of natural justice.

4. Briefly stated, the facts are as under:-

(a) The Petitioner is a company incorporated in India. The record indicates that the Petitioner had not been engaged in active business for several years and had not filed Return of Income for the relevant period. It is the specific case of the Petitioner that at the relevant time it did not even have an account on the income-tax e-filing portal and that such account

came to be opened only on 16 October 2024 after the Petitioner became aware of the reassessment and penalty proceedings.

(b) For Assessment Year 2018-19, a notice dated 23 March 2022 is stated to have been issued under Section 148A(b) of the IT Act alleging that information was flagged on the portal in accordance with risk management strategy and that the Petitioner had sold property valued at Rs.2,29,23,500/- without filing any return of income. The Petitioner contends that the said notice was never served either physically or electronically.

(c) Thereafter, an order dated 06 April 2022 came to be passed under Section 148A(d) of the IT Act and a notice dated 07 April 2022 came to be issued under Section 148 of the IT Act. The Petitioner contends that these were also never served. According to the Petitioner, the said notice and order themselves record that approval had been obtained from the Principal Commissioner of Income Tax.

(d) The proceedings were thereafter carried forward. An intimation dated 30 January 2023 regarding faceless assessment was issued. Notices under Section 142(1) dated 20 October 2023

and 09 December 2023 were thereafter issued by Income Tax Officer Ward 28(1)(1), Mumbai. A further notice under Section 142(1) dated 15 February 2024 was issued by Income Tax Officer Ward 2(3)(1), Mumbai. Show cause notices dated 27 February 2024 and 18 March 2024 followed, alleging that the Petitioner had sold immovable property and proposing to add Rs.2,29,23,500/- under Section 50C of the IT Act.

(e) It is the Petitioner's case that none of the aforesaid notices were ever served upon it. In fact, the reassessment order itself records that the notice sent by speed post was returned with the remark "Left", and that the Inspector deputed for service reported that the address of the Assessee was not accurate and that no company in the name of the Petitioner existed at the stated address in Raja Bahadur Compound. The Petitioner contends that despite this, the Department continued to proceed on the incorrect address.

(f) On 26 March 2024, Respondent No.1 passed an order under section 147 read with Section 144 of the IT Act, treating Rs.2,29,23,500/- as short-term capital gain under Section 50C and raising a tax demand of Rs.1,79,72,560/-. On the same date,

notice under Section 274 read with Section 270A and notice under Section 274 read with Section 272A(1)(d) were also issued. Thereafter, by orders dated 23 September 2024, penalty under Section 270A of Rs.1,51,58,394/- and penalty under Section 272A(1)(d) of Rs.50,000/- came to be levied.

(g) According to the Petitioner, it became aware of these proceedings only when the assessment order and penalty orders were received by its director on 10 October 2024. Thereafter, an e-filing account was created on 16 October 2024, upon which the Petitioner downloaded various notices and orders.

5. Mr. Gandhi, learned counsel appearing for the Petitioner, submitted that the impugned notice under Section 148 and the order under Section 148A(d) are wholly without jurisdiction since they were issued after expiry of three years from the end of Assessment Year 2018-19 and yet the approval admittedly was granted by the Principal Commissioner of Income Tax. According to him, in such a case, the competent specified authority under Section 151(ii), as it then stood, had to be the Principal Chief Commissioner / Principal Director General or, in the absence thereof, the Chief Commissioner / Director General, and not the Principal Commissioner.

6. Mr. Gandhi submitted that the law on the issue is no longer *res integra*. He relied upon the decision of this Court in ***Vodafone Idea Limited vs. Deputy Commissioner of Income Tax in Writ Petition No. 2768 of 2022 decided on 06 February 2024***, wherein this Court, in an identical case, held that where the notice under Section 148 and order under Section 148A(d) were issued beyond three years from the end of the relevant assessment year, sanction by the Principal Commissioner was invalid and the sanctioning authority had to be the authority specified under Section 151(ii). He submitted that this Court has taken the same view in several decisions thereafter. He also relied upon the decision of this Court in ***Kpmg Llp vs. Assistant Commissioner of Income Tax, International Tax Circle 2(1)(2), Delhi & Ors., Writ Petition (ST) No. 5390 of 2024 decided on 21 February 2024***, wherein following *Vodafone Idea Limited (supra)*, this Court quashed the order under Section 148A(d) and notice under Section 148 on the ground that the sanction was accorded by the Principal Commissioner even though the matter pertained to Assessment Year 2018-19 and the impugned action had been taken beyond three years. He, further, pointed out that the Special Leave Petition preferred against the said decision in *KPMG (supra)* also came to be dismissed by the Hon'ble Supreme Court.

7. Mr. Gandhi, further submitted that the importance of prior approval under Section 151 has been emphasized by the Supreme Court in ***Union of India & Ors. vs. Rajeev Bansal [(2024) 469 ITR 46 (SC)]***, where the Supreme Court has held that Section 151 imposes an important check upon the power of the Revenue to reopen assessments and that grant of sanction by the appropriate authority is a pre-condition for assumption of jurisdiction under Section 148. He submitted that non-compliance with the statutory requirement as to sanction goes to the root of the matter and renders the entire proceedings void.

8. It was further submitted on behalf of the Petitioner that the proviso inserted to Section 151 with effect from 01 April 2023 cannot be treated as retrospective. The Legislature has consciously inserted the proviso prospectively. Mr. Gandhi, submitted that there cannot be retrospective conferment of jurisdiction upon an authority where such jurisdiction did not exist on the date when the notice under section 148 was issued and the order under Section 148A(d) was passed. He submitted that this Court in *Vodafone Idea Limited (supra)* has already taken a view that the proviso to section 151 has been inserted only with effect from 01 April 2023 and therefore, shall not apply to notices and orders issued prior thereto.

9. Developing this submission further, Mr. Gandhi submitted that the proviso to Section 151 itself refers to four provisos to Section 149(1). According to him, two of those provisos (i.e., the third and fourth provisos to Section 149) themselves came to be enacted with effect from 01 April 2023. Therefore, when the provisos to Section 149 are themselves prospective, the proviso to Section 151 cannot be pressed into service retrospectively so as to validate earlier proceedings. He submitted that in any event, a jurisdictional defect cannot be cured by retrospective implication where the Legislature itself has expressly made the proviso effective prospectively.

10. Mr. Gandhi also submitted that, independently of the issue of approval, the entire proceedings stand vitiated since the notices under Section 148A(b), the order under Section 148A(d), the notice under section 148, the notices under Section 142(1), the show cause notices and even the assessment and penalty orders were never properly served upon the Petitioner. It was urged that the record itself demonstrates failed attempts at service on an incorrect address, and therefore the Petitioner was denied any effective opportunity of being heard.

11. On the other hand, Mr. Mishra, learned counsel appearing for the Revenue, first tendered a copy of the Affidavit in Reply of one Ms. Savitha S. Menon drawn on 27.06.2025. He submitted that the Petition ought not to

be entertained in view of the alternate statutory remedy available to the Petitioner. It was submitted that the assessment order, demand and penalty orders are appealable, and the Petitioner ought to be relegated to such remedies. It was also submitted that the reassessment proceedings were initiated based on information flagged under the risk management strategy and that several opportunities were granted to the Petitioner. According to the Revenue, the Petitioner chose not to respond and cannot now invoke writ jurisdiction. On the merits, he submitted that the approval is of the correct authority, as three years had not expired from end of the relevant assessment year, considering the fifth and sixth proviso to Section 149(1) read with proviso to Section 151.

12. Having heard the learned counsel for the parties and having perused the material placed on record, we are of the view that the petition deserves to be allowed.

13. The foundational facts are not in dispute. The present case pertains to Assessment Year 2018-19. The impugned order under Section 148A(d) is dated 06 April 2022 and the impugned notice under Section 148 is dated 07 April 2022. Both these actions are, therefore, beyond a period of three years from the end of the relevant Assessment Year.

14. Once this position is accepted, the consequence in law is clear. As Section 151 stood at the relevant time, where more than three years had elapsed from the end of the relevant assessment year, the specified authority was the authority contemplated by Section 151(ii), and not the authority mentioned in Section 151(i). Three years are to be counted from the end of the relevant assessment year. In the present case, the impugned order and notice themselves indicate that the approval was granted by the Principal Commissioner of Income Tax. This fact is also admitted in the Reply Affidavit. He was not the competent authority in law for a case falling beyond the three-year period from the end of the relevant assessment year.

15. The issue is directly covered by the decision of this Court in ***Vodafone Idea Limited vs. Deputy Commissioner of Income Tax decided on 06 February 2024***. In that case also, for Assessment Year 2018-19, the notice under Section 148 and the order under Section 148A(d) had been issued beyond three years and the sanction had been accorded by the Principal Commissioner. Incidentally, the notice in the said case was also dated 07 April 2022. This Court held that the sanctioning authority had to be the Principal Chief Commissioner as provided under Section 151(ii) and that the proviso to Section 151, inserted only with effect from 01 April 2023, would

not apply. Consequently, the notice and order were quashed. Relevant paragraphs of the said judgment are as under:

“3. The impugned order and the impugned notice both dated 7th April 2022 state that the Authority that has accorded the sanction is the PCIT, Mumbai 5. The matter pertains to Assessment Year (“AY”) 2018-19 and since the impugned order as well as the notice are issued on 7th April 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 has been inserted only with effect from 1st April 2023 and, therefore, shall not be applicable to the matter at hand.

4. In this circumstances, as held by this Court in Siemens Financial Services Private Limited Vs. Deputy Commissioner of Income Tax & Ors., the sanction is invalid and consequently, the impugned order and impugned notice both dated 7th April 2022 under section 148A(d) and 148 of the Act are hereby quashed and set aside.”

16. The same view has been reiterated by this Court in ***Kpmg Llp vs. Assistant Commissioner of Income Tax, International Tax Circle 2(1)(2), Delhi & Ors. decided on 21 February 2024***. There again, this Court held that since the impugned notice and order for Assessment Year 2018-19 were issued beyond three years, sanction by the Principal Commissioner was invalid, and the matter was governed by Section 151(ii). This Court expressly observed that the proviso to Section 151 had been inserted only with effect from 01 April 2023 and therefore was not applicable to the case at hand. We are informed that the Special Leave Petition against the said decision came to be dismissed in SLP(C) Diary No. 23377/2025.

There are also several decisions of this Court which have taken the same view on this aspect.

17. We are also in respectful agreement with the submission based on the decision of the Hon'ble Supreme Court in *Rajeev Bansal (supra)*. The Hon'ble Supreme Court has clearly explained the importance of sanction under Section 151 and has held that grant of sanction by the appropriate authority is a pre-condition for the Assessing Officer to assume jurisdiction under Section 148. Section 151 is not an empty formality. It is a statutory safeguard and check against arbitrary reopening. Non-compliance with that requirement strikes at jurisdiction itself. Relevant paragraphs of the said judgments are as under:

“31. The Income-tax Act 1961 also mandates assessing officers to fulfil certain pre-conditions before issuing a notice of reassessment. Section 149 requires assessing officers to issue a notice of reassessment under section 148 within the prescribed time limits. Further, Section 151 requires assessing officers to obtain sanction of the specified authority before issuing notice under section 148. In Chhugamal Rajpal v. S P Chaliha, [1971] 79 ITR 603 (SC), a three-Judge Bench of this Court held that Section 151 must be strictly adhered to because it contains "important safeguards."

...

73. Section 151 imposes a check upon the power of the Revenue to reopen assessments. The provision imposes a responsibility on the Revenue to ensure that it obtains the sanction of the specified authority before issuing a notice under section 148. The purpose behind this procedural check is to

save the assesses from harassment resulting from the mechanical reopening of assessments Sri krishna (P.) Ltd. v. ITO [1996] 87 Taxman 315/221 ITR 538 (SC)/[1996] 9 SCC 534...

76. Grant of sanction by the appropriate authority is a precondition for the assessing officer to assume jurisdiction under section 148 to issue a reassessment notice. Section 151 of the new regime does not prescribe a time limit within which a specified authority has to grant sanction. Rather, it links up the time limits with the jurisdiction of the authority to grant sanction. Section 151(ii) of the new regime prescribes a higher level of authority if more than three years have elapsed from the end of the relevant assessment year. Thus, non-compliance by the assessing officer with the strict time limits prescribed under section 151 affects their jurisdiction to issue a notice under section 148.” (emphasis supplied)

18. In our view, the defect in the present case is not a mere procedural irregularity. It is a case of approval by a wrong authority. Therefore, the assumption of jurisdiction itself is bad.

19. In so far as the fifth and sixth proviso (erstwhile third and fourth provisos) to Section 149(1) are concerned, they are not applicable for the purposes of Section 151 of the IT Act. The provisos themselves make it clear that they are only for the purposes of computation of period of limitation under Section 149 of the IT Act. It was because of this reason that proviso was inserted in Section 151 of the IT Act.

20. We also find merit in the Petitioner’s submission that the proviso inserted to Section 151 cannot be treated as retrospective. The Legislature has inserted the proviso specifically with effect from 01 April 2023. Where the

Legislature intended retrospectivity, it could have said so expressly. In the absence of such indication, and particularly where the provision relates to jurisdiction, it cannot be construed so as to retrospectively validate an action which was without jurisdiction when taken.

21. There is another aspect which fortifies the Petitioner's stand. The proviso to Section 151 refers to four provisos to Section 149(1). The same reads thus:

“Provided that the period of three years for the purposes of clause (i) shall be computed after taking into account the period of limitation as excluded by the third or fourth or fifth provisos or extended by the sixth proviso to sub-section (1) of section 149.”

22. Two of those provisos i.e., third and fourth proviso to Section 149(1) were inserted with effect from 01 April 2023. The original third and fourth provisos were made fifth and sixth provisos. There is no case made out or even argued that even third and fourth proviso to Section 149(1) are retrospective in nature. Once, the third and fourth proviso to Section 149(1) are undisputedly prospective and effective from 01.04.2023, then the proviso to Section 151 which was inserted at the same time, and which makes a reference to such provisos cannot be held to be retrospective. In that view of the matter also, the proviso to Section 151 cannot be read retrospectively so as to govern notices and orders issued in April 2022.

23. Since, we have accepted the contention of the Petitioner on the aspect of approval, we shall refrain from commenting on the other grounds raised in the Petition.

24. The objection of alternate remedy raised by the Revenue does not impress us in the facts of the present case. It is well settled that where the impugned proceedings are wholly without jurisdiction, the existence of an alternate remedy is not an absolute bar to exercise of writ jurisdiction. Since, the very initiation of reassessment proceedings is vitiated on account of approval by an incompetent authority, the Petitioner need not be relegated to alternate remedies. This is more so, when the Petitioner claims that it was not served with any notice or orders, and the reassessment order itself records that the notice sent by speed post was returned with the remark “Left”, and that the Inspector deputed for service reported that the address of the Assessee was not accurate and that no company in the name of the Petitioner existed at the stated address.

25. In the circumstances, the impugned order passed under Section 148A(d) dated 06 April 2022, the impugned notice issued under Section 148 dated 07 April 2022, the assessment order dated 26 March 2024 passed under section 147 read with Section 144, the notice of demand issued pursuant thereto, and the penalty orders dated 23 September 2024 under

Sections 270A and 272A(1)(d), being consequential to proceedings initiated without jurisdiction, are liable to be quashed and set aside.

26. Rule is made absolute in the aforesaid terms and the Writ Petition is also disposed of in terms thereof. However, there shall be no order as to costs.

27. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.]

[B. P. COLABAWALLA, J.]