2024:DHC:6132-DB

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on: 08 August 2024**
Judgment pronounced on: 14 August 2024

\+ W.P.(C) 4196/2022 & CM APPL. 39982/2022

VINOD KUMAR SOLANKI .....Petitioner

Through: Mr. Salil Kapoor, Ms. Ananya Kapoor, Mr. Sumit Lalchandani & Mr. Utkarsh Gupta, Advocates

versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE-61-1, DELHI & ORS. .....Respondents

Through: Mr. Sanjay Kumar & Ms. Easha, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

RAVINDER DUDEJA, J.

1. The present Writ Petition has been filed by the writ petitioner with the following prayer:-

> "A. Issue a writ of and/or order and or directions in the nature of Certiorari or any other appropriate writ, order or direction quashing impugned notice dated 30.03.2021 issued by Respondent No. l under Section 148 of the Act, order disposing off objections dated 15.02.2022 and proceedings initiated pursuant thereto;
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> B. Issue a writ of and/or order and/or direction in the nature of Prohibition commanding Respondents to forebear from giving effect to and/or taking any step whatsoever pursuant to and/or in furtherance of the said purported notice under Section 148 of the Act and/or in any proceedings initiated thereunder for the A.Y. 2015-16."

2. The necessary facts are being set out hereinafter. Petitioner filed

the original return of income for the Assessment Year ["**AY**"] 2015-16, declaring an income of Rs. 23,14,930/-. Revised return was filed on 28.01.2017, declaring an income of Rs. 26,64,930/-. The return was processed under Section 143(1) of the Income Tax Act, 1961 ["**Act**"].

3. Respondent No. 1 issued a notice dated 30.03.2021 under Section 148 of the Act for the AY 2015-16.

4. To comply with the impugned notice, petitioner filed his return of income on 03.12.2021, declaring income amounting to Rs. 26,64,930/-.

5. On 12.01.2022, notice under Section 143(2) of the Act was issued by respondent No. 3 on the basis of information received by respondent No. 1 from Insight portal. Petitioner was identified as one of the parties/entities who made financial transactions with BKR Capitals Pvt. Ltd. He had made a transaction of Rs. 31,07,963/- with BKR Capitals Pvt. Ltd. to bring his unaccounted money/cash into his books of accounts to avoid tax during the relevant AY 2015-16.

6. Vide letter dated 09.02.2022, petitioner filed detailed objections to the reasons recorded, specifically objecting to the re-opening without there being valid reasons to believe. According to him, the reasons recorded for issuing the impugned notices were based on incorrect facts. He pointed out that respondent No. 1 has overlooked the fact that petitioner had obtained a loan of Rs. 45 lakhs from BKR Capitals Pvt. Ltd in the AY 2014-15 for which interest amounting to Rs. 1,19,959/- was also paid during the AY 2014-15 and the assessment for the said AY 2014-15 was completed under Section 143(3) after scrutiny. He also submitted that the said loan to the tune of Rs. 31,07,963/- was

repaid in the year under consideration along with interest on which TDS was also deducted and therefore the reasons given were completely illegal, bad in law and baseless.

7. On 09.02.2022, respondent No. 3 issued notice under Section 142 (1) of the Act, requiring the petitioner to submit details. The objections filed by the petitioner were disposed of by respondent No. 1 vide order dated 15.02.2022.

8. On 16.02.2022, respondent No. 3 issued notice under Section 142(1) of the Act, requiring the petitioner to submit the details.

9. The present writ petition has been filed challenging the notice under Section 148 of the Act dated 30.03.2021 as wholly without jurisdiction, illegal, bad in law, barred by limitation and liable to be quashed, inter alia, on the following grounds:-

a) impugned notice dated 30.03.2021 issued under Section 148 of the Act for initiation of reassessment proceedings has been issued without there being any valid reasons to believe and on account of incorrect facts;

b) the impugned notice has been issued without a valid sanction in terms of Section 151 of the Act as the approval granted by respondent No. 2 is illegal, bad in law and without jurisdiction.

10. The principal argument canvassed before us is with regard to the validity of the approval accorded in terms of Section 151 of the Act. The learned counsel for the petitioner has argued that the approval has been granted mechanically without considering the facts of the case and the material on record as is evident from the fact that respondent No. 2 has granted approval in 111 cases at one go, and therefore, that being

so, the impugned notice dated 30.03.2021 issued by respondent No. 1 under Section 148 of the Act is wholly without jurisdiction.

11. Per contra, the learned counsel for the respondents has defended the order granting approval, arguing that the proforma for seeking approval along with sheet containing the reasons for re-opening of assessment under section 147 of the Act was placed before the Principal Commissioner, Income Tax **['PCIT']**, who after considering the entire record including the information received, relevant details, evidence submitted and the reasons recorded by the Assessing Officer **["AO"]**, accorded the approval. It is submitted that the prescribed authority found the case to be fit for action on the basis of prima facie finding arrived at from the record and therefore the conditions envisaged under Section 151 of the Act stand satisfied.

12. Before considering the merits of the contentions of the parties, it would be apposite to examine the relevant legal framework.

13. Section 151 of the Act, as it stood prior to the substitution by Act of 13 of 2021 is reproduced hereunder:-

> "151. Sanction for issue of notice.—(1) No notice shall be issued under Section 148 by an Assessing Officer, after the expiry of a period of four years from the end of the relevant assessment year, unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice. (2) In a case other than a case falling under sub-section (1), no notice shall be issued under Section 148 by an Assessing Officer, who is below the rank of Joint Commissioner, unless the Joint Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice. (3) For the purposes of sub-section (1) and sub-section (2), the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner or the Joint Commissioner, as the case may be, being satisfied on the reasons recorded by the

> Assessing Officer about fitness of a case for the issue of notice under Section 148, need not issue such notice himself."

14. A plain reading of the aforesaid provision clearly indicates that the prescribed authority must be "satisfied", on the reasons recorded by the AO, that it is a fit case for the issuance of such notice. Thus, the satisfaction of the prescribed authority is a sine qua non for a valid approval.

15. It is a trite law that the grant of approval/sanction is neither an empty formality nor a mechanical exercise. The Competent Authority must apply its mind independently on the basis of material placed before it before grant of approval/ sanction.

16. Perusal of the record reveals that the proforma for seeking approval was placed before the Principal Commissioner, Income Tax along with a note of reasons for re-opening of assessment under section 147 of the Act. The PCIT passed the following orders:-

> "On careful perusal of information received, relevant details/evidences submitted and reasons recorded by the Assessing Officer, the cases from SL. No. 1 to 111 as listed in the annexures enclosed appear prima facie to be fit cases for action u/s 147/148 of the I.T. Act, 1961."

17. It is evident that the approval dated 28.03.2021 is in respect of 111 cases of reassessment. It is a general order of approval for all the 111 cases. There is not even a whisper as to what material had weighed in the grant of approval in the present case. While the PCIT is not required to record elaborate reasons, he has to record satisfaction after application of mind. The approval is a safeguard and has to be meaningful and not merely ritualistic or formal. The sanction order does not refer to the material of any of the 111 cases. The grant of

approval in such a manner does not fulfil the requirement of section 151 of the Act.

18. We note that dealing with an identical challenge of approval having been accorded mechanically and without due application of mind had arisen for our consideration in the case of **The Principal Commissioner of Income Tax-7 vs. Pioneer Town Planners Pvt. Ltd.** (2024) SCC OnLine Del 1685, wherein, we had held as follows:-

> "13. The primary grievance raised in the instant appeal relates to the manner of recording the approval granted by the prescribed authority under Section 151 of the Act for reopening of assessment proceedings as per Section 148 of the Act.
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> xxxx xxxx xxxx
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> 17. Thus, the incidental question which emanates at this juncture is whether simply penning down "Yes" would suffice requisite satisfaction as per Section 151 of the Act. Reference can be drawn from the decision of this Court in N. C. Cables Ltd., wherein, the usage of the expression "approved" was considered to be merely ritualistic and formal rather than meaningful. The relevant paragraph of the said decision reads as under:-
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> > "11. Section 151 of the Act clearly stipulates that the Commissioner of Income-tax (Appeals), who is the competent authority to authorize the reassessment notice, has to apply his mind and form an opinion. The mere appending of the expression "approved" says nothing. It is not as if the Commissioner of Income-tax (Appeals) has to record elaborate reasons for agreeing with the noting put up. At the same time, satisfaction has to be recorded of the given case which can be reflected in the briefest possible manner. In the present case, the exercise appears to have been ritualistic and formal rather than meaningful, which is the rationale for the safeguard of an approval by a higher ranking officer. For these reasons, the court is satisfied that the findings by the Income-tax Appellate Tribunal cannot be disturbed."
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> 18. Further, this Court in the case of **Central India Electric Supply Co. Ltd. v. ITO** [2011 SCC OnLine Del 472] has taken a view that merely rubber stamping of "Yes" would suggest that the decision

was taken in a mechanical manner. Paragraph 19 of the said decision is reproduced as under: -

> "19. In respect of the first plea, if the judgments in Chhugamal Rajpal (1971) 79 ITR 603 (SC), Chanchal Kumar Chatterjee (1974) 93 ITR 130 (Cal) and Govinda Choudhury and Sons case (1977) 109 ITR 370 (Orissa) are examined, the absence of reasons by the Assessing Officer does not exist. This is so as along with the proforma, reasons set out by the Assessing Officer were, in fact, given. **However, in the instant case, the manner in which the proforma was stamped amounting to approval by the Board leaves much to be desired. It is a case where literally a mere stamp is affixed. It is signed by an Under Secretary underneath a stamped Yes against the column which queried as to whether the approval of the Board had been taken. Rubber stamping of underlying material is hardly a process which can get the imprimatur of this court as it suggests that the decision has been taken in a mechanical manner. Even if the reasoning set out by the Income-tax Officer was to be agreed upon, the least which is expected is that an appropriate endorsement is made in this behalf setting out brief reasons**. Reasons are the link between the material placed on record and the conclusion reached by an authority in respect of an issue, since they help in discerning the manner in which conclusion is reached by the concerned authority. Our opinion is fortified by the decision of the apex court in Union of India v. M. L. Capoor, AIR 1974 SC 87, 97 wherein it was observed as under:
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> "27.. .. We find considerable force in the submission made on behalf of the respondents that the 'rubber stamp' reason given mechanically for the supersession of each officer does not amount to 'reasons for the proposed supersession'. The most that could be said for the stock reason is that it is a general description of the process adopted in arriving at a conclusion.
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> 28…. If that had been done, facts on service records of officers considered by the Selection Committee would have been correlated to the conclusions reached. Reasons are the links between

> the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject-matter for a decision whether it is purely administrative or quasi-judicial. They should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way can opinions or decisions recorded be shown to be manifestly just and reasonable."(emphasis supplied).”

19. In the case of Chhugamal Rajpal, the Hon‟ble Supreme Court refused to consider the affixing of signature alongwith the noting “Yes” as valid approval and had held as under:-

> “5. ---
> Further the report submitted by him under Section 151(2) does not mention any reason for coming to the conclusion that it is a fit case for the issue of a notice under Section 148. We are also of the opinion that the Commissioner has mechanically accorded permission. He did not himself record that he was satisfied that this was a fit case for the issue of a notice under Section 148. To Question 8 in the report which reads “whether the Commissioner is satisfied that it is a fit case for the issue of notice under Section 148”, he just noted the word “yes” and affixed his signatures thereunder. We are of the opinion that if only he had read the report carefully, he could never have come to the conclusion on the material before him that this is a fit case to issue notice under Section 148. The important safeguards provided in Sections 147 and 151 were lightly treated by the Income Tax Officer as well as by the Commissioner. Both of them appear to have taken the duty imposed on them under those provisions as of little importance. They have substituted the form for the substance.”

20. This Court, while following *Chhugamal Rajpal* in the case of **Ess Adv. (Mauritius) S. N. C. Et Compagnie v. ACIT** [2021 SCC OnLine Del 3613], wherein, while granting the approval, the ACIT “This is fit case for issue of notice under section 148 of–has written the Income- tax Act, 1961. Approved”, had held that the said approval would only amount to endorsement of language used in Section 151 of the Act and would not reflect any independent

application of mind. Thus, the same was considered to be flawed in law.

21. The salient aspect which emerges out of the foregoing discussion is that the satisfaction arrived at by the prescribed authority under Section 151 of the Act must be clearly discernible from the expression used at the time of affixing its signature while according approval for reassessment under Section 148 of the Act. The said approval cannot be granted in a mechanical manner as it acts as a linkage between the facts considered and conclusion reached. In the instant case, merely appending the phrase "Yes" does not appropriately align with the mandate of Section 151 of the Act as it fails to set out any degree of satisfaction, much less an unassailable satisfaction, for the said purpose.

22. So far as the decision relied upon the Revenue in the case of *Meenakshi Overseas Pvt. Ltd.* is concerned, the same was a case where the satisfaction was specifically appended in the proforma in "*Yes, I am satisfied*". Moreover, paragraph 16 of–terms of the phrase the said decision distinguishes the approval granted using the expression "*Yes*" by citing *Central India Electric Supply*, which has already been discussed above. The decision in the case of *Experion Developers P. Ltd.* would also not come to the rescue of the Revenue as the same does not deal with the expression used in the instant appeal at the time of granting of approval.

23. Therefore, it is seen that the PCIT has failed to satisfactorily record its concurrence. By no prudent stretch of imagination, the expression "*Yes*" could be considered to be a valid approval. In fact, the approval in the instant case is apparently akin to the rubber stamping of "*Yes*" in the case of *Central India Electric Supply*."

19. The decision in "Pioneer" case was followed by us in the case of **Principal Commissioner of Income Tax, Central Circle-02 vs. M/s. MDLR Hotels Pvt. Ltd.** [ITA 593/2023], wherein, the Competent Authority had granted approval in terms of Section 153-D of the Act to as many as 246 proposed assessments by way of a single letter of approval and we had affirmed the finding of the ITAT that such approval has been granted mechanically without application of mind.

20. As noticed aforesaid, we are of the firm opinion that the PCIT

has failed to satisfactorily record its concurrence and by no stretch of imagination, the approval granted by common order, could be considered to be a valid approval.

21. Hence for the reasons stated above, we are of the view that the approval granted by PCIT for action under Section 147/148 of the Act is not valid. Consequently, the impugned notice issued by respondent No. 1 under Section 148 of the Act for the AY 2015-16 and the proceedings emanating therefrom are set aside and quashed.

22. The writ petition along with pending applications stand disposed of accordingly.

RAVINDER DUDEJA, J.

YASHWANT VARMA, J.

14 August 2024/*RM*