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

% **Judgment reserved on: 11 September 2024**
Judgment pronounced on: 20 September 2024

\+ W.P.(C) 2698/2022

ABHINAV JINDAL HUF .....Petitioner
Through: Mr. Kapil Goel & Mr. Sandeep Goel, Advs.

versus

INCOME TAX OFFICER WARD 54 (1) DELHI AND ORS. .....Respondents
Through: Mr. Sanjay Kumar & Ms. Easha, Advs.

\+ W.P.(C) 3151/2022

NANDITA SIKKA .....Petitioner
Through: Mr. Kapil Goel & Mr. Sandeep Goel, Advs.

versus

INCOME TAX OFFICER WARD 23 (3) DELHI AND ORS .....Respondents
Through: Mr. Aseem Chawla, SSC with Ms. Pratishtha Chaudhary, Ms. Nivedita & Ms. Nancy Jain, Advs.

\+ W.P.(C) 3344/2022

ATMA RAM SINGHANIA .....Petitioner
Through: Mr. Kapil Goel & Mr. Sandeep Goel, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 22 (2) DELHI AND ORS .....Respondents

Through: Mr. Puneet Rai, SSC with Mr. Ashvini Kumar & Mr. Rishabh Nangia, JSCs.

\+ W.P.(C) 4676/2022

OMNIPRESENT CREDITS PRIVATE LIMITED .....Petitioner

Through: Mr. Salil Kapoor, Ms. Ananya Kapoor, Mr. Sumit Lalchandani & Mr. Tarun Chanana, Advs.

versus

INCOME TAX OFFICER-WARD 19-1 & ANR. .....Respondents

Through: Mr. Puneet Rai, SSC with Mr. Ashvini Kumar & Mr. Rishabh Nangia, JSCs.

\+ W.P.(C) 4725/2022

SABHARWAL APARTMENTS PRIVATE LIMITED .....Petitioner

Through: Mr. Salil Kapoor, Ms. Ananya Kapoor, Mr. Sumit Lalchandani & Mr. Tarun Chanana, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 22-2, DELHI AND ANR. .....Respondents

Through: Mr. Aseem Chawla, SSC with Ms. Pratishtha Chaudhary, Ms. Nivedita & Ms. Nancy Jain, Advs.

\+ W.P.(C) 6225/2022

PRASHANT SOFTWARES PVT. LTD .....Petitioner

Through: Mr. Priyadarshi Manish, Ms. Anjali Jha Manish, Ms. Muskan

Saxena & Mr. Ankur Singh, Advs.

versus

ADDITIONAL / JOINT / DEPUTY / ASSISTANT COMMISSIONER OF INCOME TAX & ANR. ....Respondents

Through: Mr. Puneet Rai, SSC with Mr. Ashvini Kumar & Mr. Rishabh Nangia, JSCs.

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

J U D G M E N T

YASHWANT VARMA, J.

1. This batch of writ petitions assails the validity of the reassessment action initiated by the respondents under Section 148 of the **Income Tax Act, 1961**[1] and pertaining to **Assessment Year**[2] 2015-16. The solitary ground on which those reassessments were assailed before us was a violation of the provisions contained in Section 151 of the Act.

2. It is the case of the writ petitioners that the sanction for initiation of reassessment action rests on an approval granted by the **Joint Commissioner of Income Tax**[3] as opposed to the Principal Chief Commissioner /Chief Commissioner/ Principal Commissioner/ Commissioner as mandated by Section 151(1) of the Act. It is contended that since all the impugned Section 148 notices have come to be issued after the expiry of a period of four years from the concerned

[1] Act
[2] AY
[3] JCIT

AY, they were liable to be mandatorily approved by the Principal Chief Commissioner or the other authorities specified in sub-section (1) of Section 151.

3. According to the writ petitioners, the impugned notices would not sustain even if they were tested on the basis of Section 151 as it came to exist on the statute book after Finance Act 2021. It becomes pertinent to note that after the passing of the Finance Act 2021, Sections 148 and 148A introduced the concept of *"specified authority"* as the designated officer which would be liable to accord sanction for reassessment and which expression was defined by Section 151. In terms of Section 151(i) after the passing of the Finance Act 2021, if the notices for reassessment were issued where *"three years or less than three years"* had elapsed from the end of the relevant AY, the action would have to be based on the approval of the Principal Commissioner/Principal Director/Commissioner/Director. In all other cases, and which would relate to those reassessments which were proposed to be commenced "*if more than three years*" had elapsed from the end of the concerned AY, the authorities empowered to accord approval were specified to be the Principal Chief Commissioner/ Principal Director General/ Chief Commissioner/ Director General. The petitioners would contend that viewed from any angle and irrespective of whether the unamended Section 151 or the provision as it came to form part of the statute post Finance Act 2021, the approval of reassessment by the JCIT would not sustain.

4. The petitioners would assert that the provision for sanction which stands engrafted in Section 151 assumes significance in light of the statute clearly stipulating that a reassessment action would not be

commenced unless the authorities mentioned in that provision are satisfied that it is a fit case for issuance of notice under Section 148/148A. It is their case that in the absence of sanction being accorded by the competent authority, the entire action for reassessment is liable to be set at nought on this ground alone.

5. The respondents, on the other hand, bid us to uphold the initiation of action in light of the provisions contained in the **Taxation and Other Laws (Relaxation & Amendment of Certain Provisions) Act, 2020**[4] and which enabled them to initiate action for reassessment notwithstanding the time frames ordinarily applicable having expired. To recall, TOLA had come to be promulgated to overcome the insurmountable difficulties which beset the initiation of action and compliance with statutory timelines on account of the COVID-19 pandemic which had broken out in March 2020 and raged across the country. The provisions of TOLA thus provided an extended lifeline for the issuance of notices, the grant of sanction and other statutory compliances contemplated under the Act. It is thus submitted that since the impugned notices, by virtue of TOLA, came to be validly issued after the expiry of four years, the sanction was liable to be obtained in accordance with sub-section (2) of Section 151 and consequently, the approval accorded by the JCIT would be compliant with the statutory scheme of that provision.

6. It is pertinent to note that Section 151, pre-Finance Act 2021, categorized the approval liable to be accorded based upon the period within which a reassessment action was proposed to be initiated when

[4] TOLA

computed from the end of the relevant AY. While sub-section (1) catered to situations where a notice for reassessment was sought to be issued after the expiry of four years from the end of the relevant AY and thus required that action be preceded by approval being obtained from the Principal Chief Commissioner and the other authorities specified therein, sub-section (2) constituted the residuary clause and pertained to cases falling within its ambit where approval was to be obtained from the JCIT.

7. Section 151 as it stood prior to and as it existed by virtue of the promulgation of Finance Act 2021 is extracted in a tabular form hereinbelow:-

Income Tax Act, 1961 – As Amended by Finance Act 2015	**Income Tax Act, 1961 – As Amended by Finance Act 2021**
[Sanction for issue of notice. **151.** (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 subsection (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	**[Sanction for issue of notice.** **151.** Specified authority for the purposes of section 148 and section 148A shall be,— (i) Principal Commissioner or Principal Director or Commissioner or Director, if three years or less than three years have elapsed from the end of the relevant assessment year; (ii) Principal Chief Commissioner or Principal Director General or where there is no Principal Chief Commissioner or Principal Director General, Chief Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year. **]**

of such notice. (3) For the purposes of sub-section (1) and subsection (2), the Principal Chief Commissioner or Chief Commissioner or the Principal Commissioner or 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. **]**	

8. Subsequently, by virtue of Finance Act 2023, the phrase "*where there is no Principal Chief Commissioner or Principal Director General*" was deleted from Section 151 as it exists and a proviso had been inserted clarifying that the period of three years for the purpose of Section 151(i) would be computed in light of the Third, Fourth, Fifth and Sixth Provisos to Section 149(1) of the Act. Section 151 has been further reframed by virtue of Finance Act 2024 to define the 'specified authority' for sanction for issuance of notice to be the Additional Commissioner/ Additional Director/ Joint Commissioner/ Joint Director. However, in the present batch of writ petitions, we are concerned with the provisions of Section 151 as it stood immediately before and after the promulgation of Finance Act 2021.

9. For the purposes of brevity, we deem it apposite to notice the following salient facts as they obtain in W.P.(C) 2698/2022. For AY 2015-16, the petitioner is stated to have furnished a Return of Income on 30 October 2015. The aforesaid Return is stated to have been duly acknowledged in terms contemplated under Section 143(1) of the Act. Thereafter, a notice under Section 148 dated 31 March 2021 is stated to

have been issued to the writ petitioner. The notice, it is pertinent to note, appears to have been digitally signed on 01 April 2021, and, as per the writ petitioner, served via email on 22 April 2021. Responding to the aforesaid Section 148 notice, a revised Return is stated to have been filed by the writ petitioner on 13 July 2021.

10. The petitioner is stated to have taken an objection asserting that the notice would be invalid being barred by limitation. In addition, the petitioner also appears to have objected to the **Assessing Officer**[5] having failed to follow the procedure as prescribed under Section 148A and which had come to be introduced in the Act by virtue of Finance Act 2021 with effect from 01 April 2021. The aforesaid objections came to be disposed of with the AO holding that the commencement of action under the statutory regime as it existed prior to 01 April 2021 was valid and would be in accordance with **Central Board of Direct Taxes**[6] Circular F. No. 225/40/2021/ITA-II dated 04 March 2021.

11. While the controversy with respect to the applicability of the changed regime of reassessment and which would govern all notices issued after 01 April 2021 is no longer *res integra* and stands conclusively settled by virtue of the decision of the Supreme Court in **Union of India vs. Ashish Agarwal**[7], the challenge in the present set of writ petitions stands confined to the aspect of sanction and approval as contemplated under Section 151 of the Act. We have, therefore, alluded to *Ashish Agarwal* only for the sake of completeness.

12. The respective sides also take contrary positions with respect to

[5] AO
[6] CBDT
[7] (2023) 1 SCC 617

whether Section 151 in its unamended or its rescripted version would apply. While the writ petitioners assert that since the notice was digitally signed on and dispatched after 01 April 2021, it would be Section 151 as it stood after the said date which would govern, the respondents would contend that it would be the date appearing on the notice which would be determinative.

13. However, we note that it was Section 151(2), and as that provision existed prior to Finance Act 2021, which alone spoke of the JCIT as the authority competent to accord approval and that too in cases where the reassessment was being initiated within four years from the end of the relevant AY. After 01 April 2021, Section 151 post its amendment makes no reference to a JCIT, and both its clauses specify a particular set of authorities who are liable to examine the aspect of sanction dependent solely upon whether reassessment is proposed to be initiated within or up to three years and in the alternative scenario where it is initiated beyond that period.

14. As is manifest from a plain reading of the original notice under Section 148 in W.P.(C) 2698/2022, the same came to be issued with the approval of the JCIT Range-52, Delhi. Similar is the position that emerges from a perusal of the Section 148 notices which are impugned in the connected writ petitions with the solitary distinction being of the JCITs' being authorities conferred with jurisdiction over different ranges.

15. Leading arguments on behalf of the writ petitioners, Mr. Kapil Goel learned counsel submitted that the challenge as raised by the writ petitioners is liable to succeed bearing in mind the consistent position

with respect to Section 151 which has been taken by the Bombay, Madras and Orissa High Courts and all of which have taken the view that the provisions of TOLA cannot be construed as having amended the procedure for approval as contemplated under Section 151 of the Act.

16. Mr. Goel further submitted that this aspect had also fallen for consideration before our High Court in **Twylight Infrastructure (P.) Ltd. vs. Commissioner of Income Tax**[8] and where too this issue came to be answered in favour of the assessees as under:-

> "**4.1.** In defence of the writ petitions, the Revenue, inter alia, has relied upon the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (in short, "TOLA") and paragraphs 6.1 and 6.2(ii) of Instruction No. 1 of 2022 dated May 11, 2022 ((2022) 444 ITR (St) 43) issued by the Central Board of Direct Taxes (in short, "CBDT").
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> **xxxx xxxx xxxx**
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> **7.** A careful perusal of the above extract would show that after the amendment, section 151 has been split and the part which enjoins that the approval of the specified authority is mandatory stands embedded in the first proviso to section 148.
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> **7.1.** The concerned specified authorities, depending on the applicable timeframe, are adverted to in section 151 of the Act.
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> **8.** The first proviso to section 148 and section 151, when read conjointly, demonstrate the untenability of the submission made on behalf of the Revenue.
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> **xxxx xxxx xxxx**
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> **12.** Clearly, the Revenue advanced the argument of interlinkage between limitation and the ascertainment of the specified authority due to the plain language of the amended section 151 of the Act. Section 151, when read alongside the first proviso to section 148, brings the aspect of inextricable linkage to the fore.
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> **xxxx xxxx xxxx**
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> **12.1.** Clauses (i) and (ii) of section 151 of the amended Act (which has been extracted hereinabove) clearly specify the authority whose approval can trigger the reassessment proceedings. Thus, if three (3) years or less have elapsed from the end of the relevant assessment year, the specified authority who would grant approval for initiation of reassessment proceedings will be the Principal Commissioner or

[8] 2024 SCC OnLine Del 330

> Principal Director or Commissioner or Director. However, if more than three (3) years from the end of the relevant assessment year have elapsed, the specified authority for according approval for the reassessment shall be the Principal Chief Commissioner or Principal Director General or, where there is no Principal Chief Commissioner or Principal Director General, Chief Commissioner or Director General."

17. As was noticed in the introductory parts of this decision, the respondents had, contrary to the above, argued that once a notice for reassessment comes to be issued after the expiry of four years by virtue of the extended period of time made available by TOLA, all the impugned notices would fall within the ken of sub-section (2) of the pre-amendment Section 151 and consequently the sanction and approval accorded by the JCIT would be in accordance with law.

18. We find that a challenge on identical lines was addressed before the Bombay High Court in **J M Financial and Investments Consultancy Services Private Limited vs. ACIT, Circle 3(2)(1) & Ors**[9]. While dealing with these aspects the Bombay High Court had in *J M Financial* held as follows:-

> "**5** Respondents have relied upon a letter dated 18th March 2021 issued by one Income Tax Officer, who has given an opinion to the Additional Commissioner of Income Tax that in view of the Taxation and other Laws (Relaxation of Certain Provisions) Act, 2020 (Relaxation Act), limitation, inter alia, under provisions of Section 151(1) and Section 151(2), which were originally expiring on 31st March 2020 stand extended to 31st March 2021. According to the Income Tax Officer, in view of the above, Assessment Year 2015-2016 which falls under the category within four years as on 31st March 2020, the statutory approval for issuance of notice under Section 148 of the Act for the Assessment Year 2015-2016 may be given by the Range Head as per the said provisions. Mr. Sharma clarifies that the Income Tax Officer is only conveying the view of the Principal Commissioner of Income Tax because this letter has been issued on the letterhead of Principal Commissioner of Income

[9] Writ Petition No. 1050 of 2022 dated 04 April 2022

Tax.

6 Even for a moment we agree with the view expressed by the Principal Commissioner of Income Tax, still it applies to only cases where the limitation was expiring on 31st March 2020. In the case at hand, the assessment year is 2015-2016 and, therefore, the six years limitation will expire only on 31st March 2022. Certainly, therefore, the Relaxation Act provisions may not be applicable. In any event, the time to issue notice may have been extended but that would not amount to amending the provisions of Section 151 of the Act.

7 In our view, since four years had expired from the end of the relevant assessment year, as provided under Section 151(1) of the Act, it is only the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner who could have accorded the approval and not the Additional Commissioner of Income Tax. On this ground alone, we will have to set aside the notice dated 31st March 2021 issued under Section 148 of the Act, which is impugned in this petition. In view thereof, the consequent orders and notices will also have to go."

19. The decision in *J M Financial* came to be re-affirmed by that High Court in **Siemens Financial Services Pvt. Ltd. vs. Deputy Commissioner of Income-Tax & Ors.**[10]. We deem it apposite to extract the following passages from that decision:-

"**24.** As per section 151 of the Act, the "specified authority" who has to grant his sanction for the purposes of section 148 and section 148A is the Principal Chief Commissioner or Principal Director General or where there is no Principal Chief Commissioner or Principal Director General, the Chief Commissioner or Director General if more than three years have elapsed from the end of the relevant assessment year. The present petition relates to the assessment year 2016-17, and as the impugned order and impugned notice are issued beyond the period of three years which elapsed on March 31, 2020 the approval as contemplated in section 151(ii) of the Act would have to be obtained which has not been done by the Assessing Officer. The impugned notice mentions that the prior approval has been taken of the "Principal Commissioner of Income-tax-8" ("PCIT-8") which is bad in law as the approval should have been obtained in terms of section 151(ii) and not section 151(i) of the Act and the Principal Commissioner of Income- tax-8 cannot be the specified authority as per section 151 of the Act. Further, even in the affidavit-in-reply, the Department has accepted that the approval

[10] 2023 SCC OnLine Bom 2822

obtained is of the "Principal Commissioner of Income-tax-8" and, hence, such an approval would be bad in law.

25. The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, enacted on September 29, 2020 and came into force on March 31, 2020 ([2020] 428 ITR (St.) 29). It, inter alia, provided for a relaxation of certain provisions of the Income-tax Act, 1961. Where any time limit for completion or compliance of an action such as completion of any proceedings or passing of any order or issuance of any notice fell between the period March 20, 2020 to December 31, 2020, the time limit for completion of such action stood extended to March 31, 2021. Thus, the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act only seeks to extend the period of limitation and does not affect the scope of section 151.

26. The Assessing Officer cannot rely on the provisions of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act and the notifications issued thereunder as section 151 has been amended by the Finance Act, 2021 and the provisions of the amended section would have to be complied with by the Assessing Officer, with effect from April 1, 2021. Hence, the Assessing Officer cannot seek to take the shelter of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act as a subordinate legislation cannot override any statute enacted by Parliament. Further, the notification extending the dates from March 31, 2021 till June 30, 2021 cannot apply once the Finance Act, 2021 is in existence. The sanction of the specified authority has to be obtained in accordance with the law existing when the sanction is obtained and, therefore, the sanction is required to be obtained by applying the amended section 151(ii) of the Act and since the sanction has been obtained in terms of section 151(i) of the Act, the impugned order and impugned notice are bad in law and should be quashed and set aside."

20. Dealing with an identical controversy the Madras High Court in **Ramachandran Shivam vs. Income Tax Officer**[11], explained the legal position in the following terms:-

"**13.** The orders and notices are challenged herein not on the ground that the time limit under preamended section 149 does not apply, but on the ground that sanction was not granted by the specified authority. Therefore, it remains to be considered as to whether the application of the proviso to section 149 has the effect of incorporating by reference to preamended section 151. In order to

[11] Citation

substantiate the contention that preamended section 151 gets incorporated by reference, learned standing counsel relied on sub-section (2) to the preamended section 149. It should be noticed that the proviso to sub-section (1) of the amended section 149 does not even incorporate the whole of preamended section 149. It merely makes the time limit prescribed therein applicable to the issuance of notices for reassessment in respect of any assessment year beginning before April 1, 2021. A fortiori the proviso certainly does not incorporate preamended section 151 by reference and make it applicable.

14. The next question to be examined is the impact of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020. Undoubtedly, the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 extended the time limits under specified enactments, including the Income-tax Act. As per clause (a)(ii) of sub-section(1) of section 3 thereof, time limits for grant of sanction or approval were also extended. Since the petitioner does not challenge the sanction with respect to the time limit, clause (a) of sub-section (1) of section 3 is immaterial. Indeed, the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, which extends the time limits for completion of specified tasks up to March 31, 2021, itself becomes irrelevant because of the nature of the challenge in these writ petitions.

15. In *Siemens Financial Services* [*Siemens Financial Services Pvt. Ltd.* v. *Dy. CIT*, (2023) 457 ITR 647 (Bom); 2023 SCC OnLine Bom 2822; (2023) 154 taxmann.com 159 (Bom).] , the Division Bench of the Bombay High Court concluded, in substantially similar facts and circumstances, that the amended section 151 and not the preamended section 151 would apply. For reasons set out above, I concur with the conclusion in *Siemens Financial Services* [*Siemens Financial Services Pvt. Ltd.* v. *Dy. CIT*, (2023) 457 ITR 647 (Bom); 2023 SCC OnLine Bom 2822; (2023) 154 taxmann.com 159 (Bom).] and *Ganesh Das Khanna* v. *ITO* [(2024) 460 ITR 546 (Delhi); (2023) 6 HCC (Del) 516; (2023) 156 taxmann.com 417 (Delhi).] as subsequently followed in *Twylight Infrastructure* [*Twylight Infrastructure Pvt. Ltd.* v. *ITO*, (2024) 463 ITR 702 (Delhi); 2024 SCC OnLine Del 330.] . Consequently, the validity of sanction for issuing the orders under section 148A(d) and the notices under section 148 should be tested with reference to amended section 151. If so tested, it is evident that sanction was not granted by an authority specified under clause (ii) of section 151. Hence, the orders under section 148A(d) and the notices under section 148 are quashed. As a corollary, the draft assessment orders under section 144B/144C cannot survive and are also quashed.

16. These writ petitions are allowed on the above terms. There will be no order as to costs. Consequently, the connected miscellaneous

petitions are also closed."

21. The Orissa High Court too in **Ambika Iron and Steel Pvt. Ltd. vs. Principal Commissioner of Income Tax**[12] has taken an identical view while holding in favour of the assessees as would be apparent from the following passages of that decision:-

> "**2.** In each of these cases, the challenges to a notice issued by the Income- tax Department (hereinafter "Department") under section 148 of the Income-tax Act, 1961, (IT Act) as it stood prior to the amendment by the Finance Act of 2021 with effect from April 1, 2021. In other words, in each of these cases, the notice under section 148 of the Income-tax Act has been issued prior to April 1, 2021. In many of them, in fact, the date of the notice is March 31, 2021.
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> **3.** In each of these cases, the relevant assessment year (AY) in relation to which such notice has been issued is more than four years prior to the date of the reopening, i. e., it is beyond four years from the expiry of the assessment year in question and is clearly therefore, time barred in terms of the first proviso to section 147 of the Income-tax Act.
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> **4.** The stand of the Revenue that in view of the notifications issued by the Central Government in terms of the provisions of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, the said time limits stood extended is clearly untenable as those notifications were issued to deal with the situation arising from the amendment to the Income-tax Act by the Finance Act, 2021 with effect from April 1, 2021 whereas in these cases the notices were issued prior to April 1, 2021.
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> **5.** This court had an occasion in similar circumstances to quash an identical notice under section 148 of the Income-tax Act by its order dated November 20, 2019 in Writ Petition (C) No. 7618 of 2009 and which order stood confirmed by this court by the dismissal of the Department's review petition, i. e., RVWPET No. 188 of 2020 by the order dated December 3, 2021 which reads as under :
>
> > "1. Although the point made by the Revenue in this review petition is that this court in its order dated November 20, 2019 erred in drawing a distinction between an Additional Commissioner and Commissioner in terms of their authority, the point involved was that for the purpose of section 151(1) of the Income-tax Act, 1961 since the reopening of the assessment was beyond four years, it had to have the prior

[12] 2022 SCC OnLine Ori 4162

approval of the Commissioner of Income-tax, and there was no such approval in the present case.

2. Consequently, no ground is made out for reviewing the order dated November 20, 2019 in Writ Petition (C) No. 7618 of 2009.

3. The review petition is dismissed."

6. Indeed in the notice issued under section 148 of the Income-tax Act on March 31, 2021 which has been challenged in Writ Petition (C) No. 41826 of 2021 it has been stated that the notices had been issued after obtaining "necessary satisfaction of the Joint Commissioner of Income-tax Range-I, Cuttack" whereas the Officer authorized to record the necessary satisfaction had to be the Chief Commissioner of Income-tax/Commissioner of Income-tax.

7. For all the aforesaid reasons, in each of the above cases, the impugned notice under section 148 of the Income-tax Act is hereby quashed. The writ petitions are allowed, but in the circumstances, with no order as to costs."

22. In *Twylight Infrastructure*, the Division Bench of our Court while dealing with a challenge to reassessment action and whether reassessment would sustain in case escaped income be less than INR 50 lakhs also had an occasion to deal with the aspect of specified authority under Section 151 of the Act. It ultimately answered the latter issue as under:-

"**10.** As indicated above, the specified authority changes depending on the time limit prescribed in section 151 of the Act. It is on this account that there is a linkage between ruling rendered in *Ganesh Dass Khanna* [*Ganesh Dass Khanna* v. *ITO*, (2024) 460 ITR 546 (Delhi); 2023 SCC OnLine Del 7286; 2023 : DHC : 8187-DB.] and the instant matters.

11. It may also be noted that in *Ganesh Dass Khanna* [*Ganesh Dass Khanna* v. *ITO*, (2024) 460 ITR 546 (Delhi); 2023 SCC OnLine Del 7286; 2023 : DHC : 8187-DB.] , we had recorded the stand of the Revenue that the issue concerning limitation and the specified authority are "intertwined". For convenience, the relevant part of the judgment is extracted hereafter (page 567 of 460 ITR):

"24. On behalf of the Revenue, the following broad submissions were made:…

(viii) Both under the unamended 1961 Act and amended 1961

Act, the issue concerning limitation is inextricably intertwined with two aspects:

(a) First, the rank of the authority granting approval/sanction for triggering reassessment proceedings.

(b) Second, the quantum of income which has escaped assessment."

(Emphasis is ours)

12. Clearly, the Revenue advanced the argument of interlinkage between limitation and the ascertainment of the specified authority due to the plain language of the amended section 151 of the Act. Section 151, when read alongside the first proviso to section 148, brings the aspect of inextricable linkage to the fore.

12.1. Clauses (i) and (ii) of section 151 of the amended Act (which has been extracted hereinabove) clearly specify the authority whose approval can trigger the reassessment proceedings. Thus, if three (3) years or less have elapsed from the end of the relevant assessment year, the specified authority who would grant approval for initiation of reassessment proceedings will be the Principal Commissioner or Principal Director or Commissioner or Director. However, if more than three (3) years from the end of the relevant assessment year have elapsed, the specified authority for according approval for the reassessment shall be the Principal Chief Commissioner or Principal Director General or, where there is no Principal Chief Commissioner or Principal Director General, Chief Commissioner or Director General.

12.2. That the approval is mandatory is plainly evident on perusal of the first proviso appended to section 148 of the Act. The said proviso, at the risk of repetition, reads as follows:

"Provided that no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority to issue such notice."

12.3. In these cases, there is no dispute that although three (3) years had elapsed from the end of the relevant assessment year, the approval was sought from the authorities specified in clause (i), as against clause (ii) of section 151.

12.4. Before us, the counsel for the Revenue continue to hold this position. The only liberty that they seek is that if, based on the judgment in *Ganesh Dass Khanna* [*Ganesh Dass Khanna* v. *ITO*, (2024) 460 ITR 546 (Delhi); 2023 SCC OnLine Del 7286; 2023 : DHC : 8187-DB.] , the impugned orders and notices are set aside,

> liberty be given to the Revenue to commence the reassessment proceedings afresh.
>
> **13.** Therefore, having regard to the aforesaid, the impugned notices and orders in each of the above-captioned writ petitions are quashed on the ground that there is no approval of the specified authority, as indicated in section 151(ii) of the Act. The direction is issued with the caveat that the Revenue will have liberty to take steps, if deemed necessary, albeit as per law."

23. As is manifest from the aforesaid discussion, High Courts appear to have consistently taken the position that TOLA does not impact the working of Section 151 and that the operation of the latter would not stand amended by TOLA which merely enabled the specified authority to issue notices or accord sanction within the extended time frame created by that legislation. However, and before we proceed to enunciate our position in respect of the principal issue which was addressed, it would be appropriate to dispose of an ancillary issue which arose from the rival submissions that were addressed.

24. As was noticed hereinabove, learned counsels for respective sides had taken a divergent view with respect to the date when the impugned notices could be said to have been "issued" and consequently the version of Section 151 which would be applicable. Although all the notices bore a date of 31 March 2021, in all the cases before us they came to be served upon the assessees' thereafter. It is also asserted by the writ petitioners that the notices were digitally signed on or after 01 April 2021 and dispatched thereafter. They would thus contend that it was the amended regime of reassessment that would be applicable.

25. In the counter affidavit which has been filed in the lead writ petition, we find that the respondents have in paragraphs 6 to 9 taken the following stand:-

> "6. It is respectfully submitted that the technical team of ITBA portal were asked certain queries to clarify the issues regarding issuance of impugned notice dated 31.03.2021. The technical team of ITBA clarified the followings-
>
> i. The document with DIN No. ITBA/AST/S/148/2020-21/1032104440(1) was generated at 7:41 pm on 31.03.2021.
>
> ii. The last transaction time of AO Ward 54(1) on 31.03.2021 was 08:56 pm.
>
> iii. Document with DIN No. ITBA/AST/S/148/2020-21/1032104440(1) was signed by user on 01.04.2021 at 01:12:18 pm, mail was bounced but document read by e-filing on 02.04.2021 at 10:02 pm. Copy of notice under Section 148 of the Act dated 31.03.2021 alongwith the email containing reply from ITBA technical team is annexed herewith as **Annexure-R1 (Colly.).**
>
> 7. There is no dispute that the DIN of the impugned notice was generated at 07:41 pm on 31.03.2021.
>
> 8. Also, it is evident that DSC was executed for signing the notice on 31.03.2021. However, the same was not getting processed because of system delay. The logout time of the AO confirmed by ITBA technical team is 08:56 pm on 31.03.2021, yet the impugned notice records time of digital signature as 12:42 am. This goes to establish that the digital signature was put on the notice on the portal by the AO on or before 08:56 pm on.31.03.2021 which on account of system delay was recorded as 12:42 am (about after 4 hours) on the portal. It is pertinent to mention here that the notice was uploaded and signed by the AO on the system on or before 08:56 pm and thus the notice was out for dispatch on the system beyond the control of the AO on or before 08:56 pm on 31.03.2021. Therefore, the impugned notice was issued on 31.03.2021 itself and not on or after 01.04.2021 as claimed by the Petitioner.
>
> 9. Besides, as the impugned notice was not getting processed on the portal, the AO therefore signed the impugned 148 notice manually on 31.03.2021 which was sent to the assessee through speed post on 07.04.2021. Copy of manually singed impugned notice under Section 148 dated 31.03.2021 along with speed post booking receipt dated 07.04.2021 is annexed herewith as **Annexure-R2 (Colly).**"

26. As is apparent from the above, while a document with a DIN number appears to have been drawn up on 31 March 2021, as per the respondents themselves, the document was digitally signed on 01 April 2021. They further concede to the fact that although the DSC was "executed for signing" on 31 March 2021, due to system delay the digital signature bears the time stamp of 12:42 AM. The respondents further proceed to significantly aver that since the impugned notice was not being processed on the portal, it was manually dispatched vide Speed Post on 07 April 2021.

27. The question of when a reassessment notice could be said to have been issued is no longer *res integra* and stands conclusively answered by the Court in **Suman Jeet Agarwal vs. Income Tax Officer & Ors.**[13] The Court firstly categorised the various writ petitions under the following broad heads:-

> "Categories identified
>
> 1.13. The impugned notices as categorized by the counsel for the petitioners, Ms. Kavita Jha and recorded by this court vide its order dated March 24, 2022, are reproduced hereinunder :
>
> ".. . 1. Category A : is in respect of writ petitions where notice is dated March 31, 2021 or before but digitally signed on or after April 1, 2021, however sent and received on or after April 1, 2021.
>
> 2. Category B : is in respect of writ petitions where notice is dated March 31, 2021 or before, digitally not signed, however sent and received on or after April 1, 2021.
>
> 3. Category C : is in respect of writ petitions where notice is dated March 31, 2021 or before, digitally signed on or before March 31, 2021, however sent and received on or after April 1, 2021.
>
> 4. Category D : is in respect of writ petitions where notice is dated March 31, 2021 or before, digitally signed on or before

[13] 2022 SCC OnLine Del 3141

March 31, 2021, no service either by e-mail or by post or any other mode and assessee came to know later on through Portal or receipt of subsequent notice under section 142(1).

5. Category E : is in respect of writ petitions where notice is dated March 31, 2021 or before, manually signed, no service by e-mail but despatched through speed post on or after April 1, 2021. . ."

28. The Court then proceeded to explain the legal principles which would govern as under:-

"25.10. The judgment of the Allahabad High Court in Daujee Abhusan Bhandar (supra), was the earliest to hold that drawing up a notice on March 31, 2021, and digitally signing the same, in the absence of despatch, does not amount to issuance of notice within the meaning of section 149 of the Act of 1961. The High Court after elaborately discussing the provisions of sections 282 and 282A of the Act of 1961, and the provisions of section 13 of the Act of 2000, held that, since the impugned notice therein though dated March 31, 2021, was issued through e-mail on April 6, 2021, the same was time barred and therefore liable to be quashed. The court at paragraphs 29 and 30 held as under (page 54 of 444 ITR) :

"Thus, considering the provisions of sections 282 and 282A of the Act, 1961 and the provisions of section 13 of the Act, 2000 and meaning of the word 'issue" we find that firstly notice shall be signed by the assessing authority and then it has to be issued either in paper form or be communicated in electronic form by delivering or transmitting the copy thereof to the person therein named by modes provided in section 282 which includes transmitting in the form of electronic record. Section 13(1) of the Act, 2000 provides that unless otherwise agreed, the despatch of an electronic record occurs when it enters into computer resources outside the control of the originator. Thus, the point of time when a digitally signed notice in the form of electronic record is entered in computer resources outside the control of the originator, i. e., the assessing authority that shall be the date and time of issuance of notice under section 148 read with section 149 of the Act, 1961.

In view of the discussion made above, we hold that mere digitally signing the notice is not the issuance of notice. Since the impugned notice under section 148 of the Act, 1961 was issued to the petitioner on April 6, 2021 through e-mail, therefore, we hold that the impugned notice under section 148 of the Act, 1961 is time barred. Consequently, the

impugned notice is quashed." (emphasis supplied)

25.11. In the subsequent judgments of the Allahabad High Court in the case of Santosh Krishna (supra) and Mohan Lal Santwani (supra) the High Court summoned the details of date and time of triggering of e-mail by the Income Tax Business Application e-mail software system to determine the date of issuance of the e-mail attaching the notice. The High Court held the said date of triggering of e-mail to be the date of issue of section 148 notice for the purpose of section 149 of the Act of 1961.

25.12. The review of the aforesaid judgments of the Supreme Court and the several High Courts shows that all courts have consistently held that the expression "issue" in its common parlance and its legal interpretation means that the issuer of the notice must after drawing up the notice and signing the notice, make an overt act to ensure due despatch of the notice to the addressee. It is only upon due despatch, that the notice can be said to have been "issued".

25.13. Further, a perusal of the compliance affidavit reveals that while the function of generation of notice on Income Tax Business Application portal and digital signing of the notice is executed by the jurisdictional Assessing Officer, the function of drafting of the e-mail to which the notice is attached and triggering the e-mail to the assessee is performed by the Income Tax Business Application e-mail software system. Thus, mere generation of notice on the Income Tax Business Application screen cannot in fact or in law constitute issue of notice, whether the notice is issued in paper form or electronic form. In case of paper form, the notice must be despatched by post on or before March 31, 2021 and for communication in electronic form the e-mail should have been despatched on or before March 31, 2021. In the present writ petitions, the despatch by post and e- mail was carried out on or after April 1, 2021 and therefore, we hold that, the impugned notices were not issued on March 31, 2021.

25.14. The Department has not disputed the correctness of the law settled by the Supreme Court in the case of R. K. Upadhyaya (supra) in which the court was concerned with issuance of the section 148 notice in paper form and concluded that, since the date of despatch was within the prescribed period of limitation, the notice was validly issued for the purpose of section 149 of the Act of 1961, and held that the date of service of notice was not relevant. In fact, the Department has relied upon the said judgment. The said judgment squarely applies to the notice classified as category "E". The amendments to the Act of 1961 including section 282A was to enable the Income-tax authority to issue notice either in paper form or electronic form and were made to provide an adequate legal framework for paperless assessment. Similarly, setting up of the

digital platform of Income Tax Business Application portal and the e-filing portal is for facilitating assessment proceedings electronically. The said amendments or the use of Income Tax Business Application portal by the Department for issuing notice in no manner mitigates against or dispense with the legal requirement of the Department to ensure due despatch of the section 148 notice to satisfy the test of section 149 of the Act of 1961. The contention of the Department that upon generation of the notice on the Income Tax Business Application screen simplicitor (even before its despatch) is to be held to be issued does not persuade the court and is contrary to the judgment relied upon by the said party.

25.15. This court in the case of Court on its Own Motion v. CIT [2013] 352 ITR 273 (Delhi), while dealing with section 143(1) of the Act of 1961, has held that the law requires that, the intimation under section 143(1) should be communicated to the assessee. The uncommunicated orders or intimations cannot be enforced and are not valid. The relevant extract of the aforesaid decision is reproduced herein under (page 295 of 352 ITR) :

> "The second grievance of the assessee is with regard to the uncommunicated intimations under section 143(1) which remained on paper/file or the computer of the Assessing Officer. This is serious challenge and a matter of grave concern. The law requires intimation under section 143(1) should be communicated to the assessee, if there is an adjustment made in the return resulting either in demand or reduction in refund. The uncommunicated orders/intimations cannot be enforced and are not valid. .. But when there is failure to despatch or send communication/intimation to the assessee consequences must follow. Such intimation/order prior to March 31, 2010, will be treated as non est or invalid for want of communication/service within a reasonable time. This exercise, it is desirable should be undertaken expeditiously by the Assessing Officers. The Central Board of Direct Taxes will issue instructions to the Assessing Officers. . ." (emphasis supplied)

25.16. The Department sought to contend that the Madras High Court in Malavika Enterprises (supra) has struck a discordant chord with the judgment in the Daujee Abhusan Bhandar (supra). However, on a perusal of the judgment in Malavika Enterprises (supra), we find that in the said case the notice had been despatched on March 31, 2021, at 6.42 p. m. by the Income Tax Business Application server, though served on the assessee on April 1, 2021, at 2.00 am and therefore, the Madras High Court concluded that the notice has been validly issued on March 31, 2021. The relevant portion of paragraph 8 of this judgment reads as follows (page 653 of 445 ITR):

> "Coming to the facts of the case, it is stated that notice under section 148 of the Act of 1961 is said to have been issued on March 31, 2021 for the assessment year 2013-14, followed by consequential notices. It is the case of the petitioner that the notice is said to have been issued vide e-mail at 6.42 p. m., but was served on April 1, 2021 at 2 am and, therefore, the unamended provisions of section 148 of the Act of 1961 would not be applicable to the case. . ."

We do not find that this judgment takes the case of the Department any further as the section 148 notice in the case was duly despatched on March 31, 2021.

25.17. The Department has not cited any judgment which would support its contention that mere drawing up of notice and signing it (pending despatch) amounts to issuance. The counsel for the respondent placed heavy reliance on the judgment of the Supreme Court in M. M. Rubber and Co. (supra). In the said case as well, the apex court was concerned with the issue of limitation while determining if the impugned order therein had been passed within time. However, the provision under consideration was section 35E(3) of the Central Excises and Salt Act, 1944 ("Act of 1944"), which reads as under :

> ".. . Sub-section (3) of section 35E of the Act which deals with the limitation for exercise of the powers under sub-sections (1) and (2) of the Act and which is the relevant provision for consideration in this appeal reads as follows :
>
> 'No order shall be made under sub-section (1) or sub-section (2) after the expiry of one year from the date of the decision or order of the adjudicating authority.'. . ."

The court in the aforesaid judgment deliberated with reference to the phrase "no order shall be made" in section 35E(3) of the Act of 1944 and concluded that the date on which the order was made by the adjudicatory authority by signing it is a relevant date for determining if it was passed within limitation. As is evident, the expression used in section 35E(3) of the Act of 1944, is "no order shall be made" which is distinct from the expression used in section 149 of the Act of 1961 which reads as "no notice under section 148 shall be issued". The two statutory provisions are materially different and the ratio of the said judgment can have no bearing in interpreting section 149 of the Act of 1961."

29. It proceeded to record its conclusions in the following terms:-

> **"31.** For the reasons and principles that we have laid down, we dispose of these writ petitions with the following directions :
>
> 31.1. Category "A" : The notices falling under category "A", which

were digitally signed on or after April 1, 2021, are held to bear the date on which the said notices were digitally signed and not March 31, 2021. The said petitions are disposed of with the direction that the said notices are to be considered as show-cause notices under section 148A(b) of the Act as per the directions of the apex court in the Ashish Agarwal, (supra) judgment.

31.2. Category "B" : The notices falling under category "B" which were sent through the registered e-mail ID of the respective jurisdictional Assessing Officers, though not digitally signed are held to be valid. The said petitions are disposed of with the direction to the jurisdictional Assessing Officers to verify and determine the date and time of its despatch as recorded in the Income Tax Business Application portal in accordance with the law laid down in this judgment as the date of issuance. If the date and time of despatch recorded is on or after April 1, 2021, the notices are to be considered as show-cause notices under section 148A(b) as per the directions of the apex court in the Ashish Agarwal (supra) judgment.

31.3. Category "C" : The petitions challenging notices falling under category "C" which were digitally signed on March 31, 2021, are disposed of with the direction to the jurisdictional Assessing Officers to verify and determine the date and time of despatch as recorded in the Income Tax

Business Application portal in accordance with the law laid down in this judgment as the date of issuance. If the date and time of despatch recorded is on or after April 1, 2021, the notices are to be considered as show-cause notices under section 148A(b) as per the directions of the apex court in the Ashish Agarwal (supra) judgment.

31.4. Category "D" : The petitions challenging notices falling under category "D" which were only uploaded in the e-filing portal of the assessees without any real time alert, are disposed of with the direction to the jurisdictional Assessing Officers to determine the date and time when the assessees viewed the notices in the e-filing portal, as recorded in the Income Tax Business Application portal and conclude such date as the date of issuance in accordance with the law laid down in this judgment. If such date of issuance is determined to be on or after April 1, 2021, the notices will be construed as issued under section 148A(b) of the Act of 1961 as per the Ashish Agarwal (supra) judgment.

31.5. Category "E" : The petitions challenging notices falling under category "E" which were manually despatched, are disposed of with the direction to the jurisdictional Assessing Officers to determine in accordance with the law laid down in this judgment, the date and time when the notices were delivered to the post office for despatch and consider the same as date of issuance. If the date and time of despatch recorded is on or after April 1, 2021, the notices are to be

construed as show-cause notices under section 148A(b) as per the directions of the apex court in the Ashish Agarwal (supra) judgment.

31.6. Notices sent to unrelated e-mail addresses : The petitions challenging notices which were sent to unrelated e-mail addresses are disposed of with the direction the jurisdictional Assessing Officers to verify the date on which the notice was first viewed by the assessee on the e-filing portal and consider the same as the date of issuance. If such date of issuance is determined to be on or after April 1, 2021, the notices will be construed as issued under section 148A(b) of the Act of 1961 as per judgment in Ashish Agarwal (supra).

31.7. We may note that in the writ petitions, the petitioners have raised additional defenses to challenge the impugned notices. Such additional defenses have not been considered by this court and the petitioners shall be at liberty to raise all such additional defenses as available in law.

31.8. We are conscious that the time granted by the Supreme Court in Ashish Agarwal to the Department has since expired on June 3, 2022 however, the proceedings in the present writ petitions were stayed on March 24, 2022 until the pronouncement of this judgment. Therefore, we grant the jurisdictional Assessing Officers in the first instance eight (8) weeks time from today to determine the date of issuance of the notices as per the law laid down in this judgment.

31.9. The notices which in accordance with the law laid down in this judgment has been verified by the jurisdictional Assessing Officers to have been issued on or after April 1, 2021 and until June 30, 2021 shall be deemed to have been issued under section 148A of the Act of 1961 as substituted by the Finance Act, 2021 and construed to be show-cause notices in terms of section 148A(b) as per the judgment of the apex court in Ashish Agarwal (supra) and the jurisdictional Assessing Officers shall thereafter follow the procedure set down by the Supreme Court in the said judgment which reads as follows (page 21 of 444 ITR) :

> "In view of the above and for the reasons stated above, the present appeals are allowed in part. The impugned common judgments and orders passed by the High Court of Judicature at Allahabad in W. T. No. 524 of 2021 and other allied tax appeals/petitions, is/are hereby modified and substituted as under :
>
> (i) The impugned section 148 notices issued to the respective assessees which were issued under unamended section 148 of the Income-tax Act, which were the subject matter of writ petitions before the various respective High Courts shall be deemed to have been issued under section 148A of the

> Income-tax Act as substituted by the Finance Act, 2021 and construed or treated to be show-cause notices in terms of section 148A(b). The Assessing Officer shall, within thirty days from today provide to the respective assessees information and material relied upon by the Revenue, so that the assessees can reply to the show-cause notices within two weeks thereafter ;
>
> (ii) The requirement of conducting any enquiry, if required, with the prior approval of specified authority under section 148A(a) is hereby dispensed with as a one-time measure vis-a-vis those notices which have been issued under section 148 of the unamended Act from April 1, 2021 till date, including those which have been quashed by the High Courts.
>
> Even otherwise as observed hereinabove holding any enquiry with the prior approval of specified authority is not mandatory but it is for the concerned Assessing Officers to hold any enquiry, if required ;
>
> (iii) The Assessing Officers shall thereafter pass orders in terms of section 148A(d) in respect of each of the concerned assessees.
>
> Thereafter after following the procedure as required under section 148A may issue notice under section 148 (as substituted) ;
>
> (iv) All defences which may be available to the assessees including those available under section 149 of the Income-tax Act and all rights and contentions which may be available to the concerned assessees and the Revenue under the Finance Act, 2021 and in law shall continue to be available."”

30. Tested on the principles which were enunciated in *Suman Jeet Agarwal*, the petitioners would appear to be correct in their submission of the date liable to be ascribed to the impugned notices and those being viewed as having been issued and dispatched after 01 April 2021. However, and in our considered opinion, the same would be of little relevance or significance when one bears in mind the indubitable fact that all the notices were approved by the JCIT and which was an authority recognised under the unamended Section 151. The answer to the argument based on the provisions of TOLA would

also largely remain unimpacted by our finding on this score as would become evident from the discussion which ensues.

31. We thus proceed on the demurrer that it was the unamended Section 151 which would be applicable to the impugned proceedings. However, and before proceeding ahead, it would be appropriate to briefly notice the provisions of TOLA and on which the defence of the respondents is founded.

32. TOLA, being Act No. 38 of 2020, came to be promulgated on 29 September 2020. We are in this batch of matters principally concerned with Section 3 thereof and which reads as follows:-

> "**3. Relaxation of certain provisions of specified Act**.—(1) Where, any time-limit has been specified in, or prescribed or notified under, the specified Act which falls during the period from the 20th day of March, 2020 to the 31st day of December, 2020, or such other date after the 31st day of December, 2020, as the Central Government may, by notification, specify in this behalf, for the completion or compliance of such action as—
>
> (*a*) completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval, or such other action, by whatever name called, by any authority, commission or tribunal, by whatever name called, under the provisions of the specified Act; or
>
> (*b*) filing of any appeal, reply or application or furnishing of any report, document, return or statement or such other record, by whatever name called, under the provisions of the specified Act; or
>
> (*c*) in case where the specified Act is the Income-tax Act, 1961 (43 of 1961),—
>
> (*i*) making of investment, deposit, payment, acquisition, purchase, construction or such other action, by whatever name called, for the purposes of claiming any deduction, exemption or allowance under the provisions contained in—
>
> (*I*) sections 54 to 54GB, or under any provisions of Chapter VI-A under the heading "B.—Deductions in respect of certain payments" thereof; or
>
> (*II*) such other provisions of that Act, subject to fulfilment

of such conditions, as the Central Government may, by notification, specify; or

(*ii*) beginning of manufacture or production of articles or things or providing any services referred to in section 10AA of that Act, in a case where the letter of approval, required to be issued in accordance with the provisions of the Special Economic Zones Act, 2005 (28 of 2005), has been issued on or before the 31st day of March, 2020, and where completion or compliance of such action has not been made within such time, then, the time-limit for completion or compliance of such action shall, notwithstanding anything contained in the specified Act, stand extended to the 31st day of March, 2021, or such other date after the 31st day of March, 2021, as the Central Government may, by notification, specify in this behalf:

Provided that the Central Government may specify different dates for completion or compliance of different actions:

Provided further that such action shall not include payment of any amount as is referred to in sub-section (2):

Provided also that where the specified Act is the Income-tax Act, 1961 (43 of 1961) and the compliance relates to—

(*i*) furnishing of return under section 139 thereof, for the assessment year commencing on the—

(*a*) 1st day of April, 2019, the provision of this sub-section shall have the effect as if for the figures, letters and words "31st day of March, 2021", the figures, letters and words "30th day of September, 2020" had been substituted;

(*b*) 1st day of April, 2020, the provision of this sub-section shall have the effect as if for the figures, letters and words "31st day of March, 2021", the figures, letters and words "30th day of November, 2020" had been substituted;

(*ii*) delivering of statement of deduction of tax at source under sub-section (*2A*) of section 200 of that Act or statement of collection of tax at source under sub-section (*3A*) of section 206C thereof for the month of February or March, 2020, or for the quarter ending on the 31st day of March, 2020, as the case may be, the provision of this sub-section shall have the effect as if for the figures, letters and words "31st day of March, 2021", the figures, letters and words "15th day of July, 2020" had been substituted;

(*iii*) delivering of statement of deduction of tax at source

under sub-section (3) of section 200 of that Act or statement of collection of tax at source under proviso to sub-section (3) of section 206C thereof for the month of February or March, 2020, or for the quarter ending on the 31st day of March, 2020, as the case may be, the provision of this sub-section shall have the effect as if for the figures, letters and words "31st day of March, 2021", the figures, letters and words "31st day of July, 2020" had been substituted;

(*iv*) furnishing of certificate under section 203 of that Act in respect of deduction or payment of tax under section 192 thereof for the financial year commencing on the 1st day of April, 2019, the provision of this sub-section shall have the effect as if for the figures, letters and words "31st day of March, 2021", the figures, letters and words "15th day of August, 2020" had been substituted;

(*v*) sections 54 to 54GB of that Act, referred to in item (I) of sub-clause (*i*) of clause (*c*), or sub-clause (*ii*) of the said clause, the provision of this subsection shall have the effect as if—

(*a*) for the figures, letters and words "31st day of December, 2020", the figures, letters and words "29th day of September, 2020" had been substituted for the time-limit for the completion or compliance; and

(*b*) for the figures, letters and words "31st day of March, 2021", the figures, letters and words "30th day of September, 2020" had been substituted for making such completion or compliance;

(*vi*) any provisions of Chapter VI-A under the heading "B.— Deductions in respect of certain payments" of that Act, referred to in item (I) of sub-clause (*i*) of clause (*c*), the provision of this sub-section shall have the effect as if—

(*a*) for the figures, letters and words "31st day of December, 2020", the figures, letters and words "30th day of July, 2020" had been substituted for the time-limit for the completion or compliance; and

(*b*) for the figures, letters and words "31st day of March, 2021", the figures, letters and words "31st day of July, 2020" had been substituted for making such completion or compliance;

(*vii*) furnishing of report of audit under any provision thereof for the assessment year commencing on the 1st day of April, 2020, the provision of this sub-section shall

have the effect as if for the figures, letters and words "31st day of March, 2021", the figures, letters and words "31st day of October, 2020" had been substituted:

Provided also that the extension of the date as referred to in sub-clause (*b*) of clause (*i*) of the third proviso shall not apply to *Explanation* 1 to section 234A of the Income-tax Act, 1961 (43 of 1961) in cases where the amount of tax on the total income as reduced by the amount as specified in clauses (*i*) to (*vi*) of sub-section (1) of the said section exceeds one lakh rupees:

Provided also that for the purposes of the fourth proviso, in case of an individual resident in India referred to in sub-section (2) of section 207 of the Income-tax Act, 1961 (43 of 1961), the tax paid by him under section 140A of that Act within the due date (before extension) provided in that Act, shall be deemed to be the advance tax:

Provided also that where the specified Act is the Direct Tax *Vivad Se Vishwas* Act, 2020 (3 of 2020), the provision of this sub-section shall have the effect as if—

(*a*) for the figures, letters and words "31st day of December, 2020", the figures, letters and words "30th day of December, 2020" had been substituted for the time limit for the completion or compliance of the action; and

(*b*) for the figures, letters and words "31st day of March, 2021", the figures, letters and words "31st day of December, 2020" had been substituted for making such completion or compliance.

(2) Where any due date has been specified in, or prescribed or notified under the specified Act for payment of any amount towards tax or levy, by whatever name called, which falls during the period from the 20th day of March, 2020 to the 29th day of June, 2020 or such other date after the 29th day of June, 2020 as the Central Government may, by notification, specify in this behalf, and if such amount has not been paid within such date, but has been paid on or before the 30th day of June, 2020, or such other date after the 30th day of June, 2020, as the Central Government may, by notification, specify in this behalf, then, notwithstanding anything contained in the specified Act,—

(*a*) the rate of interest payable, if any, in respect of such amount for the period of delay shall not exceed three-fourth per cent. for every month or part thereof;

(*b*) no penalty shall be levied and no prosecution shall be sanctioned in respect of such amount for the period of delay.

> *Explanation*.—For the purposes of this sub-section, "the period of delay" means the period between the due date and the date on which the amount has been paid."

33. A plain reading of Section 3 establishes that where the time limit for the completion or compliance of any action under a specified Act were to fall between 20 March 2020 to 31 December 2020, the period for completion and compliance would stand extended up to 31 March 2021 or such other date thereafter as may be specified by the Union Government by way of a notification. Undisputedly, the date of 31 March 2021 came to be extended thereafter up to 30 April 2021 and lastly up to 30 June 2021.

34. Concededly, Finance Act 2021 was enacted thereafter and came into effect from 01 April 2021. It is admitted by the respondents that the terminal point for initiation of reassessment for AY 2015-16 in ordinary circumstances would have been 31 March 2020 and that date clearly fell within the period spoken of in Section 3 of TOLA. The period for issuance of notice for AY 2015-16, thus and principally speaking, stood extended up to 30 June 2021.

35. However, the key to answering the argument which was canvassed on behalf of the respondents is contained in Section 3 itself and which purported to extend the period for completion of proceedings, passing of an order, issuance of a notice, intimation, notification, sanction or approval. The provision extended the time limit for such action, notwithstanding anything contained in the specified Act, initially up to 31 March 2021 and which date was extended subsequently to 30 April 2021 and lastly up to 31 June 2021.

36. Section 3 thus essentially extended the time period statutorily

prescribed for initiation and compliance up to the dates notified by the Union Government from time to time. The extension of these timelines was intended to apply to all statutes which were included in the expression *"specified Act"* as defined in Section 2(b) of TOLA.

37. TOLA was thus concerned with overcoming the statutory closure and eclipse which would have otherwise descended upon the authority to act and take action under the specified statutes. It was essentially concerned with tiding over the insurmountable hurdles which arose due to the pandemic and the disruption that followed in its wake. TOLA, viewed in that light, was neither aimed at nor designed or intended to confer a new jurisdiction or authority upon an officer under a specified enactment. On a fundamental plane, it was a remedial measure aimed at overcoming a position of irretrievable and irreversible consequences which were likely to befall during the nationwide lockdown. It was principally aimed at enabling authorities to take and commence action within the extended timelines that TOLA introduced. However, it neither altered nor modified or amended the distribution of functions, the command structure or the distribution of powers under a specified Act. It was in that light that we had spoken of the carving or conferral of a new or altered jurisdiction.

38. It would therefore be wholly incorrect to read TOLA as intending to amend the distribution of power or the categorisation envisaged and prescribed by Section 151. The additional time that the said statute provided to an authority cannot possibly be construed as altering or modifying the hierarchy or the structure set up by Section 151 of the Act. The issue of approval would still be liable to be answered based on whether the reassessment was commenced after or

within a period of four years from the end of the relevant AY or as per the amended regime dependent upon whether action was being proposed within three years of the end of the relevant AY or thereafter. The bifurcation of those powers would continue unaltered and unaffected by TOLA.

39. The fallacy of the submission addressed by the respondents becomes even more evident when we weigh in consideration the fact that even if the reassessment action were initiated, as per the extended TOLA timelines, and thus after the period of four years, Section 151 incorporated adequate measures to deal with such a contingency and in unambiguous terms identified the authority which was to be moved for the purposes of sanction and approval. Section 151 distributed the powers of approval amongst a set of specified authorities based upon the lapse of time between the end of the relevant AY and the date when reassessment was proposed. Thus even if the reassessment was proposed to be initiated with the aid of TOLA after the expiry of four years from the end of the relevant AY, the authority statutorily empowered to confer approval would be the Principal Chief Commissioner /Chief Commissioner /Principal Commissioner /Commissioner. It would only be in a case where the reassessment was proposed to be initiated before the expiry of four years from the end of the relevant AY that approval could have been accorded by the JCIT. Similar would be the position which would emerge if the actions were tested on the basis of the amended Section 151 and which divides the power of sanction amongst two sets of authorities based on whether reassessment is commenced within three years or thereafter.

40. What we seek to emphasise is that the TOLA authorisation merely enables the competent authority to take action within the extended time period and irrespective of the closure which would have ordinarily come about by virtue of the provisions contained in the Act. It does not alter or amend the structure for approval and sanction which stands erected by virtue of Section 151. TOLA merely extended the period within which action could have been initiated and which would have otherwise and ordinarily been governed and regulated by Sections 148 and 149 of the Act. If the contention of the respondents were to be accepted it would amount to us virtually ignoring the date when reassessment is proposed to be initiated and the same being indelibly tied to the end of the relevant AY. Once it is conceded that the notice came to be issued four or three years after the end of the relevant assessment year, the approval granted by the JCIT would not be compliant with the scheme of Section 151. We thus find ourselves unable to sustain the grant of approval by the JCIT.

41. It is pertinent to note that the respondents had feebly sought to urge that the use of the expression "sanction" in Section 3 of TOLA also merits due consideration and is liable to be read as supportive of the contentions that were addressed on their behalf. The argument is however clearly meritless when one bears in consideration the indisputable fact that the set of provisions with which we are concerned nowhere prescribe a timeframe within which sanction is liable to be accorded. 'Sanction' when used in Section 3 of TOLA caters to those contingencies where a specified Act may have prescribed a particular time limit within which an action may be approved. That is clearly not the position which obtains here. We thus

find ourselves unable to sustain the impugned action of reassessment. The impugned notices which rest on a sanction obtained from the JCIT would thus be liable to be quashed.

42. We accordingly allow the instant writ petitions. The impugned notices issued under Section 148 of the Act dated 31 March 2024 are hereby quashed.

43. However, the aforesaid would be without prejudice to the right of the respondents to initiate such further action as may be otherwise permissible in law.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

SEPTEMBER 20, 2024/kk