$~

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

% **Judgment reserved on: 19 September 2024**
Judgment pronounced on: 03 October 2024

+ W.P.(C) 4303/2017

CAPITAL BROADWAYS PVT. LTD. ..... Petitioner

Through: Mr. P. Roychaudhuri and Mr. Gagan Gupta, Advocates

versus

INCOME TAX OFFICER WARD 5(3) DELHI & ANR. ..... Respondents

Through: Mr. Gaurav Gupta, SSC with Mr. Shivendra Singh, Mr. Yojit Pareek, Mr. Namit Gupta, Advocates

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 for quashing of notice dated 24.03.2017 issued under Section 148 of the Income Tax Act, 1961 [**"Act"**] for the Assessment Year **["AY"**], 2010-11.

2. The facts as necessary for the disposal of the petition are set out hereinafter.

3. Petitioner filed return of income on 05.08.2010 for the AY 2010-11, declaring the income of Rs. 1,95,711/-. The case of the petitioner was processed under Section 143(1) of the Act but no assessment order

was passed.

4. Subsequently, an information was received from the Investigation Wing of the Department about money laundering operation conducted by Jain Brothers. The information contained the report as to how Jain Brothers through their paper companies had provided accommodation entries to various beneficiaries in the guise of share capital/share premium etc. through the help of various mediators. Upon examination of the report, it was found that in the list of beneficiaries, the name of the assessee M/s. Capital Broadways Pvt. Ltd. was also appearing who had taken accommodation entries aggregating to Rs. 55 lakhs during the AY 2010-11 through three papers companies managed and operated by Jain Brothers.

5. On 28.03.2017, the impugned notice under Section 148 of the Act was issued directing the petitioner to file its return of income for the subject AY 2010-11 on the allegation that there has been an escapement of income.

6. In response to the impugned notice, petitioner made request to the respondents to treat the original ITR filed for the AY 2010-11 as the ITR in response to the notice under Section 148 and also requested the respondent to provide the reasons on the basis of which the assessment proceedings were initiated. Pursuant to the request of the petitioner, the reasons for reopening the assessment along with proforma for seeking necessary approval of the Principal Commissioner Income Tax ["PCIT"] were provided to the petitioner.

7. Feeling aggrieved, petitioner has filed the present writ petition, challenging the impugned notice issued under Section 148 of the Act.

8. The principal challenge in the petition is to the grant of sanction

under Section 151 of the Act. It has been submitted that PCIT, who is the competent authority, has granted sanction without application of mind. It is submitted that PCIT has approved issuance of impugned notice by merely endorsing his signatures on the file in a routine and mechanical manner by simply writing "I am satisfied". It has been further submitted that if PCIT had delved into the issue, he would have discovered that there is no specific allegation in the "reasons" recorded qua the petitioner with the information given by Investigation Wing and therefore there was no independent conclusion of the Assessing Officer ["AO"] to believe that income has escaped assessment. It is also submitted that the sanction is vitiated as PCIT was influenced by the sanction of the Additional Commissioner Income Tax [**"ACIT"**] and for the said reason, the impugned notice under Section 148 consequent to the grant of approval is liable to be quashed.

9. Per contra, learned counsel representing the Revenue has submitted that the statutory requirement is only to the extent of grant of approval by the PCIT on the reasons recorded by the AO. It is submitted that PCIT had examined the elaborate reasons accorded by the AO to form the belief that income has escaped assessment. It has been further submitted that the order granting approval need not contain the reasons as the same is based on prima facie finding arrived at from the record. It is thus submitted that the approval has been granted based upon the material and therefore the conditions envisaged in Section 151 stand satisfied.

10. Section 151(1) of the Act categorically provides that no notice shall be issued under Section 148 by the Assessing Officer, after expiry of period of four years from the end of the relevant assessment year,

unless the Principal Chief Commissioner or 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. In the present case, since reopening was beyond the period of four years, it was for the PCIT to record satisfaction for reopening the assessment. In the case of **SBC Minerals Pvt. Ltd. vs. Assistant Commissioner of Income Tax Circle 22(2), Delhi, WP (C) 7885/2023**, we had clearly held that prescribed authority referred to in Section 151 must be "satisfied" on the reasons recorded by the Assessing Officer that it is a fit case for the issuance of such notice and therefore the satisfaction of the prescribed authority is a sine qua non for a valid approval. We had also held that the competent authority must apply its mind independently on the basis of material placed before it before grant of the sanction.

11. While dealing with the scope and requirement under Section 151 of the Act for initiating proceedings under Section 147 read with 148 of the Act, this Court in the case of **Yum! Restaurants Asia Pte. Ltd v. Deputy Director of Income Tax (2017) 397 ITR 665,** held as under:-

> "**11.** The purpose of Section 151 of the Act is to introduce a supervisory check over the work of the AO, particularly, in the context of reopening of assessment. The law expects the AO to exercise the power under Section 147 of the Act to reopen an assessment only after due application of mind. If for some reason, there is an error that creeps into this exercise by the AO, then the law expects the superior officer to be able to correct that error. This explains why Section 151 (1) requires an officer of the rank of the Joint Commissioner to oversee the decision of the AO where the return originally filed was assessed under Section 143 (3) of the Act. Further, where the reopening of an assessment is sought to be made after the expiry of four years from the end of the relevant AY, a further check by the further superior officer is contemplated."

12. We take note that request for approval under Section 151 of the

Act in a printed format (Annexure P-6) was placed before the ACIT, who after according his satisfaction, placed the same before the PCIT. PCIT granted the approval on the very same day. The approval accorded by the ACIT and PCIT in Column No. 11 & 12 are extracted below:-

> "11. Whether the Addl. CIT is satisfied on the reasons recorded by AO that it is a fit Case for the issue of notice u/s 148.
>
> I am satisfied Sd/-
> (G.G. Kamei)
> Addl. CIT, Range-5, New Delhi
>
> Dated 22.03.2017
> 12. Whether the Pr. Commissioner is satisfied: On the reasons recorded by the AO that it is a fit case for the issue of notice u/s 148.
>
> Yes I am satisfied Sd/-
> P.K. Gupta)
> Pr. Commissioner of Income Tax-2,
> New Delhi
>
> Dated: 22.03.2017"

13. The satisfaction arrived at by the concerned Officer should be discernible from the sanction order passed under Section 151 of the Act. However, as may be seen, the approval order is bereft of any reason. There is no whisper of any material that may have weighed for the grant of approval.

14. Even the bare minimum requirement of the approving authority having to indicate what the thought process was, is missing in the afore-mentioned approval order. While elaborate reasons may not have been given, at least there has to be some indication that the approving authority has examined the material prior to granting approval. Mere appending the expression "Yes I am satisfied" says nothing. The entire exercise appears to have been ritualistic and formal rather than

meaningful, which should be the rationale for the safeguard of an approval by a high ranking official. Reasons are the link between material placed on record and the conclusion reached by the authority in respect of an issue, since they help in discerning the manner in which the conclusion is reached by the concerned authority.

15. This Court in the case of **The Principal Commissioner of Income Tax-7 vs. Pioneer Town Planners Pvt. Ltd. (2024) SCC OnLine Del 1685**, while dealing with an identical challenge of approval, having been accorded mechanically, had held as under:-

> "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.
>
> xxxx xxxx xxxx
>
> 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:-
>
> > "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."
>
> 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:
>
> "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.
>
> 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*."

16. In the case of **Principal Commissioner of Income Tax-6 Vs. Meenakshi Overseas Pvt. Ltd. ITA 651/2015**, while reiterating that the satisfaction has to be accorded on the reasons recorded by the Assessing Officer that it is a fit case for the issue of such notice, the Court noted that by writing the words "Yes, I am satisfied" the mandate of Section 151(1) of the Act as far as approval of Additional CIT was concerned, stood satisfied. However, we may take note that such finding was arrived at by the Court in light of the fact that Additional CIT addressed a letter to the ITO stating as under:-

"In view of the reasons recorded under Section 148(2) of the IT Act, approval for issue of notice under Section 148 is hereby

> given in the above-mentioned case, you are, accordingly directed to issue notice under Section 148 and submit a compliance report in this regard at the earliest."

17. Such letter sent by the Additional CIT to the ITO clearly reveals that the sanction was accorded after due application of mind and on considering the reasons narrated by the Assessing Officer. However, in the present case, there is no such material to come to the conclusion that PCIT granted approval after considering the reasons assigned by the Assessing Officer. The decision rendered in Meenakshi Overseas Pvt. Ltd. (*supra*), is therefore not applicable to the facts and circumstances of the present case.

18. Dealing with an identical challenge where the competent authority just recorded "Yes I am satisfied", the Madhya Pradesh High Court in the case of **CIT Jabalpur vs. S. Goyanka Lime & Chemicals Ltd. ITA 82/2012**, held as under:-

> "7. We have considered the rival contentions and we find that while according sanction, the Joint Commissioner, Income Tax has only recorded so "Yes, I am satisfied". In the case of **Arjun Singh** (supra), the same question has been considered by a Coordinate Bench of this Court and the following principles are laid down:-
>
> > "The Commissioner acted, of course, mechanically in order to discharge his statutory obligation properly in the matter of recording sanction as he merely wrote on the format "Yes, I am satisfied" which indicates as if he was to sign only on the dotted line. Even otherwise also, the exercise is shown to have been performed in less than 24 hours of time which also goes to indicate that the Commissioner did not apply his mind at all while granting sanction. The satisfaction has to be with objectivity on objective material.
>
> 8. If the case in hand is analysed on the basis of the aforesaid principle, the mechanical way of recording satisfaction by the Joint Commissioner, which accords sanction for issuing notice under section 148, is clearly unsustainable and we find that on such consideration both the appellate authorities have interfered into the matter. In doing so, no error has been committed warranting reconsideration."

19. The SLP challenging the decision rendered by the Madhya Pradesh High Court was dismissed by the Supreme Court [**(2015) 64 Taxman.com 313 (SC)]**.

20. As explained in the above cases, mere repeating of the words of the statute, mere rubber stamping of the letter seeking sanction or using similar words like "Yes, I am satisfied" will not satisfy the requirement of law. Hence, we are of the firm view that PCIT has failed to satisfactorily record his concurrence. The mere use of expression "Yes, I am satisfied" cannot be considered to be a valid approval as the same does not reflect an independent application of mind. The grant of approval in such manner is thus flawed in law.

21. Hence, for the aforesaid reasons, we are of the view that the approval granted by the PCIT for issuance of notice under Section 148 of the Act is not valid and therefore the impugned notice under Section 148 dated 24.03.2017 cannot be sustained. Accordingly, the impugned notice is set aside.

22. Writ Petition is disposed of in the aforesaid terms.

RAVINDER DUDEJA, J.

YASHWANT VARMA, J.

03 OCTOBER, 2024/*RM*