$~

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

% **Judgment reserved on: 09 August 2024**
Judgment pronounced on: 20 August 2024

+ W.P.(C) 7885/2023 & CM APPL. 30359/2023 (Stay)

SBC MINERALS PVT. LTD ..... Petitioner

Through: Mr. Kapil Goel and Mr. Sandeep Goel, Advs.

versus

ASSISTANT COMMISIONER OF INCOME TAX CIRCLE 22(2), DELHI ..... Respondent

Through: Mr. Aseem Chawla, Sr. SC with Ms. Pratishtha Chaudhary and Mr. Naveen Rohila, Advs.

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

J U D G M E N T

RAVINDER DUDEJA, J.

1. Petitioner has filed the present Writ Petition under Articles 226 & 227 of the Constitution of India, praying for the following reliefs:

> "A. Issue of a writ of certiorari, mandamus, prohibition or any other writ and/or order and or directions quashing the impugned foundational SCN issued u/s 148A(b) dated 22.02.2023, which is totally perverse and issued without application of mind , based on borrowed satisfaction and without considering previous scrutiny asst. u/s 143(3) ; issued in violation of mandate of sec. 149(1)(b) of 1961 Act;
>
> B. Issue of a writ of certiorari, mandamus, prohibition or any other writ and/or order and or directions quashing the impugned foundational SCN issued u/s 148A(b) dated 22.02.2023 issued without even quantifying income escaping asst and without any independent application of mind

C. Issue of a writ of certiorari, mandamus, prohibition or any other writ and/or order and or directions quashing the impugned order passed u/s 148A(d) and notice u/s 148 of the Act dated 20.03.2023 being passed in total non-consideration of vital material on record namely detailed inquiry u/s 142 during previous scrutiny asst u/s 143(3); passed in violation of mandate of sec. 149(1)(b) of 1961 Act;

D. Issue of a writ of certiorari, mandamus, prohibition or any other writ and/or order and or directions quashing the impugned order passed u/s 148A(d) and notice u/s 148 of the Act dated 20.03.2023 based on totally invalid sanction u/s 151 dated 20.03.2023 ;

E. Issue of a writ of certiorari, mandamus, prohibition or any other writ and/or order and or directions quashing the impugned order passed u/s 148A(d) and consequential notice dated 20 .03.2023 being ultra vires to sec 151A and relevant cbdt notification;

F. Issue of a writ of certiorari, mandamus, prohibition or any other writ and/or order and or directions quashing the impugned SCN dated 22.02.2023, impugned order passed u/s 148A(d) of the Act dated 20.03.2023 and notice dated 20.03.2023 by being issued arbitrarily and perfunctorily in violation of the command/tests specified under article 14 of constitution of India;

G. Pass any other order(s) as this Hon'ble Court may deem to be fit and more appropriate may please give order to grant interim relief to the petitioner by staying the operation of impugned SCN issued &order passed u/s 148A(d) by respondent which suffers from series of jurisdictional errors as pointed above;"

2. The necessary facts are being set out hereinafter.

3. Petitioner filed return of income on 17.10.2016 declaring Rs. 7,69,73,060/- as total income. On 16.11.2018, notice under Section 142(1) of the Income Tax Act, 1961 ["**Act**"] was issued during scrutiny assessment, seeking details and inputs of loan transaction (s). On 04.12.2018, petitioner submitted its response duly furnishing all the details including confirmation of unsecured loans.

4. On 22.02.2023, the impugned Show Cause Notice ["**SCN**"] was issued under Section 148A(b) proposing reopening of the case of the petitioner under Section 148 for the Assessment Year ["**AY**"] 2016-17.

5. On 20.03.2023, the impugned order was passed under Section 148A(d) treating the case as fit for reopening under Section 148, quantifying the income escaping assessment at Rs.3,15,09,010/- for the subject AY 2016-17.

6. As a consequence to the impugned order passed under Section 148A(d) of the Act, notice under Section 148 of the Act was issued on 20.03.2023.

7. Feeling aggrieved, the petitioner has filed the present writ petition challenging the impugned notice under 148A of the Act as also the order passed under Section 148A(d). Petitioner has also laid challenge to the grant of sanction under Section 151 of the Act.

8. During arguments, learned counsel for the petitioner has restricted the challenge only to the grant of sanction under Section 151 of the Act, stating that the same has been granted mechanically and without due application of mind, and therefore, the grant of sanction is liable to be declared as nullity and invalid, and resultantly, the impugned order passed under Section 148A(d) and the impugned notice under Section 148 issued consequent to the grant of sanction are liable to be quashed.

9. Per contra, learned counsel for the respondent while defending the order granting approval, has submitted that the approval has been granted based upon the material placed before PCCIT. It is further submitted that the order granting approval need not mention the reasons as the same is based on a prima facie finding arrived at from the record.

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

11. Section 151 of the Act, as it stood prior to the substitution by Act of 13 of 2001 is reproduced hereunder:-

> "151. Sanction for issue of notice.—(1) No notice shall be issued under Section 148 by an Assessing Officer, after the expiry of a period of four years from the end of the relevant assessment year, unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice. (2) In a case other than a case falling under sub-section (1), no notice shall be issued under Section 148 by an Assessing Officer, who is below the rank of Joint Commissioner, unless the Joint Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice. (3) For the purposes of sub-section (1) and sub-section (2), the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner or the Joint Commissioner, as the case may be, being satisfied on the reasons recorded by the Assessing Officer about fitness of a case for the issue of notice under Section 148, need not issue such notice himself."

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

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

14. Perusal of the record reveals that the request for approval under Section 151 of the Act in a printed format was placed before the Principal Chief Commissioner of Income Tax ["**PCCIT**"] on 20.03.2023. PCCIT granted the approval the same day. The approval accorded by the PCCIT in Column No. 22 is extracted below:-

22	Reasons for according approval/rejection by the specified authority to order u/s 148A(d) AND/OR issuance of notice under section 148 of the Income Tax Act, 1961?	Remarks: Approved u/s 148A(d) as a fit case. Name: RAJAT BANSAL Designation: PCCIT, DELHI Date: 20/03/2023

15. It is evident that the approval order is bereft of any reasons. It does not even refer to any material that may have weighed in the grant of approval. The mere appending of the word "approved" by the PCCIT while granting approval under Section 151 to the re-opening under Section 148 is not enough. While the PCCIT is not required to record elaborate reasons, he has to record satisfaction after application of mind. The approval is a safeguard and has to be meaningful and not merely ritualistic or formal. The 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. Our opinion in this regard is fortified by the decision of the Apex Court in **Union of India vs. M.L. Capoor** [AIR 1974 SC 87]. The grant of approval by PCCIT in the printed format without any line of reason does not fulfil the requirement of Section 151 of the Act.

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

> "13. The primary grievance raised in the instant appeal relates to the manner of recording the approval granted by the prescribed authority

under Section 151 of the Act for reopening of assessment proceedings as per Section 148 of the Act.

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*."

17. The decision in **Pioneer Town Planners** (*supra*) case has been followed by this Court in number of other cases including the recent case of **Principal Commissioner of Income Tax, Central Circle-02 vs. M/s. MDLR Hotels Pvt. Ltd.** [ITA 593/2023].

18. As noticed aforesaid, we are of the firm opinion that the PCCIT has failed to satisfactorily record its concurrence. By no stretch of imagination, the mere use of expression "approval" could be considered to be a valid approval as the same does not reflect any independent application of mind. Grant of approval in such manner in this case is flawed in law.

19. Hence, for the reasons stated above, we are of the view that the approval granted by the PCCIT for issuance of order under Section 148A(d) is not valid. Consequently, the order passed under Section 148A(d) and the notice under Section 148 issued pursuant to order under Section 148A(d) are set aside and quashed.

20. Writ Petition is disposed in terms of the aforesaid order.

RAVINDER DUDEJA, J.

YASHWANT VARMA, J.

20 August 2024/*RM*