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

WRIT PETITION NO.1812 OF 2023

Kartik Sureshchandra Gandhi)
Age 48 years, Occupation : Business)
902, I-Wing, Kukreja Palace – II,)
Vallabh Baug Lane, Garodia Nagar,)
Ghatkopar (East), Mumbai – 400 077)
PAN No.AFPPG2041H) ….Petitioner

V/s.

1. Asst. Commissioner of Income Tax)
Circle 4(2)(1), Mumbai,)
Room No.642, 6th Floor, Aayakar Bhavan,)
Maharshi Karve Road, Mumbai – 400 020)

2. Pr. Commissioner of Income Tax – 4,)
Room No.629, 6th Floor, Aayakar Bhavan,)
Maharshi Karve Road, Mumbai – 400 020)

3. Union of India,)
Through the Secretary, Ministry of Finance,)
North Block, New Delhi – 110 001) ….Respondents

Mr. Tanzil Padvekar a/w. Ms. Tejal Kharkar for petitioner.
Mr. Subir Kumar a/w. Ms. Sruti Kalyanikar for respondents.

CORAM : K. R. SHRIRAM AND
FIRDOSH P. POONIWALLA, JJ.
DATED : 1st AUGUST 2023

ORAL JUDGMENT : (PER K.R. SHRIRAM, J.) :

1 Rule. Rule made returnable forthwith. By consent, the petition is taken up for final hearing at the admission stage.

2 Petitioner has approached this Court in our jurisdiction under Article 226 of the Constitution of India challenging reassessment notice dated 12th April 2023 for Assessment Year 2019-2020 issued under Section

148 of the Income Tax Act, 1961 (the Act) and order dated 12th April 2023 passed under Section 148A(d) of the Act.

3 It is petitioner's case that the notice issued under Section 148 of the Act was wholly without jurisdiction as it does not meet the pre-requisite conditions stipulated under the amended scheme of reassessment. It is also petitioner's case that the notice under Section 148A(b) and order under Section 148A(d) of the Act suffered from total non application of mind. So also, the approval granted under Section 151 of the Act by the specified authority reflects non application of mind.

4 Petitioner, an individual earning income from salaries, house properties and other sources, filed his return of income for Assessment Year 2019-2020 on 19th August 2019. The return of income was accompanied by computation of income. Thereafter, petitioner filed a revised income tax return on 8th November 2019.

5 Petitioner received notice dated 27th March 2023 under Section 148A(b) of the Act issued by respondent no.1 calling upon petitioner to show cause as to why notice under Section 148 of the Act should not be issued to petitioner. The notice was accompanied by a two page note stating details of third party information. The notice mentioned that it was based on insight portal of the department in relation to a donation made by petitioner during the relevant Assessment Year 2019-2020 to a charitable

organisation called All India Social Education Charitable Trust. Petitioner was called upon to file a response by 5th April 2023.

6 By a letter dated 5th April 2023, petitioner filed his objections under Section 148A(c) of the Act. Respondent no.1 rejected the objections filed by petitioner and passed the impugned order dated 12th April 2023 under Section 148A(d) of the Act. It is petitioner's case that the impugned order passed under Section 148A(d) of the Act has been passed without application of mind. The quantum of alleged income escaping assessment is Rs.5 lakhs. Petitioner has claimed deduction under Section 80G of the Act where only 50% deduction is allowable. Therefore, the alleged amount of Rs.5 lakhs is factually incorrect because petitioner has only been allowed to claim as deduction an amount of Rs.2,50,000/-. This itself indicates non application of mind.

7 Mr. Padvekar submitted that one of the main grievance of petitioner is that the approving authority has granted approval for issuance of the impugned notice under Section 148 and order under Section 148A(d) of the Act in a mechanical manner. Mr. Padvekar submitted that while granting approval under Section 151 of the Act, it was obligatory on the approving authority to verify the material available on record. The purpose of Section 151 of the Act is to introduce a supervisory check over the work of the Assessing Officer particularly, in the context of reopening of assessment. If an error has crept in while the Assessing Officer exercises his

jurisdiction, the law expects the superior officer to be able to correct that error. In the case at hand, instead of correcting such an error, the approving authority has certified the errors committed as correct without even applying his mind.

8 Mr. Padvekar, relying on a judgment of the Allahabad High Court in ***Vikas Gupta V/s. Union of India***[1], submitted that the approving authority not having digitally signed the approval granted under Section 151 of the Act, the effect thereof would be that no valid sanction has been granted. Mr. Padvekar submitted that even the Miscellaneous – Digital Signature Certificate (DSC) Policy – 2018 mandates that every letter, notice, order to income tax assessees or other addressees within the Department or outside will have to be issued by using digital signature. A valid digital signature gives a recipient reason to believe that the message was created by a known sender (authentication), that the sender cannot deny having sent the message (non-repudiation), and that the message was not altered in transit (integrity). Mr. Padvekar also submitted that under Section 282A of the Act, the Act requires a notice or other document to be issued by any Income Tax Authority, such notice or other document shall be signed and issued in paper form or communicated in electronic form by that authority. Mr. Padvekar submitted that since the sanction granted under Section 151 of the Act did not have any digital signature of the sanctioning authority,

1. (2022) 142 taxmann.com 253 (Allahabad)

the document was not valid. Consequently, the notice issued, relying on this sanction, is *non-est*.

9 Mr. Padvekar further submitted that in the approval sought under Section 151 of the Act, the person submitting for approval in box 8 states that the approval was needed for "order under Section 148A(d) required for issuance of notice under Section 148". In box 9 - Time limit for current proceedings covered under, it says "u/s 149(1)(b) – for more than 3 years but not more than 10 years" and this is the document which has been approved by the Principal Commissioner of Income Tax, Mumbai – 4 (PCIT). Mr. Padvekar submitted that the reopening relates to Assessment Year 2019-2020 and the approval is sought on 12th April 2023, which means it is within three years. Therefore, what would apply is Section 149(1)(a) and not Section 149(1)(b) of the Act. Further, Mr. Padvekar submitted that if Section 149(1)(b) was applicable, the sanctioning authority would have been Principal Chief Commissioner or Principal Director General and where there is no Principal Chief Commissioner or Principal Director General, then Chief Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year. This would mean that the sanctioning authority - Kishan Kumar Vyas, PCIT, could not have granted this sanction.

10 Mr. Padvekar also submitted that if this person had only seen box 8 and box 9 of the form for approval submitted, he would not have

signed the sanction order. This further indicates clear non application of mind by the sanctioning authority and it evidences that the sanctioning authority has mechanically signed the sanction. Mr. Padvekar submitted that on this ground also the sanction granted has to be held as invalid and, therefore, the notice issued, relying on this sanction, has to be quashed.

11 Mr. Subir Kumar made a valiant attempt to justify the action taken by the authority. Mr. Subir Kumar submitted that the present petition is not maintainable as it is premature and petitioner can file a reply to the notice and take all grounds and petitioner has alternative remedies. Moreover, Mr. Subir Kumar submitted that no digital signature was required because the approval granted under Section 151 of the Act was a system generated document and also contained DIN number.

12 We are not at all impressed with the stand taken by respondents. In paragraphs 14 and 16 of the petition, petitioner has specifically raised these grounds. Paragraphs 14 and 16 read as under :

> *14. The Petitioner states that the Approving Authority has granted the approval for issued of impugned Notice under Section 148 and Order under Section 148A(d) of the Act in a mechanical manner. The Petitioner states that while granting approval under Section 151 of the Act it is obligatory on the approving authority to verify the material available on record. The Petitioner states and submits that the purpose of Section 151 of the Act is to introduce a supervisory check over the work of the Assessing Officer, particularly, in the context of reopening of assessment. The law expects the Assessing Officer 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 Assessing Officer, then the law expects the Superior Officer to be able to correct that error. In the Present Case, instead of correcting such errors,*

> *the approving authority concurred with the errors committed by the Assessing Officer without considering the reply filed by Petitioner. Concurrence of the Approving Authority with the Assessing Officer is non-est due to non-application of mind on part of both the Authorities as no speaking approval with reasons is given by approving authority The Petitioner states and submits that the since impugned sanction under Section 151 was granted without application of mind to reasons recorded for reopening, impugned reopening Notice was bad in law.*
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> *xxxxxxxxxxxxxxxxxxx*
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> *16. On perusal of the approval under section 151 of the Act it was observed it has been mentioned in the Approval that at column 9 that the time limit for current proceedings is under section 149(1)(b) - more than 3 years but not more than 10 years, whereas the Notice under section 148A(b) has been issued on 27/03/2023 which is under a period of 3 years from the end of the A.Y. 2019-20. The Petitioner further states that if the reopening would be happening under section 149(1)(b) of the Act then the Respondent No.2 would not be the appropriate authority to grant such approval as the approval should have been taken from Pr. CCIT. Thus, there is total non-application of mind Respondent No.1 while making granting approval under section 151 of the Act.*

13 In the affidavit in reply, there is no denial. We would say even in the affidavit in reply, there is non application of mind in as much as the affiant admits that while issuing notice for reopening of assessment proceedings under Section 148 of the Act, the Principal Chief Commissioner or Principal Director General and where there is no Principal Chief Commissioner or Principal Director General, then Chief Commissioner or Director General has to grant the sanction if more than three years have elapsed from the end of the relevant assessment year. If that is so, there is no explanation as to how the PCIT - Kishan Kumar Vyas granted this sanction when in box 9 of the approval the time limit for current proceedings covered under is stated to be under Section 149(1)(b) – for

more than 3 years but not more than 10 years. In the affidavit in reply, it is stated that the reopening is within three years and the specified authority is PCIT under Section 151 of the Act. In that case, the applicable provision would be Section 149(1)(a) and not Section 149(1)(b) of the Act. Therefore, it is rather clear that neither the issuing authority, i.e., respondent no.1, nor the sanctioning authority, i.e., respondent no.2, have applied their mind but have simply issued the notice mechanically.

14 Having considered the approval under Section 151 of the Act, we are satisfied that there is no valid sanction. There is no evidence that PCIT has even granted any valid sanction. If respondents say there was a sanction by respondent no.2, then it is an obvious case of utter non application of mind because he would otherwise have not granted sanction if he had only read and applied his mind to what is stated in box 9, i.e., the time limit for current proceedings covered under is stated to be under Section 149(1)(b), or he would have sent it back to respondent no.1 refusing to grant approval. It also goes to say that even respondent no.1, who has sought approval, has not applied his mind. We are of the opinion that if only respondent no.2 had read the report carefully, he would have never come to the conclusion that there is any material before him to treat it as a fit case to issue notice under Section 148 of the Act or pass order under Section 148A(d) of the Act. The safeguards provided in Sections 148 and 151 were lightly treated by respondent nos.1 and respondent no.2.

Both of them appear to have taken the duty imposed on them under these provisions as of little importance.

On this ground alone, the order passed under Section 148A(d) and notice issued under Section 148 of the Act have to be quashed and set aside.

In view thereof, we do not wish to delve into the other issue of want of digital signature raised by petitioner on the sanction order issued under Section 151 of the Act. That can be considered in an appropriate case.

15 In the circumstances, we hereby quash and set aside order dated 12th April 2023 passed under Section 148A(d) of the Act and notice dated 12th April 2023 issued under Section 148 of the Act.

16 Petition disposed. No order as to costs.

(FIRDOSH P. POONIWALLA, J.) **(K. R. SHRIRAM, J.)**

Gauri Gaekwad