IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 4888 OF 2022

Siemens Financial Services Pvt Ltd.)
Plot no.2, Sector No.2, Kharghar S. O.)
Kharghar, Raigarh, Navi Mumbai 410 201) ...Petitioner

Vs.

1. Deputy Commissioner of Income Tax)
Circle-8(2)(1), Mumbai, Room No.624,)
6th floor, Aayakar Bhavan, Maharshi Karve)
Road, Mumbai 400 020)

2. The Principal Chief Commissioner of)
Income Tax Mumbai, Room No.624,)
6th floor, Aayakar Bhavan, Maharshi Karve)
Road, Mumbai 400 020)

3. The Principal Chief Commissioner of)
Income Tax Mumbai-8, Room No.611,)
6th floor, Aayakar Bhavan, Maharshi Karve)
Road, Mumbai 400 020)

4. Union of India)
Through Joint Secretary & Legal Adviser,)
Branch Secretariat, Department of Legal)
Affairs, Ministry of Law and Justice,)
2nd Floor, Aayakar Bhavan, M. K.Road,)
New Marine Lines, Mumbai 400 020) ..Respondents

Mr. P. J. Pardiwalla, Senior Advocate a/w Mr. Jeet Kamdar i/b Mr. Atul K Jasani for Petitioner.
Mr. Suresh Kumar a/w Ms Mohinee Chougule for Respondents.

CORAM : K.R. SHRIRAM &
Dr. N. K. GOKHALE, JJ
DATED : 25th AUGUST 2023

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

Meera Jadhav

1 Rule. Rule made returnable forthwith as pleadings are completed.

Petitioner is registered with the Reserve Bank of India (RBI) as Non-Banking Finance Company and is classified as an Asset Finance Company. On 28th November 2016, petitioner filed its return of income for A.Y.-2016-2017 declaring a total income of Rs.44,92,46,370/-. Later petitioner filed revised return of income on 28th March 2018 declaring a total income of Rs.50,67,32,580/-.

2 The return of income was selected for scrutiny and a notice dated 5th September 2018 under Section 143(2) of the Income Tax Act 1961 (the Act) was issued. This was followed by notice dated 5th December 2018 under Section 142(1) of the Act. Petitioner responded by its letter dated 6th December 2018 and submitted the transaction wise summary on expenditure on software consumables. Respondent no.1 passed an assessment order dated 23rd December 2018 under Section 143(3) of the Act without making any adjustments to the total income as reported by petitioner in its revised return of income.

3 Almost three years later, petitioner received notice dated 25th June 2021 under Section 148 of the Act, stating that there was reason to believe, petitioner's income chargeable to tax for A.Y. 2016-2017 has escaped assessment within the meaning of Section 147 of the Act. The impugned notice mentioned that necessary satisfaction of Range 8(2), Mumbai has been obtained. Petitioner was also provided with the reasons recorded for reopening the assessment in response to the request made by petitioner.

4 Petitioner by its letter dated 22nd July 2021 replied to the notice issued under Section 148 of the Act and submitted that the notice has been issued as per the provisions of Sections 147 to 151 of the Act as they stood prior to their substitution vide Finance Act, 2021 and respondent no.1 should assume jurisdiction post 1st April 2021 in terms of the amended provisions. Petitioner pointed out that the notice dated 25th June 2021 is bad in law and requested respondent no.1 to drop the assessment proceedings.

5 Petitioner was served with the notice dated 26th November 2021 under Section 142(1) of the Act. Petitioner responded vide its letter dated 20th December 2021.

Thereafter, respondent no.1 issued the letter / show cause notice dated 31st May 2022 under Section 148A(b) of the Act, wherein respondent no.1 had referred to the notice issued on 25th June 2021 under Section 148 of the Act. In the said notice dated 31st May 2022, respondent no.1 referred to various writ petitions that had been filed in Bombay High Court as well as the other courts challenging the validity of the notices issued under Section 148 of the Act and also referred to the order of the Apex Court in ***Union of India Vs. Ashish Agarwal*** [1]and stated that the notice under Section 148 of the Act shall be deemed to be issued under Section 148A of the Act as substituted by the Finance Act 2021 and shall be treated as show cause notice in terms of Section 148A(b) of the Act. Respondent no.1, therefore,

1. (2022) 138 taxmann.com 64(SC)

treated the notice issued under Section 148 of the Act as show cause notice in terms of Section 148A(b) of the Act. Respondent no.1 also relied on information and material annexed to the show cause notice suggesting that the income chargeable to tax has escaped assessment within the meaning of Section 147 of the Act and also relied on the approval of the competent authority annexed to the impugned show cause notice.

6 The annexure to the impugned show cause notice mentioned the following:

> *a) On perusal of the records, it is noticed that the Petitioner has debited an amount of Rs. 6,41,87,931/- on account of software consumables as other expenses to the profit and loss account and as per the information gathered Respondent No. 1 alleged that the said expense is a capital expenditure which is not allowable as per section 37 of the Act and attracts depreciation at 60%. Thus, the remaining 40% of the software consumable amounting to Rs. 2,56,75,172/- should be disallowed and added back to the business income of petitioner.*
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> *b) Respondent no.1 alleged that it resulted in underassessment of income of Rs. 2,56,75,172/-. The reasons recorded relied on the finding of respondent no.1 to form the basis for reason to believe that income chargeable to tax of Rs. 2,56,75,172/- has escaped assessment within the meaning of section 147 of the Act.*
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> *c) The reasons recorded alleged that the requisite material facts were embedded in such a manner that material evidence could not be discovered by respondent no.1 and the issues were never examined by respondent no.1 during the course of regular assessment. The reasons alleged that petitioner has failed to disclose fully and truly all material facts necessary for its assessment and therefore, it is a fit case for reopening the assessment within the meaning of section 147 of the Act.*
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> *d) Respondent no.1 alleged that CBDT vide Notification No. 20/2021 has revised the due date relating to issuing the notice under section 148 of the Act as per the time limit specified in section 149 or sanction under section 151 of the Act if it expires on March 31, 2021 to April 30, 2021.*

7 Petitioner responded vide its communications dated 9th June 2022 and 7th July 2022. Various grounds were taken in its response. Respondent no.1, by an order dated 31st July 2022 passed under Section 148A(d) of the Act, rejected the submissions of petitioner and in paragraph 9 of the impugned order stated as under:

> *"9. In response to notice issued u/s 148A(b) of the I.T. Act dated 01.06.2022, the assessee has filed reply vide letter dated 05.07.2022. The reply of the assessee is considered carefully, however, the same is not acceptable. The assessee has not submitted any documentary evidence in support of its claim. Overall, the submission made by the assessee is not satisfactory."*

8 Respondent no.1 issued an intimation letter for notice under Section 148 of the Act on 31st July 2022 and thereafter issued the notice dated 31st July 2022 under Section 148 of the Act stating that respondent no.1 has information suggesting that income chargeable to tax has escaped assessment within the meaning of Section 148 of the Act. None of the boxes in the said notice have been ticked and respondent no.1 has not provided what information is available with him for issuing the impugned notice. At this stage, petitioner filed this petition impugning the show cause notice dated 31st May 2022, the order dated 31st July 2022 passed under Section 148A(d) of the Act and the notice dated 31st July 2022 under Section 148 of the Act.

9 Mr. Pardiwalla appearing for petitioner submitted that the impugned notice dated 31st May 2022, order dated 31st July 2022 and intimation letter dated 31st July 2022 are: a) beyond limitation, b) signed by the wrong specified authority, c) lack "information" as required under Section 148, d)

results from change of opinion and e) is in violation of Section 151A of the Act.

10 Mr. Pardiwalla on the suggestions made by the court confined his submissions primarily to “signed by the wrong specified authority” and “change of opinion”. The court felt, if petitioner succeeds on these two points and primarily on the point of wrong ‘specified authority’, the court need not go into the other grounds raised.

11 On the wrong ‘specified authority’, Mr. Pardiwalla submitted as under:

a) The provisions of Section 149(1)(b) as introduced by the Finance Act, 2021 provides that a notice under section 148 of the Act can be issued beyond a period of three years and upto a period of ten years from the end of the relevant assessment year only if the Assessing Officer has in his possession books of account or other documents or evidence which reveal that income chargeable to tax represented in the form of an asset which has escaped assessment amounts to or is more than Rs. 50 lakhs.

b) There is no income chargeable to tax which is represented in the form of an “asset” which has escaped assessment as expenditure on computer software consumables cannot be the asset as per Section 149 of the Act. Hence, the extended period of time limits specified in Section 149 (1)(b) cannot apply to petitioner and hence notice issued on 31st July 2022 is bad-in-law.

c) 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.

d) For A.Y.-2016-2017, three years elapsed on 31st March 2020 and hence the provisions of Section 151(i) and 151(ii) of the Act would have to be fulfilled, which have not been complied with.

e) Respondent no.1 has mentioned in the impugned order dated 31st July 2022 that prior approval has been taken from respondent no.3 under Section 151 (i) of the Act. Such sanction would be bad in law as respondent no.1 should have complied with Section 151(ii) and not Section 151(i) of the Act. Hence, respondent no.3 cannot be a specified authority as per Section 151 of the Act.

f) Respondent no.1 cannot rely on the provisions of the Taxation and other laws (Relaxation and Amendment of certain provisions) Act, 2020 (TOLA) and the notification issued thereunder as Section 151 of the Act has been amended by Finance Act 2021 and the provisions of amended Section would have to be complied with by respondent no.1, w.e.f. 1st April 2021. Hence, as the sanction of the specified authority has not been obtained, the impugned order and impugned notice both dated 31st July 2022 are bad-in-law and should be quashed and set aside.

g) The approval given by respondent no.3 is without any application of mind and is mechanical approval as respondent no.3, if properly

instructed, could never have granted such approval on the facts and circumstances of the case of petitioner.

h) In any event, deduction of expenditure on computer software as revenue expenditure was correct and query had been raised during the assessment proceedings by the Assessing Officer. Petitioner has provided all the details in addition to the documents which were filed alongwith return of income and the Assessing Officer has accepted the explanation given by petitioner. Relying on the judgment of ***Aroni Commercials Ltd. Vs. Deputy Commissioner of Income Tax-2(1)***[2], Mr. Pardiwalla submitted that once a query is raised during the assessment proceedings and the assessee has replied to it, it follows that the query raised was a subject of consideration of the Assessing Officer while completing the assessment. It is not necessary that an assessment order should contain reference and/or discussion to disclose his satisfaction in respect of the query raised.

i) The change in the language of Section 147 of the Act has not made any difference because if we accept what revenue says that will still give arbitrary powers to the Assessing Officer to reopen the assessments on the basis of mere change of opinion which cannot be per se reason to reopen. There is a conceptual difference between power to review and power to re-assess. If we accept revenue's submissions then in the garb of re-opening the assessment review would take place. The concept of change of opinion is an in-built test to check abuse of power by the Assessing Officer, as held in the

2. (2014) 44 taxmann.com 304(Bombay)

judgment of the Apex Court in ***CIT Vs. Kelvinator of India Ltd.***[3]

j) Even the recent judgment of Learned Single Judge of Madras High Court in ***Dr. Mathew Cherian Vs. Assistant Commissioner of Income Tax***[4], the court has held that whether under old or new regime of reassessment, it is settled position that the issues decided categorically by judicial precedent should not be revisited in the guise of reassessment.

12 Mr. Suresh Kumar for revenue, at the outset, submitted that sanction of the authority has been taken in view of the instructions given by the Central Board of Direct Taxes on 11th May 2022. Mr. Suresh Kumar submitted that the instructions reads as under :

> *"Hon'ble Supreme Court has upheld the views of High Courts that the benefit of new law shall be made available even in respect of proceedings relating to past assessment years Decision of Hon'ble Supreme Court read with the time extension provided by TOLA will allow extended reassessment notices to travel back in time to their original date when such notices were to be issued and the new section 149 of the Act is to be applied at that point.*
>
> *Based on above, the extended reassessment notices are to be dealt with as under:*
>
> *(i) AY 2013-14, AY 2014-15 and AY 2015-16: Fresh notice under section 148 of the Act can be issued in these cases, with the approval of the specified authority, only if the case falls under clause (b) of sub-section (1) of section 149 as amended by the Finance Act, 2021 and reproduced in paragraph 6.1 above. Specified authority under section 151 of the new law in this case shall be the authority prescribed under clause (ii) of that section.*
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> *(ii) AY 16-17. AY 17-18: Fresh notice under section 148 can be issued in these cases. with the approval of the specified authority, under clause (a) of sub-section (1) of new section 149 of the Act, since they are within the period of three years from the end of the relevant assessment year. Specified authority under section 151 of the new law in this case shall be the authority prescribed under clause (i) of that section."*

3. 320 ITR 561 (SC)
4. (2023) 151 taxmann.com 154 (Madras)

13 Mr. Suresh Kumar also submitted as under:

a) That in the instance case, the period that has elapsed is three years or less than three years because the assessment year is of AY-2016-2017, as provided under Section 3 of TOLA and extended by Notification dated 31st March 2020 and subsequently until 31st March 2021, the three years would have expired on 31st March 2020 and has got extended till 30th June 2021. The provisions of TOLA read with judgment of the Apex Court in *Ashish Agarwal* (Supra), the sanction has been rightly granted by the Principal Commissioner and there is no violation of Section 151 of the Act as alleged or at all.

b) The contention of petitioner that TOLA only seeks to extend the period of limitation and does not affect the scope of section 151 is misplaced because Section 151 is time dependent and that the notice as issued being within three years, it is only Section 151(i) which would apply.

c) If petitioner's submissions are accepted, it would apply to a hybrid view in the sense that petitioner seeks to partly apply unamended law and partly the amended law. As held by the Apex Court in *Ashish Agarwal* (Supra), the notice issued by the Department after 1st April, 2021 is deemed to be a Notice under the amended Section 148A(b). This would mean that on 31st March 2020 the time period of 3 years would have expired and hence, TOLA would be and is squarely applicable.

d) The judgments prior to TOLA are not applicable because the amended provisions were not considered at that stage.

e) Under TOLA, time for issuing notice stood extended and hence the notice issued under Section 149(1)(b) was within time. The same principle would apply to a notice issued under Section 148A(d) or notice issued under Section 148 alongwith order passed under Section 148A(d).

The main thrust,however, was on instructions dated 11th May 2022.

14 On the change of opinion, Mr. Suresh Kumar submitted:-

(a) In view of the change in the language of amended Section 147 of the Act, it would not be applicable.

(b) In any event, the material furnished expressly records that the income of the year under consideration has escaped assessment because of failure on the part of assessee to disclose fully and truly all material facts necessary for his assessment for the assessment year under consideration. The Assessing officer has noted that assessee has not fully and truly disclosed the material facts.

The Assessing Officer has also recorded that even though assessee has produced books of account, audited profit and loss account and balance sheet, requisite material facts as noted in the reasons for reopening were embedded in such manner that material evidence could not be discovered by the Assessing Officer with due diligence and accordingly attracted the provisions of explanation of sub Section (1) of Section 147 of the Act.

c) Therefore, it is not a case of change of opinion but the case where assessee has failed to make true and full disclosure.

15 In rejoinder, Mr. Pardiwalla submitted that in the instructions dated

11th May 2022, it is expressly mentioned that it applies only to the notices that were issued between 1st April 2021 and ending on 30th June 2021 and in any event, even assuming if what Mr. Suresh Kumar argues that it would travel back in time to their original date is accepted, will not be applicable to the case at hand because:

a) The instructions itself restricted it to notice issued during the period between 1st April 2021 and 30th June 2021, where paragraph no.1 reads as under:

> *1. Hon'ble Supreme Court, vide its judgment dated 04.05.2022 (2022 SCC Online SC 543), in the case of Union of India v. Ashish Agarwal has adjudicated on the validity of the issue of reassessment notices issued by the Assessing Officers during the period beginning on 1st April, 2021 and ending with 30th June 2021, within the time extended by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act. 2020 [hereinafter referred to as "TOLA"] and various notifications issued thereunder (these reassessment notices hereinafter referred to as "extended reassessment notices").*

b) In any case in ***Tata Communications Transformation Services Ltd. Vs. Assistant Commissioner of Income Tax***[5] this court held that only the time for issuance of notice was extended and the law has not been amended.

The court has also expressly observed that TOLA is not applicable to A.Y.-2015-2016 or any subsequent years and, therefore, reliance on TOLA would be of no assistance. In *Ashish Agarwal* (Supra), the Apex Court did not interfere with this view expressed by the Bombay High Court.

c) This court in ***J. M. Financial & Investment Consultancy Services Pvt Ltd. Vs. Assistant Commissioner of Income Tax, Circle 3(2)(1) & ors***[6] has held

5. (2022) 443 ITR 49 (Bombay)
6. (Order passed in Writ Petition No. 1050 of 2022 dated 4-4-2022)

that for A.Y. 2015-2016, the six years limitation was expiring on 31st March 2022, TOLA will not be applicable and 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.

Mr. Pardiwalla emphasised on paragraphs 6 and 7 of the order in *J.M.Financial* (Supra) which read as under:

> *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 31 st March 2020. In the case at hand, the assessment year is 2015-2016 and, therefore, the six years limitation will expire only on 31 st 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.*

d) This court in case of ***Sidhmicro Equities (P) Ltd. Vs. Deputy Commissioner of Income Tax***[7] had followed its own judgment in the case of *J. M. Financial* (supra) and held that the sanction that was given, was invalid. The Apex Court in ***Deputy Commissioner of Income Tax Vs. Sidhmicro Equities (P) Ltd.***[8] upheld the view expressed by the Bombay High Court.

7. (2023) 150 taxmann.com 460 (Bombay)
8. (2023) 150 taxmann.com 461 (SC)

OUR FINDINGS / CONCLUSIONS:-

16 Before we proceed further, it would be useful to reproduce Sections 147, 148, 148A, 149 and 151 of the Act as it was then applicable :

> *"147. **Income escaping assessment**—If any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year, the Assessing Officer may, subject to the provisions of sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for such assessment year (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year).*
>
> *Explanation.—For the purposes of assessment or reassessment or recomputation under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, irrespective of the fact that the provisions of section 148A have not been complied with.*
>
> *148. **Issue of notice where income has escaped assessment.**—Before making the assessment, reassessment or recomputation under section147, and subject to the provisions ofsection148A, the Assessing Officer shall serve on the assessee a notice, along with a copy of the order passed, if required, under clause (d) ofsection148A, requiring him to furnish within a period of three months from the end of the month in which such notice is issued, or such further period as may be allowed by the Assessing Officer on the basis of an application made in this regard by the assessee a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section139:*
>
> *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:*
>
> *Provided further that no such approval shall be required where the Assessing Officer, with the prior approval of the specified authority, has passed an order under clause (d) ofsection148A to the effect that it is a fit case to issue a notice under this section:*
>
> *Provided also that any return of income, required to be furnished by*

an assessee under this section and furnished beyond the period allowed shall not be deemed to be a return under section139.

Explanation 1.—For the purposes of thissectionandsection148A, the information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means,—

(i) any information in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time;

(ii) any audit objection to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act; or

(iii) any information received under an agreement referred to insection90 orsection90A of the Act; or

(iv) any information made available to the Assessing Officer under the scheme notified under section135A; or

(v) any information which requires action in consequence of the order of a Tribunal or a Court.

Explanation 2.—For the purposes of this section, where,—

(i) a search is initiated under section132 or books of account, other documents or any assets are requisitioned under section132A, on or after the 1st day of April, 2021, in the case of the assessee; or

(ii) a survey is conducted under section133A, other than under sub-section(2A) of that section, on or after the 1st day of April, 2021, in the case of the assessee; or

(iii) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner, that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned under section132 or under section132A in case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or

(iv) the Assessing Officer is satisfied, with the prior approval of Principal Commissioner or Commissioner, that any books of account or documents, seized or requisitioned under section132 orsection132A in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee, the Assessing Officer shall be deemed to have information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee where the search is initiated or books of account, other documents or any assets are requisitioned or survey is conducted in the case of the assessee or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person.

Explanation 3.—For the purposes of this section, specified authority means the specified authority referred to insection151.

148A. ***Conducting inquiry, providing opportunity before issue of notice under section148.****—The Assessing Officer shall, before issuing any notice under section148,—*

(a) conduct any enquiry, if required, with the prior approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;

(b) provide an opportunity of being heard to the assessee, with the prior approval of specified authority, by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days and but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under section148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a);

(c) consider the reply of assessee furnished, if any, in response to the show-cause notice referred to in clause (b);

(d) decide, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under section148, by passing an order, with the prior approval of specified authority, within one month from the end of the month in which the reply referred to in clause (c) is received by him, or where no such reply is furnished, within one month from the end of the month in which time or extended time allowed to furnish a reply as per clause (b) expires:
Provided that the provisions of this section shall not apply in a case where,—

(a) a search is initiated under section132 or books of account, other documents or any assets are requisitioned under section132A in the case of the assessee on or after the 1st day of April, 2021; or

(b) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any money, bullion, jewellery or other valuable article or thing, seized in a search under section132 or requisitioned under section132A, in the case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or

(c) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any books of account or documents, seized in a search under section132 or requisitioned under section132A, in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee.

Explanation.—For the purposes of this section, specified authority means the specified authority referred to insection151.

*149. **Time limit for notice**.—(1) No notice under section148 shall be issued for the relevant assessment year,—*

(a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);

(b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of—

(i) an asset;
(ii) expenditure in respect of a transaction or in relation to an event or occasion; or
(iii) an entry or entries in the books of account, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more:

Provided that no notice under section148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, a notice under section148 orsection153A orsection153C could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-section(1) of thissectionorsection153A orsection153C, as the case may be, as they stood immediately before the commencement of the Finance Act, 2021:

Provided further that the provisions of this sub-section shall not apply in a case, where a notice under section153A, orsection153C read withsection153A, is required to be issued in relation to a search initiated under section132 or books of account, other documents or any assets requisitioned under section132A, on or before the 31st day of March, 2021:

Provided also that for cases referred to in clauses (i), (iii) and (iv) of Explanation 2 to section148, where,— (a) a search is initiated under section132; or
(b) a search under section132 for which the last of authorisations is executed; or
(c) requisition is made under section132A,

after the 15th day of March of any financial year and the period for issue of notice under section148 expires on the 31st day of March of such financial year, a period of fifteen days shall be excluded for the purpose of computing the period of limitation as per this section and the notice issued under section148 in such case shall be deemed to have been issued on the 31st day of March of such financial year:

Provided also that where the information as referred to in Explanation 1 to section148 emanates from a statement recorded or documents

impounded under section131 or section133A, as the case may be, on or before the 31st day of March of a financial year, in consequence of, —

(a) a search under section132 which is initiated; or
(b) a search under section132 for which the last of authorisations is executed; or
(c) a requisition made under section132A,

after the 15th day of March of such financial year, a period of fifteen days shall be excluded for the purpose of computing the period of limitation as per this section and the notice issued under clause (b) ofsection148A in such case shall be deemed to have been issued on the 31st day of March of such financial year:

Provided also that for the purposes of computing the period of limitation as per this section, the time or extended time allowed to the assessee, as per show-cause notice issued under clause (b) ofsection148A or the period during which the proceeding under section148A is stayed by an order or injunction of any court, shall be excluded:

Provided also that where immediately after the exclusion of the period referred to in the immediately preceding proviso, the period of limitation available to the Assessing Officer for passing an order under clause (d) ofsection148A does not exceed seven days, such remaining period shall be extended to seven days and the period of limitation under this sub-section shall be deemed to be extended accordingly.

Explanation.—For the purposes of clause (b) of this sub-section, "asset" shall include immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account.

(1A) Notwithstanding anything contained in sub-section(1), where the income chargeable to tax represented in the form of an asset or expenditure in relation to an event or occasion of the value referred to in clause (b) of sub-section(1), has escaped the assessment and the investment in such asset or expenditure in relation to such event or occasion has been made or incurred, in more than one previous years relevant to the assessment years within the period referred to in clause (b) of sub-section(1), a notice under section148 shall be issued for every such assessment year for assessment, reassessment or recomputation, as the case may be.

(2) The provisions of sub-section(1) as to the issue of notice shall be subject to the provisions of section151 .

*151. **Sanction for issue of notice.**—Specified authority for the purposes ofsection148 andsection148A 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 Chief Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year :

Provided that the period of three years for the purposes of clause (i) shall be computed after taking into account the period of limitation as excluded by the third or fourth or fifth provisos or extended by the sixth proviso to sub-section(1) ofsection149."

SPECIFIED AUTHORITY :-

17 Section 148 provides that before making the assessment, reassessment or recomputation under Section 147 and subject to provisions of Section 148A, the Assessing Officer shall serve on the assessee a notice alongwith a copy of the order passed, if required under clause (d) of Section 148A. It also says no notice under Section 148 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. No such approval shall be required where the Assessing Officer, with the prior of the approval of the specified authority, has passed an order under clause (d) of Section 148A to the effect that it is a fit case to issue a notice under Section 148 of the Act.

18 Section 148A provides that the Assessing Officer shall, before issuing any notice under Section 148 …….. (d)- decide, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under Section 148, by passing an order, with the prior approval of specified authority, within one month from the end of

the month ……”. The explanation below Section 148A says - for the purposes of this Section, specified authority means the specified authority referred to in Section 151.

19 Under Section 149(1)(a), no notice under Section 148 shall be issued for the relevant assessment year if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b). Clause (b) of Section 149(1), provides if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargable to tax, represented in the form of an asset, (as relevant to this case) which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year. Explanation below 4th proviso says that for the purposes of clause (b) of this sub section, “asset” shall include immovable property being land or building or both, shares and securities, loans and advances, deposits in bank account.

20 Under Section 151 “specified authority” for the purposes of Section 148 and Section 148A shall be, if three years or less than three years have elapsed from the end of the relevant assessment year, Principal Commissioner or Principal Director or Commissioner or Director. If more than three years have elapsed from the end of the relevant assessment year, then Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General.

21 Admittedly, in this case, the approval/sanction for order under Section 148A(d) of the Act has been granted by the Principal Commissioner of Income Tax-8. The entire controversy is, therefore, (a) whether the Principal Commissioner was the specified authority, who could have granted the approval / sanction ?, (b) if not, the effect thereof ?

22 In our view, the approval is not valid. Hence, the impugned order passed under Section 148A(d) read with notice issued under Section 148 of the Act dated 31st July 2022 is not valid and has to be quashed and set aside.

23 The first proviso to section 148 of the Act refers to the approval of the specified authority being obtained before a notice under section 148 of the Act can be issued. Explanation 3 to section 148 of the Act specifies that the meaning of the term 'specified authority' as provided for in section 151 of the Act is to apply for the purpose of section 148.

Section 148A(d) of the Act also requires the Assessing Officer to pass an order after considering the reply of the assessee as to whether or not it is a fit case to issue a notice under section 148 of the Act and such an order under section 148A(d) of the Act has to be passed with the prior approval of the specified authority. The Explanation to section 148A of the Act also incorporates the meaning of 'specified authority' as provided for in section 151 of the Act.

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 AY 2016-17, and as the impugned order and impugned notice are issued beyond the period of three years which elapsed on 31st March, 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 PCIT-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 obtained is of the 'Principal Commissioner of Income-tax – 8' and, hence, such an approval would be bad in law.

25 TOLA, enacted on 29th September 2020 and came into force on 31st March 2020. 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 20th March 2020 to 31st December 2020, the time limit for completion of such action stood extended to 31st March 2021. Thus, TOLA 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 TOLA and the notifications issued thereunder as section 151 has been amended by Finance Act, 2021 and the provisions of the amended section would have to be complied with by the Assessing Officer, w.e.f., 1st April 2021. Hence, the Assessing Officer cannot seek to take the shelter of TOLA as a subordinate legislation cannot override any statute enacted by the Parliament. Further, the notification extending the dates from 31st March 2021 till 30th June 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.

27 This Court, in a series of judgments, has held that TOLA cannot apply in respect of reassessment proceedings for AY 2015-16 and subsequent years:-

(a) *Tata Communications Transformation Services Ltd* (supra), paragraph 49(c) reads as under:

> *"49. Some more reasons why the reopening notices must go are:*
>
> *(a) ……..*

(b) ……..

(c) In any case, Relaxation Act is not applicable for Assessment Years 2015-2016 or any subsequent year and, hence, the question of applicability of the Notification Nos.20 and 38 of 2021 does not arise. The time limit to issue notice under section 148 of the Act for the Assessment Years 2015- 2016 onwards was not expiring within the period for which section 3(1) of Relaxation Act was applicable and, hence, Relaxation Act could never apply for these assessment years. As a consequence, there can be no question of extending the period of limitation for such assessment years."

(b) Judgment in *Tata Communications* (Supra) has been affirmed by the Supreme Court in *Ashish Agarwal* (supra) in paragraph 7, where, the Supreme Court states that it is in complete agreement with the view of the High Courts. It reads as under:

"7. Thus, the new provisions substituted by the Finance Act, 2021 being remedial and benevolent in nature and substituted with a specific aim and object to protect the rights and interest of the assessee as well as and the same being in public interest, the respective High Courts have rightly held that the benefit of new provisions shall be made available even in respect of the proceedings relating to past assessment years, provided section 148 notice has been issued on or after 1st April, 2021. We are in complete agreement with the view taken by the various High Courts in holding so."

(c) *J.M. Financial* (supra) – paragraphs 5 to 7 read as under:

"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 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."

(d) ***MA Multi-Infra Development Pvt Ltd v. ACIT***[9] – paragraph 7 reads as under:

"7. Be that as it may, in our view, the present case is squarely covered by the view taken by this Court in J.M. Financial & Investment Consultancy Services (P) Ltd. (Supra). We accordingly hold that the approval for issuance of notice u/s. 148 ought not have been obtained from the Additional Commissioner of Income Tax but from the authority specifcally mentioned u/s. 151(ii) of the Act."

(e) ***DCW Limited v. ACIT***[10] – paragraphs 5,6, 7 & 8 read as under:

"5. In the aforementioned case, which also pertained to assessment year 2015-16 and in which approval was granted on 26 th March 2021 by the 'Additional Commissioner of Income Tax', was held to be bad inasmuch as it was held that having been issued beyond the period of four years from the relevant assessment year, the approval ought to have been accorded by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner of Income Tax and not by the Additional Commissioner of Income Tax. The Court also held that the provisions of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 ('Relaxation Act') may have extended the time to issue a notice under section 148 of the Act but did not have the effect of amending the provisions of section1 151 of the Act. This Court held :

"5 Respondents have relied upon a letter dated 18th March 2021 issued by one Income Tax Offcer, 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

9. (WP No. 1650 of 2022 dated 9-1-2023)
10. [WP No. (L) 6546 of 2022 dated 4-7-2022]

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 clarifes that the Income Tax Offcer 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 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 151of the Act."

6. In the present case, counsel for the respondents reiterated the stand of the revenue as was taken before the Court in the aforementioned case. However, we do not fnd any reason to take a view different from the one which has already been taken by this Court in the aforementioned judgment.

7. Without going into any other issues, since the issue of grant of approval by an authority, as prescribed under section 151 of the Act goes to the root of the matter, we wish to deal only with the said issue and hold that even in the present case, the approval ought to have been granted by either the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner and not by the Additional Commissioner of Income tax.

8. Since the notice was being issued beyond the four years period prescribed under the un-amended provisions of section 151(1) of the Act, it ought to have the satisfaction accorded by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner of Income Tax which is not so in the present case."

(f) ***Soumya Girdhari Agarwal v. ITO***[11] – paragraph 4 read as under:

"4. On a reading of Section 151 it is clear that a notice under Section 148 of the Act, 1961 cannot be issued after the expiry of 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 was satisfed, on the reasons recorded by the A.O., that it was a ft case for the issue of such a notice.

In the present case, it is clear that assessment year under consideration was 2015-16 and, therefore, the notice impugned dated 29th March, 2021 was admittedly beyond the four years period for

11. (WP No. 3354 of 2022 dated 25-7-2022)

which the approval ought to have been granted by any one of the aforementioned four authorities and not by the Joint Commissioner. It is clear that, the A.O. fell in error in holding that the case at hand fell within the four years period, from the end of the assessment year under consideration, which on the face of it appears to be erroneous."

(g) ***Voltas Limited v. ACIT***[12] – paragraphs 6, 19 to 24 read as under:

"(6) In the petition, petitioner has also raised an objection that the sanction obtained under section 151 of the Act was not a valid sanction since the proposed reopening is more than 4 years after expiry of relevant assessment year. As provided under sub-section (1) of section 151 of the Act only a Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner could grant the sanction. Since in this case, admittedly, sanction has been granted by an Additional Commissioner of Income Tax, it is not a valid sanction and therefore, notice issued based on an invalid sanction is also not valid and has to be quashed.

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(19) It is also petitioner's case that the approval obtained for issuing notice under section 148 of the Act is not in accordance with the mandate of Section 151 as the said approval is of Additional Commissioner of Income Tax instead of Principal Commissioner of Income Tax. It is petitioner's case that the reasons put up for approval on 26.03.2021, which is after the expiry of four years from the end of the relevant assessment year 2015-2016 and approval was granted on 30.03.2021. Therefore, Mr. Joshi submitted that as per Section 151 of the Act, as four years have elapsed at the time of reopening, the sanction is required to be obtained from the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner of Income Tax and since the sanction has not been obtained from any of these four Commissioners of Income Tax, the notice issued is bad in law.

(20) Sub-Section 1 of Section 151 of the Act provides that 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 ft case for the issue of such notice.

(21) Admittedly in this case, four years from the end of the relevant assessment year A.Y. 2015-16 has expired before the issuance of notice and the approval also has been obtained from the Additional Commissioner of Income Tax and not Principal Commissioner of Income Tax. In the affidavit-in-reply fled through Yashraj Nain, affirmed on 25.03.2022, these facts have not been disputed but according to respondents, the approval granted by the Additional

12. (WP No. 1180 of 2022 dated 5-4-2022)

Commissioner of Income Tax was a valid approval.

(22) Respondents have relied upon Taxation and other Laws (Relaxation of Certain Provisions) Act, 2020 (Relaxation Act), limitation to submit, inter alia, under provisions of Section 151(1) and Section 151(2), which were originally expiring on 31 st March 2020 stand extended to 31 st March 2021. According to the Income Tax Officer, 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.

(23) Even for a moment, we agree with the view expressed by respondents, still it applies to only cases where the limitation was expiring on 31 st March 2020. In the case at hand, the assessment year is 2015-16 and, therefore, the six years limitation will expire only on 31 st March 2022. Certainly, therefore, the Relaxation Act provisions will 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.

(24) 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 31.03.2021 issued under Section 148 of the Act, which is impugned in this petition."

Similarly in ***Johnson and Johnson v. DCIT***[13], ***Equitable Financial Consultancy Services Pvt Ltd v. ITO***[14] and ***Asian Paints Ltd. v. ACIT***[15]

28 The interpretation placed by the CBDT in paragraph 6.1 of Instruction No. 1 / 2022 dated 11th May 2022 cannot be countenanced as it is not open to them to clarify that the law laid down by the Apex Court means that the extended reassessment notices will travel back in time to their original date when such notices were to be issued and, then, the new section 149 of the Act is to be applied as this is contrary to the judgment of this court in *Tata Communications* (supra) wherein it is held that TOLA does not envisage traveling back of any notice. However, even assuming that it is held that

13. [WP (L) No. 7733 of 2022 dated 4-5-2022]
14. (WP No. 43 of 2022 dt. 27-4-2022)
15. [WP (L) No. 6385 of 2022 dated 26-4-2022]

these notices travel back to the date of the original notice issued on 25th June 2021, even then the approval of the Principal Chief Commissioner of Income Tax should be obtained in terms of section 151(ii) of the Act as a period of three years from the end of the relevant assessment year ended on 31st March 2020 for AY 2016-17.

29 Further, the CBDT in Instruction no.1/2022 at paragraph 6.2(ii) has wrongly stated that the notices issued under section 148 of the Act for AY 2016-17 are to be considered as having been issued within a period of three years from the end of the relevant assessment year and, on that basis, has wrongly mentioned that the approval of the specified authority under section 151(i) should be taken. This conclusion is premised on the basis that these notices travel back to 31 March 2020 which premise is completely erroneous as explained hereinbefore. The notice under section 148 of the Act is issued on 31 July 2022 and, hence, is issued beyond period of three years from the end of the relevant assessment year and, accordingly, the approval of the specified authority under section 151(ii) of the Act should be taken.

30 This court in *Tata Communications* (Supra), has rejected that argument of the Revenue on the issue of travel back. This court in paragraph 37 of *Tata Communications* (Supra) has held that Section 3(1) of TOLA does not provide that any notice issued under Section 148 of the Act, after 31st March 2021 will relate back to the original date or that the clock is stopped on 31st March, 2021 such that the provision as existing on

such date will be applicable to notices issued relying on the provision of TOLA. The court held that Section 3(1) of TOLA merely extends the limitation provided in the specified Acts including Income-tax Act for doing certain Acts but such Acts must be performed in accordance with the provisions of the specified Acts. The court had also recorded that the Delhi High Court had considered and rejected the contention of the Revenue that the notice issued after 1st April 2021 relates back to an earlier period. The Delhi High Court had considered and rejected the argument of the Revenue that TOLA creates a legal fiction such that the notices issued under Section 148 of the Act are deemed to be issued on 31st March, 2021. TOLA only granted power to the Central Government to notify the period during which actions are required to be taken that can fall within the ambit of TOLA, and the power to extend the time limit within which those actions are to be taken. There was no amendment to the provisions of Sections 147 to 151 of the Act. The court also observed that amendments to the substantive provisions of the Act were envisaged under Section 3 of TOLA, which was only a relaxation provision dealing with time limits under various enactments. The Assessing Officer could have assumed jurisdiction while issuing the impugned notices only after complying with the amended Section 147 which has not been done. In *Tata Communications* (Supra), this court also held that TOLA was not applicable for A.Y.-2015-2016 or any subsequent years. Hence question of applicability of notification issued under TOLA also would not arise. Paragraphs 34 to 49 of *Tata*

Communications (Supra) read as under:

> *34 It is well settled that the validity of a notice issued under Section 148 of the Act must be judged on the basis of the law existing on the date on which such notice is issued. Even the Revenue accepts this well settled position. Further, the provisions of Sections 147 to 151 are procedural laws and accordingly, the provisions as existing on the date of the notice would be applicable. Even the revenue accepts this legal position and the CBDT Circular No.549 of 1989, that Mr. Mistri relied upon, explaining the provisions of the Finance Act, 1989 specifically sets out that any notices issued by Revenue after the amendment made by the Finance Act, 1989 must comply with the amended provision of the law. Therefore, any notice issued after 1st April, 2021 must comply with the amended provisions of the Act which was amended with effect from 1st April, 2021. This contention has also been considered and upheld by the Delhi High Court and the Allahabad High Court.*
>
> *35 We have to also note the well settled proposition that when the Act specifies that something is to be done in a particular manner, then, that thing must be done in that specified manner alone, and any other method/(s) of performance cannot be upheld. Hence, notices issued under Section 148 of the Act after 1st April, 2021 must comply with the amended provisions of law and cannot be sustained on the basis of the erstwhile provision.*
>
> *36 In order to uphold the arguments of the Revenue in this regard, either a savings clause, or a specific legislative enactment deferring applicability of the amended provisions and the repeal of the old provisions of the Act, would be required. Plainly no such savings clause or enactment is available.*
>
> *37 Section 3(1) of Relaxation Act does not provide that any notice issued under Section 148 of the Act, after 31st March 2021 will relate back to the original date or that the clock is stopped on 31st March, 2021 such that the provision as existing on such date will be applicable to notices issued relying on the provision of Relaxation Act. A plain reading of Relaxation Act, as Mr. Mistri rightly submitted, makes it clear that Section 3(1) of Relaxation Act merely extends the limitation provided in the specified Acts (including Income-tax Act) for doing certain Acts but such Acts must be performed in accordance with the provisions of the specified Acts. Therefore, if there is an amendment in the specified Act, the amended provision of the specified Act would apply to such actions of the Revenue. The Delhi High Court has considered and rejected the contention of the Revenue that the notice issued after 1st April 2021 relates back to an earlier period.*
>
> *38 The Delhi High Court has considered and rejected this argument of the Revenue that Relaxation Act creates a legal fiction such that the notices issued under Section 148 of the Act are deemed to be issued on 31st March, 2021. The so-called legal fiction is directly contrary to the Revenue's own Circular No.549 of 1989, which is binding on them*

as well as the well settled principle that the validity of a notice is to be judged on the basis of the law that prevails at the time of its issue.

39 Even though Relaxation Act was in existence when the Finance Act, 2021 was passed, the parliament has specifically made the amended provisions of Sections 147 to 151 of the Act as being applicable with effect from 1st April, 2021. Therefore, the intention of the legislature is clear that substituted provisions must apply to notices issued with effect from 1st April, 2021. No savings clause has been provided in the Act for saving the erstwhile provisions of Sections 147 to 151 of the Act, like in Section 297 of the Act where, the Parliament when it intended, has specifically provided the savings clause.

40 On a plain reading of Relaxation Act it is clear that the only powers granted to the Central Government by Relaxation Act is the power to notify the period during which actions are required to be taken that can fall within the ambit of Relaxation Act, and the power to extend the time limit within which those actions are to be taken. A plain reading of the impugned Explanations in Notification Nos.20 of 2021 and 38 of 2021 shows that it purports to "clarify" that the unamended provisions of Sections 147 to 151 of the Act will apply for the purposes of issue of notices under Section 148 of the Act, which is clearly ultra vires Relaxation Act.

41 In our view, the reopening notices issued after 1st April, 2021 are unsustainable and bad in law even if one was to apply the Explanations to the Notification Nos.20 of 2021 and 38 of 2021. The Explanation seeks to extend the applicability of erstwhile Sections 148, 149 and 151. The impugned Explanation does not cover Section 147, which (as amended) empowers the revenue to reopen an assessment subject to Sections 148 to 153, which includes Section 148A. Thus, even if Explanations are valid, the mandatory procedure laid down by Section 148A has not been followed and hence, without anything further, the notices under Section 148 of the Act are invalid and must be struck down for this reason as well. This proposition has also been upheld by the Delhi High Court.

42 As regards Revenue's arguments that Relaxation Act being a beneficial legislation must be given purposive interpretation', the purpose of Section 3(1) of Relaxation Act is to extend limitation periods as provided in a specified Act (including the Income-tax Act). The purpose of Section 3(1) of Relaxation Act is not to postpone the applicability of amended provisions of a Specified Act. Though Relaxation Act was in existence when the Finance Act, 2021 was passed, the Parliament has specifically enacted the new, (amended) provisions of Section 147 to 151 of the Act and made them applicable with effect form 1st April, 2021. Therefore, it is clear that amendment is to be applied from 1st April, 2021. Further, when there is no ambiguity on the applicability of the provision, there is no question of resorting to purpose test.

43 As regards liberty granted by the Allahabad High Court, certainly, if the law permits issuance of notices under Section 148 of the Act (as

amended), afresh, then no liberty is required to be granted by the Court, and it would be within the Assessing Officer's powers to initiate proceedings as per the amended law. The Madras High Court has considered this very plea and granted liberty to initiate reassessment proceedings in accordance with the provisions of the amended Act, "if limitation for it survives".

44 As submitted by Mr. Mistri, with whom we agree, Chapter II of Relaxation Act provide for – "Relaxation of Certain Provisions of Specified Act"and Section 3 forms part of this Chapter. Further Chapter III provides for amendment to Income Tax Act, 1961 and various Sections of the Act have been amended in Chapter III. From this the following propositions emerge :

(a) Wherever the Parliament thought fit, the Parliament has itself amended the provision of the Income Tax Act, 1961 and not left it for the CBDT to make the amendment. Therefore, it is clear that no power is given under Relaxation Act to postpone the applicability of provisions of the Income Tax Act.

(b) Chapter II of Relaxation Act is only for 'Relaxation of Certain Provisions of Specified Act' and, therefore, there is no question of the Revenue relying on this Chapter and Section 3 to justify the postponement of applicability of certain provisions of the Income Tax Act. If the Parliament wanted to give some right to the CBDT, it would have formed part of Chapter III, however, there is no such provision in Chapter III of the Act.

45 As submitted by Mr. Pardiwalla there are other Sections in the Finance Act, 2021 which have amended other provisions of the Income Tax Act from dates other than 1st April, 2021. Like for example Section 12 of the Finance Act inserted a proviso in Section 43CA. Had the intention of the legislature, while amending Sections 147 to 153, been to give it effect from 1st July, 2021, a similar savings clause could have been inserted, which has not been done. We agree with Mr. Pardiwalla because as per Section 1(2)(a) of the Finance Act, 2021, the amendments to Sections 147 to 153 of the Act shall come into force on 1st April, 2021. Similarly, the Memorandum explaining the provisions of the Finance Bill, 2021 clarifies that these amendments will take effect from 1st April, 2021. Section 12 of the Finance Act inserted a proviso in Section 43CA which inter alia provides that the words 'one hundred and ten percent' in the first proviso will be substituted by the words 'one hundred and twenty percent' if the transfer of residential units takes place during the period beginning from 12th day of November, 2020 and ending on the 30th day of June, 2021. Therefore, had the intention of the legislature, while amending Sections 147 to 153, was to give it effect from 1st July, 2021, a similar savings clause could have been inserted, which has not been done.

46 Mr. Pardiwalla submitted that only Section 4 of Relaxation Act which amended the Act and no such amendments to the substantive provisions of the Act were envisaged under Section 3 of Relaxation Act, which was only a relaxation provision dealing with time limits under various enactments.

47 As noted earlier, it is Revenue's case that Section 3 of Relaxation Act enabled the Central Government to issue notifications which would permit the Assessing Officers to issue notices under Section 148 of the Act after 1st April, 2021 in terms of the erstwhile provisions of Sections 147 to section 151, even though the said provisions were repealed with effect from 1st April, 2021 by the Finance Act, 2021. It is, however, pertinent to note that Section 3 of Relaxation Act falls in Chapter II of the said Act, which is titled 'Relaxation of Certain Provisions of Specified Act'. In contradistinction, Section 4 of Relaxation Act which does amend several provisions of the Act falls in Chapter III, which is titled 'Amendments to the Income Tax Act, 1961'. It will be apposite to notice that the amendments provided for in Section 4 were made by the Legislature itself in terms of the said Section and no such power to amend the Act was delegated to the Central Government. Therefore, we would agree with Mr. Pardiwalla that it is only Section 4 of Relaxation Act which amended the Act and no such amendments to the substantive provisions of the Act were envisaged under Section 3 of Relaxation Act, which was only a relaxation provision dealing with time limits under various enactments.

48 Mr. Pardiwalla submitted that even assuming for a moment that the primary contention of petitioners that the Explanations in the notifications are invalid is not accepted, still the impugned notices will be bad in law as the Explanation only seeks to effectuate the provisions of the erstwhile Sections 148, 149 and 151 of the Act. It does not cover the erstwhile Section 147 of the Act. As rightly submitted by Mr. Pardiwalla, the Assessing Officer could have assumed jurisdiction while issuing the impugned notices only after complying with the amended Section 147. The same has not been done by the Assessing Officers as (a) his assumption of jurisdiction is on the basis of his 'reason to believe' that income chargeable to tax has escaped assessment, a concept, which is no longer recognised in the amended Section 147; and (b) the amended Section 147 is in any event subject to Sections 148 to 153, which would also include the procedure contained in Section 148A, which has not been followed. Therefore, the impugned notices do not even comply with the relevant statutory provisions, even if we do not find fault with the Explanations in the two notifications. Infact the Delhi High Court in paragraph 84 of Mon Mohan Kohli (Supra) has also considered and accepted this aspect of the matter.

49 Some more reasons why the reopening notices must go are :

(a) Section 297 of the Act provides a saving clause for applicability of various provisions of the 1922 Act, even though the Act itself had been repealed. In the absence of such a saving clause for applicability of erstwhile Sections 147 to 151 of the Act, the amended provision of the Act would apply from 1st April, 2021.

(b) Moreover, the reopening notices issued after 1st April, 2021 are bad in law even if one was to apply the Explanations to the Notification Nos.20 and 38. The Explanations seek to extend the applicability of erstwhile Sections 148, 149 and 151. They do not cover Section 147, which empowers revenue to reopen subject to

> *Section 148 to 153, which includes Section 148A. Thus, even if Explanation are valid, procedure of Section 148A is not followed and hence, notices are invalid.*
>
> *(c) In any case, Relaxation Act is not applicable for Assessment Years 2015-2016 or any subsequent year and, hence, the question of applicability of the Notification Nos.20 and 38 of 2021 does not arise. The time limit to issue notice under Section 148 of the Act for the Assessment Years 2015-2016 onwards was not expiring within the period for which Section 3(1) of Relaxation Act was applicable and, hence, Relaxation Act could never apply for these assessment years. As a consequence, there can be no question of extending the period of limitation for such assessment years.*

These findings of the Bombay High Court have not been disturbed by the Apex Court in *Ashish Agarwal* (Supra). The Apex Court only modified the orders passed by the respective High Courts to the effect that the notices issued under Section 148 of the Act which were subject matter of writ petitions before various High Courts shall be deemed to have been issued under Section 148A(b) of the Act and the Assessing Officer was directed to provide within 30 days to the respective assessee the information and material relied upon by the Revenue so that the assessee could reply to the show cause notices within two weeks thereafter. The Apex Court held that the Assessing Officer 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). The Apex Court also expressly kept open all contentions which may be available to the assessee including those available under Section 149 of the Act and all rights and contentions which may be available to the concerned assessee and revenue under the Finance Act 2021 and in law, shall be continued to be available.

31 Notwithstanding this, the CBDT has issued instruction No.1 of 2022 contary to what the courts have held. Even by the finding of the Apex Court in *Ashish Agarwal* (Supra), only the original notice issued under Section 148 of the Act was converted into a notice deemed to have been issued under Section 148A(b) of the Act. The Apex Court held that the Assessing Officer shall thereafter pass orders in terms of Section 148A(b) in respect of each of the assessee and after following the procedure as required under Section 148 of the Act. Even judgment in *Ashish Agarwal* (supra) does not anywhere indicate the notices that could be issued for eternity like in this case, on 31st July 2022, would be sanctioned by the authority other than sanctioning authority defined under the Act.

32 We have to also note that the instructions dated 11th May 2022, on which respondents have relied upon, has no applicability to the facts of this case. These instructions expressly provides that it applies only to the issue of reassessment notice issued by the Assessing Officer during the period beginning 1st April 2020 and ending with 30th June 2021 within the time extended under TOLA and various notifications issued thereunder. Since the impugned notice in this case is dated 31st July 2022, certainly the instructions no.1 of 2022 dated 11th May 2022 shall have no applicability at all. Even for a moment, if we accept Mr. Suresh Kumar's arguments that Apex Court's findings in *Ashish Agarwal* (Supra) read with time extension provided by TOLA will allow extended reassessment notices to travel back to their original date when such notices were issued and then new Section 149

of the Act is to be applied at that time, the extended reassessment notices are defined under the instructions to be notice issued between 1st April 2021 and ending with 30th June 2021. Therefore, the instructions would not help respondents' case at all.

33 As held by this court in *J. M. Financials* (Supra), Sidhmicro Equities (P) Ltd. (Supra) and confirmed by the Apex Court that any notice issued without the sanction of the correct sanctioning authority will be invalid. This court in ***Godrej Industries Limited v. DCIT***[16] has held that an assessment can be reopened under section 147 and 148 of the Act only on the jurisdictional preconditions being satisfied strictly. This Court held that sanction of a superior officer to the reasons recorded in terms of section 151 should be obtained before issuing the notice under section 148 of the Act and all jurisdictional requirements are required to be satisfied cumulatively and even if one of the numerous jurisdictional requirements necessary for issuing the notice under section 148 of the Act are not satisfied, the reopening of an assessment would fail. Hence, in the present facts also since the approval of the specified authority in terms of section 151(ii) of the Act is a jurisdictional requirement and in the absence of complying with this requirement, the reopening of assessment would fail.

The Calcutta High Court in ***K K Agarwal and Sons HUF v. ITO***[17] while dealing with the reopening of the assessment for AY 2016-17 held that the approval granted by the PCIT is not in accordance with section 151(ii) of

16. (2015) 377 ITR 1 (Bom)
17. (WPA No. 25770 of 2022)

the Act and such approval is not sustainable in law. Hence, the Court held that the show cause notice under section 148A(b) and all subsequent proceedings were not sustainable in law and were quashed.

CHANGE OF OPINION :-

34 On the facts of this case, as regards change of opinion, the information made available is the same reason to believe. If one considers it clearly, it indicates change of opinion. Paragraphs 2 to 6 of the information read as under:

> *"2. Brief details of information collected/ received by AO: On perusal of the records it is noticed that the assessee company has debited an amount of Rs.6,41,87,931/- on account of Software consumables as other expenses to the Profit and Loss account.*
>
> *3. Analysis of information collected/received: As per the information gathered from case record, the assessee company has debited an amount of Rs.6,41,87,931/- on account of Software consumables. As the said expenses is a capital expenditure. This attract depreciation at the rate of 60%. Remaining 40% of software consumable, which comes at Rs.2,56,75,172/- should have been disallowed and added back to the business income of the assessee. This has resulted in underassessment of income of Rs.2,56,75,172/-.*
>
> *4. Enquiry made by the AO: The assessment records of assessee for year under consideration has been analysed and as per the information gathered from case record the assessee company has debited an amount of Rs.35,90,19,339/- as other expenses. On perusal of details of other expenses, it is noticed that the assessee has claimed the software consumable of Rs.6,41,87,931/-on account of Software consumable. Expenses on acquiring software consumable is a capital expenditure. Section 37(1) provide for deduction for any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession under the head "Profit and gain of business or profession". Hence capital expenditure incurred for acquisition of an intangible asset should have been disallowed and added back the total income after allowing depreciation at the applicable rate of 60%, which resulted into underassessment of income of Rs.2,56,75,172/-.*
>
> *5. Finding of the AO: In this case, an amount of Rs.6,41,87,931/- had been debited in P&L A/c. on account of Software consumable. As expenses on acquiring computer software consumable is a capital*

expenditure, the same is not allowable as per the provision of section 37 of Income Tax Act, 1961. Hence capital expenditure incurred for acquisition of an intangible asset should have been disallowed and added back the total income after allowing depreciation at the applicable rate of 60%, which resulted into underassessment of income of Rs. 2,56,75,172/-.

6. Basis of forming reason to believe and details of escapement of income: In view of the finding of AO (as mentioned in para 5 above), I have a reason to believe that the Income chargeable to tax of Rs. 2,56,75,172/-, has escaped assessment under the meaning of section 147 of the Income tax Act, 1961. The AO has carefully applied his mind to the facts and circumstances of the case. The information in possession of the AO gives a substantial basis for the formation of a reason to believe to initiate re-assessment u/s. 147 of the Income Tax Act, 1961."

35 During the course of assessment proceedings, notice had been issued to petitioner. In reply to the notice under Section 143(2), petitioner had by its letter dated 6th December 2018 recorded, "…… based upon our discussion during the course of the hearing ……...". The transaction wise summary of the software consumable was made available. This was considered during the assessment proceedings and the assessment order accepting revised return came to be passed.

36 We would agree with the submissions of Mr. Pardiwalla that if change of opinion concept is given a go by, that would result in giving arbitrary powers to the Assessing Officer to reopen the assessments. It would in effect be giving power to review which he does not possess. The Assessing Officer has only power to reassess not to review. If the concept of change of opinion is removed as contended on behalf of the Revenue, then in the garb of re-opening the assessment, review would take place. The concept of change of opinion is an in-built test to check abuse of power by the Assessing Officer.

As held in *Dr. Mathew Cherian* (Supra), whether under old or new regime of reassessment, it is settled position that the issues decided categorically should not be revisited in the guise of reassessment. That would include issues where query have been raised during the assessment and query have been answered and accepted by the Assessing Officer while passing the assessment order. As held in *Aroni Commercials* (supra) even if assessment order has not specifically dealt with that issue, once the query is raised it is deemed to have been considered and the explanation accepted by the Assessing officer. It is not necessary that an assessment order should contain reference and/or discussion to disclose his satisfaction in respect of the query raised.

The Division Bench of this court in *Aroni Commercials Ltd.* (supra) held it is not necessary that the assessment order should contain reference and/or discussion to disclose its satisfaction in respect of the query raised. Paragraph 14 of *Aroni Commercials Ltd.* (supra) read as under:

> *"14. We are of the view that once a query is raised during the assessment proceedings and the assessee has replied to it, it follows that the query raised was a subject of consideration of the Assessing Officer while completing the assessment. It is not necessary that an assessment order should contain reference and/or discussion to disclose its satisfaction in respect of the query raised. If an Assessing Officer has to record the consideration bestowed by him on all issues raised by him during the assessment proceeding even where he is satisfied then it would be impossible for the Assessing Officer to complete all the assessments which are required to be scrutinized by him under Section 143(3) of the Act. Moreover, one must not forget that the manner in which an assessment order is to be drafted is the sole domain of the Assessing Officer and it is not open to an assessee to insist that the assessment order must record all the questions raised and the satisfaction in respect thereof of the Assessing Officer. The only requirement is that the Assessing Officer ought to have considered the objection now raised in the grounds for issuing notice under Section 148 of the Act, during the original assessment*

> *proceedings. There can be no doubt in the present facts as evidenced by a letter dated 8 September 2012 the very issue of taxability of sale of shares under the head capital gain or the head profits and gains from business was a subject matter of consideration by the Assessing Officer during the original assessment proceedings leading to an order dated 12 October 2010. It would therefore, follow that the reopening of the assessment by impugned notice dated 28 March 2013 is merely on the basis of change of opinion of the Assessing Officer from that held earlier during the course of assessment proceeding leading to the order dated 12 October 2010. This change of opinion does not constitute justification and/or reasons to believe that income chargeable to tax has escaped assessment."*

37 The Assessing Officer does not have any power to review his own assessment when during the original assessment petitioner provided all the relevant information which was considered by him before passing the assessment order under section 143(3) of the Act dated 23rd December 2018. Petitioner had debited an amount of Rs.6,41,87,931/- on account of software consumables in the profit and loss account and a detailed break-up of the said expenses were submitted before the Assessing Officer during the course of assessment proceedings vide a letter dated 6th December 2018. It is settled law that proceedings under section 148 cannot be initiated to review the earlier stand adopted by the Assessing Officer. The Assessing Officer cannot initiate reassessment proceedings to have a relook at the documents that were filed and considered by him in the original assessment proceedings as the power to reassess cannot be exercised to review an assessment. In petitioner's case the Assessing Officer having allowed the amount of software consumables as a revenue expenditure now seeks to treat the same as capital expenditure which is a clear change of opinion. Various judicial precedents have held that reassessment proceedings

initiated on the basis of a mere change of opinion are invalid and without jurisdiction.

38 The Apex Court in *Kelvinator of India Ltd.(Supra)* emphasised on the difference between a power to review and the power to reassess. The Apex Court held that the Assessing Officer has no power to review but has only the power to reassess. The concept of 'change of opinion' must be treated as an in-built test to check abuse of power by the Assessing Officer. The relevant extract of the judgement is reproduced as under:-

> *".....However, one needs to give a schematic interpretation to the words "reason to believe" failing which, we are afraid, section 147 would give arbitrary powers to the Assessing Officer to re-open assessments on the basis of "mere change of opinion", which cannot beper sereason to reopen. We must also keep in mind the conceptual difference between power to review and power to re-assess. The Assessing Officer has no power to review; he has the power to reassess. But reassessment has to be based on fulfilment of certain pre-condition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of re-opening the assessment, review would take place. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the Assessing Officer. Hence, after 1-4-1989 , Assessing Officer has power to reopen, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief. Our view gets support from the changes made to section 147 of the Act, as quoted hereinabove. Under the Direct Tax Laws (Amendment) Act, 1987 , Parliament not only deleted the words "reason to believe" but also inserted the word "opinion" in section 147 of the Act. However, on receipt of representations from the Companies against omission of the words "reason to believe", Parliament re-introduced the said expression and deleted the word "opinion" on the ground that it would vest arbitrary powers in the Assessing Officer....."*

39 The ***Delhi High Court in Seema Gupta v. ITO***[18] held that the order under section 148A(d) and notice under section 148 of the Act should be set aside when the reassessment was initiated on a change of opinion where the

18. (2022) 288 Taxman 519 (Del)

same was discussed and verified by the Assessing Officer at the time of original assessment proceedings.

40 While concluding, Mr. Suresh Kumar submitted that the effect of setting aside notice on the ground of not having obtained proper sanction would result in stalling the entire reassessment proceedings. Rajasthan High Court in ***Sudesh Taneja Vs. ITO***[19] held that (a) taxing statute must be interpreted strictly. Equity has no place in taxation. Nor while interpreting taxing statute intendment would have any place.

(b) There is nothing unjust in the tax payer escaping if the letter of the law fails to catch him on account of the legislature's failure to express itself clearly.

(c) It is axiomatic that taxation statute has to be interpreted strictly because the State cannot at their whims and fancies burden the citizens without authority of law.

(d) In the matter of interpretation of charging section of a taxation statute, strict Rule of interpretation is mandatory and if there are two views possible in the matter of interpretation of a charging section, the one favourable to the assessee need to be applied. Paragraph 31(i) of *Sudesh Taneja* (supra) reads as under:

> *"31. We may now attempt to answer these questions ourselves with the aid of statutory provisions and law laid down in various decisions cited before us we may summarise certain principles applicable in the field of taxation and which principles would be invoked in the course of the judgment:-*
>
> *(i) A taxing statute must be interpreted strictly. Equity has no place in*

19. 442 ITR 289

taxation nor while interpreting taxing statute intendment would have any place. In case of State of W.B. Vs. Kesoram Industries Ltd. And Ors., (2004) 10 SCC 201, referring to Article 265 of the Constitution which provides that no tax shall be levied or collected except by authority of law, it was observed that in interpreting a taxing statute, equitable considerations are entirely out of place. Taxing statutes cannot be interpreted by any presumption or assumption. A taxing statute has to be interpreted in light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any deficiency. Before taxing any person it must be shown that he falls within the ambit of charging section by clear words used in the section and if the words are ambiguous and open to two interpretations, the benefit of interpretation is given to the subject. There is nothing unjust in the tax payer escaping if the letter of the law fails to catch him on account of the legislature's failure to express itself clearly.

A Constitution Bench in the case of Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar And Company And Ors., (2018) 9 SCC 1, had reiterated these principles. It was a case where on a reference to the Larger Bench the Supreme Court was considering a question whether an ambiguity in a tax exemption provision or notification, the same must be interpreted so as to favour the assessee. Making a clear distinction between a charging provision of a taxing statute and exemption notification which waives a tax or a levy normally imposed, the Supreme Court observed as under:-

"14. We may, here itself notice that the distinction in interpreting a taxing provision (charging provision) and in the matter of interpretation of exemption (98 of 113) [CW-969/2022] notification is too obvious to require any elaboration. Nonetheless, in a nutshell, we may mention that, as observed in Surendra Cotton Oil Mills Case, in the matter of interpretation of charging Section of a taxation statute, strict Rule of interpretation is mandatory and if there are two views possible in the matter of interpretation of a charging section, the one favourable to the Assessee need to be applied. There is, however, confusion in the matter of interpretation of exemption notification published under taxation statutes and in this area also, the decisions are galore.

24. In construing penal statutes and taxation statutes, the Court has to apply strict Rule of interpretation. The penal statute which tends to deprive a person of right to life and liberty has to be given strict interpretation or else many innocent might become victims of discretionary decision making. Insofar as taxation statutes are concerned, Article 265 of the Constitution prohibits the State from extracting tax from the citizens without authority of law. It is axiomatic that taxation statute has to be interpreted strictly because the State cannot at their whims and fancies burden the citizens without authority of law. In other words, when the competent Legislature mandates taxing certain persons/certain objects in certain circumstances, it cannot be expanded/interpreted to include those, which were not intended by the legislature."

41 In the circumstances, we make the Rule absolute and allow the

petition for the following reasons:

(a) that approval for issuance of notice under Section 148A(d) of the Act has not been properly obtained and hence the order passed thereunder and consequent notice issued under Section 148 of the Act have to be quashed and set aside. The sanction ought to have been granted under Section 151(ii) and not under Section 151(i) of the Act.

(b) The notice to reopen has also been issued on the basis of change of opinion which is not permissible.

42 Since we have disposed the petition on these grounds, we have not considered the other grounds which can be considered in some other matter at the appropriate stage.

43 No order as to costs.

(Dr. N. K. GOKHALE, J.) (K.R. SHRIRAM, J.)