

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 09.07.2018

+ **W.P.(C) 8394/2014**

AMIT JAIN

.....Petitioner

versus

**SECURITIES AND EXCHANGE BOARD OF
INDIA & ANR**

.....Respondents

Advocates who appeared in this case:

For the Petitioner: Mr Rishabh Jain, Advocate along with petitioner in person.

For the Respondents: Mr Neeraj Malhotra, Senior Advocate with Ms Sandhya Kohli, Ms Harshita Agarwal, Ms Rupal Luthra and Ms Abhinandana, Advocates for R-1/SEBI.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

Introduction

1. The petitioner has filed the present petition under Article 226 and 227 of the Constitution of India impugning a show cause notice dated 14.11.2013 (hereafter 'the impugned notice') calling upon the petitioner to show cause why an inquiry not be held in terms of Rule 4 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereafter 'the Rules') and penalty not being imposed under Section

15A(b) of the Securities and Exchange Board of India Act, 1992 (hereafter 'the Act').

2. The impugned notice was issued for alleged violation of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereafter 'the PIT Regulations').

3. The petitioner also prays that the proceedings leading to the appointment of the Adjudicating Officer to adjudge the penalty be quashed.

4. The principal allegation against the petitioner is that although he held more than 5% shares in a listed company, Himalaya Granites Ltd., he had failed to make the disclosure as required under Regulation 13(3) read with 13(5) of the PIT Regulations.

5. The petitioner contends that an Adjudicating Officer can be appointed under Section 15-I of the Act only where the Securities and Exchange Board of India (hereafter 'the Board') forms an opinion that there are grounds for adjudging under any provisions of Chapter VIA of the Act (which includes Section 15A). However, in the present case, no such opinion was formed by the Board and, therefore, the appointment of the Adjudicating Officer is without jurisdiction. The petitioner further claims that proceedings for imposition of penalty cannot be initiated without a prior order under Regulation 14 of the PIT Regulations and, therefore, the proceedings initiated against the petitioner are without jurisdiction and contrary to law.

Factual Background

6. The petitioner is a shareholder of a listed company, namely, Himalaya Granites Ltd. By a letter dated 10.10.2011, the Bombay Stock Exchange Ltd. (BSE) had informed the Board that Anirudh Bubna Trust had acquired a significant number of shares of Himalaya Granites Ltd. and hence was required to make the disclosures in terms of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereafter 'the Takeover Regulations') as well as the PIT Regulations.

7. On the basis of examination of the transaction statements, it was found that three persons/entities, namely, Anirudh Bubna Trust, Spark Securities Private Limited and the petitioner, had dealt with the shares of the Himalaya Granites Limited. And, it was observed that the said persons/entities had violated the Takeover Regulations and Regulation 13(3) and Regulation 13(5) of the PIT Regulations. The above was discussed at the meeting of Group of Assistant General Managers of SEBI held on 20.06.2012 and the said group recommended that the adjudicating proceedings be initiated against the said persons/entities, namely, Anirudh Bubna Trust, Spark Securities Private Limited and the petitioner.

8. The aforesaid recommendations were considered by a Committee of Division of Chiefs of the Board at a meeting held on 25.06.2012 and it was recommended that the adjudication proceedings under Section 15A(b) of the Act be initiated against Anirudh Bubna

Trust, Spark Securities Private Limited and the petitioner. In the case of Anirudh Bubna Trust and Spark Securities Private Limited, it was alleged that the said entities had not followed Regulations 7(1) and 7(2) of the Takeovers Regulations as well as Regulations 13(1) and 13(3) read with 13(5) of the PIT Regulations. However, in the case of the petitioner, it was alleged that the petitioner had violated Regulation 13(3) read with 13(5) of the PIT Regulations.

9. The said recommendations were submitted for approval to the superior officers and on 04.10.2013, the Whole Time Member appended noting on the file; “*Ms Anita Kenkare is appointed as A.O.*”. Thereafter, the Executive Director of the Board communicated the decision for appointment of the Adjudicating Officer by a communication dated 18.10.2013 captioned as “*Proceedings of the Whole Time Member appointing Adjudicating Officer.*” The said note stated that the Board had examined the alleged irregularities observed in the matter of Himalaya Granites Ltd. and into possible violation of the provisions of the Act and various Regulations made thereunder and it, *prima facie*, appeared to the Whole Time Member of the Board that Anirudh Bubna Trust and Spark Securities Private Limited had violated Regulations 7(1) and 7(2) of the Takeovers Regulations as well as Regulations 13(1) and 13(3) read with 13(5) of the PIT Regulations. And, the petitioner had violated Regulations 13(3) read with 13(5) of the PIT Regulations. The note further recorded that the Whole Time Member was satisfied that there was sufficient grounds to enquire into the affairs and adjudicate upon the alleged violation by

the said entities under (a) the Act; (b) the Takeovers Regulation; and (c) the PIT Regulations. Accordingly, the Whole Time Member had in exercise of powers under Section 19 of the Act read with Section 15-I of the Act and Rule 3 of the Rules appointed Ms Anita Kenkare as the Adjudicating Officer (AO) by an order dated 04.10.2013 to enquire into and to adjudge under Section 15A(b) of the Act.

10. The Adjudicating Officer issued the impugned notice on 14.11.2013. The enclosures with the said notice included a copy of the appointment order appointing the Adjudicating Officer and the said order was captioned as “Proceedings of the Whole Time Member appointing the Adjudicating Officer”. In addition, the impugned notice also enclosed a transaction statement of the petitioner during the period 01.01.2009 to 15.03.2012 as well as the communications issued by the Board to the BSE and to the company, Himalaya Granites Ltd.

11. On 09.01.2014, the petitioner appeared before the Adjudicating Officer. Thereafter, on 10.01.2014, the petitioner sent a letter requesting for a copy of the appointment letter/warrant through which the present Whole Time Member had been appointed, and, also requesting for a list of the powers delegated to the Whole Time Member.

12. Thereafter, the petitioner sent letters on 10.01.2014, 15.01.2014, and 20.01.2014. By the letter dated 10.01.2014, the petitioner requested for information on whether the transaction conducted by the petitioner had caused a loss to any investor or a group of investors of

the Company; the letter dated 15.01.2014 was sent as a reminder to furnish the requisite information; and, by the letter dated 20.01.2014, the petitioner requested to be re-heard after giving the petitioner a reasonable amount of time to examine the documents.

13. On 26.09.2014, the Assistant General Manager of the Board sent a communication to the Respondent declining to disclose the requisite information as requested for in the aforementioned letter.

Submissions

14. The learned counsel appearing for the petitioner advanced contentions, essentially, on two fronts. First, he submitted that the Board alone was vested with the power to form an opinion as required under Rule 3 of the Rules before an Adjudicating Officer could be appointed to adjudicate the question of any violation under Chapter VIA of the Act. He submitted that in the present case, the Board had not recorded any opinion and, therefore, the appointment of the Adjudicating Officer was without jurisdiction.

15. Second, he submitted that the proceedings for imposing penalty could not be initiated without a prior order under Regulation 14 of the PIT Regulations. He submitted that in terms of Regulation 4A of the PIT Regulations, the Board was required to undertake an investigation if it suspects any violation of the PIT Regulations. He referred to the PIT Regulations and submitted that the same contained provisions with regard to investigations. The same also required the Board to communicate the findings of the investigation and to provide an

opportunity to the concerned person to respond to the said investigation. The Board was empowered to issue orders under Regulation 11 of the PIT Regulations after considering any explanation that may be provided by the concerned party. He submitted that Regulation 14 of the PIT Regulations expressly provided that if a person had violated the provisions of the Regulation, he would also be liable for appropriate action including under Chapter VIA of the Act. He submitted that the scheme of the PIT Regulations made it amply clear that the Board was first required to exhaust the process of investigation and then form a firm opinion. The question whether any penalty was required to be imposed would arise only after the Board had formed a firm opinion. He submitted that any order passed by the Board would also be appealable before the Securities Appellate Tribunal in terms of Regulation 15 of the PIT Regulations. He submitted that since the Board had not passed any order, it had also effectively precluded the petitioner from exercising its right to appeal under Section 15 of the PIT Regulations.

Reasons and Conclusion

16. Regulation 13(3) of the PIT Regulations requires a person who holds more than 5% of the voting rights in any listed company to disclose to the company number of shares or voting rights held by him as well as the change in share holding if such change accedes 2% of the total shareholding or voting rights in the company. Regulation 13(3) of the PIT Regulations is set out below:-

“Continual disclosure.

(3) Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company.”

17. Regulation 13(5) of the PIT Regulations require the disclosure under Regulation 13(3) to be made within two working days of the receipt of intimation of allotment of shares or acquisition or sale of shares or voting rights as the case may be.

18. The allegation against the petitioner is that he had failed to make disclosure as required under Regulation 13(3) of the PIT Regulations. It is alleged that the said violation was noticed on examination of the transaction statement of the petitioner in respect of the shares of the Himalaya Granites Ltd. during the period 01.01.2009 to 15.03.2012. It is further stated that BSE has also confirmed that no disclosure as required was made by the petitioner.

19. Section 15A of the Act expressly provides for levy of penalty, *inter alia*, for failure to file any return or furnish any information as required under the Regulations framed on their behalf. According to the respondents, the petitioner may be liable to penalty under Section 15A(b) of the Act, which reads as under:-

“Penalty for failure to furnish information, return, etc.

15A.If any person, who is required under this Act or any rules or regulations made thereunder,—

“(b) to file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to [a penalty [which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees]].”

20. In terms of Section 15-I of the Act, the Board is required to appoint an officer not below the rank of Division Chief for holding inquiry for the purposes of adjudging the levy of penalty, *inter alia*, under Section 15A of the Act. Section 15-I of the Act is set out below:-

“15-I. Power to adjudicate – (1)For the purpose of adjudging under sections 15A, 15B, 15C, 15D, 15E, 15F, 15G (15H, 15HA and 15HB), the Board shall appoint any officer not below the rank of a Division Chief to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.

(2) While holding an inquiry the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances, of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry and if, on such inquiry, he

is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.

(3) The Board may call for and examine the record of any proceedings under this section and if it considers that the order passed by the adjudicating officer is erroneous to the extent it is not in the interests of the securities market, it may, after making or causing to be made such inquiry as it deems necessary, pass an order enhancing the quantum of penalty, if the circumstances of the case so justify.

Provided that no such order shall be passed unless the person concerned has been given an opportunity of being heard in the matter.

Provided further that nothing contained in this sub-section shall be applicable after an expiry of a period of three months from the date of the order passed by the adjudicating officer or disposal of the appeal under section 15T, whichever is earlier.”

21. In terms of Section 19 of the Act, the Board has the power to delegate to any member, officer of the Board or any other person such powers and functions under the Act as it may deem necessary. In exercise of the said powers, the Board has issued a general order whereby the powers and functions of “*approval for adjudication*” and to appoint an Adjudicating Officer under Section 15-I of the Act has been delegated to a Whole Time Member. Further, the Executive Director has been delegated the power to sign and communicate the order appointing an Adjudicating Officer/Designated Authority/ Inquiry Officer.

22. In view of the above, there is no dispute that the Adjudicating Officer to adjudge the question as to levy of penalty under Section 15A(b) is to be appointed by a Whole Time Member and the order communicating the same can be signed by the Executive Director. There is no controversy that in the present case, the appointment of the Adjudicating Officer was approved by a Whole Time Member and the order dated 18.10.2013 communicating the same was signed by the Executive Director.

23. The questions that are required to be addressed in this petition are (i) whether the Whole Time Member had formed an opinion that there were grounds for adjudging penalty under Section 15A(b) of the Act; and (ii) whether the Whole Time Member was required to pass an order under Regulation 14 of the PIT Regulations before taking any steps for appointing an Adjudicating Officer for adjudging any penalty under Section 15A(b) of the Act.

24. The learned counsel appearing for the petitioner had referred to Regulation 4A of the PIT Regulations and had contended that it was mandatory for the Board (or its delegate) to make the necessary inquiries for forming a, *prima facie*, opinion and to further follow the procedure under Chapter III of the PIT Regulations.

25. Regulation 4A(1) of the PIT Regulations empowers the Board to make inquiries in cases where the Board suspects that any person has violated the provisions of the PIT Regulations in order to form a *prima facie* opinion as to whether there is any such violation. In terms

of Regulation 4A(2) of the PIT Regulations, the Board is also empowered to appoint one or more officers to inspect the books and records of insider(s) or any other person as referred to in Regulation 11(2)(i) of the Act – stock exchanges, mutual funds, other persons associated with the security market, intermediaries and self regulatory organizations in the security market. Regulation 5 of the PIT Regulations provides for right of the Board to investigate and inspect the books of accounts, records and other documents of insider(s) or any other person as referred to in Section 11(2)(i) of the Act. Regulation 6 of the PIT Regulations provides for the procedure for investigation and Regulation 7 of the PIT Regulations provides for the obligation of an insider who is being investigated. Regulation 8 of the PIT Regulations mandates that the investigating authority would submit a report to the Board. Regulation 9(1) of the PIT Regulations mandates that the Board would consider the investigation report and communicate the findings for the person suspected to be involved insider trading or violation of these provisions. In terms of Regulation 9(2) of the PIT Regulations, the person to whom such findings have been communicated is required to submit a reply within a period of twenty one days; and in terms of Regulation 9(3) of the PIT Regulations, the Board is required to take such measures as it deem fit on receipt of the reply or explanation from the concerned person furnished in terms of Regulation 9(2) of the PIT Regulations. Regulation 10 of the PIT Regulations provides for appointment of an auditor.

26. Regulation 11 of the PIT Regulations expressly provides that the Board may issue any or all of the orders as described therein. Regulation 4 of the PIT Regulations provides that any person who violates the PIT Regulations would be, *inter alia*, liable for any action under Chapter VIA of the Act without prejudice to any directions that may have been issued under Regulation 11 of the PIT Regulations.

27. Regulation 4A, 11 and 14 of the PIT Regulations are set out below:-

“Power to make inquiries and inspection

4A. (1) If the Board suspects that any person has violated any provision of these regulations, it may make inquiries with such persons or any other person as mentioned in clause (i) of sub-section (2) of section 11 as deemed fit, to form a prima facie opinion as to whether there is any violation of these regulations.

(2) The Board may appoint one or more officers to inspect the books and records of insider(s) or any other persons as mentioned in clause (i) of sub-section 11 for the purpose of sub-regulation (1).”

Directions by the Board

11. The Board may without prejudice to its right to initiate criminal prosecution under section 24 or any action under Chapter VIA of the Act, to protect the interests of investor and in the interests of the securities market and for due compliance with the provisions of the Act, regulations made thereunder issue any or all of the following order, namely:

- (a) directing the insider or such person as mentioned in clause (i) of sub-section (2) of

section 11 of the Act not to deal in securities in any particular manner;

- (b) prohibiting the insider or such person as mentioned in clause (i) of sub-section (2) of section 11 of the Act from disposing of any of the securities acquired in violation of these regulations;
- (c) restraining the insider to communicate or counsel any person to deal in securities;
- (d) declaring the transaction(s) in securities as null and void;
- (e) directing the person who acquired the securities in violation of these regulations to deliver the securities back to the seller:

Provided that in case the buyer is not in a position to deliver such securities, the market price prevailing at the time of issuing of such direction or at the time of transactions whichever is higher, shall be paid to the seller;

- (f) directing the person who has dealt in securities in violation of these regulations to transfer an amount or proceeds equivalent to the cost price or market price of securities, whichever is higher to the investor protection fund of a recognized stock exchange.”

Action in case of default

- 14.** Without prejudice to the directions under regulation 11, if any person violates provisions of these regulations, he shall be liable for appropriate action under section 11, 11B, 11D, Chapter VIA and Section 24 of the Act.”

28. It is relevant to note that the Regulations 4 to 11A of the PIT Regulations fall within Chapter 3 of the PIT Regulations but the said chapter bears the caption “investigation”. As the caption indicates, the provisions of Regulation 4A to Regulation 10 of the PIT Regulations relate essentially to the investigation that may be conducted by the Board either directly and/or indirectly.

29. Regulation 11 of the PIT Regulations provides for direction that may be issued to protect the interest of the investors and the security market. The opening sentence of Regulation 11 of the PIT Regulations makes it expressly clear that the same is without prejudice of the right of the Board to initiate criminal prosecution under Section 24 of the Act or any action under Chapter VIA of the Act. Similarly, the opening sentence of Regulation 14 of the PIT Regulations also makes it amply clear that if a person violates the provisions of the PIT Regulations, he would be liable for an appropriate action under Section 11, 11B and 11D, Chapter VIA and Section 24 of the Act. And, this would be without prejudice to the power of the Board to issue directions under Regulation 11 of the PIT Regulations.

30. It is, thus, clear from the above that it is not necessary for the Board to exhaust the procedure as specified in the PIT Regulations before initiating any independent action under Chapter VIA of the Act. Section 15T of the Act provides for an appeal against any order of the Board made under the PIT Regulations. It is clear from the scheme of PIT Regulations that the Board is duly empowered to conduct

investigations and pass orders under PIT Regulations and issue directions as specified under Regulation 11 of the PIT Regulations. However, the said procedure does not impinge or any way dilute the powers of the Board to otherwise take action under the provisions of Chapter VIA of the Act. In view of the above, the contention that the Board was first required to determine whether the petitioner had violated the PIT Regulations before appointing an Adjudicating Officer under Section 15-I of the Act is unmerited. As noticed above, the provisions of Chapter 3 of the PIT Regulations (which includes Regulation 4A to Regulation 11A) provides self contained code for conduct of the examination/investigation, which may culminate in the directions as contemplated under Regulation 11 of the PIT Regulations. However, it is not necessary that the procedure of investigation must be carried out before the Board can form an opinion that there are grounds for adjudging under any of the provisions in Chapter VIA of the Act. It is also clear that if the investigation is carried out in terms of PIT Regulations results in the issue of directions under Regulation 11 of the PIT Regulations, the Board is not precluded from directing criminal prosecution under Section 24 of the Act or initiating an action under Chapter VI of the Act.

31. The next question to be examined is whether the proceedings initiated are without jurisdiction as the Board has not formed any opinion that there are grounds for adjudging under any provisions of Chapter VIA of the Act.

32. The Central Government has framed rules for holding inquiry for the purposes of imposing penalty under Chapter VIA of the Act. Rule 3 of the SEBI (Procedure for Holding Enquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 provided for appointment of an Adjudicating Officer for holding an inquiry. The said Rule reads as under:-

“Appointment of adjudicating officer for holding inquiry.

3. Whenever the Board is of the opinion that there are grounds for adjudging under any of the provisions in Chapter VIA of the Act, it may appoint any of its officer not below the rank of Division Chief to be an adjudicating officer for holding an inquiry for the said purpose.”

33. It is apparent from the above that the formation of an opinion by the Board that there are grounds for adjudging under any of the provisions of Chapter VIA of the Act is a pre condition for appointment of an Adjudicating Officer. It follows that in absence of such an opinion, an Adjudicating Officer cannot be appointed and any such appointment would be without jurisdiction. The respondent also does not dispute the above proposition. It claims that the Board has formed an opinion that there are grounds for adjudging under the provisions of Chapter VIA of the Act and, therefore, the appointment of the Adjudicating Officer cannot be faulted. In its counter affidavit, the respondent has averred as under:-

“It is submitted that SEBI had examined into the alleged irregularities in the trading in shares of Himalayan

Granites Ltd. and into possible violation of the provisions of the SEBI Act and PIT Regulations. Further, the adjudication proceedings were initiated in the matter after the Whole Time Member was prima-facie satisfied that there are sufficient grounds to enquire into the affairs and adjudicate upon the alleged violations under the SEBI Act and PIT Regulations. It is submitted that the same can be seen from Page no.66 (Annexure 10) of the writ petition containing the file noting.”

34. As noticed above, a Whole Time Member has been delegated the power for appointing an Adjudicating Officer and, therefore, before such appointment is made, the Whole Time Member is required to form an opinion that there are grounds for adjudging under the provisions of Chapter VIA of the Act. Admittedly, there is no noting by the Whole Time Member expressly stating that he has formed such an opinion. The only noting available on the file made by the Whole Time Member is that “*Ms Anita Kenkare is appointed as A.O.*”. The said noting is on a file put up to the Whole Time Member seeking approval of the recommendations made by the Committee of Division Chiefs and such recommendations includes the recommendations of initiation of adjudicating proceedings under Section 15A(b) of the Act against the petitioner. It is, thus, apparent that the Whole Time Member had accepted the recommendations made as he has proceeded to appoint an Adjudicating Officer. However, there is no noting that indicates that he has independently formed any opinion that there are grounds for adjudging under Chapter VIA of the Act.

35. This Court is of the view that the noting made by the Whole Time Member cannot be read as an expression of his opinion that there are grounds for adjudging under Chapter VIA of the Act, which is a pre condition for appointment of an Adjudicating officer. The contention that the Whole Time Member was required to give reasons and pass an order is unmerited. There is no such requirement under the Rules. Further, an opinion to be formed is also not a judicial or quasi judicial order, which would require the Whole Time Member to articulate his reasons in detail. However, he as a delegate of the Board is required to examine the allegations made and independently form and express an opinion that there are grounds for adjudging under Chapter VIA of the Act.

36. The formation of an opinion that there are grounds for adjudging under Chapter VIA of the Act is the necessary pre-requisite for the Board to exercise its jurisdiction. Absent such opinion, the Board would have no jurisdiction to appoint an Adjudicating Officer. There is no dispute as to the above proposition. The only controversy is whether the fact that the Board (Whole Time Member) had formed such opinion can be inferred from appointment of the Adjudicating Authority. Plainly, there is no scope for inferring formation of such opinion merely for the reason that an Adjudicating Officer has been appointed and other officers have forwarded their recommendations for such an action. As stated above, the Board has to form an independent opinion that there are grounds for adjudging under Chapter VIA of the Act. It is not necessary for the Board to elaborate

its opinion or to provide reasons for the same. However, the least that is required for the Board is to state in unequivocal terms that in its opinion, there are grounds for adjudging under Chapter VIA of the Act before proceeding to appoint an Adjudicating Officer. It is necessary that the record clearly bears out that there is an application of mind on the part of the Board. The power to appoint an Adjudicating Officer has been delegated to the Whole Time Member. Therefore, it was necessary for him to have formed such opinion before proceeding further.

37. In *Chhugamal Rajpal v. S.P. Chaliha: (1971) 79 ITR 603 (SC)*, the Supreme Court considered a case relating to Section 148 of the Income Tax Act, 1961. In terms of relevant provisions of the Income Tax Act, 1961, the Income Tax Officer was required to have a reason to believe that income had escaped assessment, before initiating any action for reopening of the assessment and the Commissioner was required to be satisfied that such action was warranted. In that case, the concerned officer had merely stated “Yes” against the question “Whether the Commissioner is satisfied that it is a fit case to issue a notice under Section 148 of the Act?” The Court concluded that the Commissioner had mechanically recorded his permission as he could not have come to such conclusion on the material placed before him. In the present case, the Whole Time Member has not even made a statement that he has formed an opinion that there are grounds for adjudging levy of penalty under Chapter VIA of the Act. In the *Central India Electric Supply Co. Ltd. v. Income Tax Officer*,

Company Circle - X, New Delhi & Anr.:(2011) 333 ITR 237 (Delhi), the Division Bench of this Court considered a case where an endorsement “Yes. The Board is satisfied” was made against a column reading “whether the Board was satisfied of the reasons recorded.” The said satisfaction was in the form of a rubber stamp. The Court concluded that the same did not comply with the provisions of Section 151 of the Income Tax Act, 1961 which proscribed the issue of notice under Section 148 of the Income Tax Act, 1961 beyond the specified period unless the Central Board of Direct Taxes [referred to as the Board] was satisfied on the reasons as recorded by the Income Tax Officer that it is a fit case for issue of such notice.

38. There are number of decisions where the courts have not accepted endorsement made mechanically as indicative of expression of any opinion or satisfaction that the necessary statutory conditions have been met.

39. In the present case, the Whole Time Member has not even made an endorsement that he is of an opinion that there are grounds for adjudging under Chapter VIA of the Act and, therefore, the question of inferring that he had formed such an opinion does not arise.

40. In view of the above, the proceedings initiated against the petitioner are set aside. The impugned notice is also set aside. However, it is clarified that the Board/Whole Time Member may examine the file and if the Board is of the view that there are grounds for adjudging under Chapter VIA of the Act, an Adjudicating Officer

may be appointed for holding an inquiry and pass an order in terms of the Rules.

41. The petition is disposed of in the above terms.

VIBHU BAKHRU, J

JULY 09, 2018
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