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

WRIT PETITION NO. 3101 OF 2019

Kandoi Polytex P. Ltd. ....Petitioner

V/s.

The Assistant Commissioner of Income Tax Circle 4 (2) (2) and Ors. ...Respondents

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Ms. Dinkle Hariya i/b Ms. Namrata Kasale for Petitioner.
Mr. Suresh Kumar for Respondents.

CORAM : K.R. SHRIRAM &
AMIT B. BORKAR, JJ.
DATED : 22nd DECEMBER, 2021

P.C. :

1. Mr. Suresh Kumar tenders a copy of the letter dated 15th December, 2021 addressed by one Mr. Ajay Uke, Deputy Commissioner of Income Tax 4(2)(1), to petitioner enclosing 11 documents, one of the document is the approval under Section 151 of the Income Tax Act, 1961 (the Act). In the reasons for re-opening annexed to the said letter, it is stated that petitioner has e-filed its return of income on 11th September, 2012 declaring total income of Rs.1,78,56,170/- and the return was processed under Section 143(1) of the Act on 25th February, 2014. The reasons for re-opening has been signed by one Dhivya Ruth J, Deputy Commissioner of Income Tax. The reasons now provided is at variance from the two reasons annexed to the petition. It is entirely different from the reasons annexed at Exhibit "H" and as regards the reasons annexed at

Exhibit "K", signatory of Exhibit "K" is one Jaya Lakhwani, Circle 4(2)(2), Mumbai. This also shows that Mr. Ajay Uke has not even bothered to read the petition and the documents annexed thereto and has mechanically done a ministerial job.

2. Moreover, in the form for recording reasons which was signed by Dhivya Ruth J in Column No.8 the answer is 'Yes' to the question whether the assessment is proposed to be made for the first time. In this case, the reasons itself starts with the words that the assessee company has e-filed its return on 11th May, 2012 declaring total income as mentioned earlier. Therefore, Mr. Suresh Kumar agrees with the court that the answer should have been 'No'. Consequently, Column No.9 which is left blank should have been filled up with figure of Rs.1,78,56,170/-. Strangely, the Additional Commissioner of Income Tax and Principal Commissioner of Income Tax have also endorsed and expressed they are satisfied that it was a fit case for issuance of notice under Section 148 of the Act. The recommendations made by the Additional Commissioner and the approval granted by the Principal Commissioner in our view are without application of mind that the same appears to have been granted in a routine and perfunctory manner.

It is settled law as held by the Division Bench of this court in ***German Remedies Ltd. vs. Deputy Commissioner of Income Tax***[1] that while granting approval it was obligatory on the part of the Principal

1 [2006] 287 ITR 494 (BOM)

Commissioner of Income Tax to verify whether there was any failure on the part of the assessee to disclose full and true relevant facts in the return of income filed for the assessment of income of that assessment order. If the PCIT had only read the reasons and also the form for recording the reasons together and referred to other documents in the file, none of which seems to have been done, he would have sent the file back to the person who has filled the form for recording the reasons. We are not certain it is Dhivya Ruth J who recorded the reasons or Jaya Lakhwani because now we find there are three sets of reasons instead of earlier two. Petitioner is justified in raising a contention that the approval granted itself suffered from non application of mind.

3. In view of the above, the impugned notice and consequential order justifying reasons recorded are unsustainable. The same are liable to be quashed and set aside. Hence, petition is allowed. Rule made absolute in terms of prayer clause - (a) and (b) which reads as under :

> *(a) that this Hon'ble Court may be pleased to issue under Article 226 of the Constitution of India an appropriate direction, order or a writ, including a writ in the nature of 'Certiorari', calling for the records of the case and after satisfying itself as to the legality thereof quash and set aside the notice dated 29.03.2019 issued by the First Respondent under section 148 of the Income Tax Act, 1961, being Ex. - 'E' hereto ;*
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> *(b) that this Hon'ble Court may be pleased to issue under Article 226 of the Constitution of India an appropriate direction, order or a writ, including a writ in the nature of 'Certiorari', calling for the records of the case and after satisfying itself as to the legality thereof quash and set aside the order dated 31.10.2019, Ex. - 'M' herein, passed by the First Respondent, disposing of the objections raised by the Petitioner against the initiation of the reassessment proceeding by the First Respondent.*

4. Petition disposed.

(AMIT B. BORKAR, J.) **(K.R. SHRIRAM, J.)**