IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3354 OF 2022

Soumya Girdhari Agrawal }
B1 504 Vihang Garden, }
Pokhran Road, 1 Vartak Nagar, }
Thane (West) – 400 606 } .. Petitioner

Versus

Income Tax Officer, Ward 3(2), }
Ashar IT Park, 6th Floor, Road }
No.16Z, Wagle Industrial Estate, }
Thane (West) 400 604 & Ors. } .. Respondents

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Mr. Tanzil Padvekar, Advocate for the Petitioner.

Mr. Ashok Kotangle a/w Mr. P. A. Narayanan, Mr. Prabhakar Ranshur & Mr. Ajay V. Anand, Advocate for the Respondents.

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CORAM : DHIRAJ SINGH THAKUR AND ABHAY AHUJA, JJ.

DATE : 25th JULY, 2022

P.C.:

. Reply has not been filed by the Respondents. However, with the consent of learned Counsel for the parties, the matter is taken up for final disposal at this stage.

2. The Petitioner challenges the impugned notice dated 29th March, 2021, issued under Section 148 of the Income Tax Act (the Act, 1961) by the Assessing Officer (A.O.), Ward 3(2), Thane, in purported exercise of

power vested in it under Section 148 of the Act, 1961, on the ground that he had reasons to believe that the income chargeable to tax for the assessment year 2015-16 had escaped assessment within the meaning of Section 147 of the Act, 1961.

3. Learned Counsel for the Petitioner urged that the notice impugned was unsustainable in law inasmuch as the notice impugned reflects that the A.O. had purportedly obtained an approval from the Joint Commissioner of Income Tax instead of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner of Income Tax, which was the requirement in terms of Section 151 of the Act, 1961.

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 satisfied, on the reasons recorded by the A.O., that it was a fit 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 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.

5. For the reasons mentioned above, the writ petition is allowed. The notice impugned dated 29th March, 2021 is held to be bad, and is, accordingly, set aside.

(ABHAY AHUJA, J.) **(DHIRAJ SINGH THAKUR, J.)**