IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1204 OF 2022

Vishakha Accounting Services Pvt Ltd. ....Petitioner

V/s.

Assistant Commissioner of Income Tax
Circle 8(3)(1) Mumbai & Ors. ...Respondents

Mr. Prathamesh Kamat a/w Mr. Harsh L Behany, Ms Neena Shah, Mr. Gaurav Gandhi a/w Ms Saloni Manjrekar i/b Mr. Harsh Behany for Petitioner
Mr. Suresh Kumar for Respondents

CORAM : K.R. SHRIRAM &
N.R. BORKAR, JJ
DATED : 20th APRIL 2022

P.C. :

1 This petition has been served on respondents on 3rd March 2022 but no reply has been filed till date. On 29th March 2022, respondents were directed to file an affidavit regarding the time of uploading the notice, which affidavit also has not been filed.

2 Petitioner is impugning a notice dated 31st March 2021 issued under Section 148 of the Income Tax Act 1961 (the said Act) for A.Y.-2015-2016 on various grounds. One such ground is that the sanction issued under Section 151 of the Act is not a valid sanction. Indisputably, the notice impugned has been issued more than four years after expiry of the relevant assessment year. It is petitioner's case that the approval obtained for issuing the said notice is from Additional Commissioner of Income Tax instead of Principal Commissioner of Income Tax and hence is not accordance with

mandates of Section 151 of the Act. Though, approval has not been placed on record, in paragraph 8 of the reasons recorded for re-opening it is mentioned "*……….. Hence necessary sanction to issue the notice under Section 148 has been obtained separately from the Additional Commissioner of Income Tax as per the provisions of Section 151 of the Act.*" According to respondents the case at hand is within four years from the end of the assessment year under consideration, in view of extension of limitation date due to Covid situation. The Assessing Officer has not explained in the reasons recorded as to how the limitation date has got extended. Mr. Suresh Kumar states that he is relying on Taxation and other Laws (Relaxation of Certain Provisions) Act, 2020, by which limitation, inter alia, under provisions of Section 151(1) and Section 151(2), which were originally expiring on 31st March 2020 stood extended to 31st March 2021 and in view thereof, for the 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 was given by the Additional Commissioner.

3 Even if for a moment, we agree with Mr. Suresh Kumar, 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. Therefore, the Relaxation Act provisions cannot be applicable. Even if, the time to issue notice is considered to have been extended, that would not amount to amending the

provisions of Section 151 of the Act.

4 In our view, for the case at hand, the approval ought to have been given by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner and not by the Additional Commissioner of Income Tax. We find support for this view in judgment of this court in ***Voltas Ltd. Vs. ACIT & Ors.***[1] and ***J.M.Financial and Investment Consultancy Services Pvt. Ltd. Vs. ACIT Circle 3(2)(1) & Ors.***[2] Therefore, on this ground alone the impugned notice dated 31st March 2021 issued under Section 148 of the Act is quashed and set aside. Therefore, consequential orders and notices will also have to go including the assessment order dated 28th March 2022.

5 Petition disposed with no order as to costs.

(N. R. BORKAR, J.) **(K.R. SHRIRAM, J.)**

1. 2022 SCC Online Bom 741
2. Order dated 4th April 2022 in Writ Petition No.1050 of 2022