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

WRIT PETITION (L)NO.12295 OF 2022

Thirdware Solution Limited … Petitioner
V/s.
Deputy Commissioner of Income Tax,
Circle 3(3)(1), Mumbai and ors. … Respondents

Mr.Rahul K. Hakani, Advocate for the Petitioner.
Mr.Akhileshwar Sharma, Advocate for the Respondents.

CORAM : DHIRAJ SINGH THAKUR AND
ABHAY AHUJA, JJ.
DATE : AUGUST 02, 2022.

P.C.:-

1. Petitioner challenges the notice dated 26th March, 2021 issued under section 148 seeking to reopen petitioner's assessment for assessment year 2015-16. The reopening statedly is beyond 4 years.

2. At the outset, Mr.Rahul Hakani, learned counsel for the petitioner raises an objection stating that the notice has been issued without proper sanction under section 151 of the Income Tax Act, 1961 ("the Act"). He draws the attention of this court to Ex.A page 34 viz. the notice issued by the concerned Assessing Officer and submits that the said notice states that it is being issued after obtaining the necessary satisfaction of Range 3(3), Mumbai. Learned counsel submits that the satisfaction of Range 3(3),

Mumbai refers to Additional Commissioner or Joint Commissioner. Learned counsel refers to section 151(1) of the Act and submits that no notice under section 148 shall be issued by an Assessing Officer after the expiry of a period of 4 years 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 fit case for the issuance of such a notice. Learned counsel would submit that in this case the assessment year in question is 2015-16 and the notice is dated 26th March, 2021, which is clearly beyond the period of 4 years and therefore, the satisfaction ought to have been as per section 151 (1), whereas the satisfaction has been as per section 151(2) which is for reopening of a case within a period of 4 years in which case the satisfaction of the Joint Commissioner would be sufficient.

3. Mr.Hakani refers to the decision of this court dated 4th April, 2022 in Writ Petition No.1050 of 2022 **JM Financial & Investment Consultancy Services Private Limited Vs. Assistant Commissioner of Income Tax, Circle 3(2)(1) and others (K.R.Shriram and N.R.Borkar, JJ.)** in support of his contentions and submits that in similar facts this court has set aside the reopening.

4. Mr.Akhileshwar Sharma, learned standing counsel for the Revenue submits that the satisfaction has been issued by the Joint Commissioner in accordance with section 151(2) of the Act under the impression that the

reopening is within a period of 4 years. He submits that it appears that the Revenue has relied upon the provisions of the Taxation and other laws, Relaxation of Certain Provisions Act, 2020 (the "Relaxation Act") such that the limitation which was to expire on 31st March, 2020 stood extended to 31st March, 2021. With this understanding the notice for assessment year 2015-16 has been issued on 26th March, 2021 under an impression that with the extension the reopening would be within a period of 4 years and the satisfaction of the Joint Commissioner would be sufficient.

5. We observe that this very issue has been dealt with by the decision of this court in **JM Financial & Investment Consultancy Services Private Limited Vs. Assistant Commissioner of Income Tax, Circle 3(2)(1) and others** (supra), where this court after considering the Relaxation Act as well as the provisions of section 149 as well as section 151 of the Act has observed that even if the Relaxation Act applies to cases of this nature, the provisions of section 149 describing the outer limit 6 years for reopening of an assessment and section 151 dealing with the sanction for an reopening beyond 4 years and within 4 years have not been amended to take care of these eventualities.

6. It is undisputed that the relevant assessment year is 2015-16 and notice for reopening has been issued on 26th March, 2021 which is beyond a period of 4 years. The satisfaction under section 151 has been issued by the Range 3(3), Mumbai which admittedly is a Joint Commissioner, whereas the

satisfaction should have been of either the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner in accordance with section 151(1) of the Act. The notice dated 26th March, 2021, is clearly without jurisdiction and deserves to be quashed and set aside.

7. In this view of the matter, we allow the petition in terms of prayer clause (a) which reads thus :-

> "(a) that this Hon'ble Court may be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate writ, order or direction, calling for the records of the Petitioner's case and after going into the legality and propriety thereof, to quash and set aside the said (i) Notice dated 26/3/2021 u/s 148 for A.Y. 2015-16(Exh.A), (ii) the impugned order disposing objection dated 23/3/2022 being (Exh.B) (iii) Assessment Order u/s 147 r.w. 143(3) dated 31/3/2022 being (Exh.C) and after examining the legality and validity thereof to quash and set aside the same."

8. Writ petition accordingly stands disposed of. No costs.

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

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