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

WRIT PETITION NO.930 OF 2022

Verna Trading Private Limited .... Petitioner.

Vs.

Income Tax officer Ward 4(3)(1)

& Ors. ... Respondents.

Mr.Dharan V. Gandhi for petitioner.
Mr. Suresh Kumar a/w Ms Sumandevbi Yada for respondents.

CORAM : K.R. SHRIRAM &
N.R.BORKAR, JJ.

DATE : 29th APRIL, 2022.

P.C.:

1. In the reasons recorded, copy whereof is annexed to Exhibit J to the petition, it is recorded that, *"In this case return of income was filed for year under consideration but no scrutiny assessment under Section 143(3) of the Act was made."* In the affidavit in reply filed through one S.D. Suryavanshi who has recorded the reasons, affirmed on 13.4.2022, the said Suryavanshi admits that what is stated in the reasons recorded is erroneous but has tried to explain that the error occurred due to substantial work pressure. What is significant is approval granted under Section 151

of the Act is based on erroneous statement recorded in the reasons. That also indicates that approving authorities have not checked the file before according approval. In our view, if the approving authorities had only considered the file, they would have come to know that there was scrutiny assessment that has been made for petitioner.

2. In our view, Additional Commissioner of Income Tax and Principal Commissioner of Income of Tax have mechanically accorded the permission. The important safeguards provided in section 147 and 151 were lightly treated by the Officers. They appear to have taken the duty imposed on them under these provisions as of little importance. We find support for this view in ***Chhugamal Rajpal V/s. S.P. Chaliha & Ors.***,[1] .

3. This Court in ***German Remedies Limited V/s. Deputy Commissioner of Income Tax***[2] has held that while granting approval it was obligatory on the part of the Commissioner 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 year. It was also obligatory on the part of the Commissioner to consider whether or not power to reopen is being invoked properly. In our view, the approval

1 1971(79)ITR 603 SC
2 (2006)287 ITR 494 (Bom)

granted suffers from non application of mind.

4. In the circumstances, notice dated 31.3.2021 issued under Section 148 of the Act is quashed and set aside. Petition allowed in terms of prayer clause (a) which reads as under :

> *"(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 notice under Section 148 of the Act dated 31.03.2021 ("Exhibit G") and the order dated 23.7.2021 ("Exhibit M")."*

5. Petition disposed.

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