

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

WRIT PETITION NO. 1650 OF 2022

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MA Multi-Infra Development Pvt. Ltd.]
(Formerly known as Ma Dairy Products P. Ltd.]
and MA Multi-Trade P. Limited)]
having its registered office at]
106-107, 10th floor,]
Bajaj Bhavan, Jamnalal Bajaj Marg,]
226, Nariman Point, Mumbai 400 021.]... Petitioner

Versus

1. The Assistant Commissioner of Income-tax,]
Circle-3(2)(1), Mumbai,]
having his office at]
Room No.608, 6th floor,]
Aayakar Bhavan, M.K. Road,]
Mumbai-400 020.]
]
2. Additional/Joint/Assistant]
Commissioner of Income-tax/]
Income Tax Officer,]
National Faceless Assessment Centre,]
Delhi.]
]
3. Principal Commissioner of Income-tax-3,]
Mumbai,]
having his office at]
Aaykar Bhavan, M. K. Road, 3rd floor,]
Mumbai – 400 020]
]
4. Union of India,]
Through the Secretary,]
Department of Finance, Ministry of Finance,]
Government of India, North Block,]
New Delhi-110 001.]..Respondents

**Suo -motu corrected vide order dated 3-3-2023

Mr.Jeet Kamdar with Mr.Sameer G. Dalal Advocates for petitioner.

Mr.Akhileshwar Sharma with Ms.Shilpa Goel, Advocate for respondents.

CORAM : DHIRAJ SINGH THAKUR &
 KAMAL KHATA, JJ.

RESERVED ON : 4th JANUARY, 2023

PRONOUNCED ON : 9th JANUARY, 2023

J U D G M E N T

PER DHIRAJ SINGH THAKUR, J.

1. The petitioner challenges the notice dated 31st March 2021 u/s. 148 of the Income Tax Act, 1961 ('the Act') for the assessment year 2015-16, *inter-alia*, on the ground that since the same has been issued beyond the period of four years, approval for issuance of the same ought to have been obtained from the Principal Chief Commissioner of Income-tax in terms of section **151(1)** of the Act.

2. Section 151 reads as under :

“151 Sanction for issue of notice --(1) No notice shall be issued under section 148 by an Assessing Officer, after the expiry of a

***Suo -motu corrected vide order dated 3-3-2023*

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 is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice.

(2) In a case other than a case falling under sub-section (1), no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of Joint Commissioner, unless the Joint Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.

(3)

3. On a perusal of the notice dated 31st March 2021 issued u/s.148 of the Act by the Assessing Officer shows that the same has been issued after obtaining necessary satisfaction of the Range 3(2), Mumbai. As per the objections filed by the revenue, the approval was obtained from the Additional Commissioner of Income Tax of Income-tax, Range (3)(2), Mumbai. The said officer, it is stated, was competent to grant approval in view of the applicability of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (for the sake of convenience, hereinafter referred to as 'the Relaxation Act').

It is stated that in terms of the Relaxation Act, the limitation

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inter-alia, under provisions of sections 151(i) and 151(ii) of the Act, which were originally expiring on 31st March 2020, stood extended to 31st March 2021. It was, thus, urged that since the Relaxation Act had extended the period of limitation, the authority which was otherwise supposed to grant approval in regard to cases falling within the ambit of section 151(i) of the Act could have granted approval beyond the period of three years based upon the Relaxation Act.

4. This Court in *J.M. Financial & Investment Consultancy Services (P) Ltd. Vs. Assistant Commissioner of Income Tax & Ors.*¹ has already taken a view holding that the Relaxation Act would apply only to cases where the limitation was expiring on 31st March 2020 and since for the assessment year 2015-16, the limitation period was six years which was to expire only on 31st March 2022, the said provisions would not be applicable. It was held while the time to issue notice may have been extended but that would not amount to amending the provisions of section 151 of the Act. What was held was as under :

“6 Even for a moment we agree with the view

1 Writ Petition No.1050 of 2022 dt.4th April 2022

***Suo -motu corrected vide order dated 3-3-2023*

expressed by the Principal Commissioner of Income Tax, 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. Certainly, therefore, the Relaxation Act provisions may not be applicable. In any event, the time to issue notice may have been extended but that would not amount to amending the provisions of Section 151 of the Act.”

5. At this stage, it would be relevant to state that before the amendment of section 149 of the Act with effect from 1st April 2022, section 149 as was applicable then envisaged as under :

“Section 149 - Time limit for notice.--(1) No notice under section 148 shall be issued for the relevant assessment year,-

(a) if four years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b) or clause (c);

(b) if four years, but not more than six years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year;

(c) if four years, but not more than sixteen years, have elapsed from the end of the relevant assessment year unless the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment.....”

***Suo -motu corrected vide order dated 3-3-2023*

6. Counsel for the petitioner urged that the case of the petitioner fell u/s. 149(b), and therefore, the period of limitation of six years for issuance of notice u/s. 148 for the assessment year 2015-16 would expire on 31st March 2022. It was, therefore, urged that the case of the petitioner was squarely covered by ***J.M. Financial & Investment Consultancy Services (P) Ltd.*** (Supra).

7. Be that as it may, in our view, the present case is squarely covered by the view taken by this Court in ***J.M. Financial & Investment Consultancy Services (P) Ltd.*** (Supra). We accordingly hold that the approval for issuance of notice u/s. 148 ought not have been obtained from the Additional Commissioner of Income Tax but from the authority specifically mentioned u/s. 151(1) of the Act.

8. Notwithstanding the fact that there were other grounds urged for challenging the notice impugned u/s. 148 of the Act, although feeble, since we are allowing the present petition on the issue of sanction, we do not feel it absolutely necessary to decide the same.

***Suo -motu corrected vide order dated 3-3-2023*

9. Be that as it may, the notice impugned notice dated 31st March 2021 is quashed. The petition is allowed. No costs.

[KAMAL KHATA, J.]

[DHIRAJ SINGH THAKUR, J.]

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