PURTI PRASAD PARAB Digitally signed by PURTI PRASAD PARAB Date: 2023.08.22 10:58:56 +0530

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

WRIT PETITION NO. 1627 OF 2022

Invent Assets Securitisation And
Reconstruction Private Limited ….Petitioner

V/s.
Deputy Commissioner of
Income Tax, Central Circle 1(1)
and Ors. …Respondents

Mr. Deepak Tralshawala a/w Mr. V.S. Hadade for Petitioner.
Mr. Suresh Kumar for Respondents.

CORAM : K.R. SHRIRAM &
FIRDOSH P. POONIWALLA, JJ.
DATED : 18th AUGUST 2023

P.C. :

1. Petitioner is impugning a notice dated 31st March 2021 issued under Section 148 of the Income Tax Act, 1961 (the Act) and the order dated 11th March 2022 rejecting petitioner's objections to re-open.

2. Petitioner is an asset reconstruction company. Petitioner had filed return of income for Assessment Year 2017-18 on 26th October 2017 declaring total income of Rs.28,94,730/-. The case was selected under scrutiny and assessment under Section 143(3) of the Act was completed vide order dated 24th June 2019.

3. Subsequently, petitioner received the impugned notice dated

31st March 2021 in which it is stated that the Assessing Officer (A.O.) had reasons to believe that petitioner's income chargeable to tax for Assessment Year 2017-18 has escaped assessment within the meaning of Section 147 of the Act. Petitioner subsequently received, vide a communication dated 15th November 2021, the reasons for re-opening the assessment. Petitioner was also provided the approval obtained under Section 151 of the Act. Petitioner had raised various grounds and one such ground is that the mandatory sanction required under Section 151 of the Act issuing notice under Section 148 of the Act by A.O. is absent. The reason for petitioner to state this is because in the approval copy under Section 151 of the Act made available to petitioner states "Reasons to Believe - As per Annexure." But in the annexure it is only blank page. In ground (N) to the petition, petitioner has alleged as under :

> *N. That the impugned notice dated 31.03.2021 issued under section 148 along with all proceedings consequent thereto are without jurisdiction and invalid in law because copy of approval subsequently provided by the Respondent no.1 on 11.03.2022 reveals that the Annexture containing reasons is blank in the said approval which makes it evident that the approval was granted by Respondent No.2 without looking at the reasons.*

4. In the affidavit in reply filed by one Ms. Sarika Jain affirmed on 31st May 2022 it is stated as under :

> *Ground N – The notice u/s 148 dated 31.03.2021 with all proceedings is without jurisdiction and invalid in law because a copy of approval provided by the Respondent No.1 is blank.*
>
> *Comment – The annexure containing the reasons is not blank. It contains reasons with the remark "As per Annexure". A copy of the reasons was provided to the petitioner vide later dated 15.11.2021.*

5. Therefore, there is no denial of the fact that the annexure did not contain any reasons. On this ground alone in our view the impugned notice and the order on objections have to be quashed and set aside.

6. During the hearing Mr. Suresh Kumar tendered photocopy of the Form for recording reasons for initiating proceedings under Section 148 of the Act for obtaining approval of the Additional Commissioner of Income Tax – 3(2), Mumbai. To this document is annexed reasons for re-opening. These reasons for re-opening is not there on the Website/Income Tax Portal. There is no reference to these reasons for re-opening in the affidavit in reply. Moreover, the Form for recording the reasons and obtaining approval indicates that the approval was given on 30th March 2021. It would only mean that either the Form was filled up on 30th March 2021 or earlier. But in the approval which is available on the Website/Income Tax Portal, an extract/copy whereof is annexed at Exhibit "V" to the petition shows approval is dated 31st March 2021 and date of proposal is also shown as 31st March 2021.

7. Therefore, we are not inclined to accept the submissions of Mr.Suresh Kumar that there was proper reasons recorded based on which approval was obtained under Section 151 of the Act and that there was application of mind by the Additional Commissioner of Income Tax while according the approval.

8. In the circumstances, on this ground also the petition is allowed in terms of prayer clause – (A) which reads as under :

> *(A) That this Hon'ble Court be pleased to quash the impugned notice dated 31.03.2021 issued under section 148 of the Act and the impugned order dated 11.03.2022 and all proceedings consequent thereto as without jurisdiction and hence illegal and bad in law;*

9. Petition disposed.

(FIRDOSH P. POONIWALLA, J.) **(K.R. SHRIRAM, J.)**