IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.1333 OF 2022

Pinki Rajesh Modi,
Aged about 48 years,
Residing at 402, Guru Vandana Apartment,
Chhapru Nagar Chowk, Lakadganj,
Nagpur 440008, Maharashtra, India ... Petitioner

vs.

1. Income Tax Officer, Ward-5(3),
   Nagpur Income Tax Department,
   Saraf Chambers, Sadar, Nagpur,
   Maharashtra, India

2. Additional/Joint/Deputy/Assistant
   Commissioner of Income Tax/Income-Tax
   Officer, National Faceless Assessment Centre,
   Delhi Email:delhi.dcit2.1.neac@incometax.gov.in

3. Additional/Joint Commissioner of Income Tax,
   Range-4, Aayakar Bhawan, Civil Lines, Nagpur

4. Pr. Commissioner of Income Tax-1,
   Aayakar Bawan, Civil Lines, Nagpur

5. The Union of India, through its Secretary,
   Department of Revenue, Ministry of Finance,
   Government of India, New Delhi-110002

6. Central Board of Direct Taxes, through its
   Chairman, Ministry of Finance, North Block,
   New Delhi – 110002 ... Respondents

Shri Kapil Hirani, Advocate for the petitioner.
Shri Anand Parchure, Advocate with Shri Bhushan Mohta, Advocate for respondent Nos.1 to 4.
Ms Nisha N. Burange, Advocate for respondent No.5.

CORAM : A. S. CHANDURKAR AND MRS VRUSHALI V. JOSHI, JJ.
DATE : JUNE 16, 2023

Judgment : (Per : A. S. Chandurkar, J.)

1. Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

A challenge raised in this writ petition is to the notice issued by the respondent No.1 under Section 148 of the Income Tax Act, 1961 (for short, the Act of 1961) dated 30/03/2021.

2. The relevant facts giving rise to the present proceedings are that the petitioner is an individual assessed to income tax with regard to Assessment Year 2015-16. The respondent No.1 issued notice under Section 148 of the Act of 1961 on 30/03/2021 stating therein that the said Officer proposed to assess/re-assess the income/loss of the petitioner for the said Assessment Year and hence called upon the petitioner to submit a return in the prescribed form. It was stated in the said notice that the same was issued after obtaining necessary satisfaction of the Additional/Joint Commissioner of Income Tax, Range-4, Nagpur. The petitioner on 01/07/2021 sought details in the matter of the reasons recorded for issuance of the said notice as well as the letter according sanction for issuance of notice under Section 148 of the Act of 1961. In reply the petitioner was informed by the respondent No.1 that prima facie there was non-genuine profit/loss of Rs.30,30,000/- for the financial year 2014-15

and hence it was a fit case for issuance of notice under Section 148 of the Act of 1961. After getting on-line approval from the Competent Authority the said notice came to be issued. It is the specific case of the petitioner that the approval obtained under Section 151 of the Act of 1961 was from the Additional/Joint Commissioner of Income Tax, Range-4, Nagpur. Thereafter notice under Section 142(1) came to be issued on 22/11/2021 to which the petitioner filed objection on 09/12/2021. The said objections were turned down by the respondent No.1 on 25/01/2022. In the aforesaid backdrop the notice dated 30/03/2021 has been challenged.

3. Shri Kapil Hirani, learned counsel for the petitioner, inter alia submitted that the impugned notice issued under Section 148 of the Act of 1961 was without jurisdiction since the approval as required under Section 151 of the Act of 1961 had not been obtained. The provisions of Section 151 came to be amended with effect from 01/04/2021 and as per the amended provisions, satisfaction of the Joint Commissioner was necessary under Section 151(2). As per the provisions prior to such amendment, prior sanction and satisfaction of the Principal Chief Commissioner of Income Tax was necessary. This was for the reason that notice under Section 148 was proposed to be issued by the Assessing Officer after expiry of period of four years from the end of the relevant Assessment Year. Placing reliance on the decisions in Writ Petition No.1050/2022 *(J M Financial and Investment Consultancy Services Private Limited vs. Assistant Commissioner of Income*

Tax, Circle 3(2) and Ors.) and Writ Petition No.7733/2022 *(Johnson and Jonson Private Limited vs. Deputy Commissioner of Income Tax Circle 3(4) and ors.)* decided at the Principal Seat, it was submitted that the notice issued under Section 148 of the Act of 1961 was liable to be set aside.

4. Shri Anand Parchure, learned counsel for the respondent Nos.1 to 4 opposed the writ petition. By relying upon the affidavit in reply it was submitted that notice issued under Section 148 was in accordance with law. In the light of the provisions of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (for short, the Act of 2020) it was sufficient that sanction was granted by the Assistant/Joint Commissioner of Income Tax. By virtue of the aforesaid provisions the time limit for issuance of notice under Section 148 and granting of sanction under Section 151 of the Act of 1961 had been extended to 31/03/2021 and as the impugned notice having been issued on 30/03/2021, it was in accordance with law. Hence there was no reason to interfere with the impugned notice. The writ petition was liable to be dismissed.

5. Having heard the learned counsel for the parties and having perused the relevant material, we are of the view that the impugned notice dated 30/03/2021 is liable to be set aside on the ground of absence of jurisdiction with the issuing authority. In the aforesaid decisions, the Division Bench after considering the provisions of the Act of 2020 held in J M *Financial*

and Investment Consultancy Services Private Limited (supra) as under :

> *" 6. Even for a moment we agree with the view 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.*
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> *7. In our view, since four years had expired from the end of the relevant assessment year, as provided under Section 151(1) of the Act, it is only the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner who could have accorded the approval and not the Additional Commissioner of Income Tax. On this ground alone, we will have to set aside the notice dated 31st March 2021 issued under Section 148 of the Act, which is impugned in this petition. In view thereof, the consequent orders and notices will also have to go."*

6. The aforesaid position has been reiterated in the subsequent decision in *Johnson and Jonson Private Ltd.* (supra). We therefore find that the stand taken by the respondents that by virtue of provisions of the Act of 2020, the approval of Assistant/Joint Commissioner of Income Tax as granted was valid has been turned down. In view of Section 151(1) of the Act of 1961 prior to its amendment it was only the Principal Chief Commissioner or the Chief Commissioner of Income Tax who could have accorded the approval. Thus a case for interference has been made out.

7. In that view of the matter, the writ petition succeeds and the same is

allowed in terms of prayer clause (A) which reads as under :

> *(A) Issue a writ of/or order and or directions in the nature of certiorari, prohibition, mandamus or any other appropriate writ, order or direction quashing impugned notice dated 30/03/2021 issued by Respondent No.1 under Section 148 of the Income Tax Act, 1961 and proceedings initiated and completed pursuant thereto;*

Order accordingly. Rule is made absolute in aforesaid terms with no order as to costs.

(Mrs Vrushali V. Joshi, J.) **(A. S. Chandurkar, J.)**

Asmita