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

WRIT PETITION NO.6158 OF 2022

Urvashi Receators Private Limited
Incorporate under the Companies Act
PAN No.AAACU 5390 E
Registered Office at 3, Adwasi Grh Nirman Society,
Ring Road, Bhamti, Nagpur – 44 0022
Through its Director
Shri Vineet s/o Ramkant Jaiswal,
Aged about 50 years, Plot No.8,
Madhumalti Apartments, Trimurti Nagar,
Nagpur 44 0022 ... Petitioner

vs.

1. Income Tax Officer, Ward-1(5),
   At Ayakar Bhavan, Seminary Hills,
   Nagpur.

2. Additional/Joint Commissioner of Income Tax,
   Range-1, At Aayakar Bhawan, Seminary Hills,
   Nagpur

3. Additional/Joint/Deputy/Assistant
   Commissioner of Income Tax/Income Tax
   Officer, National Faceless Assessment Centre,
   Delhi

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

Shri Kapil Hirani, Advocate for the petitioner.
Shri Anand Parchure, Advocate with Shri Bhushan Mohta, Advocate for respondents.

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 16/03/2021 as well as the assessment order dated 22/03/2022.

2. The relevant facts giving rise to the present proceedings are that the petitioner is a Company incorporated under the Companies Act, 1956 assessed to income tax for the Assessment Year 2015-16. The respondent No.1 issued notice under Section 148 of the Act of 1961 on 16/03/2021 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. Thereafter an assessment order under Section 147 read with Section 144 and Section 144B of the Act of 1961 came to be passed on 25/03/2022. 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. In the aforesaid backdrop the notice dated 16/03/2021 as well as the assessment order dated 25/03/2022 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. Consequently the assessment order dated 25/03/2022 was also 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 16/03/2021, 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 16/03/2021 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. The notice dated 16/03/2021 is liable to be set aside. Consequently, the assessment order dated 25/03/2022 would not survive.

7. In that view of the matter, the writ petition succeeds and the same is allowed in terms of prayer clauses (A) and (B) which read as under :

> *(A) Quashed and set aside notice dated 16/03/2021 at Annexure A issued by Respondent No.1 (Income Tax Officer 1(5), Nagpur) under Section 148 of the Income Tax Act, 1961 and proceedings initiated and completed pursuant thereto,*
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> *(B) Quashed and set aside order dated 22/03/2022 at Annexure B passed by Respondent No.3 (Additonal/Joint/Deputy/Assistant Commissioner of Income*

Tax/Income Tax Officer, National Facelss Assessment Centre, Delhi) under Section 147 of the Income Tax Act, 1961 read with Section 144 and 144B of Income Tax Act."

The rectification application preferred by the petitioner under Section 154 of the Act of 1961 shall be re-considered by the Assessing Officer in accordance with law in the light of aforesaid.

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

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

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