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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Decision delivered on: 26.09.2023+ **W.P.(C) 13903/2018**

TIA ENTERPRISES PVT. LTD

..... Petitioner

Through: Mr Kapil Goel and Mr Sandeep Goel,
Advts.

Versus

INCOME TAX OFFICER, WARD- 25(3), NEW DELHI. Respondent

Through: Mr Abhishek Maratha, Sr Standing
Counsel.**CORAM:****HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE GIRISH KATHPALIA****[Physical Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J. (ORAL):**

1. This writ petition concerns Assessment Year (AY) 2011-12.
2. *Via* the instant writ petition, the petitioner seeks to assail the notice dated 30.03.2018 issued under Section 148 of the Income Tax Act, 1961 [in short, "Act"].
 - 2.1 Besides this, a challenge has also been laid to the order dated 06.12.2018, whereby objections preferred by the petitioner *qua* commencement of reassessment proceedings were disposed of.
3. Mr Kapil Goel, who appears on behalf of the petitioner, seeks to challenge the aforementioned notice and order on one singular ground which is that the reassessment proceedings were commenced without the approval of the specified authority.



3.1 For this purpose, Mr Goel has drawn our attention to Annexure-10 which is titled “*Form of recording the reasons for initiating proceedings under Section 147/148 and for obtaining the approval of Pr. Commissioner of Income Tax, Delhi-9 New Delhi.*”

4. As would be evident from the title, this form is not only required to set forth reasons for the commencement of reassessment proceedings but must also include the approval obtained by the Assessing Officer (AO) from the concerned Principal Commissioner of Income Tax (PCIT), before he embark on that route.

5. Having perused the document, what is evident is that the reasons are recorded in Annexure-A which are mentioned against S.No.11 of the said form. Insofar as the approval is concerned, it has a two-stage process. The satisfaction with regard to commencement of reassessment proceedings is required to be recorded by the Additional Commissioner of Income Tax (ACIT) and by PCIT.

5.1. As far as ACIT is concerned, a perusal of the form shows that the following has been noted:

“In view of reasons cited by AO, I am satisfied that it is a fit case for issue of notice u/s 148.”

5.2. However, insofar as PCIT is concerned, nothing is recorded, not even the date. It only bears the signature of the PCIT.

6. Mr Goel says that there is no application of mind whatsoever by the PCIT with regard to the course that the AO chose to undertake, i.e., the commencement of reassessment proceedings against the petitioner.

8 In support of his plea that such objection was taken by the petitioner upon reasons to believe being furnished by the AO, our attention has been



drawn to Annexure-11 appended to the writ petition. Paragraph 4 of the objection supports the plea raised by Mr Goel before us. For convenience, paragraph 4 of the objections preferred is set forth hereafter:

“4. Next illegality relates to recording of reasons in mechanical manner, without application of mind. Further the competent authority the Hon'ble Pr. CIT has appended the signature without recording any satisfaction. The plain look of alleged reasons reveals that the reason is recorded by Ld. Assessing Officer on 30.03.2018, approved by Additional Commissioner on same day and Pr. CIT appended her signature without date. The notice Under Section 148 was also issued on 30.3.2018. This is classic example of non application of mind and reasons recorded as well as approved in one day by all the competent authority in mechanical manner without application of mind and without verifying the facts of the case.”

9. On perusal of the impugned order dated 06.12.2018 whereby the objections filed by the petitioner were disposed of, we are unable to find anything contained therein which would answer the poser raised on behalf of the petitioner by Mr Goel, which was that there was no application of mind whatsoever by the PCIT as to whether or not it was a fit case for triggering reassessment proceedings.

10. Mr Goel goes on to state that this very aspect was also emphasized in the writ petition. For this purpose, our attention has been drawn to paragraph 3.6 of the writ petition, which reads as follows:

“3.6 Mechanical recording of reasons is glaring from column no 9 of reasons proforma wherein Ld AO has not cared to elucidate with accuracy on earlier assessment framed u/s 147/143(3) and has incorrectly mentioned as "NA" which is a fatal and non curable mistake in recording of reasons; Further in reasons recorded proforma in column no12 approval of PCIT-9 New Delhi is given in form of "autograph" only which shows brazen disregard to statutory prescription as no valid satisfaction is visible of Ld PCIT so as to fathom that PCIT has applied his mind to reasons recorded. Further mechanical approval is proved from fact that on date on which reasons are recorded and notice u/s 148 is



issued, on very same date approval of PCIT in form of autograph is obtained. All these clubbed together shows highest level of non application of mind on part of every authority be it Ld AO or Ld PCIT.”

10.1. A perusal of the said paragraph would show that the petitioner has stated in no uncertain terms that except for the signature, there is nothing stated by the PCIT. In sum, the petitioner has asserted that this was a case of mechanical approval of commencement of reassessment proceedings by the PCIT, contrary to what the law requires.

11. The respondent/revenue have filed a counter-affidavit in the matter in which the only assertion made is that PCIT had conveyed her approval to the AO *via* letter F.No. Pr. CIT-Delhi/148/2017-18 dated 30.03.2018.

12. Admittedly, this communication has never seen light of the day. For reasons best known to the respondent/revenue it has chosen not to file the said letter even with the counter-affidavit, despite the petitioner raising a specific objection that the PCIT had not applied its mind while granting approval for the commencement of reassessment proceedings.

12.1. No such assertion concerning the letter dated 30.03.2018 has been made in the impugned order dated 06.12.2018 whereby objections were disposed of.

13. To our minds, approval granted by statutory authorities, as required under the provisions of the Act, has to be furnished to an assessee along with the reasons to believe. The statutory scheme encapsulated in the Act provides that reassessment proceedings cannot be triggered till the AO has reasons to believe that income, which is otherwise chargeable to tax, has escaped assessment and, reasons recorded by him are placed before the specified authority for grant of approval to commence the process of



reassessment.

14. In this case, the sense we get is that the second condition requiring AO to obtain prior approval of the specified authority was not fulfilled, as otherwise, there was no good reason not to furnish the same to the petitioner along with the document which contained the AO's reasons for holding the belief that income otherwise chargeable to tax had escaped assessment.

15. Thus, for the foregoing reasons, we are of the view that neither the impugned notice dated 30.03.2018 issued under Section 148 of the Act nor the impugned order dated 06.12.2018 can be sustained.

16. Accordingly, both the notice as well as the impugned order are set aside.

17. The writ petition is disposed of, in the aforesaid terms.

18. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

SEPTEMBER 26, 2023/aj