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

\+ ITA 197/2024 & CM APPL. 18155/2024 (delay)

PRINCIPAL COMMISSIONER OF INCOME TAX - 7,
DELHI ..... Appellant

Through: Mr. Sunil Agrawal, SSC with Mr. Shivansh Pandya, Mr. Utkarsh Tiwari, Advs.

versus

M/S SOUMYA TRADECOM PVT LTD (ERST. SOUMYA INFRATECH P LTD.) ..... Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% 22.03.2024

CM APPL. 18157/2024 (Ex.)

Allowed, subject to all just exceptions.

The application is disposed of.

CM APPL. 18155/2024 (delay)

Bearing in mind the disclosures made, the delay of 65 days in filing the appeal is condoned.

The application shall stand disposed of.

ITA 197/2024

1. This appeal impugns the order of the Income Tax Appellate Tribunal [**"ITAT"**] dated 18 July 2023 and has framed the following questions of law for our consideration:-

> 3.1 Whether the Ld. ITAT has failed to notice the distinction between administrative approval versus appellate power?

3.2 Whether the Ld. ITAT failed to notice the legal position that administrative decisions are non-justiciable, only judicial /quasi-judicial decisions are justiciable?

3.3 Whether the Ld. ITAT failed to notice the fact that the respondent assessee had never filed objection during the course of assessment proceedings?

3.4 Whether on the facts and in law, the Hon'ble ITAT failed to appreciate the bogus nature of transaction as the assessee company did not provide relevant documents before AO to establish the genuineness of the transactions so undertaken?

3.5 Whether on the facts and in law, the Hon'ble ITAT has failed to appreciate that onus of proving transaction as bogus nature on AO comes only after discharge of onus by assessee by giving all relevant documents which assessee failed to discharge during assessment proceedings?

3.6 Whether on the facts and in law, the Hon'ble ITAT has erred in law in deciding the case without going into merits of the case?

2. As we read the order of the ITAT, it has essentially found fault with the approval as accorded in terms of the Section 151 of the Income Tax Act, 1961 ["**Act**"] with the Principal Commissioner of Income Tax ["**PCIT**"] merely penning the words "*approved*".

3. We note that while dealing with the nature of the exercise which is liable to be undertaken under Section 151 of the Act, we had in **Pr. Commissioner of Income Tax -7 vs Pioneer Town Planners Pvt. Ltd** [2024 SCC OnLine Del 1685] held as under:-

"**13.** The primary grievance raised in the instant appeal relates to the manner of recording the approval granted by the prescribed authority under Section 151 of the Act for reopening of assessment proceedings as per Section 148 of the Act.

14. It is pertinent to first examine the mandate of Section 151 of the Act, as it stood prior to the substitution by Act No. 13 of 2021. For the sake of clarity, the same is reproduced 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 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) For the purposes of sub-section (1) and sub-section (2), the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner or the Joint Commissioner, as the case may be, being satisfied on the reasons recorded by the Assessing Officer about fitness of a case for the issue of notice under Section 148, need not issue such notice himself."

15. A plain reading of the aforesaid provision would indicate that Section 151 of the Act stipulates that the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner must be "satisfied", on the reasons recorded by the AO, that it is a fit case for the issuance of such notice. Thus, the satisfaction of the prescribed authority is a *sine qua non* for a valid approval as per the said Section.

xxxxx xxxxx xxxxx

17. Thus, the incidental question which emanates at this juncture is whether simply penning down *"Yes"* would suffice requisite satisfaction as per Section 151 of the Act. Reference can be drawn from the decision of this Court in *N. C. Cables Ltd.*, wherein, the usage of the expression "approved" was considered to be merely ritualistic and formal rather than meaningful. The relevant paragraph of the said decision reads as under:—

> "11. Section 151 of the Act clearly stipulates that the Commissioner of Income-tax (Appeals), who is the competent authority to authorize the reassessment notice, has to apply his mind and form an opinion. The mere appending of the expression "approved" says nothing. It is not as if the Commissioner of Income-tax (Appeals) has to record elaborate reasons for agreeing with the noting put up. At the same time, satisfaction has to be recorded of the given case which can be reflected in the briefest possible manner. In the present case, the exercise appears to have been ritualistic and formal rather than meaningful, which is the rationale for the safeguard of an approval by a higher

ranking officer. For these reasons, the court is satisfied that the findings by the Income-tax Appellate Tribunal cannot be disturbed."

18. Further, this Court in the case of *Central India Electric Supply Co. Ltd.* v. *ITO* [2011 SCC OnLine Del 472] has taken a view that merely rubber stamping of *"Yes"* would suggest that the decision was taken in a mechanical manner. Paragraph 19 of the said decision is reproduced as under:—

> "19. In respect of the first plea, if the judgments in *Chhugamal Rajpal*, (1971) 79 ITR 603 (SC), *Chanchal Kumar Chatterjee*, (1974) 93 ITR 130 (Cal) and *Govinda Choudhury and Sons case*, (1977) 109 ITR 370(Orissa) are examined, the absence of reasons by the Assessing Officer does not exist. This is so as along with the proforma, reasons set out by the Assessing Officer were, in fact, given **However, in the instant case, the manner in which the proforma was stamped amounting to approval by the Board leaves much to be desired. It is a case where literally a mere stamp is affixed. It is signed by an Under Secretary underneath a stamped Yes against the column which queried as to whether the approval of the Board had been taken. Rubber stamping of underlying material is hardly a process which can get the imprimatur of this court as it suggests that the decision has been taken in a mechanical manner. Even if the reasoning set out by the Income-tax Officer was to be agreed upon, the least which is expected is that an appropriate endorsement is made in this behalf setting out brief reasons**Reasons are the link between the material placed on record and the conclusion reached by an authority in respect of an issue, since they help in discerning the manner in which conclusion is reached by the concerned authority. Our opinion is fortified by the decision of the apex court in *Union of India* v. *M.L. Capoor*, (1973) 2 SCC 836 : AIR 1974 SC 87, 97 wherein it was observed as under:
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> > "27.. .. We find considerable force in the submission made on behalf of the respondents that the 'rubber stamp' reason given mechanically for the supersession of each officer does not amount to
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> > 'reasons for the proposed supersession'. The most that could be said for the stock reason is that it is a general description of the process adopted in arriving at a conclusion.

> 28.. .. If that had been done, facts on service records of officers considered by the Selection Committee would have been correlated to the conclusions reached. Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject-matter for a decision whether it is purely administrative or quasi-judicial. They should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way can opinions or decisions recorded be shown to be manifestly just and reasonable."
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> (emphasis supplied)"

19. In the case of *Chhugamal Rajpal*, the Hon'ble Supreme Court refused to consider the affixing of signature alongwith the noting *"Yes"* as valid approval and had held as under:—

> "5. —
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> Further the report submitted by him under Section 151(2) does not mention any reason for coming to the conclusion that it is a fit case for the issue of a notice under Section 148. We are also of the opinion that the Commissioner has mechanically accorded permission. He did not himself record that he was satisfied that this was a fit case for the issue of a notice under Section 148. To Question 8 in the report which reads "whether the Commissioner is satisfied that it is a fit case for the issue of notice under Section 148", he just noted the word "yes" and affixed his signatures thereunder. We are of the opinion that if only he had read the report carefully, he could never have come to the conclusion on the material before him that this is a fit case to issue notice under Section 148. The important safeguards provided in Sections 147 and 151 were lightly treated by the Income Tax Officer as well as by the Commissioner. Both of them appear to have taken the duty imposed on them under those provisions as of little importance. They have substituted the form for the substance.

20. This Court, while following *Chhugamal Rajpal* in the case of **Ess Adv. (Mauritius) S. N. C. Et Compagnie v. ACIT** [2021 SCC OnLine Del 3613], wherein, while granting the approval, the ACIT has written-"*This is fit case for issue of notice under section 148 of the Income- tax Act, 1961. Approved*", had held that the said approval would only amount to endorsement of language used in Section 151 of the Act and would not reflect any independent application of mind. Thus, the same was considered to be flawed in law.

21. The salient aspect which emerges out of the foregoing discussion is that the satisfaction arrived at by the prescribed authority under Section 151 of the Act must be clearly discernible from the expression used at the time of affixing its signature while according approval for reassessment under Section 148 of the Act. The said approval cannot be granted in a mechanical manner as it acts as a linkage between the facts considered and conclusion reached. In the instant case, merely appending the phrase "Yes" does not appropriately align with the mandate of Section 151 of the Act as it fails to set out any degree of satisfaction, much less an unassailable satisfaction, for the said purpose.

22. So far as the decision relied upon the Revenue in the case of *Meenakshi Overseas Pvt. Ltd.* is concerned, the same was a case where the satisfaction was specifically appended in the proforma in terms of the phrase-*"Yes, I am satisfied"*. Moreover, paragraph 16 of the said decision distinguishes the approval granted using the expression *"Yes"* by citing *Central India Electric Supply,* which has already been discussed above. The decision in the case of *Experion Developers P. Ltd.* would also not come to the rescue of the Revenue as the same does not deal with the expression used in the instant appeal at the time of granting of approval.

23. Therefore, it is seen that the PCIT has failed to satisfactorily record its concurrence. By no prudent stretch of imagination, the expression *"Yes"* could be considered to be a valid approval. In fact, the approval in the instant case is apparently akin to the rubber stamping of *"Yes"* in the case of *Central India Electric Supply.*"

4. Following the aforesaid decision, we find no merit in the instant appeal. The appeal raises no substantial question of law. It shall consequently stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MARCH 22, 2024/*neha*