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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ITA 235/2022

PCIT, DELHI-7

..... Appellant

Through: Mr. Sunil Aggarwal, SSC with
Mr. Shivansh Pandya, Mr.
Utkarsh Tiwari, Advts.

Versus

OMKAM DEVELOPERS LTD.

..... Respondent

Through: Mr. Rajiv Saxena, Mr. Shyam
Sundar, Mr. Dishant Sethi, Ms.
Sumangla Saxena, Advts.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE PURUSHAINdra KUMAR

KAURAV

ORDER

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13.03.2024

1. The Commissioner impugns the order dated 11 May 2021 and has proposed the following questions for our consideration:-

“3.1 WHETHER on the facts and circumstances of the case, the Hon’ble ITAT has erred in not going into the merits of the case and simply deciding the appeal of the Assessee on technical grounds where the Ld. AO has recorded the reasons after perusing the information received from the Investigation Wing, Kolkata and has not done independent enquiry or applied his mind.

3.2 WHETHER on the facts and circumstances of the case, the Hon’ble ITAT has erred in holding that the Pr. CIT has not applied its mind while granting approval for reopening the case. The Income Tax Act does not specify that discussion between AO and the Ld. Pr. CIT regarding reopening the case needs to be recorded. The file was routed through Addl. CIT also and hence it cannot be assumed that Pr. CIT has not applied his mind.

3.3 WHETHER on the facts and circumstances of the case, the Hon’ble ITAT has erred in not going through the facts that column no. 7 of the proforma is a curable defect u/s. 292B of the IT Act, 1961.”

2. Having gone through the impugned judgment, we find that the solitary issue which arose was whether the Principal Commissioner of



Income Tax [“**PCIT**”] had acted in due discharge of the statutory obligations as placed under Section 151 of the Income Tax Act, 1961 [“**Act**”] while according sanction and approval. We note that while considering an identical question, this Court in **The Pr. Commissioner of Income Tax-7 vs. Pioneer Town Planners Pvt. Ltd.** [Delhi High Court order dated 20 February 2024 in ITA 91/2019] has observed as follows: -

“**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.

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.

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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, AIR 1974 SC 87, 97 wherein it was observed as under:

"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

'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."(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. ---

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*.”

3. In view of the aforesaid, we see no reason to interfere with the findings rendered by the Income Tax Appellate Tribunal, whereby it quashed the reassessment proceedings on the ground that the PCIT had failed to apply its independent mind while granting sanction for issue of notice under Section 148 of the Act.

4. Consequently, and since the appeal raises no substantial question of law, it shall stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MARCH 13, 2024/*neha*