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

+ **W.P.(C) 2076/2022**

KRISHAN AGARWAL

.....Petitioner

Through: **Mr.Rohit Jain and Ms.Manisha
Sharma, Advs.**

versus

INCOME TAX OFFICER & ORS.

.....Respondents

Through: **Mr.Puneet Rai, SSC with
Mr.Ashvini Kumar and Mr.
Rishabh Nangia, JSCs and Mr.
Nikhil Jain and Ms. Srishti
Sharma, Advs. for Income Tax
Department.**

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

ORDER

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10.03.2025

1. We had taken note of the principal issues which merit consideration in our order of 19 February 2025 and which reads as follows:

“1. We take note of the principal ground of challenge which stands raised to the action of reassessment as commenced by the respondents under Section 148 of the **Income Tax Act, 1961** and which itself pertains to **Assessment Year 2015-16**.

2. Mr. Jain submits that the notice via electronic mode was served on the writ petitioner after 31 March 2021 and was thus clearly barred by the provisions of Section 149 of the Act. It was his submission that this issue in any case stands answered in favour of the writ petitioner in light of the judgment of the Court in **Suman Jeet Agarwal vs. Income Tax Officer and Others**. In *Suman Jeet Agarwal*, while dealing with cases falling in “Category C”, the Court had recorded the following conclusions:

25.21. The contention of the counsel for the Department that since the date of the issuance of the notices is a



disputed issue of fact the same should not be entertained in the writ petitions is also without merit. There is no dispute in the present cases and it has been conceded during rejoinder arguments that the notices have been despatched on or after April 1, 2021, unlike in the case of Rajesh Sunderdas Vaswani (supra) where the date of despatch was seriously disputed. This court has only been called upon to determine the legal effect of the despatch of April 1, 2021 and thereafter, on the validity of the notices dated March 31, 2021.

25.22. In this regard, it would be useful to note that, the impugned notice in W. P. (C) No. 5316 of 2022 was classified in category "C". However, during the pendency of the proceedings, the jurisdictional Assessing Officer on July 30, 2022 determined that the said notice though generated and signed on March 31, 2021 was issued through e-mail by the Income Tax Business Application servers on April 6, 2021. It has been brought to this court's attention that the jurisdictional Assessing Officer is now self- determined that the same shall be governed by the judgment of the Supreme Court in Ashish Agarwal (supra) and the jurisdictional Assessing Officer has accordingly proceeded to treat the notice dated March 31, 2021 as notice under section 148A(b). The aforesaid acts of the jurisdictional Assessing Officer belie the submissions of the counsel for the Department that the generation of the notice on the Income Tax Business Application screen constitutes issuance. It further substantiates the contention of the petitioners that the date and time of issue of the e-mails by the Income Tax Business Application servers are readily available with the Department and therefore there is no disputed issue of facts.

25.23. We, therefore, answer question No. (I) in the negative against the Department and hold that the impugned notices dated March 31, 2021, which were dispatched on April 1, 2021, or thereafter, would not meet the test of "issued" under section 149 of the Act of 1961 and would be time barred, unless saved by the judgment of the Supreme Court in Ashish Agarwal, (supra)."

3. The matter was ultimately remitted for the consideration of the **Assessing Officer** of each individual assessee in the following terms:-

"31.3. Category "C": The petitions challenging notices falling under category "C" which were digitally signed on March 31, 2021, are disposed of with the direction to the



jurisdictional Assessing Officers to verify and determine the date and time of despatch as recorded in the Income Tax Business Application portal in accordance with the law laid down in this judgment as the date of issuance. If the date and time of despatch recorded is on or after April 1, 2021, the notices are to be considered as show-cause notices under section 148A(b) as per the directions of the apex court in the Ashish Agarwal (supra) judgment.”

4. The second plank of the challenge is based on the requirement of sanction as prescribed by Section 151. Mr. Jain points out that in the present case the sanction was accorded by the Joint Commissioner of Income Tax as opposed to the Commissioner or the Principal Chief Commissioner of Income Tax as mandated in terms of that provision.

5. In order to enable Mr. Rai, learned counsel representing the respondents to obtain instructions in light of the above, let the writ petition be called again on 10.03.2025.”

2. Insofar as the challenge proceeding along the line of **Suman Jeet Agarwal vs Income Tax Officer & Ors.**¹ is concerned, it is the conceded position that the case of the writ petitioner would fall in “Category C”. The notice under Section 148 of the Income Tax Act, 1961 [“Act”] dated 31 March 2021 will consequently be liable to be treated as one referable to Section 148A(b).

3. While and so far as this aspect to the challenge is concerned, the same would have to be answered against the writ petitioner, we find that the initiation of reassessment comes to be faulted when tested on the anvil of Section 151. We proceed on the premise that the Section 148 notice dated 31 March 2021 was accorded approval in accordance with the procedure as prescribed and prevalent on that day.

4. However, what would be relevant to be borne in consideration is how Section 151 read at the relevant time. As that provision existed on the statute book prior to the enforcement of Finance Act, 2021 and which came into effect from 01 April 2021, it read as follows:



“Sanction for issue of notice

151. (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 Chief Commissioner or the Principal Commissioner or 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.”

5. Undisputedly, the reassessment is sought to be initiated after the expiry of four years from the relevant Assessment Year [“AY”]. It would therefore, and in light of Section 151, be the Commissioner or the Principal Chief Commissioner of Income Act who alone could have accorded approval. Undisputedly, in the facts of the present case, the approval was granted by the Joint Commissioner.

6. We, in this regard, bear in mind the following observations as they appear in our decision in **Rohit Kumar v. Income Tax Officer**²,:

“28. That only leaves us to deal with the last limb of the challenge which stood mounted by the petitioner and which was founded on the provisions comprised in Section 151 of the Act and the issue of approval by the competent authority. Undisputedly in the present case, the approval was granted by the Joint Commissioner of Income Tax, Range-52, Delhi. The issue which consequently arises is whether the Joint Commissioner could be

¹ 2022 SCC OnLine Del 3141

² 2025 SCC OnLine Del 149



considered to be the competent authority for the purposes of granting approval as contemplated under Section 151 of the Act.

29. We had in **Abhinav Jindal HUF v. Commissioner of Income Tax and Ors.** dealt with a similar issue and where the respondents had sought to contend that the provisions of TOLA would salvage approvals that may have been granted by Joint Commissioners and notwithstanding the hierarchical change which had come to be incorporated in Section 151 post Finance Act, 2021. Negating the argument of the Joint Commissioner being entitled to be viewed as the competent authority for purposes of approval, we had in *Abhinav Jindal* held:-

“30. Tested on the principles which were enunciated in *Suman Jeet Agarwal v. ITO* [(2022) 449 ITR 517 (Delhi); 2022 SCC OnLine Del 3141.], the petitioners would appear to be correct in their submission of the date liable to be ascribed to the impugned notices and those being viewed as having been issued and dispatched after April 1, 2021. However, and in our considered opinion, the same would be of little relevance or significance when one bears in mind the indubitable fact that all the notices were approved by the Joint Commissioner of Income-tax and which was an authority recognised under the unamended section 151. The answer to the argument based on the provisions of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act would also largely remain unimpacted by our finding on this score as would become evident from the discussion which ensues.

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33. A plain reading of section 3 establishes that where the time limit for the completion or compliance of any action under a specified Act were to fall between March 20, 2020 to December 31, 2020, the period for completion and compliance would stand extended up to March 31, 2021 or such other date thereafter as may be specified by the Union Government by way of a notification. Undisputedly, the date of March 31, 2021 came to be extended thereafter up to April 30, 2021 and lastly up to June 30, 2021.

34. Concededly, the Finance Act, 2021 was enacted thereafter and came into effect from April 1, 2021. It is admitted by the respondents that the terminal point for initiation of reassessment for the assessment year 2015-



2016 in ordinary circumstances would have been March 31, 2020 and that date clearly fell within the period spoken of in section 3 of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act. The period for issuance of notice for the assessment year 2015-2016, thus and principally speaking, stood extended up to June 30, 2021.

35. However, the key to answering the argument which was canvassed on behalf of the respondents is contained in section 3 itself and which purported to extend the period for completion of proceedings, passing of an order, issuance of a notice, intimation, notification, sanction or approval. The provision extended the time limit for such action, notwithstanding anything contained in the specified Act, initially up to March 31, 2021 and which date was extended subsequently to April 30, 2021 and lastly up to June 31, 2021.

36. Section 3 thus essentially extended the time period statutorily prescribed for initiation and compliance up to the dates notified by the Union Government from time to time. The extension of these timelines was intended to apply to all statutes which were included in the expression “specified Act” as defined in section 2(b) of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act.

37. The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act was thus concerned with overcoming the statutory closure and eclipse which would have otherwise descended upon the authority to act and take action under the specified statutes. It was essentially concerned with tiding over the insurmountable hurdles which arose due to the pandemic and the disruption that followed in its wake. The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, viewed in that light, was neither aimed at nor designed or intended to confer a new jurisdiction or authority upon an officer under a specified enactment. On a fundamental plane, it was a remedial measure aimed at overcoming a position of irretrievable and irreversible consequences which were likely to befall during the nationwide lockdown. It was principally aimed at enabling authorities to take and commence action within the extended timelines that the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act introduced. However, it neither altered nor modified or amended the distribution of functions, the command



structure or the distribution of powers under a specified Act. It was in that light that we had spoken of the carving or conferral of a new or altered jurisdiction.

38. It would therefore be wholly incorrect to read the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act as intending to amend the distribution of power or the categorisation envisaged and prescribed by section 151. The additional time that the said statute provided to an authority cannot possibly be construed as altering or modifying the hierarchy or the structure set up by section 151 of the Act. The issue of approval would still be liable to be answered based on whether the reassessment was commenced after or within a period of four years from the end of the relevant assessment year or as per the amended regime dependent upon whether action was being proposed within three years of the end of the relevant assessment year or thereafter. The bifurcation of those powers would continue unaltered and unaffected by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act.

39. The fallacy of the submission addressed by the respondents becomes even more evident when we weigh in consideration the fact that even if the reassessment action were initiated, as per the extended Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act timelines, and thus after the period of four years, section 151 incorporated adequate measures to deal with such a contingency and in unambiguous terms identified the authority which was to be moved for the purposes of sanction and approval. Section 151 distributed the powers of approval amongst a set of specified authorities based upon the lapse of time between the end of the relevant assessment year and the date when reassessment was proposed. Thus even if the reassessment was proposed to be initiated with the aid of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act after the expiry of four years from the end of the relevant assessment year, the authority statutorily empowered to confer approval would be the Principal Chief Commissioner/Chief Commissioner/Principal Commissioner/Commissioner. It would only be in a case where the reassessment was proposed to be initiated before the expiry of four years from the end of the relevant assessment year that approval could have been accorded by the Joint Commissioner of Income-tax. Similar would be the position which would emerge if the actions were



tested on the basis of the amended section 151 and which divides the power of sanction amongst two sets of authorities based on whether reassessment is commenced within three years or thereafter.

40. What we seek to emphasise is that the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act authorisation merely enables the competent authority to take action within the extended time period and irrespective of the closure which would have ordinarily come about by virtue of the provisions contained in the Act. It does not alter or amend the structure for approval and sanction which stands erected by virtue of section 151. The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act merely extended the period within which action could have been initiated and which would have otherwise and ordinarily been governed and regulated by sections 148 and 149 of the Act. If the contention of the respondents were to be accepted it would amount to us virtually ignoring the date when reassessment is proposed to be initiated and the same being indelibly tied to the end of the relevant assessment year. Once it is conceded that the notice came to be issued four or three years after the end of the relevant assessment year, the approval granted by the Joint Commissioner of Income-tax would not be compliant with the scheme of section 151. We thus find ourselves unable to sustain the grant of approval by the Joint Commissioner of Income-tax.

41. It is pertinent to note that the respondents had feebly sought to urge that the use of the expression “sanction” in section 3 of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act also merits due consideration and is liable to be read as supportive of the contentions that were addressed on their behalf. The argument is however clearly meritless when one bears in consideration the indisputable fact that the set of provisions with which we are concerned nowhere prescribe a timeframe within which sanction is liable to be accorded. “Sanction” when used in section 3 of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act caters to those contingencies where a specified Act may have prescribed a particular time limit within which an action may be approved. That is clearly not the position which obtains here. We thus find ourselves unable to sustain the impugned action of reassessment. The impugned notices which rest on a



sanction obtained from the Joint Commissioner of Income-tax would thus be liable to be quashed.”

30. Mr. Panda, learned counsel appearing for the respondents, however, contended that the view expressed by us in *Abhinav Jindal* would no longer sustain in light of the judgment in *Rajeev Bansal*. According to learned counsel, the Supreme Court in *Rajeev Bansal* has ultimately held that the grant of approval under Section 151 would have to be in consonance with the extended time limits which came to be introduced by TOLA. We deem it apposite to extract the following passages from *Rajeev Bansal*: -

“73. Section 151 imposes a check upon the power of the Revenue to reopen assessments. The provision imposes a responsibility on the Revenue to ensure that it obtains the sanction of the specified authority before issuing a notice under section 148. The purpose behind this procedural check is to save the assessee from harassment resulting from the mechanical reopening of assessments. (*Sri Krishna Pvt. Ltd v. ITO* [(1996) 221 ITR 538 (SC); (1996) 9 SCC 534.]) A table representing the prescription under the old and new regime is set out below:

Regime	Time limits	Specified authority
Section 151(2) of the old regime	Before expiry of four years from the end of the relevant assessment year	Joint Commissioner
Section 151(1) of the old regime	After expiry of four years from the end of the relevant assessment year	Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner
Section 151(i) of the new regime	Three years or less than three years from the end of the relevant assessment year	Principal Commissioner or Principal Director or Commissioner or Director
Section 151(ii) of the new regime	More than three years have elapsed from the end of the relevant assessment year	Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General

74. The above table indicates that the specified authority is directly co-related to the time when the notice is issued. This plays out as follows under the old regime:



(i) If income escaping assessment was less than rupees one lakh : (a) a reassessment notice could be issued under section 148 within four years after obtaining the approval of the Joint Commissioner; and (b) no notice could be issued after the expiry of four years; and

(ii) If income escaping was more than rupees one lakh : (a) a reassessment notice could be issued within four years after obtaining the approval of the Joint Commissioner; and (b) after four years but within six years after obtaining the approval of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.

75. After April 1, 2021, the new regime has specified different authorities for granting sanctions under section 151. The new regime is beneficial to the assessee because it specifies a higher level of authority for the grant of sanctions in comparison to the old regime. Therefore, in terms of *Union of India v. Ashish Agarwal* [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.], after April 1, 2021, the prior approval must be obtained from the appropriate authorities specified under section 151 of the new regime. The effect of section 151 of the new regime is thus:

(i) If income escaping assessment is less than rupees fifty lakhs: (a) a reassessment notice could be issued within three years after obtaining the prior approval of the Principal Commissioner, or Principal Director or Commissioner or Director; and (b) no notice could be issued after the expiry of three years; and

(ii) If income escaping assessment is more than rupees fifty lakhs: (a) a reassessment notice could be issued within three years after obtaining the prior approval of the Principal Commissioner, or Principal Director or Commissioner or Director; and (b) after three years after obtaining the prior approval of the Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General.

76. Grant of sanction by the appropriate authority is a precondition for the Assessing Officer to assume jurisdiction under section 148 to issue a reassessment notice. Section 151 of the new regime does not prescribe a time limit within which a specified authority has to grant sanction. Rather, it links up the time limits with the jurisdiction of the authority to grant sanction. Section 151(ii) of the new regime prescribes a higher level of



authority if more than three years have elapsed from the end of the relevant assessment year. Thus, non-compliance by the Assessing Officer with the strict time limits prescribed under section 151 affects their jurisdiction to issue a notice under section 148.

77. Parliament enacted Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 to ensure that the interests of the Revenue are not defeated because the Assessing Officer could not comply with the preconditions due to the difficulties that arose during the covid-19 pandemic. Section 3(1) of the Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 relaxes the time limit for compliance with actions that fall for completion from March 20, 2020 to March 31, 2021. The Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 will accordingly extend the time limit for the grant of sanction by the authority specified under section 151.

The test to determine whether Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 will apply to section 151 of the new regime is this : if the time limit of three years from the end of an assessment year falls between March 20, 2020 and March 31, 2021, then the specified authority under section 151(i) has an extended time till June 30, 2021 to grant approval. In the case of section 151 of the old regime, the test is : if the time limit of four years from the end of an assessment year falls between March 20, 2020 and March 31, 2021, then the specified authority under section 151(2) has time till March 31, 2021 to grant approval. The time limit for section 151 of the old regime expires on March 31, 2021 because the new regime comes into effect on April 1, 2021.

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81. This court in *Union of India v. Ashish Agarwal* [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.] directed the Assessing Officers to “pass orders in terms of section 148A(d) in respect of each of the assessee concerned”. Further, it directed the Assessing Officers to issue a notice under section 148 of the new regime “after following the procedure as required under section 148A”. Although this court waived off the requirement of obtaining prior approval under section 148A(a) and section 148A(b), it did not waive the requirement for section 148A(d) and



section 148. Therefore, the Assessing Officer was required to obtain prior approval of the specified authority according to section 151 of the new regime before passing an order under section 148A(d) or issuing a notice under section 148. These notices ought to have been issued following the time limits specified under section 151 of the new regime read with the Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, where applicable.”

31. As is evident from a reading of the aforementioned passages, the Supreme Court in *Rajeev Bansal* had merely alluded to the time frames within which approval could be sought and obtained and that being regulated by the extended timelines which TOLA had introduced. However, *Rajeev Bansal* cannot possibly be construed or read as affirming the authority of a Joint Commissioner to accord approval or the said authority being viewed as the competent authority for the purposes of grant of approval post 01 April 2021.”

Consequently, and for the reasons assigned in *Rohit Kumar*, we find ourselves unable to sustain the reassessment action.

7. We, accordingly, allow the present writ petition and quash the Section 148 notice dated 31 March 2021. This order, however, shall be without prejudice to the rights of the respondents to draw proceedings afresh, if otherwise permissible in law.

YASHWANT VARMA, J

HARISH VAIDYANATHAN SHANKAR, J

MARCH 10, 2025*akc*