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

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Date of Decision: 14.05.2025

+ **W.P.(C) 3220/2023**

BHAGWAN SAHAI SHARMA

.....Petitioner

Through: Ms Ananya Kapoor, Mr Utkarsh
Kumar Gupta and Mr Sumit
Lalchandani, Advocates.

versus

**DEPUTY COMMISSIONER OF INCOME TAX,
CIRCLE 13 -1 DELHI AND ANR.**

.....Respondents

Through: Mr Apoorv Agarwal, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE TEJAS KARIA

VIBHU BAKHRU, J. (ORAL)

1. The petitioner has filed the present petition, *inter alia*, impugning a notice dated 29.07.2022 issued under Section 148 of the Income Tax Act, 1961 [**the Act**].
2. The said notice was preceded by an order dated 29.07.2022 passed under Section 148A(d) of the Act, which in turn was passed pursuant to a notice dated 29.06.2021 issued under Section 148 of the Act that was deemed to be a notice under Section 148A(b) of the Act in terms of the directions issued by the Supreme Court in *Union of India & Ors. v. Ashish Agarwal: (2023) 1 SCC 617*.
3. Ms Kapoor, the learned counsel appearing for the petitioner has assailed the said notice and the proceedings initiated pursuant thereto on the



basis that the notice is invalid as it was not issued with the prior approval of the authorities specified under Section 151(ii) of the Act.

4. Briefly stated the facts as necessary to address the aforesaid controversy are as under:

5. The petitioner is a senior citizen aged 72 years. The petitioner claims that he has his own Company dealing in auto parts and derives his income mainly from salary from the Company. The petitioner filed his return of income for the assessment year [AY] 2016-17 on 05.08.2017, declaring total income of Rs. 73,34,600/-.

6. A notice under Section 148 of the Act for AY 2017-18 was issued on 29.06.2021. The said notice was unsustainable as it was issued under the statutory regime relating to reassessment as in force prior to 31.03.2021. This court in the case of *Mon Mohan Kohli v. Assistant Commissioner of Income Tax & Anr.: Neutral Citation No.: 2021:DHC:4181-DB* had set aside such notices that were issued after 31.03.2021 without following the procedure as prescribed under Section 148A of the Act. Some of the other High Courts also took a similar view and struck down notices that were issued under Section 148 of the Act after 31.03.2021 but under the unamended provisions relating to the re-assessment of income that had escaped assessment.

7. The Revenue appealed the decisions rendered by various High Courts to the Supreme Court of India. In *Union of India v. Ashish Agarwal, (supra)* which was one of such appeals arising from the decision of the Allahabad High Court – the Supreme Court delivered its decision on



04.05.2022, whereby it concurred with the view that the amended provisions which came into force after 31.03.2021 would be applicable to notices issued thereafter. However, the Supreme Court also issued certain directions in exercise of powers under Article 142 of the Constitution of India. The Court directed that all notices that were issued under Section 148 of the Act after 01.04.2021 till the date of the said decision (04.05.2022), including those that had been set aside by the High Courts, would be construed as show cause notices under Section 148A(b) of the Act. The Assessing Officers were directed to provide the information and material relied upon by the Revenue for issuance of such notices, to the respective assesseees within a period of thirty days from the date of the decision so as to enable the respective assesseees to respond to the same.

8. In compliance of the directions issued by the Supreme Court in ***Union of India & Ors. v. Ashish Agarwal (supra)***, the AO provided the information to the petitioner on 02.06.2022. It was alleged that the assessee (Sh. Bhagwan Sahai Sharma) was a beneficiary of an accommodation entry during financial year [FY] 2016-17. It was alleged that M/s Asian Bulls Capital Pvt. Ltd. had provided an accommodation entry of Fictitious Purchases of shares amounting to a total of ₹1,70,16,855/-, which was then used to claim bogus capital gain/loss. This was based on the analysis of the information received and ITR & financial statements of the assessee for AY 2017-18. The petitioner responded to the said notice on 25.06.2022.

9. By the letter dated 25.06.2022, the assessee denied the purchase of shares amounting to a total of Rs.1,70,16,855/- during FY 2016-17 relevant to AY 2017-18 from Asian Bulls Capital Private Limited. The Assessee



claimed that in FY 2016-17, he had purchased 3000 shares of Vedanta Ltd. for ₹256200/- and 4000 shares of Vedanta Ltd for ₹4,98,600/- totalling to Rs. 7,54,800/- through Asian Bulls Capital Pvt Ltd and payment was made through banking channels. Out of these shares, 3000 shares were sold in the same year for Rs 7,53,260, through SMC Global Securities Ltd and the resultant short term capital gain (₹7,53,260/-less ₹2,56,200/-) of ₹4,97,060/- was declared in his return of income.

10. The learned AO was not persuaded with the explanation provided by the petitioner and passed an order dated 29.07.2022 under Section 148A(d) of the Act, holding that it was a fit case for reopening the assessment proceedings under Section 147/148 of the Act.

11. The AO issued a notice dated 29.07.2022 under Section 148 of the Act accompanied with the order dated 29.07.2022 passed under Section 148A(d) of the Act.

12. It is apparent from the said notice that it was not issued with the prior approval of the Principal Chief Commissioner of Income Tax (PCCIT) or any other authority specified under Section 151(ii) of the Act. Such approval is mandatory for issuance of a notice issued under Section 148 of the Act beyond the period of three years from the end of the relevant assessment year.

13. Section 151 of the Act (as amended by the Finance Act, 2021) as in force on the date of issuance of notice reads as under:

“151. *Sanction for issue of notice.*— Specified authority for the purposes of section 148 and section 148A shall be,—



(i) Principal Commissioner or Principal Director or Commissioner or Director, if three years or less than three years have elapsed from the end of the relevant assessment year;

(ii) Principal Chief Commissioner or Principal Director General or where there is no Principal Chief Commissioner or Principal Director General, Chief Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year.”

14. The question as to which would be the specified authority under Section 151 of the Act in respect of approval of notices under Section 148 of the Act that were issued pursuant to proceedings that were initiated under Section 148A of the Act prior to 30.06.2021 [the extended limitation under TOLA] has been considered by this Court in several cases including *Twylight Infrastructure Pvt. Ltd. v. Income Tax Officer Ward 25 3 Delhi & Ors.*: Neutral Citation No.2024:DHC:259-DB and *Abhinav Jindal HUF v. Income Tax Officer Ward 54(1) Delhi & Ors.*: Neutral Citation No.: 2024:DHC:7238-DB. This Court has consistently held that TOLA would have no relevance for determining the specified authority whose approval was mandatory under Section 151 of the Act for issuance of a notice under Section 148 of the Act. We consider it apposite to refer to the following extract from the decision of this court in *Abhinav Jindal HUF v. Income Tax Officer Ward 54(1) Delhi & Ors.* (*supra*). The same is set out below:

“17. As was noticed in the introductory parts of this decision, the respondents had, contrary to the above, argued that once a notice for reassessment comes to be issued after the expiry of four years by virtue of the extended period of time made available by TOLA, all the impugned notices would fall within the ken of sub-section (2) of the pre-amendment



Section 151 and consequently the sanction and approval accorded by the JCIT would be in accordance with law.

38. It would therefore be wholly incorrect to read TOLA 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 AY or as per the amended regime dependent upon whether action was being proposed within three years of the end of the relevant AY or thereafter. The bifurcation of those powers would continue unaltered and unaffected by TOLA.

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 TOLA 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 AY and the date when reassessment was proposed. Thus even if the reassessment was proposed to be initiated with the aid of TOLA after the expiry of four years from the end of the relevant AY, 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 AY that approval could have been accorded by the JCIT. 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.”

15. The aforesaid issue is also covered by the earlier decisions of this Court in *Cadence Real Estates Pvt. Ltd. v. Income Tax Officer and Anr.: W.P.(C) 482/2023, decided on 24.04.2025*; *Twylight Infrastructure Pvt. Ltd. v. Income Tax Officer Ward 25 3 Delhi and Ors., (supra)* as well as the decision in the case of *Ganesh Dass Khanna v. Income Tax Officer & Anr. 2023: Neutral Citation No.:2023: DHC:8187-DB*.

16. In *Twylight Infrastructure Pvt. Ltd. v. Income Tax Officer Ward 25 3 Delhi and Ors. (supra)*, this Court had held as under:

“12. Clearly, the revenue advanced the argument of interlinkage between limitation and the ascertainment of the specified authority due to the plain language of the amended Section 151 of the Act. Section 151, when read alongside the first proviso to Section 148, brings the aspect of inextricable linkage to the fore.

12.1. Clauses (i) and (ii) of Section 151 of the amended Act (which has been extracted hereinabove) clearly specify the authority whose approval can trigger the reassessment proceedings. Thus, if three (3) years or less have elapsed from the end of the relevant AY, the specified authority who would grant approval for initiation of reassessment proceedings will be the Principal Commissioner or Principal Director or Commissioner or Director. However, if more than three (3) years from the end of the relevant AY have elapsed, the specified authority for according approval for reassessment shall be the Principal Chief Commissioner or Principal Director General or, where there is no Principal Chief Commissioner or Principal Director General, Chief Commissioner or Director General.



12.2. That the approval is mandatory is plainly evident on perusal of the first proviso appended to section 148 of the Act. The said proviso, at the risk of repetition, reads as follows:

“Provided that no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority to issue such notice.”

12.3. In these cases, there is no dispute that although three (3) years had elapsed from the end of the relevant AY, the approval was sought from authorities specified in clause (i), as against clause (ii) of Section 151.”

12.4. Before us, the counsel for the Revenue continue to hold this position. The only liberty that they seek is that if, based on the judgment in *Ganesh Dass Khanna* [*Ganesh Dass Khanna v. ITO*, (2024) 460 ITR 546 (Delhi); 2023 SCC OnLine Del 7286; 2023: DHC:8187-DB.], the impugned orders and notices are set aside, liberty be given to the Revenue to commence the reassessment proceedings afresh.

13. Therefore, having regard to the aforesaid, the impugned notices and orders in each of the above captioned writ petitions are quashed on the ground that there is no approval of the specified authority, as indicated in section 151(ii) of the Act. The direction is issued with the caveat that the Revenue will have liberty to take steps, if deemed necessary, albeit as per law.”

17. In the recent decision of *Communist Party Of India (Marxist) v. Income Tax Department*, W.P.(C) 9031/2023 decided on 28.04.2025, this Court had referred to the earlier decisions including the decision rendered by the Bombay High Court in *J M Financial & Investments Consultancy Services Private Limited v. ACIT, Circle 3(2)(1) & Ors.*, W.P. No.



1050/2020, decided on 04.04.2022 and Siemens Financial Services Pvt. Ltd. v. Deputy Commissioner of Income-Tax & Ors.:2023 SCC OnLine Bom 2822; the Madras High Court in Ramachandran Shivan v. Income Tax Officer, W.P. No.8570/2023 and other connected matters, decided on 04.03.2024 and the Orissa High Court in Ambika Iron and Steel Pvt. Ltd. v. Principal Commissioner of Income Tax: 2022 SCC OnLine Ori 4162 and had noted that the question as to which is the specified authority whose approval is mandatory, would depend on whether the notice under Section 148 of the Act was issued within a period of three years from the end of the relevant assessment year or thereafter.

18. In view of the above, the impugned notice is liable to be set aside on this ground alone.

19. The impugned notice is, accordingly, set aside. Thus, proceedings initiated pursuant to the said notice are also set aside.

20. The petition is allowed in the aforesaid terms.

VIBHU BAKHRU, J

TEJAS KARIA, J

MAY 14, 2025

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[Click here to check corrigendum, if any](#)