MAJESTY LEGAL
Advocates & Solicitors

APPROVAL U/S 151 OF INCOME TAX ACT, SHOULD NOT BE IN MECHANICAL MANNER FOR REOPENING OF ASSESSMENTS

PCIT VS PIONEER TOWN PLANNERS PVT LTD

Hon'ble Delhi High Court in the case of ***PCIT Vs Pioneer Town Planners Pvt Ltd***[1] examined the issue of whether a mere "Yes" by Principal Commissioner of Income-tax [PCIT] could be considered to be a valid approval under section 151 of Income Tax Act. Hon'ble Court observed that a plain reading of the aforesaid provision would indicate that Section 151 of the Act stipulates that the authority must be "satisfied", on the reasons recorded by the AO, before issuance of such notice. Furthermore, it is noted that in the instant case, Principal Commissioner of Income-tax ["PCIT"] has merely written "Yes" without specifying noting his approval while issuing notice under section 148 of the Act. Additionally, it was highlighted precedents where similar mechanical approvals were deemed inadequate.

Accordingly, held that the approval given seemed to be merely a mechanical "rubber stamping" of yes. Hence, dismissed the appeal.

TEAM MAJESTY LEGAL[2]

OFFICE : B-87, Alaknanda Apartment, G-1, Ganesh Marg/Moti Marg, Bapu Nagar, Jaipur,Rajasthan-302015.
https://maps.app.goo.gl/BsUvY9RWyvUt6JcB9?g_st=iw
CHAMBER : 204, E-Block, Rajasthan High Court, Jaipur.
MOBILE No. : 9785461395
E-MAIL : mahi@majestylegal.in
WEBSITE : www.majestylegal.in

[1] ITA 91/2019

[2] Majesty legal is a LAW FIRM established in 2013 by Ms. Mahi Yadav. Objective of this legal update is to provide insights on law, statutes and is personal in nature, not to be deemed as legal advice.

$~6

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

\+ ITA 91/2019

THE PR. COMMISSIONER OF INCOME TAX -7

..... Appellant

Through: Mr. Sanjay Kumar, Sr. SC.

versus

PIONEER TOWN PLANNERS PVT. LTD. ..... Respondent

Through: Mr. Sumit Lalchandani and Mr. Salil Kapoor, Advs.

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

O R D E R

% 20.02.2024

PER: PURUSHAINDRA KUMAR KAURAV J.

1. The instant appeal at the instance of the Revenue impugns the order dated 06.08.2018 passed by the Income Tax Appellate Tribunal [**"ITAT"**] for Assessment Year [**"AY"**] 2009-10, whereby, the ITAT, while ruling in favour of the respondent-assessee, has held that the prescribed authority has granted approval under Section 151 of the Income Tax Act, 1961 [**"Act"**] in a mechanical manner.

2. The facts of the present case manifest that on 30.09.2010, the respondent-assessee filed its income tax return [**"ITR"**] which was processed in accordance with Section 143(1) of the Act. Subsequently, a search operation was carried out in the premises of Shriji Group entities, of which the respondent-assessee was one of the concerns. Pursuant to the said search operation, reassessment proceedings were initiated against the respondent-assessee, whereby, the AO held that

the respondent-assessee has taken accommodation entry amounting to Rs.4,79,00,000/- which had escaped assessment. Upon recording of 'reasons to believe' by the concerned authority, a notice under Section 148 of the Act was duly issued to the respondent-assessee. Consequently, the respondent-assessee replied to the said notice with a request to consider the ITR it originally filed as the one filed in response to the notice under Section 148 of the Act.

3. Thereafter, in accordance with the provisions encapsulated under Section 143(3) read with Section 147 of the Act, a reassessment order was framed by the AO by making additions on account of unexplained (i) share premium and (ii) expenditure of commission for accommodation entries. The total taxable value determined by the AO amounted to Rs.10,80,47,000/-.

4. Being aggrieved by the said order, the respondent-assessee preferred an appeal before the Commissioner of Income Tax (Appeals) [**"CIT (A)"**]. However, the same came to be rejected *vide* order dated 18.09.2017.

5. The respondent-assessee challenged the aforesaid order passed by the CIT (A) before the ITAT, whereby, the appeal of the respondent-assessee has been allowed and it has been held that the AO initiated the reassessment proceedings on the basis of borrowed satisfaction and without any application of mind.

6. Learned counsel appearing on behalf of the Revenue submits that the mandate of Section 151 of the Act requires the prescribed authority, while granting approval, to concur with the reasoning of the AO in the reasons recorded or else the approval would be denied by the approving authority. According to him, Section 151 of the Act stipulates that the concurrence of the prescribed authority is a matter

of subjective satisfaction of the concerned authority and the rigour of law is duly followed as soon as the approving authority provides its consent for issuance of notice under Section 148 of the Act. He contends that the conditions envisaged in Section 151 of the Act stand satisfied till the time the wordings are unambiguous and cannot be mistaken for approval instead of rejection by the prescribed authority. He further submits that it is only in case where the prescribed authority differs with the reasoning assigned by the AO, is it required to record its reasons for disagreement.

7. Learned counsel additionally submits that the ITAT has erroneously taken the view that the AO had acted upon borrowed satisfaction from the Investigation Wing, without any independent application of mind. He contends that the 'tangible information' for the purpose of reassessment contemplated under Section 147 of the Act would include 'borrowed information' and the same ought not to be mistaken with 'borrowed satisfaction' as there exists a striking distinction between the two concepts. He further submits that the conclusion arrived at by the AO is based upon its own satisfaction drawn from the information received from the Investigation Wing and the same cannot be said to be borrowed satisfaction.

8. He has placed reliance on the decisions of this Court in the case of **Experion Developers (P.) Ltd. v. ACIT** [2020 SCC OnLine Del 2588] and **PCIT v. Meenakshi Overseas Pvt. Ltd.** [ITA 651/2015] to substantiate his arguments.

9. *Per contra,* learned counsel appearing on behalf of the assessee vehemently opposed the submissions advanced by the Revenue and submitted that the instant appeal raises no substantial question of law.

10. He submitted that unlike a mere mechanical approval, Section 151 of the Act requires sanction of the prescribed authority with a greater magnitude of consideration and analysis. According to him, while granting approval, merely appending the expression and recording *"Yes"* cannot be said to fall within the domain of sanction as it does not indicate a due application of mind as contemplated under Section 151 of the Act. He further submits that the ITAT has rightly relied upon the decision in the case of **CIT v. M/s. S. Goyanka Lime and Chemicals Ltd.** [2014 SCC OnLine MP 4550] to submit that the said expression would only mean a mechanical approval accorded by the prescribed authority. Learned counsel has further relied upon the decision of the Hon'ble Supreme Court in the case of **Chhugamal Rajpal v. S.P. Chaliha** [(1971) 1 SCC 453] to submit that where the sanction has been accorded mechanically, the notice itself deserves to be quashed.

11. According to him, the reasons recorded would show that there is no linkage between the tangible material and the culmination of the reasons to believe that income had escaped assessment. He submits that since the AO had acted upon borrowed satisfaction without any independent application of mind to the information received from the Investigation Wing, the ITAT has rightly quashed the reopening proceedings and notice issued under Section 148 of the Act. He has also placed reliance on the decision of this Court in the case of **PCIT v. N. C. Cables Ltd.** [2017 SCC OnLine Del 6533].

12. We have heard both the parties and perused the record.

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.

16. A perusal of the proforma attached as Annexure-II in the instant appeal would suggest that though the ACIT has appended his signatures by writing in his hand– *"Yes, I am satisfied",* however, the

Principal Commissioner of Income-tax [**"PCIT"**] has merely written *"Yes"* without specifically noting his approval, while recording the satisfaction that it is a fit case for issuance of notice under Section 148 of the Act.

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.*

24. For the reasons stated above, we do not find any reason to interfere with the decision rendered by the ITAT. In our considered opinion, no substantial question of law arises in the instant case and consequently, the appeal stands dismissed. Pending application(s), if any, are also disposed of.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

FEBRUARY 20, 2024/p