

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'C' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Girish Agrawal, Accountant Member**

**I.T.A. No. 1109/KOL/2019
Assessment Year: 2007-2008**

***Alauddin Fakir,.....Appellant
Padirhati, P.O. Bidhangarh,
Kolkata-700066
[PAN: AADPF8985C]
-Vs.-***

***Assistant Commissioner of Income Tax,....Respondent
Central Circle-IV, Kolkata,
Aayakar Bhawan Poorva,
110, Shanti Pally,
Kolkata-700107***

Appearances by:

*Shri Anil Kochar, Advocate, appeared on behalf of the
assessee*

*Shri G. Hukugha Sema, CIT, appeared on behalf of the
Revenue*

Date of concluding the hearing : January 12, 2023

Date of pronouncing the order : January 12, 2023

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The assessee is in appeal before the Tribunal against the order of Id. Commissioner of Income Tax (Appeals)-20, Kolkata dated 12.04.2019 passed for A.Y. 2007-08.

2. Ld. Counsel for the assessee drew our attention towards Interim Order of ITAT dated 4th April, 2022, which reads as under:-

***"04.04.2022** : The present appeal is directed at the instance of assessee against the order of ld. Commissioner of Income Tax (Appeals)-20, Kolkata dated 12th April, 2019 passed for A.Y. 2007-08. Though the assessee has taken five grounds of appeal, but his grievance revolves around two issues, namely (a) reopening of assessment was invalid in the eyes of law as well as bad in law; (b) ld. CIT(Appeals) has erred in confirming the addition of Rs.5,00,554/-. The ld. counsel for the assessee at the very outset submitted that scrutiny assessment was framed under section 143(3) on 30.12.2009. The Assessing Officer has reopened the assessment by issuance of a notice under section 148 of the Income Tax Act on 16.02.2012. According to him, as per section 151 before reopening an assessment, a prior approval at the end of ld. JCIT is to be obtained. In the present case, an approval has been given by the ld. Commissioner, which is not in consonance with law as contemplated in section 151. On the other hand, ld. D.R. has applied for adjournment.*

Taking into consideration the smallness of the issues as well as small quantum involved, we deem it appropriate to adjourn for a very short hearing. The hearing is adjourned to 7th April, 2022. On 7th April, 2022 no further adjournment will be granted.

Sd/-

*Manish Borad
Accountant Member*

Sd/-

*Rajpal Yadav
Vice-President (KZ)*

3. In response to this order, Department has taken 6-7 opportunities but did not submit anything. On record, ld. Counsel for the assessee has placed a copy of the notice issued under section 148 of the Income Tax Act by the ld. Assessing Officer. A perusal of this notice would indicate that an approval was taken from ld. Commissioner of Income Tax, Central-1, Kolkata, whereas as per section

151, the approval ought to have been taken from the ld. Joint Commissioner of Income Tax. For buttressing his contention, ld. Counsel for the assessee relied upon the judgment of the Hon'ble Bombay High Court in the case of Miranda Tools Pvt. Limited -vs.- Income Tax Officer rendered in Writ Petition No. 2240 of 2019. The Hon'ble High Court has considered an identical issue and the brief finding recorded by the Hon'ble Court reads as under:-

“6. We will take up the ground of invalidity of sanction first for consideration as, if the Petitioner succeeds on this ground, it is not necessary to decide the other grounds raised as they would be rendered academic.

7. As per the provisions of section 151(2) of the Act, a sanction to issue notice for reopening under section 148 of the Act has to be given by the Joint Commissioner of Income Tax in case the reassessment is sought to be done before four years. Under section 2(28C) of the Act, a Joint Commissioner also means Additional Commissioner of Income Tax. In the present case, the Assessing Officer submitted a proposal to the Principal Chief Commissioner of Income Tax for reopening the assessment under section 148 on 6 February 2019. A copy of the proposal placed on record shows that it bears Inward Stamp of the Additional Commissioner of Income Tax, Mumbai. The Additional Commissioner of Income Tax endorsed on 13 February 2019 as under:

*“To
The Chief Commissioner of Income-tax (OSD)-7,
Mumbai.*

*Sir,
Sub: Request for approval u/s 151(1) of the IT Act for issue of
Notice u/s 148 in the case of M/s Morarjee Gokuldas Spg
and Wvg Pvt Ltd. A.Y. 2014-15 PAN: AAACM3642H-reg-*

Kindly refer to the above.

*Kindly find enclosed herewith the proposals for reopening the
assessment in the above mentioned case received from ITO
7(2)(3), Mumbai.*

*On the basis of reason recorded by the AO. I feel that this is a
fit case for reopening of assessment u/s 147 of the IT Act as
there is clear case of escapement of income for A. Y. 2014-15.*

In view of the provision of Section 151 (2) of the IT Act, your kind approval is solicited for re-opening the assessment in above mentioned cases. The reason recorded for reopening the assessment is enclosed in prescribed format.

Submitted for kind perusal.

Yours faithfully,

*Add1. Commissioner of Income Tax,
Rg. 7(2), Mumbai. ”*

According to the Petitioner, this course of action was not permissible. According to the learned counsel for the Revenue, the Additional Commissioner of Income Tax had recorded his satisfaction that it is a fit case for reopening of the assessment on the ground that there is clear case of escapement of income.

8. *Two questions arise. Firstly, whether the communication dated 13 February 2019 accords a final approval. This question we answer in the negative. Though the words “I feel that this is a fit case” are used in the communication, the further part of the communication seeks an approval of the Chief Commissioner of Income Tax, Therefore, this opinion was subject to the approval of the Chief Commissioner of Income Tax. The communication dated 13 February 2019 cannot, therefore, be considered as a final sanction.*

9. *The next question arises is whether the sanction granted by the Chief Commissioner of Income Tax would fulfill the requirement of section 151. It is long been settled that when the statute mandates the satisfaction of a particular authority for the exercise of power then it has to be done in that manner only. Adopting this principle, the Division Benches of this Court in the case of Ghanshyam K. Khabrani v. Asst. CIV and CIT v. Aquatic Remedies P.Ltd.¹ have held that sanction for issuance of reopening notice has to be obtained from the Authority mentioned in Section 151 and not from any other officer including a superior officer. In the present case the Chief Commissioner of Income tax is not the officer specified in section 151 of the Act. There is thus a breach of requirement of section 151(2) of the Act regarding sanction for issuance of notice under section 148 of the Act. Consequently, the impugned notice and the impugned order cannot be sustained in law. The Petitioner, therefore, is entitled to succeed.*

10. *Accordingly, the impugned notice dated 26 February 2019 and the impugned order dated 15 July 2019 are quashed and set aside. The petition is disposed of accordingly.*

*Sd/-
NITIN JAMDAR, J.*

*Sd/-
M.S. SANKLECHA, J.”*

4. There is no disparity of facts before us also, therefore, respectfully following the judgment of Hon'ble Bombay High Court, the re-assessment order is quashed.

5. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open Court on 12 January, 2023.

Sd/-

**(Girish Agrawal)
Accountant Member**

Sd/-

**(Rajpal Yadav)
Vice-President (KZ)**

Kolkata, the 12th day of January, 2023

*Copies to :(1) Alauddin Fakir,
Padirhati, P.O. Bidhangarh,
Kolkata-700066*

*(2) Assistant Commissioner of Income Tax,
Central Circle-IV, Kolkata,
Aayakar Bhawan Poorva,
110, Shanti Pally, Kolkata-700107*

*(3) Commissioner of Income Tax (Appeals)-20,
Kolkata;*

(4) Commissioner of Income Tax- ;

(5) The Departmental Representative

(6) Guard File

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.