

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं  
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND  
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1001/Chny/2022  
निर्धारण वर्ष/Assessment Year: 2014-15

Mr. Krishnan Vidya Shankar, 11 Shiva Sundar Avenue, Chennai-600 041.	v.	The ITO, CHE-C-(254)(1), Chennai.
[PAN: AAHPS 5321 B]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Mr. Philip George, Adv.
प्रत्यर्थी की ओर से /Respondent by	:	Ms. R. Anitha, Addl.CIT
सुनवाईकीतारीख/Date of Hearing	:	01.08.2024
घोषणाकीतारीख /Date of Pronouncement	:	09.10.2024

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

This is an appeal preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter in short "the Ld.CIT(A)"), Delhi, dated 18.10.2022 for the Assessment Year (hereinafter in short "AY") 2014-15.

2. At the outset, the Ld.AR of the assessee challenged the jurisdiction of the AO to have re-opened the assessment, *inter alia*, on the ground that the notice u/s.148 of the Income Tax Act, 1961 (hereinafter in short "the Act") dated 24.03.2020 has been issued after four years from the



:: 2 ::

end of the relevant Assessment Year, therefore, necessary sanction for issue of impugned notice as prescribed u/s.151 of the Act needs to have been taken, which is bad being without application of mind and done in a mechanical manner, which indicates that the Commissioner didn't apply his mind at all while granting sanction.

**3.** Since the assessee has raised legal issue against the re-opening of assessment, *inter alia*, on many grounds, first we would like to examine the validity of his contention that the sanction accorded u/s.151 of the Act for re-opening of assessment was bad in law.

**4.** The brief facts relevant to the legal issue are that the assessee had filed his original return of income (RoI) for AY 2014-15 declaring total income of Rs.1,95,62,940/- on 27.11.2014 which was processed u/s.143(1) of the Act. The assessee is a Director in the company M/s.MM Forgings Ltd., and M/s.Synmax Consultations & Trading P. Ltd., and later the AO issued notice u/s.148 of the Act on 24.03.2020 for the year under consideration (AY 2014-15) and on request of the assessee by letter dated 18.02.2021, the AO provided the reasons for re-opening of assessment along with sanction granted by the JCIT as well as by the Ld.PCIT as under:



ITA No.1001/Chny/2022 (AY 2014-15)  
Mr. Krishnan Vidya Shankar

:: 3 ::

AAACM2164L  
ASST YEAR 2013-14

**FORM FOR RECORDING OF REASONS FOR INITIATING PROCEEDINGS UNDER SECTION 147 OF THE INCOME TAX ACT 1961 AND FOR OBTAINING THE APPROVAL OF THE PRINCIPAL COMMISSIONER OF INCOME TAX – 4 CHENNAI.**

Name of the Assessee:	Shri. K. Vidyashankar Director of M/s MM Forgings Ltd (AAACM2164L)
Address of the Assessee:	6, New No-11 Sivasundar Avenue Chennai 600041
PAN of the Assessee:	AAHPS5321B
Assessment year	2014-15
Details of the Assessing Officer having jurisdiction over the Assessee:	Corporate Circle 4 (1) Chennai.
The quantum of Income which has escaped assessment	More than 1 lakh
Whether the assessment is proposed to be made for the first time	Yes
a. Whether Voluntary return has been filed and Date of filing of voluntary return	Yes 27.11.2014
If the answer to item 8 is in negative, please state the Income originally assessed	-
Reasons for reopening of the assessment	<p>The assessee filed the return of Income for the Asst year 2014-15 on 27.11.2014 admitting total income of Rs . 1,95,62,940/- and the same was processed u/s 143 (1) on 09.12.2014 . Assessee is the director of M/s MM Forgings and assessed to tax in this circle. Assessee is also director of M/s Synmax Consultants and Trading Pvt Ltd, and has 50.07% voting rights in the company.</p> <p>The assessee had received loans / advances to the extent of Rs 1 Crore during the F. Y 2013-14 relevant to assessment year 2014-15 from M/s Synmax Consultants and Trading Pvt Ltd .</p>

h



ITA No.1001/Chny/2022 (AY 2014-15)  
Mr. Krishnan Vidya Shankar

:: 4 ::

श्री क. विद्याशंकर,  
AAACM2164L  
ASST YEAR 2013-14


As per sec 2 (22) ( e) of the Act, any loan or advance received from the closely held company by a person who holds 10% or more voting power in that company requires to be treated as deemed dividend and taxed in the hands of the person who received the loan/advance.

The amount of Rs 1 Crore received by the assessee during the F. Y 2013-14 from M/s Synmax Consultants and Trading Pvt Ltd of which he is the director, has to be treated as deemed dividend and brought to tax under section 2 (22) ( e) of the Act.

Therefore I have reason to believe that the income of the assessee has escaped assessment. It is pertinent to mention here that in this case the assessee has filed return of income for the year under consideration but no assessment as stipulated u/s 2(40) of the Act was made and the return of income was only processed u/s 143(1) of the Act. In view of the above, provisions of clause (b) of explanation 2 to section 147 are applicable to facts of this case and the assessment year under consideration is deemed to be a case where income chargeable to tax has escaped assessment.

In this case more than four years have lapsed from the end of assessment year under consideration.

I therefore, solicit the approval of the Joint Commissioner of Income Tax -4 for issue of notice u/s 148 of the Act.

  
(PS Aravind)

Assistant Commissioner of Income Tax  
Corporate Circle 4 (1) Chennai.

Dated :09.03.2020



ITA No.1001/Chny/2022 (AY 2014-15)  
Mr. Krishnan Vidya Shankar

:: 5 ::

AAACMIZ164L  
ASST YEAR 2013-14

<p>Whether the Joint Commissioner of Income-tax is satisfied on the reasons recorded by the ACIT that it is a fit case for issue of notice u/s 148 of the Income- tax Act,1961.</p>	<p>on the basis of reasons recorded by the A.O., I am satisfied that it is a fit case for re-opening u/s. 147. Recommended for your kind approval.</p> <p>10.03.2020</p> <p>(SANAT KUMAR RAHA, IRS) Joint Commissioner of Income Tax Corporate Range 4 Chennai</p>
<p>Whether the Principal Commissioner of Income-tax is satisfied on the reasons recorded by the JCIT that it is a fit case for issue of notice u/s 148 of the Income- tax Act,1961.</p> <p>Date: 16/03/2020</p>	<p>Yes.</p> <p>(L)</p> <p>(RADHA RAMAN PATHAK) Principal Commissioner of Income tax Chennai - 4</p>

**5.** Since we are only examining the validity of the sanction granted by the authority (the Ld. PCIT) on the reasons recorded by the AO (the ACIT), we note that the AO had recorded the reasons for re-opening of assessment on 09.03.2020 and the JCIT has expressed his satisfaction that it is a fit case for re-opening of assessment by observing as under:-

"on the basis of reasons recorded by the AO, I am satisfied that it is a fit case for re-opening u/s.147 of the Act - recommended for your kind approval " recommendation dated 10.03.2020.



:: 6 ::

**6.** The Ld.PCIT has endorsed his sanction/approval by endorsing as under:

“**YES**” dated 16.03.2020.

**7.** In the light of the aforesaid facts, we have to examine the impugned action of Ld PCIT granting sanction is in accordance to law in force brought in by Finance Act 2015, which substituted earlier law, w.e.f 01.06.2015 onwards till 31.03.2021 [*since notice u/s 148 was issued in the present case on 24.03.2020*]. Section 151 prohibits the AO to issue notice u/s 148 without sanction of the authority as given therein (infra) and mandates that no notice u/s.148 of the Act shall be issued by the AO, after expiry 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 AO, that it is a fit case for issuance of such notice.

**8.** In this case, since the notice has been issued undisputedly after expiry of four years from the end of the relevant Assessment Year, the AO can validly issue notice of re-opening u/s.148 of the Act after he gets the sanction by the authorities named (supra). The Ld.AR in this regard submitted that prior approval of the authority is required [for re-opening of assessment after expiry of four years] to ensure that the AO doesn't arbitrarily re-open the assessment. According to the Ld.AR, a mere



:: 7 ::

perusal of sanction accorded by the authority would reveal that he (the Ld.PCIT), has merely endorsed "Yes" on the recommendation made by the JCIT that it is a fit case for re-opening of assessment. According to the Ld.AR, the Ld.PCIT hasn't applied his mind and merely endorsed "Yes" and put his signature on it. Therefore, according to the Ld.AR, such an endorsement wouldn't stand the scrutiny of law for validly re-opening of assessment u/s.147 of the Act and cited the decision of the Hon'ble Madhya Pradesh High Court in the case of CIT, Jabalpur v. S. Goyanka Lime & Chemicals Ltd., reported in [2015] 231 Taxman 73 (MP) and therefore, he prayed that the AO didn't had the requisite jurisdiction to re-open the assessment and therefore, he pleaded that re-opening of assessment is bad in law and it has to be quashed.

**9.** Per contra, the Ld.DR for the Revenue supported the action of the Ld.PCIT and submitted that the Ld.PCIT has applied his mind and has gone through the JCIT's recommendations as well as the reasons recorded by the AO for re-opening of assessment and has endorsed that it is a fit case for re-opening of assessment by giving his endorsement "Yes" and it is to be read together and not in isolation. Therefore, he doesn't want us to interfere with the impugned action of the Ld.PCIT while granting sanction to re-open the assessment.



:: 8 ::

**10.** We have heard both the parties and perused the material available on record. Brief facts relevant to the legal issue are that the assessee had filed his original return of income for AY 2014-15 declaring total income of Rs.1,95,62,940/- on 27.11.2014 which was processed u/s.143(1) of the Act. The assessee is a Director in the company M/s.MM Forgings Ltd., and M/s.Synmax Consultations & Trading P. Ltd.; and the AO issued notice u/s.148 of the Act on 24.03.2020 expressing his desire to re-open the assessment on the reasons for reopening reproduced (supra). Since sanction for issuance of notice has been granted by the Ld.PCIT as noted supra, the assessee has challenged the re-opening, *inter alia*, on the ground that sanction giving by the Ld.PCIT for re-opening of assessment is without proper application of mind and so is invalid in the eyes of law, because, it defeats the very purpose for which the Parliament has bestowed such power to high ranking officers, so that the AO doesn't misuse the power of re-opening after four years from the end of the Assessment Year.

**11.** We note that sec.151(1) of the Act deals with sanction for issue of notice u/s.148 of the Act by the AO after expiry of four years from the end of the relevant Assessment Year by the Income Tax Authorities named therein on the reasons recorded by the AO that it is a fit case for issue of such notice. The satisfaction of the Ld.PCIT (or other officers named therein) has to be necessarily recorded by the Ld.PCIT on the



:: 9 ::

reasons recorded by the AO that it is a fit case for issue of such notice. In this context, it has to be borne in mind that recording of reasons u/s.147 of the Act is not an idle formality, but a mandatory requirement under the statute casting duty on the AO to record his reasons for issuing a notice for assessment of the escaped income. This is because the concept of assessment is governed by the time barring Rule and the assessee acquires a right as to the finality of proceedings. Quietus of the assessment, be it u/s.143(1) of the Act or u/s.143(3) of the Act, can be disturbed only by scrupulously following the procedure provided for it with statute. Sanction to issue of notice u/s.151 of the Act has been provided by the Parliament as a safeguard against arbitrary exercise of powers by the AO to re-open the assessment after four years from the end of the relevant Assessment Year. Therefore, it was incumbent on the Income Tax Authority to give his brief reasons while according sanction u/s.151 of the Act. Reasons are the heart beat of the every conclusion, without the same, it becomes lifeless. The most effective check against arbitrary exercise of power is that order can be made only after due and proper application of mind. Application of mind is demonstrated by disclosure of mind; and disclosure of mind is best demonstrated by recording the reasons which will reveal the mind of the Officer giving sanction as to whether he has taken note of the facts and law on the issue raised by the AO. It is well settled law that reason substitute subjectivity with



**:: 10 ::**

objectivity. Failure to give reasons amounts to denial of justice [refer Mangalore Ganesh Beedi Works v. CIT AIR 2005 SC 1308]. And that recording of reasons in support of a decision ensures that the decision is reached according to law and is not result of caprice, whim or fancy. If the order is subjected to an appeal, the appellate authority has no material on which to determine the appeal, if order is without reasons [refer Mahabir Prasad Santosh Kumar v. State of UP- AIR 1970 SC 1302] and the most effective check against an arbitrary exercise of power is that order can be made only after due and proper application of mind. Application of mind is demonstrated by disclosure of mind and disclosure of mind is best demonstrated by recording reasons [refer Maya Devi v. Raj Kumari Batra (2010) 9 SCC 486 & similar view in Ankush Shivaji Gaikwad v. State of Maharashtra (2013) 6 SCC 770]. And that, if reasons are not given, it becomes virtually impossible for the Courts to perform their appellate function or exercise power of judicial review in adjudicating validity of decision [refer State of Punjab v. Bhag Singh 2004(1) SCC 547].

**12.** Tested on the touch stone of the aforesaid judicial precedents given supra as well as the decision of the Hon'ble Supreme Court in the case of ITO v. Lakhmani Mewal Das reported in [1976] 103 ITR 437 (SC), arising from Ravish Lakhmani, Kolkata v. Pr.CIT reported in 99 ITR 296 (Calcutta) in which the principles of re-opening of assessment as well as



:: 11 ::

the importance of granting sanction to issue notices have been explained. It has to be borne in mind that as per law in force for the relevant Assessment Year, two conditions had to be satisfied before the AO usurped jurisdiction to issue notice u/s.148 of the Act in respect of assessment beyond the period of four years but within the period of six years from the end of the relevant year viz., i) the AO had reason to believe income chargeable to tax had escaped assessment and he must record his reasons to be initiating proceedings as required by sec.147 of the Act. Another condition precedent [if notice is issued after expiry of four years from the end of the relevant Assessment Year], then the Commissioner/Ld.PCIT should be satisfied on the reasons recorded by the AO that it is a fit case for the issue of such notice. Therefore, according to us, in the present case, [reopening of assessment is accorded after four years from the end of the relevant Assessment Year] the Ld.PCIT while according permission for taking action u/s.147 of the Act had to necessarily apply his mind on the relevant facts of the case, and examine whether there was *reason to believe* escapement of income, discernable from the reasons recorded by the AO and thereafter, permit re-opening of the assessment in question. In this case, we note that the Ld.PCIT while according permission u/s.151 of the Act, acted mechanically, because, the Ld.PCIT has not expressed his satisfaction that it was a fit case for issuance of notice u/s.148 of the Act, but merely endorsed 'Yes' under



:: 12 ::

recommendation of JCIT, which action of Ld PCIT cannot be countenanced. For such a conclusion, we rely on the decision of the Hon'ble Madhya Pradesh High Court in the case of S. Goyanka Lime & Chemicals Ltd., (supra) wherein, their Lordships had held as under:

7- We have considered the rival contentions and we find that while according sanction, the Joint Commissioner, Income Tax has only recorded so "Yes, I am satisfied". In the case of Arjun Singh (supra), the same question has been considered by a Coordinate Bench of this Court and the following principles are laid down:-

"The Commissioner acted, of course, mechanically in order to discharge his statutory obligation properly in the matter of recording sanction as he merely wrote on the format "Yes, I am satisfied" which indicates as if he was to sign only on the dotted line. Even otherwise also, the exercise is shown to have been performed in less than 24 hours of time which also goes to indicate that the Commissioner did not apply his mind at all while granting sanction. The satisfaction has to be with objectivity on objective material."

8- If the case in hand is analyzed on the basis of the aforesaid principle, the mechanical way of recording satisfaction by the Joint Commissioner, which accords sanction for issuing notice under section 148, is clearly unsustainable and we find that on such consideration both the appellate authorities have interfered into the matter. In doing so, no error has been committed warranting reconsideration.

9- As far as explanation to Section 151, brought into force by Finance Act, 2008 is concerned, the same only pertains to issuance of notice and not with regard to the manner of recording satisfaction. That being so, the said amended provision does not help the revenue.

10- In view of the concurrent findings recorded by the learned appellate authorities and the law laid down in the case of Arjun Singh (supra), we see no question of law involved in the matter, warranting reconsideration.

11- The appeals are, therefore, dismissed.

**13.** Therefore, the assessee succeeds on the legal issue and we hold that since requirement u/s.151 of the Act has not been fulfilled, the impugned notice issued u/s.148 of the Act dated 24.03.2020 is vitiated and the resultant re-assessment flowing therefrom would be invalid and



ITA No.1001/Chny/2022 (AY 2014-15)  
Mr. Krishnan Vidya Shankar

:: 13 ::

so quashed. Since assessee succeeds on legal issue, other grounds have become academic and so, not adjudicated.

**14.** In the result, appeal filed by the assessee is allowed.

Order pronounced on the 09<sup>th</sup> day of October, 2024, in Chennai.

**Sd/-**  
(मनोज कुमार अग्रवाल)  
**(MANOJ KUMAR AGGARWAL)**  
लेखा सदस्य/**ACCOUNTANT MEMBER**

**Sd/-**  
(एबी टी. वर्की)  
**(ABY T. VARKEY)**  
न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,  
दिनांक/Dated: 09<sup>th</sup> October, 2024.  
**TLN, Sr.PS**

आदेश की प्रतिलिपि अग्रेषित /**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF