

[2024] 161 taxmann.com 258 (Bombay)/[2024] 298 Taxman 769 (Bombay)/[2025] 478 ITR 74 (Bombay)[19-03-2024]

INCOME TAX : PCIT, while granting approval under section 151 must diligently review approval application and draft order under section 148A(d) and on noticing any discrepancies they should either deny approval or sent application back to AO for filing correct form for approval.

■ ■ ■

[2024] 161 taxmann.com 258 (Bombay)

HIGH COURT OF BOMBAY

Teleperformance Global Service (P.) Ltd.

v.

Assistant Commissioner of Income-tax*

K. R. SHRIRAM AND DR. NEELA GOKHALE, JJ.

WRIT PETITION (L) NO. 31772 OF 2023

MARCH 19, 2024

Section 151, read with sections 147 and 148, of the Income-tax Act, 1961 - Income escaping assessment - Sanction for issue of notice (Approval) - Assessment year 2019-20 - For assessment year 2019-20, order under section 148A(d) and a consequent notice under section 148, both approved by Principal Commissioner under section 151, were issued against assessee - Assessee contended that sanction/approval under section 151 had been obtained and granted without application of mind as quantum of income which had escaped assessment as mentioned in approval and in draft order varied from each other - In reply, department mentioned it as a typographical error – Whether said explanation could not be accepted because a typographical error could have been committed by AO, who was seeking approval, but if only Additional/Joint Commissioner or Principal Commissioner had read approval application and draft of order to be issued under section 148A(d), they would have certainly noticed discrepancy and they should have either refused approval or sent application back to AO for filing correct form for approval - Held, yes - Whether in such circumstances, order under Clause (d) of Section 148A as well as consequent notice issued under section 148 was to be quashed and set aside - Held, yes [Paras 7 and 8] [In favour of assessee]

FACTS

- An order under section 148A(d) and the consequent notice under section 148 approved by the Principal Commissioner under section 151 was passed against assessee for assessment year 2019-20.
- In the instant writ petition the assessee contended that the sanction/approval under section 151 had been obtained and granted without application of mind as the quantum of income which had escaped assessment as mentioned in the approval and in the draft order varied from each other.
- In the affidavit in reply, the department mentioned it as a typographical error.

HELD

- The ground raised by the petitioner that the sanction/approval under Section 151 has been obtained and granted without application of mind is to be agreed with. A copy of the approval and impugned order under Section 148A(d) are annexed to the petition. In column 7 of the approval, the quantum of income which has escaped assessment is mentioned as Rs.63,16,784/-. In column 18, reasons for the belief that income has escaped assessment is answered as, "Refer order under section 148A(d) for details". The Additional/Joint Commissioner of Income Tax has recommended the issuance of notice under section 148. [Para 6]
- The draft of the order under section 148A(d) in paragraph 7 states that income of Rs.97,06,911/- has escaped assessment within the meaning of provision of Section 147 and the same is required to be examined. If the AO who had sought the approval, the Additional/Joint CIT, who had recommended grant of approval and the Principal Commissioner, who granted the approval had only bothered to read the request for approval along with draft of the order under Section 148A(d), they would have certainly noticed the discrepancies. It is, therefore, clear that none of these officers have even bothered to read the request for approval or draft of the order. In the affidavit in reply, it is mentioned as a typographical error. This explanation cannot be accepted because a typographical error could have been committed by the AO, who was seeking the approval, but if only the Additional/Joint CIT or the Principal Commissioner had read the approval application and the draft of the order to be issued under Section 148A(d), they would have certainly noticed the discrepancy and they should have either refused approval or sent the application back to the AO for filing correct form for approval.[Para 7]
- In the circumstances, this is a fit case seeking interference of this Court. Thus, the order dated 31-3-2023 under Clause (d) of Section 148A is hereby, quashed. The consequent notice issued under Section 148 also dated 31-3-2023 is also quashed and set aside.[Para 8]

J.D. Mistry, Sr. Adv. and **Madhur Agrawal** for the Petitioner. **Vikas T. Khanchandani** and **Eshaan Saroop** for the Respondent.

ORDER

1. By this petition, Petitioner is challenging the impugned initial notice dated 21st March 2023 issued under Section 148A(b) of the Income Tax Act, 1961 ("the Act"), the impugned order dated 31st March 2023 passed under Section 148A(d) of the Act for AY 2019-20, and the impugned notice dated 31st March 2023 issued under Section 148 of the Act for AY 2019-20.
2. One Intelenet Global Services Pvt. Ltd. ("IGSPL") amalgamated with Petitioner with effect from 7th July 2011 pursuant to an order dated 5th March 2013 passed by this Court. Petitioner was earlier called M/s. Serco BPO Pvt. Ltd.
3. Petitioner filed return of income on 29th November 2019 for AY 2019-20 disclosing total income of Rs.193,91,30,100/- under normal provisions of the Act and Rs.2,47,10,34,147/- as book profit under Section 115JB of the Act. It is averred in the petition that all the transactions during the relevant year were done by Petitioner being the transferee company but certain third parties have inadvertently booked the transactions with Petitioner in the erstwhile PAN of IGSPL and the said transaction are reflected in the 26AS of IGSPL. Petitioner has, however, considered all the transactions entered into by Petitioner in its return of income ("ROI") irrespective of whether the transactions have been booked in PAN of Petitioner or IGSPL and claimed credit of all TDS irrespective of whether tax has been deducted in the PAN of Petitioner or IGSPL.
4. Petitioner, thereafter, received notice dated 21st March 2023 under Section 148A(b) of the Act from Respondent No.1. In the notice it was stated, inter alia:

"it is seen from the insight portal of the Income-tax Department that assessee company has transaction by the company by Intelenet Global Services Pvt. Ltd. (AACI7387P), now amalgamated with company M/s. Teleperformance Global Services Pvt. Ltd., the assessee has entered into the following transactions:

Information Code	Information Description	Amount Description	Amount (Rs.)
TDS 194J	TDS Statement - Fees for professional or technical services	Paid or credited	27,94,479/-

TDS 194A	TDS Statement -interest other than interest on securities	Paid or credited	5,02,490/-
TDS 194J	TDS Statement - Fees for professional or technical services	Paid or credited	93,158/-
TDS 194J	TDS Statement - Fees for professional or technical services	Paid or credited	63,16,784/-

The Petitioner is given a show cause as to why in view of the above transactions, information, a notice under Section 148 of the Act, should not be issued."

5. Petitioner replied vide its letter dated 29th March 2023. Notwithstanding Petitioner's explanation, an order dated 31st March 2023 is passed by Respondent No.1 rejecting Petitioner's objections and holding that it was a fit case for issuance of notice under Section 148 of the Act. A consequent notice under Section 148 of the Act has also been issued. The order under Section 148A(d) of the Act and the consequent notice under Section 148 of the Act has the approval of the Principal Commissioner of Income Tax Devindra Kumar Gupta under Section 151 of the Act.

6. Various grounds has been raised in the petition, but the most important ground is that the sanction/approval under Section 151 of the Act has been obtained and granted without application of mind. We would agree with Petitioner. A copy of the approval and impugned order under Section 148A(d) are annexed to the petition. In column 7 of the approval, the quantum of income which has escaped assessment is mentioned as Rs.63,16,784/-. In column 18, reasons for the belief that income has escaped assessment is answered as, "Refer order under Section 148A(d) for details". The Additional/Joint Commissioner of Income Tax Rameshwar Prasad Meena has recommended the issuance of notice under Section 148 and in Column 22, reasons for according approval/rejection by the specified authority reads as under:

"Remarks: I have carefully gone through the proposal submitted by the Assessing Officer (AO) through the jurisdictional Range Heard. After examining the details, I find that this is a fit case for issue of notice u/s 148 of the Income Tax Act. The proposal submitted by the AO is accordingly approved.

Name: Devinder Kumar Gupta

Designation: PCIT, Mumbai-5

Date: 31/03/2023."

7. The draft of the order under Section 148A(d) of the Act in paragraph 7 states that income of Rs.97,06,911/- has escaped assessment within the meaning of provision of Section 147 of the Act and the same is required to be examined. If the AO who had sought the approval, the Additional/Joint CIT, who had recommended grant of approval and the PCIT, who granted the approval had only bothered to read the request for approval along with draft of the order under Section 148A(d) of the Act, they would have certainly noticed the discrepancies. It is, therefore, clear that none of these officers have even bothered to read the request for approval or draft of the order. In the affidavit in reply, it is mentioned as a typographical error. We are not inclined to accept this explanation because a typographical error could have been committed by the AO, who was seeking the approval, but if only the Additional/Joint CIT or the PCIT had read the approval application and the draft of the order to be issued under Section 148A(d) of the Act, they would have certainly noticed the discrepancy and they should have either refused approval or sent the application back to the AO for filing correct form for approval.

8. In the circumstances, in our view, this is a fit case for us to interfere. We hereby quash and set aside the order dated 31st March 2023 under Clause (d) of Section 148A of the Act. The consequent notice issued under Section 148 of the Act also dated 31st March 2023 is also quashed and set aside.

9. Petition disposed. No order as to costs.

NEETU