

[2024] 161 taxmann.com 609 (Bombay)/[2024] 464 ITR 385 (Bombay)[19-03-2024]

INCOME TAX : Where Principal Chief Commissioner granted approval under section 151 stating that record had been carefully considered before granting of approval, however, there was not even an explanation as to how amount of escaped income had changed or gone down, it displayed total non-application of mind by Principal Chief Commissioner and, thus, impugned reopening notice and order passed under section 148A(d) were to be set aside

INCOME TAX : Power vested in authorities under section 151 to grant or not to grant approval to Assessing Officer to reopen assessment is coupled with a duty and that power cannot be exercised casually in a routine perfunctory manner

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[2024] 161 taxmann.com 609 (Bombay)

HIGH COURT OF BOMBAY

Vodafone India Ltd.

v.

Deputy Commissioner of Income-tax*

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

WRIT PETITION NO. 2108 OF 2023

MARCH 19, 2024

I. Section 151, read with section 148, of the Income-tax Act, 1961 - Income escaping assessment - Sanction for issue of notice (Illustrations) - Assessee filed instant petition challenging notice issued under section 148A(b) and order passed under section 148A(d) on ground that sanction for issuance of order under section 148A(d) had been granted without application of mind - It was noted that in approval, Principal Chief Commissioner stated that based on material available on record and careful consideration of same, he was satisfied that it was a fit case to issue notice under section 148 - However, notice issued under section 148A(d) and information annexed to that notice stated escapement of income in sum of Rs. 42,858.47 crores, whereas amount mentioned in order passed under section 148A(d) totalled to Rs. 12,431.99 crores - There was not even an explanation as to how amount had changed or had gone down - Whether, therefore, impugned order passed under section 148A(d) and consequent notice issued under section 148 were to be quashed and set aside - Held, yes [Paras 4 and 5] [In favour of assessee]

II. Section 151, read with section 148, of the Income-tax Act, 1961 - Income escaping assessment - Sanction for issue of notice (Illustrations) - Assessment years 2012-13 and 2013-14 - Whether power vested in authorities under section 151 to grant or not to grant approval to Assessing Officer to reopen assessment is coupled with a duty and that power cannot be exercised casually in a routine perfunctory manner - Held, yes [Paras 4 and 5] [In favour of assessee]

FACTS

- The Assessing Officer issued a notice under section 148A(b) and an order under section 148A(d) to the assessee.

- The assessee filed instant petition impugning the notice under section 148A(b), the order under section 148A(d) and the notice under section 148 and submitted that the sanction for issuance of the order under section 148A(d) had been granted without application of mind and approval was granted in a most casual manner.

HELD

- In the approval, the Principal Chief Commissioner of Income-tax (PCCIT) states, ".....Based on the material available on record and careful consideration of the same, I am satisfied that it is a fit case to issue notice under section 148. Hence, draft order submitted by the Assessing Officer under section 148A(d) is hereby approved". This is an incorrect statement made by the Principal Chief Commissioner that the record has been carefully considered before granting of approval. This is because the record would certainly have contained the notice issued under section 148A(d) and the information annexed to that notice states escapement of income in the sum of Rs. 42, 858.47 crores, whereas the amount mentioned in the order passed under section 148A(d) totals to Rs. 12431.99 crores. In the said order, there is not even an explanation as to how the amount has changed or has gone down. In the affidavit in reply, it is stated that in the notice the transaction value was taken gross and subsequently it was seen that there were duplicate entries which were corrected while passing the order. The notice issued does not contain any duplicate entries. If there were duplicate entries, the Assessing Officer was duty bound to issue clarification in the order and also give details of what were those duplicate entries. The AO should have come clean on the error made. Therefore, if only the Principal Chief Commissioner or the other officers had bothered to see the records and had really applied their mind to the same, these errors would not have crept in. This displays total non-application of mind by all those persons who have endorsed their approval for issuance of notice under section 148. With great regret, it has to be mentioned that these approvals are being granted mechanically and without application of mind and this is not the only matter. The approval has been granted in a most casual manner. The power vested in the Authorities under section 151 to grant or not to grant approval to the Assessing Officer to reopen the assessment is coupled with a duty. The Authorities were duty bound to apply their mind to the proposal put up for approval in the light of material relied upon by the AO. That power cannot be exercised casually in a routine perfunctory manner. The important safeguards provided in section 147 and 151 were treated lightly by the officers. While recommending and granting approval, it was obligatory on the part of the officers to verify whether there was any genuine material to suggest escapement of income. It was obligatory on all the Authorities and Principal Chief Commissioner in particular to consider whether or not power to reopen is being invoked properly. If only the Authorities had read the record carefully, they would never have come to the conclusion that this is a fit case for issuance of notice under section 148. They would have either told the AO to correct the figures in column 7 or would have sent the papers back for reconsideration. These officers have substituted the form for substance. [Para 4]
- Therefore, the impugned order passed under section 148A(d) is quashed and set aside. The consequent notice issued under section 148 also dated 19-4-2023 is also quashed and set aside. [Para 5]

PER COURT

- Innumerable orders passed under section 148A(d) are being set aside in view of the approval being granted without application of mind. Officer should realize that this is also delaying assessment/reassessment proceedings and is also affecting the revenue of the nation.

J.D. Mistri, Sr. Adv. and Madhur Agrawal for the Petitioner. Devvrat Singh for the Respondent.

ORDER

1. Petitioner is impugning a notice dated 30th March 2023 under Section 148A(b) of the Income Tax Act, 1961 ("the Act"), an order dated 19th April 2023 passed under Section 148A(d) of the Act and a notice dated 19th April 2023 issued under Section 148 of the Act on various grounds.
2. One of the grounds raised across the bar is that the sanction for issuance of the order under Section 148A(d) of the Act has been granted without application of mind by all the five officers involved. For ease of reference, the sanction under Section 151 is scanned and reproduced herein:

EXHIBIT-1

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Exhibit - '1'



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
PCCIT, MUMBAI



Approval u/s 151 of the IT Act, 1961

PAN: AAACB2100P	Assessment Year: 2016-17	Date: 19/04/2023	DIN: ITBA/AST/S/118/2023-24/1052207527(1)
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1. Name of the assessee	VODAFONE IDEA LIMITED
2. Address and e-mail of the assessee	10Th Floor, Birla Centurion,Century Mills Compound,Pandurang Budhkar Marg,Worli,Worli Colony S.O,Mumbai,Mumbai / directtax@vodafoneidea.com
3. PAN	AAACB2100P
4. Status	Company
5. Circle/ Ward/ Range/ CIT Charge	CIRCLE 6(2)(1) ,MUMBAI / RANGE 5(2), MUMBAI / PCIT, Mumbai-5
6. Assessment year	2016-17
7. The quantum of income which has escaped assessment	428584729511
8. Approval needed for	Order u/s 148A(d) required for issuance of notice u/s 148
9. Time limit for current proceedings covered under	u/s 148(1)(b) - for more than 3 years but not more than 10 years
10. Limitation date for issuance of notice u/s 148	30/04/2023
11. Whether the show cause notice u/s 148A(b) contains the details of the information, as per explanation-1 of Section 148.	Yes
12. (i) Enquiry conducted (if any), u/s 148A(a) (ii) Whether the show cause notice u/s 148A(b) contains the details of results of enquiry conducted 148A (a).	No No
13. Date of issue of show cause notice to assessee u/s 148A(b)	30-MAR-23
14. Date by which assessee was required to submit reply to show cause notice u/s 148A(b) or the final extended date	12-APR-23
15. Whether any reply received from assessee u/s 148A(b)?	Yes / 12-APR-23
16. Whether personal hearing requested by assessee	No
17. Whether the provision of Sec. 150(1) are applicable.	No
18. Reasons for the belief that income has escaped assessment.	Refer Order u/s 148A(d) for details
19. Recommendations of the Additional/ Joint CIT	Remarks: The information in the case of the assessee is of transaction of

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		Rs.4,28,58,47,29,611/- In the PANs of the companies which has merged in the present company i.e. assessee. The information suggests that income embedded in the given transaction is more than Rs.50 Lakh and has escaped assessment. therefore, the case of the assessee is a fit case to issue notice u/s.148 of the I.T.Act. Name: KANUPRIYA DAMOR Designation: RANGE 5(2), MUMBAI Date: 19/04/2023
20.	Recommendations of the CIT/PCIT (where CCIT/PCCIT is the specified authority)	Remarks: The information in the case of the assessee relates to transactions of Rs.4,28,58,47,29,611/- In the PANs of the companies which has merged in the present company i.e. assessee. The information suggests that income embedded in the given transactions is more than Rs.50 Lakh has escaped assessment. Therefore, the case of the assessee is a fit case to issue notice u/s.148 of the Income Tax Act. Name: DEVINDER KUMAR GUPTA Designation: PCIT, Mumbai-5 Date: 19/04/2023
21.	Recommendations of the CCIT (where PCCIT is the specified authority)	Remarks: In this case the Jurisdictional Assessing Officer has concluded that the case is fit for issuance of notice u/s 148 of the Act and the same is duly concurred upon by the Range Head and PCIT. Based on the facts mentioned in the Draft Order u/s 148A(d), I concur with the findings of the Subordinate Authorities that this case is fit for issuance of notice u/s 148 of the Act. Name: SATISH SHARMA Designation: CCIT, MUMBAI-4 Date: 19/04/2023

22.	Reasons for according approval/ rejection by the specified authority to order u/s 148A(d) AND/OR issuance of notice under section 148 of the Income Tax Act, 1961?	Remarks: Perused the draft order submitted by the Assessing Officer and approved/recommended by the concerned Addl CIT/PCCIT/CCIT. Based on the material available on record and careful consideration of the same, I am satisfied that it is a fit case to issue notice u/s 148 of the IT Act. Hence draft order submitted by the Assessing Officer u/s 148A(d) of the IT Act is hereby approved. Name: GEETHA RAVICHANDRAN Designation: PCCIT, MUMBAI Date: 19/04/2023
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3. Mr. Mistri states this ground could not have been taken in the Petition because the sanction was made available only with the surrejoinder filed by L. A. Janbandhu, Deputy Commissioner of Income Tax-5(2)(1), Mumbai and affirmed on 5th March 2024. We totally agree with Mr. Mistri's submission that the approval has been applied for and granted mechanically. In column 7- the quantum of income which has escaped assessment, the amount is Rs.42858,47,29,611/- . In the impugned order passed under Section 148A(d) of the Act, the amount mentioned as having escaped assessment is totaling to Rs.12431,99,24,486/- . A summary of amount reflected in the notice dated 30th March 2023 issued under Section 148A(b) of the Act, visa-vis., an amount in order dated 19th April 2023 reads as under:

Summary of Amount reflected in notice dated 30.03.2023 vis-a-vis Amounts in order dated 19.04.2023			
Entity Name	Information amount as per Notice dtd 30.03.2020	Amounts as per Order 19.04.2023	Differences
VCL	88,327,187,135	23796537779	64,530,649,356
VDL	64,194,219,901	16356031168	47,838,188,733
VEL	16,331,855,448	4454592437	11,877,263,011
VSL	154,472,355,369	50735554674	103,736,800,695
VSPL	57,285,990,365	18694379653	38,591,610,712
VWL	47,973,121,393	10282828775	37,690,292,618
Grand Total	428,584,729,611	124,319,924,486	304,264,805,125
Amt. in Crs.	42,858.47	12,431.99	30,426.48

4. In the approval, the Principal Chief Commissioner of Income Tax ("PCCIT") states, ".Based on the material available on record and careful consideration of the same, I am satisfied that it is a fit case to issue notice under Section 148 of the IT Act. Hence, draft order submitted by the Assessing Officer under Section 148A(d) of the Act is hereby approved" In our view, this is an incorrect statement made by the PCCIT that the record has been carefully considered before granting of approval. We say this because the record would certainly have contained the notice issued under Section 148A(d) of the Act and the information annexed to that notice states escapement of income in the sum of Rs.42858,47,29,611/- , whereas the amount mentioned in the order passed under Section 148A(d) of the Act totals to Rs.12431,99,24,486/- . In the said order, there is not even an explanation as to how the amount has changed or has gone down.

In the affidavit in reply, it is stated that in the notice the transaction value was taken gross and subsequently it was seen that there were duplicate entries which were corrected while passing the order dated 19th April 2023. The notice issued does not contain any duplicate entries. If there were duplicate entries, the Assessing Officer ("AO") was duty bound to issue clarification in the order and also give details of what were those duplicate entries. The AO should have come clean on the error made. Therefore, if only the PCCIT or the other officers had bothered to see the records and had really applied their mind to the same, these errors would not have crept in. This displays total non-application of mind by all those persons who have endorsed their approval for issuance of notice under Section 148 of the Act. With great regret, we have to mention that these approvals are being granted mechanically and without application of mind and this is not the only matter. Innumerable orders passed under Section 148A(d) of the Act are being set aside in view of the approval being granted without application of mind. Officer should realize that this is also delaying assessment/ reassessment proceedings and is also affecting the revenue of the nation. We find that the approval has been granted in a

most casual manner. The power vested in the Authorities under Section 151 to grant or not to grant approval to the AO to reopen the assessment is coupled with a duty. The Authorities were duty bound to apply their mind to the proposal put up for approval in the light of material relied upon by the AO. That power cannot be exercised casually on a routine perfunctory manner. The important safeguards provided in Section 147 and 151 were treated lightly by the officers. While recommending and granting approval it was obligatory on the part of the officers to verify whether there was any genuine material to suggest escapement of income. It was obligatory on all the Authorities and PCCIT in particular to consider whether or not power to reopen is being invoked properly. We are of the opinion that if only the Authorities had read the record carefully, they would never have come to the conclusion that this is a fit case for issuance of notice under Section 148 of the Act. They would have either told the AO to correct the figures in Column 7 or would have sent the papers back for reconsideration. These officers have substituted the form for substance.

5. We, therefore, quash and set aside the impugned order dated 19th April 2023 passed under Section 148A(d) of the Act. The consequent notice issued under Section 148 of the Act also dated 19th April 2023 is also quashed and set aside.

6. Petition disposed. No order as to costs.

7. A copy of this order be sent to the Revenue Secretary, Ministry of Finance, Government of India, New Delhi, for information and necessary action. We only hope that some remedial action will be taken to stop this casual behaviour.

POOJA

*In favour of assessee.