

(2022) 04 BOM CK 0065
In the Bombay High Court
Case No : Writ Petition No.1050 Of 2022

J M Financial And Investment Consultancy Services Private Limited APPELLANT

Vs

Assistant Commissioner Of Income Tax, Circle 3(2)(1) And Ors RESPONDENT

Date of Decision : 04-04-2022

Acts Referred:

Income Tax Act, 1961 — Section 142(1), 148, 151, 151(1), 151(2)

Citation : (2022) 04 BOM CK 0065

Hon'ble Judges : K.R. Shriram, J;N.R. Borkar, J

Bench : Division Bench

Advocate : Dr. Shivram, Rahul Hakani, Akhileshwar Sharma

Final Decision : Allowed

Judgement

1 Petitioner is impugning a notice dated 31st March 2021 issued under Section 148 of the Income Tax Act, 1961 (the Act) for Assessment Year 2015-2016, an order dated 24th January 2022 rejecting petitioner's objections to reopening, the sanction granted under Section 151 of the Act dated 26th March 2021 for issuance of notice under Section 148 of the Act and a subsequent notice dated 24th January 2022 under Section 142(1) of the Act.

2 We would straightaway go to the sanction granted under Section 151 of the Act. It is petitioner's case that the approval obtained for issuing notice under Section 148 of the Act is not in accordance with the mandate of Section 151 as the said approval is of Additional Commissioner of Income Tax instead of Principal Commissioner of Income Tax. It is petitioner's case that the reasons put up for approval on 23rd March 2021, which is after the expiry of four years from the end of the relevant assessment year and approval was granted on 26th March 2021. Therefore, Dr. Shivram submitted that as per Section 151 of the Act, as four years have elapsed at the time of reopening, the sanction is required to be obtained from the Principal Commissioner of Income Tax and since the

sanction has not been obtained from the Principal Commissioner of Income Tax, the notice issued is bad in law. Ofcourse Dr. Shivram also submitted that the sanction granted itself indicates non application of mind but he did not wish to elaborate on that since the Court, after considering the documents annexed to the petition, felt that the approval granted was not in accordance with Section 151 of the Act.

3 Sub-Section 1 of Section 151 provides that 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.

4 Admittedly in this case, four years from the end of the relevant assessment year has expired before the issuance of notice and the approval also has been obtained from the Additional Commissioner of Income Tax and not Principal Commissioner of Income Tax. In the affidavit in reply filed through one Nikhil Bansal affirmed on 4th March 2022, these facts have not been disputed but according to respondents, the approval granted by the Additional Commissioner of Income Tax was a valid approval because the Additional Commissioner of Income Tax was a competent authority.

5 Respondents have relied upon a letter dated 18th March 2021 issued by one Income Tax Officer, who has given an opinion to the Additional Commissioner of Income Tax that in view of the Taxation and other Laws (Relaxation of Certain Provisions) Act, 2020 (Relaxation Act), limitation, inter alia, under provisions of Section 151(1) and Section 151(2), which were originally expiring on 31st March 2020 stand extended to 31st March 2021. According to the Income Tax Officer, in view of the above, Assessment Year 2015-2016 which falls under the category within four years as on 31st March 2020, the statutory approval for issuance of notice under Section 148 of the Act for the Assessment Year 2015-2016 may be given by the Range Head as per the said provisions. Mr. Sharma clarifies that the Income Tax Officer is only conveying the view of the Principal Commissioner of Income Tax because this letter has been issued on the letterhead of Principal Commissioner of Income Tax.

6 Even for a moment we agree with the view expressed by the Principal Commissioner of Income Tax, still it applies to only cases where the limitation was expiring on 31st March 2020. In the case at hand, the assessment year is 2015-2016 and, therefore, the six years limitation will expire only on 31st March 2022. Certainly, therefore, the Relaxation Act provisions may not be applicable. In any event, the time to issue notice may have been extended but that would not amount to amending the provisions of Section 151 of the Act.

7 In our view, since four years had expired from the end of the relevant assessment year, as provided under Section 151(1) of the Act, it is only the

Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner who could have accorded the approval and not the Additional Commissioner of Income Tax. On this ground alone, we will have to set aside the notice dated 31st March 2021 issued under Section 148 of the Act, which is impugned in this petition. In view thereof, the consequent orders and notices will also have to go.

8 Petition is allowed in terms of prayer clause – (a), which reads as under :

(a) that this Hon'ble Court may be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ, order or direction, calling for the records of the petitioner's case and after going into the legality and propriety thereof, to quash and set aside the said (i) Notice dated 31/03/2021 u/s 148 for A.Y. 2015-16 (Exh.A), (ii) the impugned order dated 24/1/2022 being (Exh.B) and (iii) Sanction u/s 151 dated 26/3/2021 (Exh.C) and (iv) Notice u/s 142(1) dated 24/1/2022 being (Exh.D).

9 Petition accordingly disposed.