NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved on 07.03.2022
Order delivered on 01/04/2022

WPT No. 28 of 2022

- Jugal Kishore Paliwal S/o Late Ramavtar Paliwal, aged about 51 years Proprietor of Shri Ji Rice Product, having his office at, Main Road, NH10, Post Sendri, Bilaspur, District Bilaspur (CG)

---- Petitioner

Versus

1. Joint Commissioner of Income Tax Range 1, Bilaspur, Income Tax Department, Aayakar Bhawan, Vyapar Vihar, Bilaspur, District Bilaspur 495001 (CG)

2. The Income Tax Officer/ Assessing Officer, Having Office At, Ward 2(1), Vyapar Vihar, District Bilaspur (CG)

3. National Faceless Assessment Centre, Through Additional/ Joint/ Deputy/ Assistant Commissioner of Income Tax Department, Ministry of Finance (Goi), Room No. 356 C.R. Building, IP Estate, New Delhi, Delhi- 110002.

---- Respondents

WPT No. 31 of 2022

- M/s Saraswati Agro Industries A Partnership Firm, Having Its Office At, Ward No. 12, Kesla, Post Bilha, District Bilaspur, Chhattisgarh, Through Its Partner, Shri Manish Kumar Agrawal.

---- Petitioner

Versus

1. Joint Commissioner of Income Tax Range 1, Bilaspur, Income Tax Department, Aayakar Bhawan, Vyapar Vihar, Bilaspur, District Bilaspur 495001, Chhattisgarh.
2. The Income Tax Officer / Assessing Officer Ward 2(1) Having Office At, Vyapar Vihar, Bilaspur District Bilaspur Chhattisgarh.

3. National Faceless Assessment Centre Through Additional / Joint / Deputy / Assistant Commissioner Of Income Tax / Income Tax Officer, Income Tax Department, Ministry Of Finance (Goi), Room No. 356 C.R. Building IP Estate, New Delhi, Delhi 110002.

---- Respondents

WPT No. 37 of 2022

- Smt. Vidhya Nagdeo W/o Shri Tikam Das Nagdeo Aged About 63 Years Proprietor of Shri Yash Industries, Having Office At,

NH 130, Main Road, Post Bodri, Bilaspur, District- Bilaspur, Chhattisgarh.

---- Petitioner

Versus

1. Joint Commissioner of Income Tax Range 1, Bilaspur, Income Tax Department, Aayakar Bhawan, Vyapar Vihar, Bilaspur, District- Bilaspur, Chhattisgarh-495001
2. The Income Tax Officer/assessing Officer Having Office At, Ward 2(1), Vyapar Vihar, District- Bilaspur, Chhattisgarh.
3. National Faceless Assessment Centre Through Additional/joint/deputy/assistant Commissioner Of Income Tax Department, Ministry Of Finance (Gol), Room No. 356 C.R. Building, IP Estate, New Delhi, Delhi-110002

---- Respondents

For Petitioners	:	Mr. Ankit Singhal, Advocates.
For Respondents	:	Mrs. Naushina Afrin Ali with Mr. Ajay Kumrani,Advocates on behalf of Mr. Amit Chaudhary, Advocate.

Hon'ble Mr. Justice Parth Prateem Sahu

CAV Order

1. Since common issue is involved in above three petitions, they were heard together and are being decided by this common order.

2. Challenge in these three writ petitions is to the notice issued under Section 148 of the Income Tax Act, 1961 (for short 'the Act of 1961'), for the assessment year 2016-17.

3. Facts of WPT No.28/2022 in brief are that petitioner is running a rice mill in the name and style of M/s Shri Ji Rice Product. Petitioner submitted his return on 15.9.2016 for the assessment year 2016-17 declaring his total income as Rs.13,33,000/-. His case was selected for compulsory scrutiny based on information received regarding three suspicious transaction reports. Upon

examination, it revealed that petitioner obtained bogus purchase bills of Rs.1,73,83,410/- from M/s Shri Shyamji Rice Agrotech, M/s Navdurga Traders & M/s Shrinath Paddy Process and thereby income escaped assessment.

4. Facts of WPT No.31/2022 in brief are that petitioner is engaged in the business of running rice mill.. He submitted his return on 30.9.2016 for the assessment year 2016-17 declaring total income at Rs.1,49,763/-. Based on information received from Income Tax Officer (Investigation) Raipur, an enquiry was conducted in which it revealed that M/s Saraswati Agro Industries credited Rs.30,00,000/- in the account of bogus entity related to M/s Deepak Nanjyani during financial year 2015-16 and also obtained bogus purchase bills of Rs.34,20,000/- from M/s Navdurga Traders and M/s Deepak Nanjyani.

5. Facts of WPT No.37/2022 in brief are that petitioner is engaged in the business of running rice mill. She submitted her return on 13.10.2016 for the assessment year 2016-17 declaring her total income as Rs.8,92,380/-. Petitioner's case was selected for compulsory scrutiny based on information in form of survey report. As per information, petitioner has shown bogus purchases from M/s Nav Durga Traders, proprietor of which is Shri Vijay Kumar Sharma. M/s Nav Durga Traders is bogus entity having no genuine business.

6. All three petitioners were served with notice under Section 148 of the Act of 1961.

7. Mr. Ankit Singhal, learned counsel for petitioners in above writ petitions would submit that respondent Department had issued notice under Section 148 of the Act of 1961 without there being any reason to believe in terms of Section 147 of the Act of 1961 that income of assessees has escaped assessment. The Assessing Officer has not supplied reasons to believe along with notice under Section 148 of the Act of 1961. Material based upon which Assessing Officer recorded reason to believe was not supplied nor sanction/ approval under Section 151 of the Act of 1961 was supplied. On receipt of impugned notice under Section 148 of the Act of 1961, petitioners submitted an application (Annexure P-2) before the Assessing Officer for providing copy of reasons recorded for issuance of notice under Section 148 of the Act of 1961 along with documents relied upon as also copy of sanction / approval granted by the Joint Commissioner of Income Tax under Section 151 of the Act of 1961. Respondents along with Covering Memo dated 27.9.2021 (Annexure P-3) supplied Annexure-A containing reasons for proceeding under Section 148 of the Act of 1961, but copy of sanction/approval under Section 151 of the Act of 1961 was not supplied. Petitioners made reminder request for providing copy of sanction/approval under Section 151 of the Act of 1961 on 30.9.2021 but the same was not provided to them. As time was running, petitioners submitted objections (Annexure P-5) to notice issued under Section 148 of the Act of 1961. In the objection petitioners raised specific grounds amongst other of non-supply of copy of sanction/approval granted under Section

151 of the Act of 1961 to be against the principles of natural justice. Objections submitted by petitioners were decided. Along with copy of decision taken on objection, copy of sanction/approval granted under Section 151 of the Act of 1961 was also supplied to petitioners. The sanction/approval under Section 151 of the Act of 1961 was not signed by the authority concerned. Sanction / approval letter only mentions “fit case” which shows that authority granting approval has not applied mind and granted sanction in a mechanical manner. As per information of petitioners, record was not forwarded by Assessing Officer to the approving authority; unless and until entire material is forwarded, there cannot be satisfaction of authority approving proposal for issuance of notice under Section 148 of the Act of 1961. The notice issued under Section 148 of the Act of 1961 is not sustainable and it is liable to be quashed. He submits that proposal for issuance of notice was sent to the Joint Commissioner of Income Tax on 31.3.2021, sanction/approval under Section 151 of the Act of 1961 was granted on the same day, hence time of grant of sanction is having significance. In the notice impugned there is mention of date and time by authority but in the sanction/approval date and time is not mentioned. It is contended that requirement under the Act of 1961 is that sanction/approval should be prior to the date and time of issuance of notice under Section 148 of the Act of 1961. Time is relevant because 31.3.2021 is the last date for initiating proceeding of reassessment (within four years). There is apprehension of petitioners that on the date of issuance of

notice, there was no sanction by the competent authority and in absence of proper sanction under Section 151 of the Act of 1961, issuance of notice under Section 148 is illegal. In support of his contention, he places reliance upon the decision of Bombay High Court dated 21.12.2021 in case of **Svitzer Hazira Pvt. Ltd. v. Assistant Commissioner of Income Tax & ors** reported in **Writ Petition No.3554/2019**.

Learned Counsel further submitted that except in letter of approval/sanction, all the documents, which are forwarded to the petitioners, bears digital signature of authority. In absence of digital signature on sanction/approval under Section151 of the Act of 1961, the same cannot be treated to be a valid approval. In absence of proper sanction/approval, notice under Section 148 of the Act of 1961 could not have been issued. Remarks of approving authority, as appearing in approval under Section 151 of the Act of 1961, would show that there is total non-application of mind and approval, if any, has been granted in a mechanical manner. The Joint Commissioner of Income Tax, who is higher authority, is having important responsibility to consider material placed before him recording reasons to believe by Assessing Officer and after analysing reasons recorded by Assessing Officer, higher authority like Joint Commissioner of Income Tax or Principal Commissioner of Income Tax can approve or reject proposal sent by the Assessing Officer. In case at hand, at the time of considering proposal for grant of approval, no records and files were

forwarded to the Joint Commissioner of Income Tax. Mere making mention of 'fit case' or 'yes' in approval by the Joint Commissioner of Income Tax or Principal Commissioner of Income Tax while exercising powers under Section 151 of the Act of 1961 will not be considered to be sanction/approval granted after proper application of mind and in accordance with provisions of the Act of 1961. Referring to decision in case of **Commissioner of Income Tax Jabalpur (MP) vs. M/s S. Goyanka Lime and Chemical Ltd.** reported in **(2014) SCC Online MP 4550**, he submits that Division Bench of Madhya Pradesh High Court while dismissing appeal preferred by the Commissioner of Income Tax has observed that the Joint Commissioner of Income Tax has only recorded “Yes, I am satisfied” on the format, which indicates, as if, he was to sign only on the dotted line without application of mind. The Department preferred Special Leave Petition No.11916/2015 before Hon'ble Supreme Court against the order of Division Bench of Madhya Pradesh High Court which came to be dismissed vide order dated 8.7.2015. In instant case also the Joint Commissioner of Income Tax has only mentioned “fit case” on approval which shows total non-application of mind by the authority, hence impugned notice is liable to be quashed on this count alone.

He contended that notice under Section 131 of the Act of 1961 is also not issued to petitioners seeking clarification or explanation. As per direction issued by the Department vide

Notification of the year 2018, the Department is required to issue notice under Section 131, only after enquiry, proceeding under Section 147 of the Act of 1961 could have been initiated by the Assessing Officer. It is for the Assessing Officer to spell out all reasons and grounds available for reopening of assessment, but the same are missing in case of petitioners. No specific reason to believe is recorded satisfying the Assessing Officer that there is tangible material for issuance of notice under Section 148 of the Act of 1961. The Assessing Officer has not conducted any inquiry, only based on information received from other sources, initiated proceedings for issuance of notice under Section 148 of the Act of 1961. Information received from other sources does not fulfil requirement of Section 147 of the Act of 1961.

In support of his contention, he also places reliance upon decision of Hon'ble Supreme Court in **GKN Driveshafts (India) Ltd. Vs. Income Tax Officer & ors** reported in **(2003) 1 SCC 72;** judgements of Delhi High Court in cases of **Ferrous Infrastructure Pvt. Ltd. Vs. Deputy Commissioner of Income Tax** reported in **2015 SCC Online Del. 9693**; **Sabh Infrastructure Ltd. v. Asstt. Commissioner of Income Tax** reported in **2017 SCC Online Del 10863; Principal Commissioner of Income Tax-6 v. Meenakshi Overseas Pvt. Ltd.** reported in **2017 SCC Online Del 8691;**

8. Mrs. Naushina Aafrin Ali, learned counsel for respondents vehemently opposes submissions of learned counsel for

petitioners and submits that based on information collected/ received by Assessing Officer about three suspicious transactions of petitioner Jugalkishore Paliwal (WPT No.28/2022), first related to M/s Navdurga Traders (Proprietor- Shri Vijay Kumar Shamra); second related to M/s Shrinath Paddy Process (Proprietor- Shri Amar Kumar Sahu) and third related to M/s Shri Shyamji Rice Agrotech (Proprietor- Shri Sushil Kumar Maurya). Upon examination of all three suspicious transactions, it revealed that petitioner Jugal Kishore Paliwal had obtained bogus purchase bills to the tune of Rs.1,73,83,410/- from aforementioned proprietorship firms in the financial year 2015-16. Summons were issued under Section 131 (1A) of the Act of 1961 to Shri Sushil Kumar Maurya. During course of survey proceedings, entry providers and other stated on oath that they have provided bogus entries or bogus bills to various rice millers. During financial year 2015-16 petitioner has obtained bogus purchase bills worth Rs.55,96,940/- from M/s Shri Shyamji Rice Agrotech; Rs.73,90,000/- from M/s Navdurga Traders. Money of petitioner was routed through bank account of M/s Shrinath Paddy Process at Bank of Bardoa.

In case of petitioner M/s Saraswati Agro Industries (WPT No.31/2022), upon receiving suspicious transaction report from the Income Tax Officer (Investigation), Raipur, an enquiry was conducted in which it revealed that during financial year 2015-16 petitioner has taken bogus purchase bills of Rs.34,20,000/-

and Rs.30,00,000/- from M/s Navdurga Traders and M/s Deepak Nanjiyani respectively, which are bogus entities.

In case of petitioner Smt. Vidhya Nagdeo (WPT No.37/2022) upon receiving suspicious transaction report from the Income Tax Officer (Investigation), Raipur, it revealed that petitioner, who is Proprietor of M/s Yash Industries, Bilaspur, took bogus purchase bills of Rs.80,03,876/- from M/s Navdurga Traders during financial year 2015-16.

Based upon aforementioned material, the Assessing Officer formed reasons to believe that income of respective petitioners escaped assessment. There was *prima facie* material available with Assessing Officer based upon which he recorded reasons to believe that income of assessees' escaped assessment. Hence, there is due compliance of provisions of Section 147 of the Act of 1961. She submits that submission of learned counsel for petitioners that at the time of issuance of notice under Section 148 of the Act of 1961, proper approval/sanction under Section 151 of the Act of 1961 was not there, is not correct. Screen shot of ITBA Portal is filed along with additional reply dated 7.3.2022 which clearly mentions as to proceedings initiated by Assessing Officer and on 31.3.2021 print approval was uploaded. In ITBA portal unless and until the approval is uploaded, the portal will not allow uploading of notice under Section 148 of the Act of 1961.

She further contended that submission of learned counsel

for petitioners that digital signature is not available in sanction/ approval granted by the Joint Commissioner of Income Tax, which makes the approval itself invalid, is not correct. Referring to Section 282 (A) of the Act of 1961, she submits that this Section provides that mentioning of name and designation of authority on any document is sufficient for its authentication. Every income tax authority is provided with separate DIN & Document Number; in approval granted under Section 151 of the Act of 1961, DIN & Document Number is specifically mentioned. She relied upon Notification No.4/2017 issued by CBDT dated 3.4.2017 in support of her contention. Furthermore, approval/sanction under Section 151 of the Act of 1961 is an internal correspondence and exchange of document between authorities, hence it is identified by DIN & Document number. In approval/sanction under Section 151 of the Act of 1961, the authority concerned has mentioned “yes, fit”, which is mentioned only after due application of mind. The High Court of Gujarat in case of **Lalita Ashwin vs. State of Gujarat** reported in **Special Civil Application Nos.1626 & 1627/2014** has observed that only because the Joint Commissioner of Income Tax granted approval by writing 'yes' to the reasons recorded, the notice of reopening cannot fail. Hence, submission of learned counsel for petitioners that there is no application of mind by authority concerned is not correct. Approval/sanction has been supplied little late to the petitioners but the fact remains that prior to issuance of notice under Section 148 of the Act of 1961, there was due approval/sanction by competent

authority for issuance of notice, as reflecting from Page No.14 of additional reply i.e. screen shot of web portal. The only requirement of approving authority is to approve or reject or sent back proposal. In case at hand, the approving authority has mentioned 'yes, fit'. Proper reasons are recorded in terms of Section 147 of the Act of 1961 and further proper approval/ sanction was accorded by authority competent, as required under Section 151 of the Act of 1961 before issuance of notice under Section 148 of the Act of 1961. Hence, petitioners are not entitled for any relief as claimed in these petitions and the same are liable to be dismissed. She places her reliance in cases of **Kalyanji Mavji & Co.** v. **CIT** reported in **(1976) 1 SCC 985**; **M/S. Phool Chand Bajrang Lal vs Income-Tax Officer** reported in **(1993) 4 SCC 77; ACIT vs. Rajesh Jhaveri** reported in **(2008) 14 SCC 208**; **Raymond Woollen Mills Ltd. vs. ITO, Centre Circle XI, Range Bombay & ors** reported in **(2008) 14 SCC 218.**

9. In reply, learned counsel for petitioners would submit that in WPT No.37/2022 copy of approval/sanction granted under Section 151 of the Act of 1961 was provided only on 16.2.2022. He also pointed out that in all these writ petitions, application was forwarded to the National Faceless Assessment Centre, New Delhi for not providing relevant material/ information/ documents and information. With respect to certain information sought by petitioners in letter dated 17.12.2021 it is mentioned not available in the office of Income Tax Officer, Bilaspur.

10. At this stage, Mrs. Naushina Afreen Ali, learned counsel for respondents would submit that along with copy of rejection of objection, notice under Section 143 (2) of the Act of 1961 was also issued to the respective petitioners. Petitioners can very well explain to authority concerned about return submitted by them under Section 139 of the Act of 1961.

11. I have heard learned counsel for the parties and perused the documents placed on record by respective parties.

12. So far as submission of learned counsel for petitioners that there was no proper sanction/approval on the date of issuance of notice under Section 148 of the Act of 1961 is concerned, provision under Section 151 of the Act of 1961 provides for “sanction for issuance of notice”. Authority prescribed for grant of sanction/approval within four years of relevant assessment year is the 'Joint Commissioner of Income Tax'. Under Section 151 (2) of the Act of 1961 the Joint Commissioner is required to record his satisfaction on the reasons recorded by Assessing Officer. Respondents along with their additional reply have placed on record copy of screen shot of ITBA web portal in which there is mention of 'print approval' against name of respective petitioner with DIN number showing status to be generated with an option to view attachments. From the screen shot placed on record by respondents along with their additional return, accord of sanction/approval with DIN number of authority showing status to be generated on 31.3.2021, *prima facie* it cannot be said that there was no sanction/approval for

issuance of notice under Section 148 of the Act of 1961. Along with additional return respondents have further placed on record approval/sanction granted under Section 151 dated 31.3.2021 which contains similar DIN Number as is mentioned in screen shot of ITBA web portal placed on record. Petitioners have also annexed approval/sanction granted under Section 151 of the Act of 1961 as Annexure P-6 to writ petition. DIN Number is mentioned in Annexure P-6. Nothing has been brought on record by petitioners to show that any objection was raised by them to the effect that DIN number is incorrect or it was not generated on 31.3.2021, except raising objection before this Court with respect to manner in which sanction/ approval is granted, as is appearing in sanction order. In view of aforementioned facts of case, submission of learned counsel for petitioners that notice under Section 148 of the Act of 1961 is issued without there being any sanction/approval from the competent authority is not sustainable and it is hereby repelled.

13. Ruling of the Bombay High Court in **Svitzer Hazira's case (supra)** on which heavy reliance is placed by learned counsel for petitioners is of no help to petitioners being based on different facts. In that case, time of issuance of notice as also time of granting sanction is specifically mentioned in the document. Considering both the documents, the Court held that notice under Section 148 of the Act of 1961 was issued prior to grant of sanction/approval by competent authority. Time mentioned in sanction / approval is 15 minutes after the time of

issuance of notice under Section 148 of the Act of 1961. In these circumstances, Division Bench of Bombay High Court has passed the order.

14. Another submission of learned counsel for petitioners is that there was no proper application of mind by authority granting approval/sanction. Section 151 of the Act of 1961 deals with sanction for issue of notice. Sub-section (2) of Section 151 requires that the authority granting sanction/approval must be satisfied on the reasons recorded by Assessing Officer that it is a fit case for issuance of such notice. In case at hand, on the basis of analysis of information collected/received and findings thereon, the Assessing Officer elaborately recorded reasons to believe in Annexure-A that income of petitioners escaped assessment and sought permission to proceed under Section 148 of the Act of 1961. Based on reasons to believe recorded by Assessing Officer in Annexure-A, the approving authority granted approval under Section 151 of the Act of 1961. At this stage, this Court is to consider whether notices under Section 148 of the Act of 1961 issued to petitioners are after following the procedure prescribed under the law or not. In the facts of the case, I do not find any substance in submission of learned counsel for petitioners that sanction/approval under Section 151 of the Act of 1961 is bad in law and it is hereby repelled.

15. The judgment in case of **S. Goyanka Lime & Chemicals Ltd. (supra)** relied upon by learned counsel for petitioners is concerned, in that case petitioner therein submitted objection

which was rejected. Final assessment order under Section 143 (3) of the Act of 1961 was passed. Assessee aggrieved by assessment order filed appeal. Appellate authority considering entire record and material has held that the authority accorded sanction not applied his mind and it was done in mechanical manner. In case at hand that stage is still to come and petitioners will have the opportunity to raise grounds before appellate authority. Satisfaction recorded by sanctioning/ approving authority is to be considered based on facts of each case. In this proceeding where challenge is to the issuance of notice under Section 148 of the Act of 1961, sufficiency or correctness of material for reopening of assessment will not be the consideration. In the opinion of this Court the word 'fit case' mentioned in 'sanction order / approval under Section 151 of the Act of 1961' is to be tested along with the reasons' recorded by the Assessing Officer and records of the proceedings.

16. Coming to next submission of learned counsel for petitioners that there was no tangible material available for re-opening of assessment. Perusal of reasons assigned *prima facie* shows that Assessing Officer based on information of suspicious transactions report from the Income Tax Officer (Investigation) has verified transactions. Notice under Section131A of the Act of 1961 was also issued and statements were recorded including of one Sushil Kumar Maurya. Based on statements, Assessing Officer recorded that petitioners obtained bogus purchase bills during relevant period. Hon'ble Supreme Court

in case of **M/s Phoolchand Bajrang Lal vs. Income Tax Officer** reported in **(1993) 4 SCC 77** has observed that Assessing Officer can start re-assessment proceeding when fresh facts come to light which were not previously disclosed. Relevant part of judgment is quoted below for ready reference:-

> "From a combined review of the judgements of this Court, it follows that an Income-tax Officer acquires jurisdiction to reopen assessment under Section 147 (a) read with Section 148 of the Income Tax 1961 only if on the basis of specific, reliable and relevant information coming to his possession subsequently, he has reasons which he must record, to believe that by reason of omission or failure on the part of the assessee to make a true and full disclosure of all material facts necessary for his assessment during the concluded assessment proceedings, any part of his income, profit or gains chargeable to income tax has escaped assessment. He may start reassessment proceedings either because some fresh facts come to light which where not previously disclosed or some information with regard to the facts previously disclosed comes into his possession which tends to expose the untruthfulness of those facts. In such situations, it is not a case of mere change of opinion or the drawing of a different inference from the same facts as were earlier available but acting on fresh information. Since, the belief is that of the Income-tax Officer, the sufficiency of reasons for forming the belief, is not for the Court to judge but it is open to an assessee to establish that there in fact existed no belief or that the belief was not at all a bona fide one or was based on vague, irrelevant and non-specific information. To that limited extent, the Court may look into the conclusion arrived at by Income-tax Officer and examine whether there was any material available on the record from

which the requisite belief could be formed by the Income-tax Officer and further whether that material had any rational connection or a live link for the formation of the requisite belief.."

17. In case of **Raymond Wollen Mills Ltd. vs. ITO Centre Excise XI, Range Bombay & ors** reported in **(2008) 14 SCC 218** Hon'ble Supreme Court while considering as to sufficiency of reasons to believe at the stage of issuance of notice under Section 148 of the Act of 1961 has held thus:-

"3.In this case, we do not have to give a final decision as to whether there is suppression of material facts by the assessee or not. We have only to see whether there was prima facie some material on the basis of which the Department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage. We are of the view that the court cannot strike down the reopening of the case in the facts of this case. It will be open to the assessee to prove that the assumption of facts made in the notice was erroneous. The assessee may also prove that no new facts came to the knowledge of the Income-tax Officer after completion of the assessment proceeding. We are not expressing any opinion on the merits of the case. The questions of fact and law are left open to be investigated and decided by the assessing authority. The appellant will be entitled to take all the points before the assessing authority. The appeals are dismissed. There will be no order as to costs."

18. Hon'ble Supreme Court in above rulings has held that at the stage of issuance of notice for re-opening of assessment, the Court is only require to see whether there is *prima facie*

material available on the basis of which department can reopen case and not sufficiency or correctness of material to be considered. Petitioners are having opportunity to reply to notice under Section 148 of the Act of 1961, participate in proceedings and raise all grounds available to them in accordance with law. At this stage, this Court is only required to see whether there is *prima facie* material before the Assessing Officer to initiate proceedings and other requirements under the law, pre-condition i.e. of taking approval/sanction under Section 151 of the Act of 1961, before issuance of notice under Section 148 of the Act of 1961 is followed or not.

19. Next submission of learned counsel for petitioners is that approval/sanction granted under Section 151 of the Act of 1961 has not been digitally signed and dated. In rebuttal, submission of learned counsel for respondents is that as per provisions of Section 282-A of the Act of 1961, mention of name of competent authority sanction/approval is sufficient. Relevant portion of Section 282A of the Act of 1961 is extracted below for ready reference:-

> "282A.Authentication of notices and other documents.—(1) Where this Act requires a notice or other document to be issued by any income-tax authority, such notice or other document shall be signed and issued in paper form or communicated in electronic form by that authority in accordance with such procedure as may be prescribed.
>
> (2) Every notice or other document to be issued,

served or given for the purposes of this Act by any income-tax authority, shall be deemed to be authenticated if the name and office of a designated income-tax authority is printed, stamped or otherwise written thereon.

(3) For the purposes of this section, a designated income-tax authority shall mean any income-tax authority authorised by the Board to issue, serve or give such notice or other document after authentication in the manner as provided in sub-section (2)."

20. Perusal of Section 282-A of the Act of 1961 would show that this provision is brought into by way of amendment for the purpose of authentication of notice and other documents. Sub-section (2) of Section 282-A of the Act of 1961 envisages that every notice or other document to be issued, served or given for the purpose of this Act by any Income Tax authority shall be deemed to be authenticated if name and office of designated income tax authority is printed/stamped or otherwise written thereon. In view of specific provision under the Act of 1961, the document i.e. sanction/approval under Section 151 of the Act of 1961 issued by Competent Authority in case of petitioners will be deemed to be an authenticated document. In the 'Note' appended at the bottom of sanction/approval under Section 151 of the Act of 1961, it is mentioned that “**if digitally signed**”, the date of signature may be taken as date of document. Further submission of learned counsel for respondents in this regard is that approval is an inter-departmental correspondence; notices issued to petitioners are digitally signed by Assessing Officer.

Hence, in view of aforementioned provision of law as also submission of learned counsel for respondents based on the Notification No.4/2017 dated 03.04.2017 documents granting sanction/approval under Section 151 of the Act of 1961 cannot be said to be an unauthenticated document.

21. For the foregoing discussions, I do not find present to be a fit case to interfere with proceedings of re-assessment initiated by respondent Department against petitioners upon issuance of notice under Section 148 of the Act of 1961.

22. Accordingly, all above three writ petitions stand dismissed.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-