

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**ORDINARY ORIGINAL CIVIL JURISDICTION**  
**WRIT PETITION NO.3090 OF 2019**

Lintas India Private Limited ] ... Petitioner

Versus

Union of India & Anr. ] ... Respondents

Mr. Arun Jain a/w Ms. Dhruvi Shah i/b PDS Legal for Petitioner.  
Mr. Suresh Kumar for Respondents.

**CORAM :- K. R. SHRIRAM &  
AMIT B. BORKAR, JJ.**  
**DATE :- 14 DECEMBER, 2021**

**P. C. :-**

1. Mr. Suresh Kumar tenders a counter-Affidavit of one Akhil Goel, Assistant Commissioner of Income Tax, Circle-16(1), Mumbai, affirmed on 11/03/2020. The said Affidavit is taken on record. Mr. Arun Jain, learned Counsel for Petitioner, states that he has received copy of the Affidavit a week ago.

2. Petitioner is impugning notice dated 05/09/2017 issued under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') and an order dated 14/10/2019 disposing of the objections raised by Petitioner for re-opening the assessment for AY 2015-16.

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3. Mr. Arun Jain, learned Counsel for Petitioner, submitted that prayer sought in the Petition ought to be granted on various grounds, primarily sanction required under Section 151 of the Act has not been validly obtained. Section 151 of the Act provides that no notice shall be issued under Section 148 by an Assessing Officer after the expiry of a period of 4 years from the end of the relevant assessment year unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied with reasons recorded by Assessing Officer that it is a fit case for issue of such notice.

4. Mr. Jain submitted that at Petitioner's request, Respondents sent an email dated 23/11/2018 which reads as under :-

*"To,  
The Principal Officer,  
Lintas India Pvt. Ltd.  
Mumbai.*

*PFA attached reasons for re-opening of assessment u/s.147 for  
A.Y:1015-16 along with copy of letter of Addl.CIT, Range-3(2),  
Mumbai granting approval for the same.*

*(Hari Mohan Dubey)  
ACIT-3(2)(1), Mumbai."*

5. The reasons attached to the email is dated 05/09/2017 and the letter of Addl.CIT granting approval is dated 22/08/2017. Mr. Jain submitted that the Commissioner can issue a sanction if he is satisfied, on

the reasons recorded by the Assessing Officer, that it is a fit case for issue of such notice. In this case, the sanction is dated 22/08/2017 whereas the reasons were recorded on 05/09/2017. Mr. Jain submitted that on this ground alone, the notice should be set aside and the order disposing the objections should also be set aside.

6. Mr. Suresh Kumar, learned Counsel for Respondents, submitted that the notice under Section 148 is dated 05/09/2017 and as the sanction is dated 22/08/2017, it is prior to issuance of the notice and therefore there is no error committed by Respondents.

7. We do not agree with Mr. Suresh Kumar. Section 151 as it was then applicable, expressly provides “*no notice shall be issued under Section 148 by an Assessing Officer after the expiry of 4 years from the end of the relevant assessment year, unless ..... is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice*”. Therefore, the Commissioner should be satisfied on the reasons that the Assessing Officer has recorded that it is a fit case for the issue of such notice. The reasons should be before the Commissioner before he expresses his satisfaction by according the sanction. In this case, the reasons is date 05/09/2017 and the sanction letter which reads “.... *I hereby convey the approval for reopening the assessment*” is dated

22/08/2017 and according to the Assessing Officer who has also filed the Affidavit-in-Reply, the approval was obtained in accordance with administrative procedure followed while obtaining sanction for re-assessment. According to Assessing Officer, firstly, a proposal is submitted to the Principal CIT / Addl.CIT in the prescribed format with the draft reasons for re-opening. Then approval is obtained from Principal CIT / Addl.CIT and thereafter the reasons as approved by the Principal CIT / Addl.CIT are recorded. Eventually, the notice under Section 148 is issued. In our view, this is a flawed procedure being adopted. The procedure being adopted is contrary to Section 151 under which the sanction has to be granted for issuing a notice under Section 148 when the Principal CIT / Addl.CIT is satisfied that it is a fit case for issue of such notice. The reasons recorded have to be final and it cannot be a draft submission for approval of the Principal CIT or Addl.CIT. The Assessing Officer has to record the final reasons as to why according to him a notice has to be issued under Section 148 and only if the Principal CIT / Addl.CIT is satisfied with the reasons so recorded, they can grant sanction and by applying their mind. The sanction cannot be given mechanically. It is based on the reasons on which a sanction has to be given for issuing the notice. Reasons cannot be submitted in a draft form for approval. The reasons have to be that of the Assessing Officer and the Commissioner cannot improve upon those reasons.

8. Moreover, even while conveying the approval for re-opening, Addl.CIT has displayed non-application of mind. The non-approval is given for re-opening the assessment of Petitioner but in the reference it pertains to another entity by the name Laxmi Organic and a communication dated 07/08/2017 is referred to. This also indicates that the Addl.CIT has granted sanction without even reading the letter.

9. In the circumstances, on this ground alone, the notice under Section 148 has to be set aside and the same is hereby set aside.

10. Consequently, order dated 14/10/2019 disposing of the objections is also set aside.

11. Petition disposed.

**(AMIT B. BORKAR, J.)**

**(K. R. SHRIRAM, J.)**