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(Judgment reserved on 26.07.2022)

(Judgment delivered on 08.09.2022)

In Chamber

1. Case :- WRIT TAX No. - 554 of 2022

Petitioner :- Vikas Gupta

Respondent :- Union Of India And 3 Others

Counsel for Petitioner :- Ankur Agarwal,Ankur Agarwal,Ashish Bansal

Counsel for Respondent :- A.S.G.I.,Gaurav Mahajan,Krishna Agarawal

WITH

2. Case :- WRIT TAX No. - 370 of 2022

Petitioner :- Neeraj Rathor

Respondent :- Income Tax Officer And 3 Others

Counsel for Petitioner :- Rahul Agarwal

Counsel for Respondent :- Gaurav Mahajan

3. Case :- WRIT TAX No. - 427 of 2022

Petitioner :- M/S Universal Polymers Private Limited

Respondent :- Income Tax Officer And 3 Others

Counsel for Petitioner :- Rahul Agarwal

Counsel for Respondent :- Gaurav Mahajan

4. Case :- WRIT TAX No. - 475 of 2022

Petitioner :- Beyond Research And Development Limited

Respondent :- Pr. Commissioner Of Income Tax And 2 Others

Counsel for Petitioner :- Ashish Bansal

Counsel for Respondent :- Gaurav Mahajan,Manu Ghildyal

5. Case :- WRIT TAX No. - 487 of 2022

Petitioner :- Beyond Research And Development Ltd

Respondent :- Pr Commissioner Of Income Tax And 2 Others

Counsel for Petitioner :- Ashish Bansal

Counsel for Respondent :- Gaurav Mahajan,Manu Ghildyal

6. Case :- WRIT TAX No. - 555 of 2022

Petitioner :- Deepak Gupta

Respondent :- Union Of India And 3 Others

Counsel for Petitioner :- Ankur Agarwal,Ankur Agarwal,Ashish Bansal

Counsel for Respondent :- A.S.G.I.,Gaurav Mahajan,Praveen Kumar

7. Case :- WRIT TAX No. - 642 of 2022

Petitioner :- Dar Landmarks Private Limited

Respondent :- Assistant Commissioner Of Income Tax Circle And 3 Others

Counsel for Petitioner :- Srijan Mehrotra,Abhinav Mehrotra,Pankaj Agrawal

Counsel for Respondent :- A.S.G.I.,Anant Kumar Tiwari,Gaurav Mahajan,Krishna Agarawal

8. Case :- WRIT TAX No. - 694 of 2022

Petitioner :- Manish Maheshwari

Respondent :- Asst. Commissioner Of Income Tax And 3 Others

Counsel for Petitioner :- Yash Tandon

Counsel for Respondent :- A.S.G.I.,Gaurav Mahajan,Naveen Chandra Gupta

9. Case :- WRIT TAX No. - 710 of 2022

Petitioner :- Manoj Kumar Agarwal

Respondent :- Asst. Commissioner Of Income Tax - 1 And 3 Others

Counsel for Petitioner :- Yash Tandon

Counsel for Respondent :- C.S.C.,Gaurav Mahajan,Sudarshan Singh

Hon'ble Surya Prakash Kesarwani,J.

Hon'ble Chandra Kumar Rai,J.

(Per: Hon'ble Surya Prakash Kesarwani, J.)

1. Heard learned counsel for the petitioners, Sri S.P. Singh, learned Additional Solicitor General of India assisted by Sri Krishna Agrawal and Sri Praveen Kumar, learned counsel for the respondents in all the above-noted writ petitions.

2. These writ petitions have been filed praying to quash the notice under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act, 1961') and the reassessment orders passed under Section 147/148 of the Act, 1961.

3. Since common questions of law on similar set of facts are involved in this batch of writ petitions, therefore, with the consent of learned counsels for the parties, the Writ Tax No.554 of 2022 have been heard as a leading writ petition and facts of this case are being noted.

4. In the above noted writ petitions, the following reliefs have been sought by the petitioners:

"WRIT TAX No. 554/22

(I) Issue a writ, or direction in the nature of Certiorari quashing the impugned notice u/s 148 of the Act, dated 31.03.2021, issued by respondent no.3, for A.Y. 2013-14. (Annexure No. 4).

(ii) Issue a writ, order or direction in the nature of Prohibition thereby restraining Respondent No. 3 from undertaking further reassessment

proceedings pending before him against the Petitioner, for A.Y. 2013-14 in pursuance of notice u/s 148 of the Act, dated 31.03.2021.

(iii) Issue any other writ order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.

(iv) Award the costs of the petition to the petitioner.

*(v) Issue a Writ, Order or Direction in the nature of Certiorari to **quash the Assessment Order dated 23.03.2022** passed by Respondent No.4 (Annexure - 13) being in consequence of the proceedings which is without jurisdiction and without giving an effective opportunity of being heard.*

(vi) Issue writ order or direction in nature of mandamus directing Respondent Nos.3 & 4 not to proceed further towards the recovery of demand created in consequence of the assessment order dated 23.03.2022 (Annexure – 13)/ not treat the Petitioner as assessee in default, during the pendency of the present writ petition.

WRIT TAX No. - 370 of 2022

(a) Issue a writ, order or direction in the nature of Certiorari quashing the notice dated 08.02.2022 (Annexure-1 to the writ petition) issued by the Respondent No. 1 disposing of the objections raised by the petitioner against the issuance of notice dated 31.03.2021 under Section 148 of the Income Tax Act for the Assessment Year 2015-16;

(b) Issue a writ, order or direction in the nature of Certiorari quashing the notice dated 08.02.2022 (Annexure-3 to the writ petition) issued by the Income Tax Department under Section 143(2) read with Section 147 of the Income Tax Act, 1961;

*(c) Issue a writ, order or direction in the nature of Certiorari quashing **the notice dated 31.03.2021 issued by the Assistant Commissioner of Income Tax Officer, Circle 5(1)(1), Gautam Budh Nagar under Section 148 of the Income Tax Act, 1961 for the Assessment Year 2015-16** (Annexure-2 to the writ petition);*

*(c-i) Issue a writ, order or direction in the nature of Certiorari **quashing the assessment order dated 31.03.2022** u/s 147 of the Income Tax Act, 1961 passed by the respondent no. 3, the demand notice and computation sheet issued to the*

petitioner (Annexure-19 to the writ petition);

(d) Issue a writ, order or direction in the nature of Mandamus restraining the respondents from proceeding with the consequential reassessment initiated vide notice dated 31.03.2021 issued under Section 148 of the Income Tax Act, particularly, the notices dated 23.11.2021 (Annexure-9 to the writ petition) and 08.02.2022 (Annexure-3 to the writ petition) issued under Section 142(1) and Section 143(2) read with Section 147 of the Income Tax Act respectively;

(d-i) Issue a writ, order or direction in the nature of Mandamus restraining the respondents from taking any coercive steps pursuant to the show cause notice dated 31.03.2022 issued by the respondent no. 3 u/s 274 read with Section 271(1)(c) of the Income Tax Act, 1961 to the petitioner (Annexure-22 to the writ petition).

WRIT TAX No. - 427 of 2022

(a) Issue a writ, order or direction in the nature of Certiorari quashing the notice dated 16.02.2022 (Annexure-1 to the writ petition) issued by the Respondent No. 1 disposing of the objections raised by the petitioner against the issuance of notice dated 31.03.2021 under Section 148 of the Income Tax Act for the Assessment Year 2014-15;

(b) Issue a writ, order or direction in the nature of Certiorari quashing the notice dated 25.11.2021 (Annexure-3 to the writ petition) issued by the Income Tax Department under Section 143(2) read with Section 147 of the Income Tax Act, 1961;

*(c) Issue a writ, order or direction in the nature of Certiorari **quashing the notice dated 31.03.2021** (served on 01.04.2021) (Annexure-2 to the writ petition) issued by the Income Tax Officer, Ward-2(3) (1), Kanpur Nagar **under Section 148 of the Income Tax Act, 1961 for the Assessment Year 2014-15;***

(d) Issue a writ, order or direction in the nature of Mandamus restraining the respondents from proceeding with the consequential reassessment proceedings initiated vide notice dated 31.03.2021 issued under section 148 of the Income Tax Act, particularly, the notice dated 25.11.2021 issued under Section 143(2) read with Section 147 of the Income Tax Act respectively;

WRIT TAX No. - 475 of 2022

(i) issue writ, order or direction in the nature of certiorari so as **to quash the notice dated 31.03.2021** (Annexure - 10) issued **under section 148** by the Respondent No3, as the same being illegal having been issued without prior approval under section 151 of the Act, hit by first proviso to section 147 and is also based on 'change of opinion';

(ii) issue writ, order or direction in the nature of certiorari so as to quash the notices dated 20.12.2022, 22.02.2022 & 28.02.2022 (Annexures 15, 18 & 19 respectively) issued by Respondent No.2 under section 142(1) of the Income Tax Act, for the purposes of making reassessment and that too in pursuance of an invalid notice;

WRIT TAX No. - 487 of 2022

(i) Issue writ, or direction in the nature of Certiorari so as **to quash the notice dated 31.03.2021** (Annexure - 6) **issued under section 148** by the Respondent No3, as the same being illegal having been issued without prior approval under section 151 of the Act, hit by first proviso to section 147 and is also based on 'change of opinion';

(ii) issue writ, order or direction in the nature of certiorari so as to quash the notices dated 08.02.2022 & 28.02.2022 (Annexures 14 & 16 respectively) issued by Respondent No.2 under section 142(1) of the Income Tax Act, for the purposes of making reassessment and that too in pursuance of an invalid notice;

WRIT TAX No. - 555 of 2022

(i) Issue a writ, or direction in the nature of Certiorari **quashing the impugned notice u/s 148 of the Act, dated 31.03.2021**, issued by respondent no.3, for A. Y. 2013-14. (Annexure No. 4).

(ii) Issue a writ, order or direction in the nature of Prohibition thereby restraining Respondent No. 3 from undertaking further reassessment proceedings pending before him against the Petitioner, for A.Y. 2013-14 in pursuance of notice u/s 148 of the Act, dated 31.03.2021.

(III) Issue any other writ order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.

(iv) Award the costs of the petition to the petitioner.

*(v) Issue a Writ, Order or Direction in the nature of Certiorari to **quash the Assessment Order dated 31.03.2022** passed by Respondent No.4 (Annexure 11) being in consequence of the proceedings which is without jurisdiction and without giving an effective opportunity of being heard.*

(vi) Issue writ order or direction in nature of mandamus directing Respondent Nos.3 & 4 not to proceed further towards the recovery of demand created in consequence of the assessment order dated 31.03.2022 (Annexure -11)/ not treat the Petitioner as assessee in default, during the the present writ petition.

WRIT TAX No. - 642 of 2022

A. issue a writ, order or direction in the nature of certiorari **quashing the impugned notice issued under section 148** of income tax act dt. 31.03.2021 and order disposing off objections dt. 26.03.2022, as also the sanction authorising the issuance of such notice for a.y. 2013-14.

B Issue a writ, order or direction in the nature of certiorari **quashing the impugned order of reassessment dt. 30.03.2022** which is made contrary to settled principles of law and in violation to the settled principles of natural justice.

WRIT TAX No. - 694 of 2022

*1. issue a writ, order or direction in the nature of certiorari **quashing the impugned notice issued under section 148 of income tax act dt. 31.03.2021** and order disposing off objections dt. 10.02.2022, since the notice u/s 148 has been issued without obtaining the sanction of respondent 2, which was received post-facto i.e. after the issuance of impugned notice.*

*2. issue a writ, order or direction in the nature of certiorari **quashing the impugned order of reassessment dt. 26.03.2022***

3. Issue any other writ, order or direction as this hon'ble court may deem fit and proper in the circumstances of the case.

4. award costs in favour of the petitioner

WRIT TAX No. - 710 of 2022

*1. Issue a writ, order or direction in the nature of certiorari **quashing the***

impugned notice issued under section 148 of income tax act dt. 31.03.2021 and order disposing off objections dt. 02.03.2022, as also the sanction authorising the issuance of such notice for a.y. 2013-14.

*2. issue a writ, order or direction in the nature of certiorari **quashing the impugned order of reassessment dt. 28.03.2022** and consequential proceeding which is made contrary to settled principles of law and in violation to the settled principles of natural justice.*

3. issue any other writ, order or direction as this hon'ble court may deem fit and proper in the circumstances of the case.

4. award costs in favour of the petitioner”

Facts:-

5. In this batch of writ petitions, the admitted facts are that on the basis of unsigned alleged digital approval under Section 151, Assessing officer issued notices to the assesseees under Section 148 of the Act, 1961. The point of time when the aforesaid approval under Section 151 of the Act, 1961 was signed, is subsequent to the issuance of notices by the Assessing Officer under Section 148 of the Act, 1961.

6. Facts of Writ Tax No.554 of 2022 are that as per approval under Section 151 of the Act, 1961 for the Assessment Year 2013-14 filed as Annexure-4 to the writ petition, the Principal Commissioner of Income Tax (for short ‘PCIT’) **granted approval on 31.03.2021 at 07:05 P.M., i.e. 19:05 hours by digitally signing the approval.** Jurisdictional **notice under Section 148 of the Act, 1961** was digitally signed by the respondent No.3/ Assessing officer **on 31.03.2021 at 05:43 P.M., i.e. 17:43 hours, which is prior to the grant of digitally signed approval by the PCIT under Section 151 of the Act, 1961.** As per Section 151 of the Act, 1961, as stood at the relevant time no notice shall be issued by the Assessing Officer after expiry of four years from the end of the Assessment Year unless the Principal Chief Commissioner/ PCIT is satisfied on the reasons recorded by the Assessing Officer that it is a fit case for issuing such notice.

7. In **Writ Tax No. 370 of 2022** the impugned notice under section 148 of the Act, 1961 relating to the assessment year 2015-16 was issued on 31.3.2021 at 6.33 p.m. whereas the satisfaction under section 151 was recorded by the PCIT subsequently at 7.15 p.m. on the same day. In **Writ Tax No. 427 of 2022** the impugned notice under section 148 of the Act, 1961 relating to the assessment year 2014-15 was issued on 31.3.2021 at 3.32 p.m. whereas the satisfaction under section 151 was recorded by the PCIT subsequently at 4.02 p.m. on the same day. In **Writ Tax No. 475 of 2022** the impugned notice under section 148 of the Act, 1961 relating to the assessment year 2014-15 was issued on 31.3.2021 at 3.34 p.m. whereas the satisfaction under section 151 was recorded by the PCIT subsequently at 4.02 p.m. on the same day. In **Writ Tax No. 487 of 2022** the impugned notice under section 148 of the Act, 1961 relating to the assessment year 2015-16 was issued on 31.3.2021 at 3.38 p.m. whereas the satisfaction under section 151 was recorded by the PCIT subsequently at 4.02 p.m. on the same day. In **Writ Tax No. 555 of 2022** the impugned notice under section 148 of the Act, 1961 relating to the assessment year 2013-14 was issued on 31.3.2021 at 6.32 p.m. whereas the satisfaction under section 151 was recorded by the PCIT subsequently at 7.00 p.m. on the same day. In **Writ Tax No. 642 of 2022** the impugned notice under section 148 of the Act, 1961 relating to the assessment year 2013-14 was issued on 31.3.2021 at 6.25 p.m. whereas the satisfaction under section 151 was recorded by the PCIT subsequently at 7.07 p.m. on the same day. In **Writ Tax No. 710 of 2022** the impugned notice under section 148 of the Act, 1961 relating to the assessment year 2013-14 was issued on 31.3.2021 at 2.40 p.m. whereas the satisfaction under section 151 was recorded by the PCIT subsequently at 3.52 p.m. on the same day.

8. In **Writ Tax No. 694 of 2022** the impugned notice under section 148 of the Act, 1961 relating to the assessment year 2013-14 was issued on 31.3.2021 at 4.01 P.M. by Assessing Officer and satisfaction was recorded by the PCIT at 4.01 p.m. Thus the recording of satisfaction under section 151 and issuance of

notice under section 148 are simultaneous.

Submissions on behalf of the Petitioners:-

9. Learned counsel for the petitioners submitted that the impugned notices under Section 148 of the Act, 1961 are wholly without jurisdiction, inasmuch as, it was issued without prior satisfaction/approval of the competent authority under Section 151 of the Act, 1961. Since at the point of time when notices under Section 148 of the Act, 1961 were issued, there was no valid satisfaction/ approval of the competent authority, therefore, the Assessing Officer could not assume jurisdiction to issue notice under Section 148 of the Act, 1961. Hence, the notices under Section 148 of the Act, 1961 are without jurisdiction and thus invalid. Consequently, the subsequent proceedings including reassessment orders are also without jurisdiction. Section 282A of the Act, 1961 has no relevance with respect to the recording of satisfaction or prior permission by the PCIT under Section 151 of the Act, 1961.

Submissions on behalf of the respondents:-

10. Learned Additional Solicitor General of India has submitted that the unsigned satisfaction of the PCIT stands validated in view of Section 282A of the Act, 1961 inasmuch as the digital or physical unsigned satisfaction recorded by the PCIT shall be deemed to be authenticated under Section 282A of the Act, 1961 read with Rule 127A of the Income Tax Rules, 1962 and Sections 2(d), 2(p) and 2(t) of the Information Technology Act, 2000 inasmuch as satisfaction bears the name and office of a designated income tax authority, i.e. PCIT. He submits that the moment the PCIT has pushed in "Generate Tap in ITBA System" his satisfaction under Section 151 of the Act, 1961, would be deemed to be an authenticated document in terms of Section 282A and thus is a valid satisfaction under Section 151 of the Act, 1961. The digital signature affixed by the PCIT on his aforesaid satisfaction under Section 151 of the Act, 1961, subsequent to issuance of the notice by the Assessing Officer under Section 148, would not invalidate the notices under

Section 148 of the Act, 1961. He referred to paragraphs 17, 18 and 19 of the supplementary counter affidavit dated 02.05.2022 sworn by Nisha Gupta, Income Tax officer, Ward-5(2)(5), NOIDA, which read as under:

“17. That a perusal of the aforesaid provisions demonstrates that if a notice or other document is issued served or given for the purpose of the Act by any income tax authority, the same shall be deemed to be authenticated, if the name and office of a designated income tax authority is printed, stamp or otherwise written thereon.

*18. That the aforesaid provisions of law clearly demonstrates that **the approval issued by the PCIT in electronic form, without affixing digital signature is also deemed to be authenticated and therefore affixation of digital signature is not a precondition for validation of the document.***

*19. That it is respectfully submitted that in view of the above, **the approval granted by PCIT is valid approval even if the digital signature was affixed later in point of time.**”*

Discussion and Findings:-

11. We have carefully considered the submissions of the learned counsels for the parties and perused the records of the writ petitions. Before we proceed to examine the rival contentions of learned counsels for the parties, it would be appropriate to reproduce below the relevant provisions of the Act, 1961, the Income Tax Rules, 1962 and Information and Technology Act, 2000:-

“A. Income Tax Act, 1961

“Issue of notice where income has escaped assessment.

Section 148. (1) Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period, as may be specified in the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139 :

Provided that in a case—

(a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005 in response to a notice served under this section, and

(b) subsequently a notice has been served under sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to sub-section (2) of section 143, as it stood immediately before the amendment of said sub-

section by the Finance Act, 2002 (20 of 2002) but before the expiry of the time limit for making the assessment, re-assessment or recomputation as specified in sub-section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice:

Provided further that in a case—

(a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005, in response to a notice served under this section, and

(b) subsequently a notice has been served under clause (ii) of sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to clause (ii) of sub-section (2) of section 143, but before the expiry of the time limit for making the assessment, reassessment or recomputation as specified in sub-section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice.

Explanation.—For the removal of doubts, it is hereby declared that nothing contained in the first proviso or the second proviso shall apply to any return which has been furnished on or after the 1st day of October, 2005 in response to a notice served under this section.

(2) The Assessing Officer shall, before issuing any notice under this section, record his reasons for doing so.

Sanction for issue of notice.

Section 151. (1) 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.

(2) In a case other than a case falling under sub-section (1), no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of Joint Commissioner, unless the Joint Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.

(3) For the purposes of sub-section (1) and sub-section (2), the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner or the Joint Commissioner, as the case may be, being satisfied on the reasons recorded by the Assessing Officer about fitness of a case for the issue of notice under section 148, need not issue such notice himself.

Authentication of notices and other documents.

282A. (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).

B. Income Tax Rules, 1962:-

Authentication of notices and other documents.

Rule 127A. (1) Every notice or other document communicated in electronic form by an income-tax authority under the Act shall be deemed to be authenticated,-

(a) in case of electronic mail or electronic mail message (hereinafter referred to as the e-mail), if the name and office of such income-tax authority-

(i) is printed on the e-mail body, if the notice or other document is in the e-mail body itself; or

(ii) is printed on the attachment to the e-mail, if the notice or other document is in the attachment,

and the e-mail is issued from the designated e-mail address of such income-tax authority;

(b) in case of an electronic record, if the name and office of the income-tax authority-

(i) is displayed as a part of the electronic record, if the notice or other document is contained as text or remark in the electronic record itself; or

(ii) is printed on the attachment in the electronic record, if the notice or other document is in the attachment,

and such electronic record is displayed on the designated website.

(2) The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) shall specify the designated e-mail address of the income-tax authority, the designated website and the procedure, formats and standards for ensuring authenticity of the communication.

Explanation. - For the purposes of this rule, the expressions-

(i) "electronic mail" and "electronic mail message" shall have the same meanings respectively assigned to them in Explanation to section 66A of the Information Technology Act, 2000 (21 of 2000);

(ii) "electronic record" shall have the same meaning as assigned to it in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000).

C. Information Technology Act, 2000:-

Section 2(d) —*affixing electronic signature* with its grammatical variations and cognate expressions means adoption of any methodology or procedure by a

person for the purpose of authenticating an electronic record by means of digital signature;

Section 2(p) —*digital signature means authentication of any electronic record by a subscriber by means of an electronic method or procedure in accordance with the provisions of section 3;*

Section 2(t) —*electronic record means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche;*

Explanation to Section 66-A-- *For the purposes of this section, terms "electronic mail" and "electronic mail message" means a message or information created or transmitted or received on a computer, computer system, computer resource or communication device including attachments in text, image, audio, video and any other electronic record, which may be transmitted with the message."*

12. Annexure-4 to the writ petition is the alleged approval, under section 151 of the Act, 1961 for the Assessment Year 2013-14 which was granted by the PCIT on 31.03.2021 at 7:05 P.M. i.e. 19:05 hours by digitally signing the approval. Notice under Section 148 of the Income Tax Act, 1961 was digitally signed by the respondent no.3 on 31.03.2021 at 5:43 P.M. i.e. 17:43 hours, which is prior to the satisfaction recorded by the PCIT. **Section 151** of the Act, 1961 as stood at the relevant time provides that **no notice shall be issued under section 148** of the Act by Assessing Officer after expiry of period of 4 years from the end of assessment year **unless Principal Chief Commissioner** or Chief Commissioner or Principal Commissioner or Commissioner **is satisfied**, on the reason recorded by the assessing officer that **it is a fit case for issuing such notice**.

13. Thus, as per provision of Section 151 of the Income Tax Act, 1961, an assessing officer gets jurisdiction to issue notice to an assessee under Section 148 of the Act, 1961 after Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner of Income Tax is satisfied on the reason recorded by the assessing officer that it is a fit case for issuing such notice. The date and time of the approval granted digitally under Section 151 of the Act and the date and time of the notice under section 148 of the Act, shows that the satisfaction was recorded by the PCIT digitally after

the notice under section 148 was digitally signed and issued by the Assessing Officer.

14. Thus, the following questions arise for consideration:-

(a) Whether an unsigned content in an electronic record said to be pushed through electronic mode at a particular point of time, can be said to be a valid satisfaction of the PCIT under Section 151 for assumption of jurisdiction by the Assessing Officer to issue jurisdictional notice to an assessee under Section 148 of the Act, 1961?

(b) Whether impugned notices under Section 148 of the Act, 1961 issued by the Assessing Officer without satisfaction signed by the PCIT under Section 151 of the Act, 1961, is a valid notice?

15. The whole case set up by the respondents is that “unsigned approval” issued in electronic form to the Assessing Officer is a valid approval as it is an authenticated document within the meaning of Section 282A of the Act, 1961. Therefore, we proceed to examine correctness of the stand taken by the respondents in their oral submissions as also made in paragraphs 17, 18 and 19 of supplementary counter affidavit dated 02.05.2022.

Whether unsigned alleged approval is an authenticated document under Section 282A of the Act, 1961:-

16. Sub-section (1) of Section 282A contains the following necessary conditions:

- (i) such notice or other document shall be signed by that Authority and**
- (ii) issued in paper form or communicated in electronic form by that**

authority

(iii) in accordance with such procedure as may be prescribed.

17. The procedure for communication in electronic form has been prescribed under Rule 127A of the Rules 1962.

18. The first and foremost condition under Section (1) of Section 282A is that notice or other document to be issued by any Income Tax Authority shall be signed by that authority. The word “and” has been used in sub-Section (1), in conjunctive sense meaning thereby that such **notice or other document has first to be signed by the authority and thereafter it may be issued either in paper form or may be communicated in electronic form by that authority. In the present set of facts, it is the admitted case of the respondents that the PCIT has not recorded satisfaction under his signature prior to the issuance of notice by the Assessing Officer under Section 148 of the Act, 1961.**

19. In the case of **Maharaja Sir Pateshwari Prasad Singh vs. State of U.P. (1963) 50 ITR 731**, three judges bench of Hon’ble Supreme Court held that the word “and” should normally be given its ordinary meaning and should be understood in conjunctive sense. Thus, as per provisions of sub-Section (1) of Section 282A, the notice or other document shall be signed and thereafter it shall be issued in paper form or may be communicated in electronic form then the document or notice so issued or communicated, shall be deemed to be an authenticated notice or document in terms of Rule 127A of the Rules, 1962.

Signed – Meaning:-

20. The word “**signed**” has not been defined under the Act, 1961, which is a central Act. However, it has been defined in Section 3(56) of the General Clauses Act, 1897, as under:

“3(56) “sign”, with its grammatical variations and cognate expressions, shall, with reference to a person who is unable to write his name, include “mark”, with its grammatical variations and cognate expressions;”

21. As per Webster’s New World Dictionary, the word ‘sign’ means ‘to

write one's name on, as in acknowledging authorship, authorising action etc.' In **Rattan Anmol Singh vs. Ch. Atma Ram, 1955 (1) SCR 481 : AIR 1954 SC 510 (para-6)**, Hon'ble Supreme Court explained the meaning of the word 'sign' and held as under:

"6. The Oxford English Dictionary sets out thirteen shades of meaning to the word "subscribe", most of them either obsolete or now rarely used. The only two which can have any real relation to the present matter are the following:

1. "To write (one's name or mark) on, originally at the bottom of a document, especially as a witness or contesting party; to sign one's name to."

This meaning is described as "rare."

2. "To sign one's name to; to signify assent or adhesion to by signing one's name; to attest by signing."

This appears to be its modern meaning, and is also one of the meanings given to the word "sign", namely "to attest or confirm by adding one's signature; to affix one's name to (a document) etc."

22. In **Hindustan Construction Co. Ltd. vs. Union of India, 1967 (1) SCR 543 : AIR 1967 SC 526 (Para-7)**, Hon'ble Supreme Court held as under:

*"7. This brings us to the meaning of the word "sign" as used in the expression "signed copy". In Webster's New World Dictionary, the word "sign" means "to write one's name on, as in acknowledging authorship, authorising action etc." To write one's name is signature. Section 3(56) of the General Clauses Act, No. 10 of 1897, has not defined the word "sign" but has extended its meaning with reference to a person who is unable to write his name to include "mark" with its grammatical variations and cognate expressions. **This provision indicates that signing means writing one's name on some document or paper.** In *Mohesh Lal v. Busunt Kumaree, (1881) ILR 6 Cal 340*, a question arose as to what "signature" meant in connection with S.20 of the Limitation Act, No. IX of 1871. It was observed that "where a party to a contract signs his name in any part of it in such a way as to acknowledge that he is the party contracting, that is a sufficient signature". It was further observed that **the document must be signed in such a way as to make it appear that the person signing it is the author of it, and if that appears it does not matter what the form of the instrument is, or in what part of it the signature occurs.**"*

23. In **Dakshin Haryana Bijli Vitran Nigam Ltd. vs. Navigant Technologies (P.) Ltd. (2021) 7 SCC 657 (paras 25 and 26)**, Hon'ble Supreme Court observed that the words 'shall be signed', makes signing mandatory for authentication and held as under:

"Legal requirement of signing the award

25. The legal requirement of signing the arbitral award by a sole arbitrator, or the members of a tribunal is found in Section 31 of the 1996 Act, which provides the form and content of an arbitral award. Section 31 provides that :

“31. Form and contents of arbitral award.- (1) An arbitral award shall be made in writing and **shall be signed** by the members of the arbitral tribunal. (2) For the purposes of sub-section (1), in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated.

.....

(4) The arbitral award shall state its date and the place of arbitration as determined in accordance with section 20 and the award shall be deemed to have been made at that place.

(5) After the arbitral award is made, a signed copy shall be delivered to each party.”

26. Section 31 (1) is couched in mandatory terms, and provides that an arbitral award shall be made in writing and signed by all the members of the arbitral tribunal. If the arbitral tribunal comprises of more than one arbitrator, the award is made when the arbitrators acting together finally express their decision in writing, and is authenticated by their signatures. **An award takes legal effect only after it is signed by the arbitrators, which gives it authentication. There can be no finality of the award, except after it is signed, since signing of the award gives legal effect and validity to it.** The making and delivery of the award are different stages of an arbitration proceeding. An award is made when it is authenticated by the person who makes it. The statute makes it obligatory for each of the members of the tribunal to sign the award, to make it a valid award. **The usage of the term “shall” makes it a mandatory requirement. It is not merely a ministerial act, or an empty formality which can be dispensed with.”**

(Emphasis supplied by us)

24. In the case of **Commissioner of Agricultural Income Tax vs. Keshab Chandra Mandal**, 1950 SCR 435 : AIR 1950 SC 265 : (1950) 18 ITR 569 (para-17, 19 and 26), Hon’ble Supreme Court held as under:

“17. Then after stating that the Courts ought not to restrict the common law rule *qui facit per alium facit per se*, unless the statute makes a personal signature indispensable, and referring to certain decided cases, enunciated the proposition that when the word “sign” or “signature” is used by itself and unless there be a clear indication requiring the personal signature by the hand of the person concerned, the provision would be satisfied by a person signing by the hand of an agent. Applying this test the High Court came to the conclusion that there was not only not anything in the Act or the rules requiring the personal signature of the individual assessee but that insistence on such a requirement would create an anomaly, in that while an assessee who is an individual will have to sign personally, the persons authorised to sign for the other categories of assessees,

namely, a Hindu undivided family, a company, the Ruler of an Indian State, a firm or any other association will not be compellable to sign personally. The High Court took the view that to avoid such a patent anomaly which would inevitably result if the interpretation proposed by the department were to be accepted, the Court should follow the common law rule mentioned above. In the result, the High Court answered the point of law referred to them in the affirmative.

19. There is no doubt that the true rule as laid down in judicial decisions and indeed, as recognised by the High Court in the case before us, is that unless a particular statute expressly or by necessary implication or intendment excludes the common law rule, the latter must prevail. It is, therefore, necessary in this case to examine the Act and the rules to ascertain whether there is any indication therein that the intention of the legislature is to exclude the common law rule.

*26. Turning now to the judicial decisions cited before us it will be found that Courts have insisted on personal signature even when there were not so many clear indications in the statutes under consideration in those cases as there are in the statute and the rules before us. Thus in *Monks v. Jackson* (1876) 1 C.P.C. 683 : (46 L.J.C.P. 162), which was a case under s.1(3), Municipal Elections Act (38 and 39 Vic. c. 40) which required delivery of the nomination paper" by the candidate himself or his proposer or seconder to the Town Clerk" it was held that this requirement was not satisfied by the delivery it by an agent. In *The Queen v. Mansel Jones*, (1889) 23 Q B.D. 29 : (60 L.T. 860) it was held that a person charged with any corrupt or illegal practice at a municipal election who was entitled, under s.38, Corrupt and Illegal Practices Prevention Act, 1883, to be "heard by himself" was not entitled to be heard by his counsel or solicitor. In *re- Prince Blucher*, (1931) 2 Ch. 70 : (100 L.J.Ch. 292) the English Court of Appeal held that a proposal of composition signed by the solicitors of a debtor, who was, by reason of his serious illness, unable to sign it, did not comply with the requirements of s.16(1) of the Bankruptcy Act, 1914, which required "a proposal in writing signed by him." The Court of Appeal applied the principles of the decision in *Hyde v. Johnson*, (1836) 2 Bing. (N.C.) 776 : (5 L.J.C P.291) and in *In re Whitley Partners Ltd.*, (1886) 32 Ch.B. 337 : (55 L.J.Ch. 540). In *Luchman Bukshi Roy v. Runjeet Ram Panday*, 20 W.R-375 : (13) Beng. L. R. 197), a Full Bench of the Calcutta High Court held that an acknowledgment by a Mooktear was not sufficient for the purposes of s.1 (5), Limitation Act (XIV [14] of 1859) which required an acknowledgment signed by the mortgagee. Rankin C.J. held in *Japan Cotton Trading Co. Ltd. v. Jajodia Cotton Mills, Ltd.*, 54 Cal. 345 : (A.I.R. (14) 1927 Cal. 625) that a demand letter signed by the solicitors of the petitioning creditor was not a notice under section 163, of the Indian Companies Act which as it then stood required a demand "under his hand." A similar view was taken by the Rangoon High Court in *Manjeebhai Khataw & Co. v. Jamal Brothers & Co. Ltd.*, 5 Rang. 483 : (A.I.R. (14) 1927 Rang. 306) and *M.A. Kureshi v. Argus Footwear, Ltd.*, 9 Rang. 323 : (A.I.R. (18) 1931 Rang. 306. See also *Wilson v. Wallani* , (1880) 5 Ex D.155 : (49 L.J.Ex. 437). In *Nachiappa Chettyar v. Secy. of State*, 11 Rang. 380 : (A.I.R. (20) 1933 Rang. 229), it was held that the registration of a firm on an application signed by the agent of the partners was ultra vires inasmuch as the rules framed under s.59, Income-tax Act, required an application signed by at least one of the partners. In *Commr. of Income-tax, Madras v. Subba Rao*, I.L.R. (1947) Mad. 167 : (A.I.R. (33) 1946 Mad. 411) it was held that by reason of the word "personally" occurring in R.6, Income-tax Rules framed under s.59,*

Income-tax Act, 1922, a duly authorised agent of a partner was precluded from signing on behalf of the partner an application under s.26-A of the Act for registration of the firm. In all these cases the common law rule was not applied, evidently because the particular statutes were held to indicate that the intention was to exclude that rule. This intention was gathered from the use of the word "himself" or "by him" or "under his hand" or "personally." It is needless to say that such an intention may also be gathered from the nature of the particular statute or inferred from the different provisions of the statute and the rules framed thereunder. As already stated, there are many indications in the Bengal Agricultural Income-tax Act, 1944, and the rules made thereunder evidencing an intention to exclude the common law rule in the matter of the signature of the assessee, appellant or applicant on the return, appeal or application."

25. Thus the expression **"shall be signed"** used in Section 282A(1) of the Act 1961 makes the signing of the notice or other document by that authority a mandatory requirement. It is not a ministerial act or an empty formality which can be dispensed with. "Signed" means to sign one's name; to signify assent or adhesion to by signing one's name; to attest by signing or when a person is unable to write his name then affixation of "mark" by such person. The document must be signed or mark must be affixed in such a way as to make it appear that the person signing it or affixing his mark is the author of it. Therefore, a notice or other document as referred in Section 282A (1) of the Act, 1961 will take legal effect only after it is signed by that Income Tax Authority, whether physically or digitally. The usage of the word "shall" make it a mandatory requirement.

26. In the case of **Chhugamal Rajpal vs. S.P. Chaliha and others, (1971) 1 SCC 453 (para-5) : AIR 1971 SC 730 : (1971) ITR 603**, Hon'ble Supreme Court considered the **validity of recording satisfaction under Section 151** by the Commissioner for the purposes of issuance of notice under Section 148 of the Act, 1961 and held as under:

"5. In his report the Income-tax Officer does not set out any reason for coming to the conclusion that this is a fit case to issue notice under Section 148. The material that he had before him for issuing notice under Section 148 is not mentioned in the report. In his report he vaguely refers to certain communications received by him from the C.I.T., Bihar and Orissa. He does not mention the facts contained in those communications. All that he says is that from those communications "it appears that these persons (alleged creditors) are name lenders and the transactions are bogus". He has not even come to a prima

facie conclusion that the transactions to which he referred are not genuine transactions. He appears to have had only a vague feeling that they may be bogus transactions. Such a conclusion 'does not fulfil the requirements of Section 151(2). What that provision requires is that he must give reasons for issuing a notice under Section 148. In other words he must have some prima facie grounds before him for taking action under Section 148. Further his report mentions : "Hence proper investigation regarding these loans is necessary. In other words his conclusion is that there is a case for investigating as to the truth of the alleged transactions. That is not the same thing as saying that there are reasons to issue notice under Section 148. Before issuing a notice under Section 148, the Income-tax Officer must have either reasons to believe that by reason of the omission or failure on the part of the assessee to make a return under Section 139 for any assessment year to the Income-tax Officer or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year or alternatively notwithstanding that there has been no omission or failure as mentioned above on the part of the assessee, the Income-tax Officer has in consequence of information in his possession reason to believe that income chargeable to tax has escaped assessment for any assessment year. Unless the requirements of clause (a) or (b) of Section 147 are satisfied, the Income-tax Officer has no jurisdiction to issue a notice under Section 148. From the report submitted by the Income-tax Officer to the Commissioner, it is clear that he could not have had reasons to believe that by reason of the assessee's omission to disclose fully and truly all material facts necessary for his assessment for the accounting year in question, income chargeable to tax has escaped assessment for that year; nor could it be said that he as a consequence of information in his possession, had reasons to believe that the income chargeable to tax has escaped assessment for that year. We are not satisfied that the Income-tax Officer had any material before him which could satisfy the requirements of either clause (a) or (b) of Section 147. Therefore he could not have issued a notice under Section 148. Further the report submitted by him under Section 151(2) does not mention any reason for coming to the conclusion that it is a fit case for the issue of a notice under Section 148. We are also of the opinion that the Commissioner has mechanically accorded permission. He did not himself record that he was satisfied that this was a fit case for the issue of a notice under Section 148. To Question No. 8 in the report which reads "Whether the Commissioner is satisfied that it is a fit case for the issue of notice under section 148", he just noted the word "yes" and affixed his signatures thereunder. We are of the opinion that if only he had read the report carefully, he could never have come to the conclusion on the material before him that this is a fit case to issue notice under Section 148. The important safeguards provided in sections 147 and 151 were lightly treated by the Income-tax Officer as well as by the Commissioner. Both of them, appear to have taken the duty imposed on them under those provisions as of little importance. They have substituted the form for the substance."

(Emphasis supplied by me)

Question No. (a) and (b)

27. The first and foremost condition under sub-Section (1) of Section 282A

is that notice or other document to be issued by any Income Tax Authority shall be signed by that authority. The word “and” has been used in sub-Section (1), in conjunctive sense, meaning thereby that such **notice or other document has first to be signed by the authority and thereafter it may be issued either in paper form or may be communicated in electronic form by that authority. In the present set of facts, it is the admitted case of the respondents that the PCIT has not recorded satisfaction under his signature prior to the issuance of notice by the Assessing Officer under Section 148 of the Act, 1961.**

28. Section 282A (1) of the Act, 1961 specifically provides that a notice or other documents issued by any Income Tax Authority shall be signed by that authority in accordance with such procedure as may be prescribed. Section 151 of the Act, 1961 specifically provides recording of satisfaction by the Prescribed Authority, on the reasons recorded by the Assessing Officer that it is a fit case for the issue of notice under section 148 of the Act, 1961. Unless such satisfaction is recorded, the Assessing Officer could not get jurisdiction to issue notice under section 148. A satisfaction, to be a valid satisfaction under section 151 of the Act, 1961, has to be recorded by the Prescribed Authority under his signature on application mind and not mechanically, as also held by the Hon’ble Supreme Court in the case of Chhugamal Rajpal (supra). Unless the Prescribed Authority under section 151 of the Act, 1961 records his satisfaction on application of mind and under his signature, there cannot be a valid satisfaction empowering the Assessing Officer to assume jurisdiction to issue notice under section 148 of the Act, 1961. In other words, an Assessing Officer may issue jurisdictional notice under Section 148 only after the Prescribed Authority under section 151 of the Act records his satisfaction that it is fit case for issue of notice under section 148.

29. In the present set of facts there was no valid satisfaction recorded by the by the Prescribed Authority under section 151 of the Act, 1961 when the Assessing Officer issued notice to the assesseees under section 148 of the Act, 1961. At the time when the notice under section 148 of the Act, 1961 was

issued by the Assessing Officer to the petitioner there was no valid satisfaction recorded by the Prescribed Authority i.e. the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner. Subsequent to issuance of the notice under section 148 of the Act, 1961 by the Assessing Officer, the satisfaction under section 151 was digitally signed by the Prescribed Authority. Therefore, the point of time when the Assessing Officer issued notices under section 148, he was having no jurisdiction to issue the impugned notices under section 148 of the Act, 1961. Consequently the impugned notices issued by the Assessing Officer under section 148 of the Act, 1961 were without jurisdiction. The questions no. (a) and (b) are answered accordingly.

30. Since we have come to the conclusion that there was no valid satisfaction under section 151, therefore, the question whether Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner of Income Tax for the purposes of recording of satisfaction under section 151 is a designated Income Tax Authority under section 282 A of the Act 1961, is left open.

31. For all the reasons aforesaid, the above noted writ petitions, namely, Writ Tax No. 554 of 2022, Writ Tax No. 370 of 2022, Writ Tax No. 427 of 2022, Writ Tax No. 475 of 2022, Writ Tax No. 487 of 2022, Writ Tax No. 555 of 2022, Writ Tax No. 642 of 2022 and Writ Tax No. 710 of 2022 are hereby **allowed**. The impugned notices under section 148 of the Act, 1961 and the reassessment orders, if any, passed by the Assessing Officer and all consequential proceedings are hereby quashed. Concerned Income Tax Authority shall be at liberty to initiate proceedings, if still permissible, strictly in accordance with law and on due observance of the relevant provisions of the Act, 1961 and the Rules framed thereunder.

32. Writ Tax No. 694 of 2022 is **dismissed** inasmuch as recording of satisfaction by the PCIT and issuance of notice under section 148 by the

Assessing Officer are simultaneous. Liberty is granted to the petitioner to file appeal to challenge the reassessment order.

Order Date :- 08.09.2022

NLY/ok