

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2108 OF 2023

Vodafone India Ltd.

...Petitioner

*Versus*Deputy Commissioner of Income Tax, Circle
5(2)(1), Mumbai & Ors.

...Respondents

Mr. J. D. Mistri, Senior Advocate, with Mr. Madhur Agrawal, i/b.
Mr. Jitendra Singh, for Petitioner.
Mr. Devvrat Singh, for Respondents-Revenue.

CORAM: K. R. SHRIRAM &
DR. NEELA GOKHALE, JJ.
DATED: 19th March 2024

PC:-

1. Petitioner is impugning a notice dated 30th March 2023 under Section 148A(b) of the Income Tax Act, 1961 (“**the Act**”), an order dated 19th April 2023 passed under Section 148A(d) of the Act and a notice dated 19th April 2023 issued under Section 148 of the Act on various grounds.

2. One of the grounds raised across the bar is that the sanction for issuance of the order under Section 148A(d) of the Act has been granted without application of mind by all the five officers involved. For ease of reference, the sanction under Section 151 is scanned and reproduced herein:

EXHIBIT-1



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



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Exhibit-11

Approval u/s 151 of the IT Act, 1961

| | | | |
|--------------------|-----------------------------|---------------------|--|
| PAN: AAACB2100P | Assessment Year: 2016-17 | Date: 19/04/2023 | DIN: ITBA/AST/S/118/2023-24/1052207527(1) |
|--------------------|-----------------------------|---------------------|--|

| | | |
|-----|---|--|
| 1. | Name of the assessee | VODAFONE IDEA LIMITED |
| 2. | Address and e-mail of the assessee | 10Th Floor, Birla Centurion, Century Mills Compound, Pandurang Budhkar Mrg, Worli, Worli Colony S.O, Mumbai, Mumbai / directtax@vodafoneidea.com |
| 3. | PAN | AAACB2100P |
| 4. | Status | Company |
| 5. | Circle/ Ward/ Range/ CIT Charge | CIRCLE 5(2)(1), MUMBAI / RANGE 5(2), MUMBAI / PCIT, Mumbai-5 |
| 6. | Assessment year | 2016-17 |
| 7. | The quantum of income which has escaped assessment | 428584729611 |
| 8. | Approval needed for | Order u/s 148A(d) required for issuance of notice u/s 148 |
| 9. | Time limit for current proceedings covered under | u/s 149(1)(b) - for more than 3 years but not more than 10 years |
| 10. | Limitation date for issuance of notice u/s 148 | 30/04/2023 |
| 11. | Whether the show cause notice u/s 148A(b) contains the details of the information, as per explanation-1 of Section 148. | Yes |
| 12. | (i) Enquiry conducted (if any), u/s 148A(a) | No |
| | (ii) Whether the show cause notice u/s 148A (b) contains the details of results of enquiry conducted 148A (a). | No |
| 13. | Date of issue of show cause notice to assessee u/s 148A(b) | 30-MAR-23 |
| 14. | Date by which assessee was required to submit reply to show cause notice u/s 148A(b) or the final extended date | 12-APR-23 |
| 15. | Whether any reply received from assessee u/s 148A(b)? | Yes / 12-APR-23 |
| 16. | Whether personal hearing requested by assessee | No |
| 17. | Whether the provision of Sec, 150(1) are applicable. | No |
| 18. | Reasons for the belief that income has escaped assessment. | Refer Order u/s 148A(d) for details |
| 19. | Recommendations of the Additional/ Joint CIT | Remarks: The information in the case of the assessee is of transaction of |

ROOM NO:321,3rd Floor, AAYAKAR BHAVAN, MAHARISHI KARVE ROAD, MUMBAI, Maharashtra, 400020
Email: MUMBAI.PCCIT@INCOMETAX.GOV.IN, Office Phone:02222017854

Note: The website address of the e-filing portal has been changed from www.incometaxindiaefiling.gov.in to www.incometax.gov.in.
* DIN- Document Identification No.

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

| | | |
|-----|--|--|
| 22. | Reasons for according approval/ rejection by the specified authority to order u/s 148A(d) AND/OR issuance of notice under section 148 of the Income Tax Act, 1961? | Remarks: Perused the draft order submitted by the Assessing Officer and approved/recommended by the concerned Addl CIT/PCIT/CCIT. Based on the material available on record and careful consideration of the same, I am satisfied that it is a fit case to issue notice u/s 148 of the IT Act. Hence draft order submitted by the Assessing Officer u/s 148A(d) of the IT Act is hereby approved. Name: GEETHA RAVICHANDRAN Designation: PCCIT, MUMBAI Date: 19/04/2023 |
|-----|--|--|

3. Mr. Mistri states this ground could not have been taken in the Petition because the sanction was made available only with the sur-rejoinder filed by L. A. Janbandhu, Deputy Commissioner of Income Tax-5(2)(1), Mumbai and affirmed on 5th March 2024. We totally agree with Mr. Mistri's submission that the approval has been applied for and granted mechanically. In column 7- the quantum of income which has escaped assessment, the amount is Rs.42858,47,29,611/-.

In the impugned order passed under Section 148A(d) of the Act, the amount mentioned as having escaped assessment is totaling to Rs.12431,99,24,486/-. A summary of amount reflected in the notice dated 30th March 2023 issued under Section 148A(b) of the Act, *vis-a-vis.*, an amount in order dated 19th April 2023 reads as under:

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

4. In the approval, the Principal Chief Commissioner of Income Tax (“PCCIT”) states, “.....*Based on the material available on record and careful consideration of the same, I am satisfied that it is a fit case to issue notice under Section 148 of the IT Act. Hence, draft order submitted by the Assessing Officer under Section 148A(d) of the Act is hereby approved*”. In our view, this is an incorrect statement made by the PCCIT that the record has been carefully considered before granting of approval. We say this because the record would certainly have contained the notice issued under Section 148A(d) of the Act and the information annexed to that notice states escapement of income in the sum of Rs.42858,47,29,661/-, whereas the amount mentioned in the order passed under Section 148A(d) of the Act totals to Rs.12431,99,24,486/-. In the said order, there is not even an explanation as to how the amount has changed or has gone down.

In the affidavit in reply, it is stated that in the notice the transaction value was taken gross and subsequently it was seen that there were duplicate entries which were corrected while passing the order dated 19th April 2023. The notice issued does not contain any duplicate entries. If there were duplicate entries, the Assessing Officer (“AO”) was duty bound to issue clarification in the order and also give details of what were those duplicate entries. The AO should have come clean on the error made. Therefore, if only the PCCIT or

the other officers had bothered to see the records and had really applied their mind to the same, these errors would not have crept in. This displays total non-application of mind by all those persons who have endorsed their approval for issuance of notice under Section 148 of the Act. With great regret, we have to mention that these approvals are being granted mechanically and without application of mind and this is not the only matter. Innumerable orders passed under Section 148A(d) of the Act are being set aside in view of the approval being granted without application of mind. Officer should realize that this is also delaying assessment/ reassessment proceedings and is also affecting the revenue of the nation. We find that the approval has been granted in a most casual manner. The power vested in the Authorities under Section 151 to grant or not to grant approval to the AO to reopen the assessment is coupled with a duty. The Authorities were duty bound to apply their mind to the proposal put up for approval in the light of material relied upon by the AO. That power cannot be exercised casually on a routine perfunctory manner. The important safeguards provided in Section 147 and 151 were treated lightly by the officers. While recommending and granting approval it was obligatory on the part of the officers to verify whether there was any genuine material to suggest escapement of income. It was obligatory on all the Authorities and PCCIT in particular to consider whether or not power

to reopen is being invoked properly. We are of the opinion that if only the Authorities had read the record carefully, they would never have come to the conclusion that this is a fit case for issuance of notice under Section 148 of the Act. They would have either told the AO to correct the figures in Column 7 or would have sent the papers back for reconsideration. These officers have substituted the form for substance.

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

6. Petition disposed. No order as to costs.

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

(DR. NEELA GOKHALE, J.)

(K. R. SHRIRAM, J.)