

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC-II : NEW DELHI

BEFORE SHRI R.S. SYAL, ACCOUNTANT MEMBER

ITA No.2842/Del/2016
Assessment Year : 2006-07

Raj Metal Co.,
4962, Sadar Bazar,
Delhi.

PAN : AAAGR3947F

Vs. ITO,
Ward-39(3),
21ST Floor, Civic Centre,
JL Nehru Marg,
Pratyaksh Kar Bhawan,
New Delhi.

(Appellant)

(Respondent)

Appellant by : Shri Vivek Singhal, CA

Respondent by: Shri B. Ramanjaneyulu, Sr. DR

Date of Hearing : 20.12.2016

Date of Pronouncement: 21.12.2016

ORDER

This appeal by the assessee is directed against the order passed by the CIT(A) on 18.03.2016 in relation to the Assessment Year 2006-07.

2. The assessee has raised an additional ground which reads as under:-

“That as in the case of the appellant/assessee the assessment order for A.Y. 2006-07 was passed u/s 143(3) on 30.04.2008 by the Income Tax Officer Ward 39(2) New Delhi, therefore the issue of notice u/s 148 on 30.03.2013 after taking sanction for approval from the Joint Commissioner of Income Tax Range 39 New Delhi is *void ab-initio* and

therefore the consequent re-assessment order dated 31.01.2014 is bad in law and deserves to be quashed.”

3. I have heard the rival submissions and perused the relevant material on record. It is observed that the assessee filed return on 22.9.2006 which was originally processed u/s 143(1) on 31.1.2007. Thereafter, an order u/s 143(3) dated 30.4.2008 was passed accepting the returned income. A copy of this order has been placed on record. Thereafter, the AO initiated instant re-assessment proceedings and passed the order dated 31.1.2014 u/s 144 read with 147 of the Act. Reasons for reassessment have been recorded on page 2 of the order. It has been mentioned on the same page that the AO took: ‘administrative approval from the Joint CIT, Range-39, New Delhi, granted on 28.3.2013, the assessment of the assessee for AY 2006-07 was reopened as per section 147 of I. Tax Act.’ Eventually, the assessment was completed by making an addition of Rs.11,17,449/-. The assessee’s appeal was dismissed by the Id. CIT(A) and the addition was enhanced to Rs.13,46,486/-.

4. The assessee has raised the above additional ground, which is apparently a legal ground not requiring any fresh investigation of facts. The same is, therefore, admitted for adjudication. The short point raised by the

ld. AR is that the instant reassessment should have been done only after taking approval from the Chief Commissioner or Commissioner, as the case may be, since the original assessment in this case was completed u/s 143(3) and the sanction for reassessment actually obtained from JCIT rendered the assessment order *void ab initio*.

5. Material part of section 151, prior to its substitution by the Finance Act, 2015, reads as under :-

`Sanction for issue of notice.

151. (1) In a case where an assessment under sub-section (3) of section 143 or section 147 has been made for the relevant assessment year, no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of Assistant Commissioner or Deputy 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 :

Provided that, after the expiry of four years from the end of the relevant assessment year, no such notice shall be issued unless the Chief Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer aforesaid, 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, after the expiry of four years from the end of the relevant assessment year, 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.'

6. A bare perusal of sub-section (1) of section 151 reveals that sanction for issue of notice should be obtained by the AO from JCIT. In case a

period of four years from the end of the relevant assessment year has expired and the original assessment was made u/s 143(3) or section 147, then, the proviso provides that no notice can be issued without seeking sanction from the Chief Commissioner of Income-tax or Commissioner of Income-tax. Sub-section (2) of section 151, on the other hand, applies to cases not falling under sub-section (1). The effect of sub-section (2) is that where no assessment was earlier made, notice can be issued by an AO u/s 148 after the expiry of four years from the end of the relevant assessment year only after obtaining sanction from JCIT. Thus, it is apparent that there are two categories of cases requiring sanction for issue of notice u/s 148 viz., those in which assessment was earlier made u/s 143(3) or section 147, which are covered u/s 151(1) of the Act and rest of the cases, which are covered u/s 151(2) of the Act.

7. Adverting to the facts of the instant case, it is found as an admitted position that the original assessment was completed u/s 143(3) on 30.4.2008 and the sanction was obtained by the AO on 28.3.2013, that is , after a period of four years from the end of the relevant assessment year, being, 2006-07. In that view of the matter, the case is directly covered under proviso to sub-section (1) of section 151 as per which the sanction

was required from Chief Commissioner or Commissioner and not JCIT. It is apparent from the assessment order that the AO obtained sanction from JCIT. As the pre-requisite of re-assessment, being, sanction from the competent authority, was obtained by the AO from a wrong authority, the proceedings flowing therefrom and the consequential order passed cannot be sustained.

8. The Hon'ble jurisdictional High Court in *CIT VS. SPL's Siddhartha Ltd. (2012) 345 ITR 223 (Del)* dealt with almost similar situation. The AO in that case sought approval of Commissioner only as against the required sanction from the JCIT. The Hon'ble High Court held that it could not be said that the Joint Commissioner/Additional Commissioner had granted the approval and accordingly set aside the notice and the consequential assessment.

9. As such, I am of the considered opinion that the AO did not acquire a valid jurisdiction for the reassessment. The assessment order is quashed and the resultant appeal order is consequently set aside. In view of my decision on the additional ground quashing the re-assessment order passed by the AO for not obtaining sanction from a competent authority before issuing

notice u/s 148, there is no need to adjudicate on the grounds taken in the Memorandum of Appeal.

10. In the result, the appeal filed by the assessee is allowed.

The decision was pronounced in the open court on 21st December, 2016.

Sd/-

(R.S. SYAL)
ACCOUNTANT MEMBER

Dated: 21st December, 2016.

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Copy forwarded to

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Dy. Registrar, ITAT, New Delhi