

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC-I', NEW DELHI**

Before Sh. N. K. Saini, Accountant Member

ITA No. 4235/Del/2015 : Asstt. Year : 2005-06

M/s Palos Verdes Estate Pvt. Ltd., 48, Friends Colony, New Delhi-110065	Vs	ACIT, Central Circle-23, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAACP7081P		

Assessee by : Sh. Sashi Tulsian, Adv.

Revenue by : Sh. F. R. Meena, Sr. DR

Date of Hearing : 19.09.2016	Date of Pronouncement : 16.12.2016
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ORDER

This is an appeal by the assessee against the order dated 11.02.2015 of ld. CIT(A)-30, New Delhi.

2. Following grounds have been raised in this appeal:

“1. That the CIT (Appeals) erred on facts and in law in upholding the impugned assessment order passed under sections 147 of the Income Tax Act, 1961 which is without jurisdiction, illegal and bad in law since the prerequisite conditions for initiating proceedings under section 147 of the Act were not fulfilled in the present case.

2. That the CIT (Appeals) erred on facts and in law in upholding the alleged fair rental value at Rs.1 1,77,528/- and thereby making an addition of Rs.8,24,270/-under the head income from house property.”

3. Vide Ground No. 1, the grievance of the assessee relates to the validity of the jurisdiction for reopening the assessment u/s 147 of the Income Tax Act, 1961 (hereinafter referred to as the Act).

4. Facts of the case in brief are that the assessee filed original return of income on 30.03.2006. Thereafter, the AO issued notice u/s 148 of the Act on 29.03.2012, the reason for reopening the case was that a search and seizure operation was carried out at various premises of M/s Today Homes and Infrastructure Pvt. Ltd. and its group concerns/associated persons. The assessee is one of the associated/group companies of Today group. During the course of assessment proceedings for the assessment year 2009-10, it was noticed that the assessee was one of the co-owner of the property at 48, Friends Colony East, New Delhi, holding share of 28.24% and the said property was used by Gambhir brothers for their residence and was not being used by the assessee. The AO asked the assessee to explain as to why 28.24% of the annual value of property at Rs.41,69,718/- should not be added to the income of the assessee as income from house property. In response, the assessee vide letter dated 14.03.2013 submitted that out of 3860 Sq. yards only 1350 Sq. yards was let out by two companies and 2510 Sq. yards was used for their own business purpose by all the four companies and that the annual value of the property should be Rs.20,28,670/- and Fair Rental Value for let out area comes to Rs.7,09,508/- only. The AO did not find merit in the submissions of the assessee and made the

addition of Rs.8,24,270 and worked out the assessed income at Rs.18,94,301/- by observing as under:

“As per valuation, the ALV of this property was Rs. 4169718/- during the A.Y. 2005-06. As the assessee was owner of 28.24% of the said property, the assessee's share in the said ALV comes to Rs, 11,77,528 and this amount is added to the income of the assessee against income from house property.

Subject to the above discussion the income of the assessee is computed as under:-

<i>Income as per ROI:-</i>	<i>1070031</i>
<i>Add:- Income from HP as discussed above. 1177528</i>	
<i>Less:-Ded. Of 30%;-</i>	<u><i>353258</i></u> <u><i>824270</i></u>
<i>Total</i>	<i>1894301</i>
<i>Income r/o: Rs. 1894300/-</i>	

5. Being aggrieved the assessee carried the matter to the Id. CIT(A) and submitted as under:

"The brief fact of the present case is that re-assessment has been framed by opening/ initiating the proceedings U/s 148. The reasons for opening the proceedings U/s 148 is that Ld. A O has got some information received during search assessment proceedings of Today group of cases. On the very basis as provided above AO has initiated the reassessment proceedings on assessee company by issuing notice U/s 148.

The notice issued is totally invalid and liable to be quashed under the following circumstances:-

First, that as per provisions of Sec 147. "If AO has REASONS TO BELIEVE that any income chargeable to tax has escaped

assessment for any assessment year, he may, subject to the provisions of Sec 148 to 153 assess or reassess such income " "

That at page-1, para 2.1 last line in the reasons for re-opening supplied to us, AO says. "the assessee has shown its income from house properly at Rs NIL in its return of income for AY 2000-06.

In view of above, I have reasons to believe that amount of Rs 1177528/- has escaped assessment-----.

We hereby state that AO has only some information in his possession and he even never tried to inspect the information received. No facts had been examined and no new facts brought on records to show that information received is correct and needs to proceed further. The AO has thus acted only on the basis of mere suspicion and it could not be said that it was based on belief that the income chargeable to tax had escaped assessment. The AO has to act on the basis of reason to believe and not on reason to suspect. Ld. AO in fact failed to appreciate the facts of the case and even failed to look into the ITR before him, therefore the issuance of notice U/s 148 for re-assessment proceedings was not valid.

Since the reasons on which Ld. AO has formed his belief is totally wrong and void-ab-initio, therefore the notice U/s 148 is not valid in law and needs to be quashed.

We rely on following judgements; -

*MOHINDER SINGH MALIK 267 ITR 716 (P&H).
MADHUKAR KHOSLA VS. ACIT 367 ITR 165 (DEL)
CIT VS. SMT. PRAMJIT KAUR 205 TAXATION515 (P & H.)
SARTHAK SECURITIES CO. (P) LTD. 329 ITR 110 (DEL)*

*CIT VS. (1) ATUL JAIN (2) SMT. VINITA JAIN 299 ITR 383
(DEL)*

SECOND, that as per para 2 of the reasons supplied to us is that, "The brief facts are that search and seizure action was carried out at various premises of Today group and its associate concerns and persons on 26.11.2009 and was finally concluded on 25.01.2010—— "

However in this regard it is to be slated that the search action look place in FY 2009-10 on Today Group. The complete facts had been noticed by Ld. AO during FY 2009-10 in Today Group of cases. AO imported the said facts in FY 2004-05 in assessee company ignoring the jurisprudence that every year is a different year under income tax proceedings. It seems that AO had issued notice just to create a tax burden on assessee company on the basis of some vague material The formation of reason to believe by AO, without prescribing any material evidence or facts on records to show that the facts of FY 2009-10 of Today group cases are altogether same for FY 2004 -05 of assessee company is totally null and void.

CIT VS. SMT. PRAMJIT KAUR 205 TAXATION 515 (P & H)

THIRD, that as per the provisions of Sec 151 (I), " -----no notice shall be issued U/s 148 by AO, who is below the rank of ACIT/DCIT, unless the JCIT is satisfied on the reasons recorded by such AO that it is a fit case for issue of such notice----- ..

That at the time of approval the senior officer must apply his mind and to check that whether it is to be a fit case for re-opening the proceedings or not. It should not be the case to sign the satisfaction note of AO without looking into the merits and facts of the case.

In the present case the approval has been obtained and provided in a very tailor made fashion by senior authorities and no facts might have been seen while giving approval by senior authorities concerned. The complete facts was evident from records which can be seen even from naked eyes which does not demand re-assessment u/s 48 and even than the proceedings had been initiated u/s 148 just to make assessee liable for tax.

*UNITED ELECTRICAL COMPANY (P) LTD VS. CIT & ORS
258ITR 317 (DEL)
MOHINDER SINGH MALIK 2671TR 716 (P&H).*

FOUR, FURTHER WITHOUT PREJUDICE, the impugned proceedings has been reopened by issue of notice U/s. 148. It has been mentioned in the Asst. Order that approval has been taken form Addl. CIT Central Range - 6. New Delhi. Now, as per our understanding the Addl. CIT of the concerned AO is not Addl. CIT Central Range - 6 and thus, the Ld. AO may be directed to clarify in this matter and if it is opined that Addl. CIT Central Range - 6 is not the jurisdictional Addl. CIT than the impugned proceedings .should be taken as without jurisdiction and void-ab-initio.

In view of the above facts and various judicial pronouncements we humble prayed to kindly quash the notice U/S 148.”

6. The ld. CIT(A) after considering the submissions of the assessee observed that there was no illegality in using the evidence collected during the search of third persons for making assessment u/s 147 of the Act and that the assessee had not spelt out any illegality in assuming the jurisdiction u/s 147 of the Act. The ld. CIT(A) held that the jurisdiction u/s 147 of the Act had been assumed after recording the reason and

taking approval as required under the provision of the Act for assumption of jurisdiction u/s 147 of the Act.

7. Being aggrieved the assessee is in appeal. The ld. Counsel for the assessee submitted that for the year under consideration, the property in question was in possession of the assessee and that the rent received from the let out portion was already disclosed and offered for taxation by the assessee. A reference was made to page nos. 11 & 12 of the assessee's paper book which is the copy of computation of income and acknowledgment of the receipt of Income Tax Return respectively. It was stated that how the let out value was determined by the AO at Rs.41,69,718/- was not clear and no working was provided by the AO. It was further stated that the assessment was reopened u/s 147 of the Act on the basis of search which took place on 26.11.2009 at the various premises of Today Group and concluded on 25.01.2010. It was contended that on the basis of the facts for the said year i.e. assessment year 2010-11, the AO presumed that the property was let out. It was stated that the assessee's office was there in the property situated at 48, Friends Colony East, New Delhi, which is evident from the notice dated 29.03.2012 issued by the AO u/s 148 of the Act wherein the said address has been mentioned (copy of the said notice is placed at page no. 13 of the assessee's paper book). The ld. Counsel for the assessee also referred to page nos. 14 & 15 of the assessee's paper book which is the copy of reasons recorded by the AO for reopening the case u/s 147 r.w.s. 148 of

the Act and submitted that the AO himself admitted that the whole property might reasonably be accepted to be let out but he was not sure that the property was actually let out. On the contrary, the assessee had shown the rent of a portion which was let out at Rs.1,80,000/- and after claiming deduction for repairs etc. @ 30% i.e. Rs.54,000/- the remaining amount of Rs.1,26,000/- was offered for taxation as income from house property. Therefore, the reopening only on the basis of presumption was not valid.

8. In his rival submissions the ld. DR strongly supported the order of the ld. CIT(A) and reiterated the observation made in the said order.

9. I have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is relevant to discuss the reasons recorded for reopening the assessment u/s 147 r.w.s. 148 of the Act, copy of which is placed at page nos. 14 & 15 of the assessee's paper book and read as under:

“1. The assessee filed its return of income for the AY 2005-06 at an income of Rs 10,70,031/- on 30/03/2006, The income of Rs 10,70,031/- has been shown under the head 'income from other sources'.

The brief facts are that a search and seizure operation was carried out at the various premises of M/s Today Homes and Infrastructure Pvt. Ltd. and its group concerns and associated persons (hereinafter called 'Today- group') on 26/11/2009 and was finally concluded on 25/01/2010. The assessee company M/s Palos Verdes Estate Pvt. Ltd., is one of the associated

group companies of Today-group. During the course of assessment proceedings for the AY 2009-10, it was seen that the assessee is one of the co-owner of the property at 48 Friends Colony East, New Delhi along with other group concerns namely M/s Takshila Distributors Pvt. Ltd.; M/s Mission Viejo Agro Pvt. Ltd. and M/s Rancho Place Estate Pvt. Ltd. The assessee owns 28.24% of the share in the property at 48 Friends Colony East, New Delhi and this property of the assessee company at 48, Friends Colony East, New Delhi. Further it was noticed that this property was being used by Gambhirs for their residence and was not being used by the assessee as well as the other group concerns for the purpose of their own business or profession, therefore, as per the provision of section 23 of the Act, the sum for which the whole of property at 48, Friends Colony East, New Delhi, might reasonably be expected to be let out was determined at Rs.41,69,718/-.

2.1 During the FY 2004-05 also the property of the assessee at 48 Friends Colony East, New Delhi was being used by Gambhirs for their residence and not by the assessee company for the purpose of its own business or profession therefore as per the provision of section 23 of the Act, the sum for which the property of the assessee company at 48, Friends Colony East, New Delhi, might reasonably be expected to be let out was Rs.11,77,528/- (41,69,718 x 28.24%) and this amount should have been shown by the assessee as its income from house property in its return of income, but the assessee has shown its income from house property at Rs. NIL in its return of income for the AY 2005-06.

In view of the above, I have reason to believe that amount/income of Rs 11,77,528/- has escaped assessment for the A.Y. 2005-06 for failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment within the meaning of section 147 of the Act.

Issue notice u/s 148 of the Income Tax Act, 1961.”

10. From the above reasons recorded, it is clear that the AO on the basis of the search & seizure operation which took place on 26.11.2009 was of the view that the property of the assessee at 48, Friends Colony East, New Delhi was being used by Gambhirs for their residence and not by the assessee company for the purpose of its own business or profession. On the contrary, the assessee furnished the documents which established that the assessee was having its office in the said property and the AO himself issued the notice u/s 148 of the Act to the assessee on the address of the property in question i.e. 48, Friends Colony East, New Delhi, which is evident from the copy of the notice issued u/s 148 of the Act copy of which is placed at page no. 13 of the assessee's paper book. It is also noticed that the assessee filed its return of income by mentioning the address of the said property which has been accepted by the AO. Therefore, it cannot be said that the assessee was not conducting its business from the property in question. The assessee disclosed the rental income for the let out portion at Rs.1,80,000/- which has also been accepted. It, therefore, appears that the AO issued the notice u/s 148 of the Act only on the basis of presumption and nothing was there in his possession while recording the reasons for reopening the

assessment that the property at 48, Friends Colony East, New Delhi was not let out at Rs.1,80,000/-. The AO himself had mentioned that the sum for which the whole of property at 48, Friends Colony East, New Delhi might reasonably be accepted to be let out was at Rs.41,69,718/-. Therefore, the AO himself was not sure about the presumptive let out value. In the present case, noting has been brought on record that the assessee had received the rent of Rs.11,77,528/- as worked out by the AO and not Rs.1,80,000/- which was offered for taxation. Therefore, by considering the totality of the facts as discussed hereinabove, I am of the view that the AO reopened the assessment only on the basis of the presumption which is not tenable in the eyes of law. Accordingly, the reopening u/s 147 of the Act and reassessment framed thereafter is quashed.

11. In the result, appeal of the assessee is allowed.

(Order Pronounced in the Court on 16/12/2016)

(N. K. Saini)
ACCOUNTANT MEMBER

Dated: 16/12/2016

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR