

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'F' : NEW DELHI)**

**BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.4441/Del./2016
(ASSESSMENT YEAR : 2007-08)**

Smt. Rekha Ramesh Nambiar, vs. ACIT, Circle 60 (1),
4 – F, Pocket 3, New Delhi.
Mayur Vihar Phase – 1,
New Delhi – 110 091.

(PAN : AAHPN0533A)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Rahul Khare, Advocate
REVENUE BY : Shri Deepak Garg, Senior DR

Date of Hearing : 28.09.2017
Date of Order : 12.10.2017

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The appellant, Smt. Rekha Ramesh Nambiar (hereinafter referred to as 'the assessee'), by filing the present appeal, sought to set aside the impugned order dated 03.06.2016 passed by the Commissioner of Income-tax (Appeals)-19, New Delhi qua the assessment year 2007-08 on the grounds inter alia that :-

“1. The learned CIT (A) erred in fact and in law confirming the reopening u/s 148 which is not only illegal but bad in law.

2. The learned CIT (A) erred in fact and in law in confirming the addition of Rs.31,00,000 which is not only bad in law but also against the facts and circumstances of the case.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : on the basis of information received from CBI Anti Corruption Branch, New Delhi that the case has been registered against Ramesh Nambiar, Regional Head of Sports (Air India) and JS, Sports Promotion Board, Safdarjung Airport, New Delhi and others under section 13 (2) read with section 13(1)(e) of PC Act and section 109 of the IPC and during investigation, it has come on record that Rekha Nambiar, wife of Ramesh Nambiar has purchased 2450 shares worth Rs.31,00,000/- of M/s. HYT Innovative Private Limited during 2006 vide share purchase application dated 01.10.2006. AO also noticed that the said amount of Rs.31,00,000/- was already pending with M/s. HYT Engineer Co. Limited, another entity of HYT Group of Companies having paid by her father, Shri Gopalan Radhakrishnan. AO, being satisfied that income has escaped assessment, issued notice dated 28.03.2014 u/s 148 of the Income-tax Act, 1961 (for short ‘the Act’) and thereafter issued notice u/s 143 (2) and 142 (1) were issued and in response thereto, assessee appeared through Shri

Neeraj Kumar Chaubey, AR from time to time and furnished details/ information/ evidences.

3. Assessee called upon to furnish details regarding 2450 shares of M/s. HYT Innovative Private Limited. Being dissatisfied with the explanation furnished by the assessee, AO proceeded to conclude that the assessee has failed to substantiate as to why her father purchased the shares in her name when she was not legal heir of late Shri Gopalan Radhakrishnan and thus made payment through undisclosed sources which is hit by section 69 of the Act and thereby made an addition of Rs.31,00,000/-.

4. Assessee carried the matter by way of filing appeal before the Id. CIT (A) who has dismissed the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of challenging the impugned order passed by Id. CIT (A).

5. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

6. The first contention raised by Id. AR for the assessee challenging the impugned order is that the reopening in this case is barred by limitation. Undisputedly, in the present case, assessment year ended on 31.03.2007 whereas notice was issued on

28.03.2014 which is after a period of four years. The second condition for reopening as contended by Id. AR is that the notice issued in this case u/s 148 is without the satisfaction recorded by Pr.Chief Commissioner, Chief Commissioner, Pr. Commissioner or Commissioner on the reasons recorded by the AO that it is a fit case of issuance of such notice whereas satisfaction is recorded by Joint Commissioner of Income-tax as is apparent from the approval accorded by JCIT, copy of which is available at page 2 of the paper book.

7. However, Id. DR for the Revenue drew our attention towards provisions contained u/s 151 (2) of the Act and contended that in the instant case, as per Finance Act, 2015, satisfaction of JCIT is a valid satisfaction to issue the notice. However, we are unable to agree with the contention raised by the Id. DR for the Revenue because Finance Act, 2015 came into operation w.e.f. 01.06.2015 whereas notice in this case was issued in 2014 and in that case, notice has to be issued only on the satisfaction of the Commissioner of Income-tax that it is a fit case for issuance of such notice.

8. Be that as it may, even the Joint Commissioner of Income-tax has not applied his mind while according the approval rather merely written the word "*approved*" in a mechanical manner. So,

merely putting signatures by CIT / JCIT cannot and will not amount to recording of satisfaction.

9. Hon'ble jurisdictional High Court upheld the decision rendered by coordinate Bench of the Tribunal in *CIT vs. Amar Khosla in ITA No.133/2014 dated 20.07.2016* by making following observations :-

“3. Mr. Sahni the ld. Counsel for the appellant, could not dispute that factually the ld. CIT had merely affixed his signature on the note of the ACIT forwarded to him. Certainly, this was not in conformity with the mandatory legal requirement explained by this cur tin several decisions including United Electrical Co. (P) Ltd. vs. CIT [2002] 258 ITR 317.

4. Consequently, notwithstanding that the Respondent's father-in-law Tej Mohan Sachdeva whose appeal was also considered by the common order of the ITAT is to be listed before the court, the court is not persuaded to take up this case at such time the said appeal is taken up. On facts, the court is satisfied that the decision of the ITAT qua the respondent assessee is consistent with the settled legal position and no substantial question of law arises for determination by the court.”

10. Hon'ble High Court in case cited as United Electric Co. P. Ltd. vs. CIT & Ors. – 258 ITR 317 also dealt with the identical issue on application of mind by approving authority by making following observations :-

"What disturbs us more is that even the Additional Commissioner has accorded is approval for action U/S 147 mechanically. We feel that if the Additional

Commissioner had cared to go through the statement of the said V.K.Jain, perhaps he would not have granted his approval, which was mandatory in terms of the proviso to sub section (1) of section 151 of the Act as the action u/s 147 was being initiated after the expiry of four years from the end of the relevant Assessment Year. As highlighted above, the Legislature has provided certain safeguards to prevent arbitrary exercise of powers by an Assessing Officer, particularly after a lapse of substantial time from completion of assessment. The power vested in the Commissioner to grant or not to grant approval is coupled with a duty. The Commissioner is required to apply his mind to the proposal put up to him for approval in the light of the material relied upon by the Assessing Officer. The said power cannot be exercised casually and in a routine manner. We are constrained to observe that in the present case there has been no application of mind by the Additional Commissioner before granting the approval.”

11. So, we are of the considered view that in the instant case, notice issued by the AO u/s 148 of the Act and consequent assessment order u/s 143 (3) read with section 147 of the Act is not sustainable having been passed on the basis of mechanical sanction given by JCIT without applying their mind.

12. Furthermore, the assessment was reopened in this case merely on the basis of the CBI case registered against Ramesh Nambiar, husband of the assessee and others wherein assessee along with others were charge sheeted. However, charge sheet has been quashed by *Hon’ble High Court of Delhi vide order dated 04.11.2015 passed in WP (Crl.) 1432/2014*, copy of order is

available at pages 27 to 35 of the paper book. The said judgment rendered by Hon'ble High Court has been affirmed by *Hon'ble Supreme Court vide order dated 26.07.2017*, copy of order is available at pages 51 & 52 of the paper book. So, merely proceeding against the assessee on the basis of CBI case without recording satisfaction by the approving authority is not permissible under law.

13. In view of what has been discussed above, we are of the considered view that reopening u/s 147 / 148 in this case and consequent assessment made u/s 143 (3) / 147 of the Act is bad in law, hence hereby quashed without going into the merits of the case. Consequently, appeal filed by the assessee is hereby allowed.

Order pronounced in open court on this 12th day of October, 2017.

**Sd/-
(N.K. SAINI)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 12th day of October, 2017
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-19, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**