

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

BEFORE SHRI B.P. JAIN, ACCOUNTANT MEMBER

ITA Nos. 1262/& 1263/DEL/2017
[A.Ys. 2008-09 & 2009-10]

Shri Harsh Bhatia
C/o. M/s. RRA Taxindia,
D-28, South Extension Part-I
New Delhi

Vs.

The I.T.O
Ward-50(3)
New Delhi

PAN : AALPB2685B

[Appellant]

[Respondent]

Date of Hearing : 10.10.2017
Date of Pronouncement : 17.10.2017

Assessee by : Shri Rakesh Gupta,
Sh. Somil Agarwal, Adv.

Revenue by : Shri T. Vasanthan Sr. DR

ORDER

Both these appeals of the assessee arise from the common order of the Id. CIT(A)-17, New Delhi vide order dated 15.04.2016 for assessment years 2007-08 & 2008-09.

2. The assessee pressed only legal ground and requested that the legal issue may be heard first. Therefore, additional legal grounds of appeal are taken up first which are reproduced hereinbelow:

“1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in framing the impugned reassessment order u/s 143(3)/147 and that too without assuming jurisdiction as per law and without complying with the mandatory conditions u/s 147 to 151 as envisaged under the Income Tax Act, 1961.

2. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in framing the impugned reassessment u/s 143(3)/147, is bad in law and against the facts and circumstances of the case.

3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in framing the impugned reassessment order and that too without serving the mandatory notice u/s 143(2) as per law.”

3. I have considered the rival arguments made by both the sides, perused the orders of the A.O and the ld. CIT(A) and the paper book filed on behalf of the assessee. At the outset, the ld. counsel for the assessee Dr. Rakesh Gupta, at the outset, argued that there are no reasons recorded by the approving authority i.e. the Joint Commissioner of Income tax, Range - 33, New Delhi and in fact, he has mentioned at paper book page 5 as under:

“Yes- as per reasons recorded by the AO at S. No. 10 alone.”

4. From the above reasons, it is clear that the JCIT has not applied his mind independently in giving approval for reopening the impugned case and it is settled law that assessment reopened without valid approval is nullity under law. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of CIT Vs. S. Goyanka Lime & Chemical Ltd [2015] 64 Taxman 313 [SC] wherein it has been held as under:

“High Court by impugned order held that where Joint Commissioner recorded satisfaction in mechanical manner and without application of mind to accord sanction for issuing notice under section 148, reopening of assessment was invalid—whether Special Leave Petition filed against impugned order was to be dismissed—Held, yes [In favour of assessee]”.

5. In the case of Central India Electric Supply Co. Ltd Vs. ITO [2011] 333 ITR 237 [Del], the Hon'ble High Court has held as under:

“Merely affixing a ‘yes’ stamp and signing underneath suggested that the decision was taken by the Board in a mechanical manner as such, the same was not a sufficient compliance under section 151 of the Act.”

6. In the case of Chugamal Rajpal Vs. S.P. Chalia reported in 79 ITR 603 [Supreme Court], their Lordships held as under:

“No Prima facie conclusion that the transactions to which he referred are not genuine transactions - Such a conclusion does not fulfill the requirements of s. 151(2)—Provision requires that there must be reasons and prima facie grounds for taking action under s. 148—Requirements of cl. (a) or cl. (b) of s. 147 also not satisfied - Important safeguards provided in ss. 147 and 151 were lightly treated by the ITO and CIT—They substituted the form for the substance—Therefore appeal is allowed, order of the High Court is set aside and impugned notice quashed.”

7. In the case of DIT Vs. Society for Worldwide Inter-bank Financial Telecommunications reported in 323 ITR 249 [DEL], their Lordships of the Hon'ble Delhi High Court held as under:

“Both the CIT(A) and the Tribunal have returned a concurrent and clear finding of fact that the notice under s. 143(2) was issued on 23rd March, 2000 and since the return was filed on 27th March, 2000, the notice was not a valid one and, therefore, the assessment completed on the basis of the notice was also invalid and was consequently set aside. It is for the first time that the counsel for the appellant contends that the notice, in fact, was issued on 27th March, 2000 and not on 23rd March, 2000, the date which is recorded on the notice itself. No such contention was raised before the lower appellate authorities. Consequently, the said contention cannot be raised before the Court for the first time. The appellant has stated that the return was filed by the assessee on 27th March, 2000 and the notice under s. 143(2) was

served upon the Authorised Representative of the assessee by hand when the Authorized Representative of the assessee came and filed return. However, the date of the notice was mistakenly mentioned the 23rd March, 2000. Assuming the aforesaid to be true, the notice was served on the Authorized Representative simultaneously on his filing the return which clearly indicates that the notice was ready even prior to the filing of the return. The provisions of s. 143(2) make it clear that the notice can only be served after the AO has examined the return filed by the assessee. Whereas it is clear that when the assessee came to file the return, the notice under s. 143(2) was served upon the Authorized Representative by hand. Thus, it would amount to gross violation of the scheme of s. 143(2).”

8. Reliance was also placed on the decision of the Hon'ble M.P. High Court in the case of CIT Vs. S. Goyanka Lime & Chemical Ltd [2015] 237 Taxman 378 [M.P] wherein it has been held as under:

“While according sanction, the Joint Commissioner, Income Tax has only recorded so “Yes, I am satisfied” If the case in hand is analysed on the basis of the aforesaid principle, the mechanical way of recording satisfaction by the Joint Commissioner, which accords sanction for issuing notice under section 147, is clearly unsustainable and we find that on such consideration both the appellate authorities have interfered into the matter. In doing so, no error has been committed warranting reconsideration.”

9. Therefore, in all fairness and circumstances of the present case, the Assessing Officer cannot enter into jurisdiction u/s 147/148 of the Act. Accordingly, assessment so framed is directed to be quashed.

10. It was further argued by the ld. counsel for the assessee Dr. Rakesh Gupta that notice u/s 143(2) of the Act was issued on 17.09.2014 and which is the same date on which return was filed. This is apparent from the Assessing Officer's order in para 3 at page 1. Therefore, the Assessing Officer has not applied his mind independently while issuing notice u/s 148 of the Act. On this count also, the assessment deserves to be quashed. Accordingly, under the facts and circumstances of the case, the legal grounds of the assessee are allowed.

11. I find that the legal issues raised in ITA No. 1263/DEL/20117 are identical to the issues raised in ITA No. 1262/DEL/2017 for assessment year 2008-09 decided by me hereinabove. Accordingly, my order hereinabove on this issue shall be identically applicable in the case of the assessee for assessment year 2009-10 as well.

12. In the result, both the appeals of the assessee are allowed.

The order is pronounced in the open court on 17.10.2017.

Sd/-
[B.P. JAIN]
ACCOUNTANT MEMBER

Dated: 17th October, 2017

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi