In the Income-Tax Appellate Tribunal,
Delhi Bench 'C', New Delhi

Before : Shri H.S. Sidhu, Judicial Member And
Shri L.P. Sahu, Accountant Member

ITA No. 6459/Del./2015
Assessment Year: 2005-06

D.C.I.T. (Intl. Taxation), Circle 2(1)(2), New Delhi. **(Appellant)**	vs.	Mahesh C. Khera, W-159, Greater Kailash-II, New Delhi. PAN – AAHPK7804P **(Respondent)**

Appellant by	Sh. Arun Kumar Yadav, Sr. DR
Respondent by	Sh. Kartik Jain, CA & Sh. D.K. Jain, CA

Date of Hearing	14.09.2017
Date of Pronouncement	27.10.2017

ORDER

Per L.P. Sahu, A.M.:

This is an appeal filed by the Revenue against the order dated 29.09.2015 of ld. CIT(A)-43, New Delhi for the assessment year 2005-06 on the following grounds :

"1. The Ld. CIT(A) erred in law & on facts in holding that proceedings u/s. 147/148 of Income Tax Act are bad & not curable ignoring that the Addl. Commissioner of Income Tax has categorically recorded his satisfaction in writing by independently applying his mind.

2. The Ld. CIT(A) erred in law & on facts in relying on the ratio of judgment of the Hon'ble Delhi High Court in the case of CIT vs. SPL's Siddhartha ITA No. 836/2011 as unlike that case, the Addl. CIT has very clearly put up his satisfaction note for reopening of the case without instruction/dictation of any higher authority in this regard.

3. The Ld. CIT(A) erred in law & on facts in holding that proceedings u/s. 147/148 of Income Tax Act are bad & not curable by observing that the reasons for reopening are different from the proposal put up in this regard by failing to appreciate that the reasons recorded for reopening of the case were basically the same as was the proposal. Principally there is no difference except for conciseness and brevity."

2. The brief facts of the case are that the assessee filed its return of income declaring total income of Rs.4,14,740/-, which was processed u/s. 143(1) of the Act. Subsequently, information was received from ADIT (Inv.), Jalandhar vide letter dated 19.03.2012 that while conducting enquiries in the case of Sh. Kripal Singh Marwaha, Jalandhar, it was gathered that the assessee sold a property bearing number B-IX/2-2182, B-IX/2-2481/22, Civil Lines, Jalandhar to Sh. Amarbir Marwaha, S/o Sh. Kirpal Singh Marwaha for Rs. 65 lakhs on 7.3.2005. The stamp duty of Rs.8,94,150/- was charged on the value of Rs. 99,35,000/-. Subsequently, the issue of stamp duty chargeable on the property was referred to the Competent Authority, i.e ADC cum Collector, Jalandhar u/s 47A of the Stamp Duty Act by the Sub-Registrar, Jalandhar-I. The Competent Authority assessed, on such reference, determined the value of the said property at 1,72,97,037/- and the stamp duty was ordered to be charged accordingly. Later on, the above order passed by the Competent Authority was upheld by the Punjab and Haryana High Court on 15.3.2011. The Assessing Officer observed that the total

income of assessee declared in the return of Rs.4,14,740/- included only the income from house property and income from other sources, but no income as capital gains was declared by assessee in the said return of income. Therefore, on the premise of above information, the AO initiated proceedings u/s. 147/148 of the IT Act after obtaining statutory approval from the competent authority. On being asked, the assessee submitted the details of cost of acquisition and computed long term capital loss on the sale of impugned property as under :

Market value as on 01.04.1981	Approx. 27 lacs
Indexed cost (27 lacs *4.80)	1,29,60,000/-
Sale Consideration	65,00,000/-
Long term capital loss	**64,60,000/-**
Purchase of residential property u/s. 54	21,50,000/-

The Assessing Officer further observed that there is no basis for adopting the cost of acquisition at Rs.27 lacs as on 01.04.1981 and that there is no corroborating evidence to support the said cost of acquisition and the claim u/s. 54 of the Act. The AO, therefore, determined the cost of acquisition as on 01.04.1981 at Rs.5,00,000/- which was indexed to Rs.24,00,000/- (5,00,000*480/100) and after taking into account the full value of consideration at Rs.1,72,97,037/- as per section 50C of the Act, computed the capital gains taxable in the hands of assessee as under :

Sale Consideration (in terms of sec. 50C)	1,72,97,037

Less: Indexed cost of acquisition :	24,00,000
Long-term capital gains	1,48,97,037

Accordingly, the AO computed the long-term capital gains at Rs.1,48,97,037/- taxable @ 20% in the hands of the assessee vide order u/s. 147 dated 28.03.2013.

3. The assessee carried the matter in appeal before the ld. CIT(A) and challenged the reassessment order on its validity as well as on merits of addition. As to the validity of re-assessment order, the stand of the assessee has been that the Assessing Officer was legally obliged to obtain the approval of the competent authority for issuing the notice u/s. 148, which in terms of the provisions of section 151(2) of the Act, was the Joint Commissioner/Addl. Commissioner, whereas in the instant case, the Assessing Officer has obtained the approval of the Commissioner of Income-tax nomenclature as Director of Income-tax (IT)-1, which goes to vitiate the proceedings, as held by Hon'ble Jurisdictional High court in CIT vs. SPL's Siddhartha Ltd. in ITA No. 836 of 2011. The assessment order was further assailed on the premise that there was variance between the proposal dated 22.03.2012 sent for approval of issuing notice and the reasons recorded for reopening of the case. The ld. CIT(A) allowed the appeal of the assessee, and placing reliance on the decision of Hon'ble Delhi High Court in CIT vs. SPL's

Siddhartha Ltd. (supra) and the other contentions of the assessee, held the reassessment proceedings as invalid on the premise that the approval given by the Commissioner is not in conformity with the provisions of section 151(2) of the Act and that what was approved in the proposal was different from the reasons as provided by the AO to the assessee. Being aggrieved, the Revenue is in appeal before the Tribunal.

4. The learned Departmental Representative relying on the order of Assessing Officer, submitted a brief synopsis before us, which reads as under :

> *"**Brief Facts of the Case :**The case was reopened u/s 148 after 4 years from the end of the relevant assessment year. Notice u/s 148 was issued by the assessing officer after taking approval u/s 151(2) from Additional Commissioner of International Taxation, Delhi. Approval for issuing the notice was also accorded by the DIT International Tax, Delhi. Ld. AO completed the assessment u/s 143/147 after detailed investigation by making an addition of Rs. 1,48,97,037/- on account of Long Term Capital Gains against the sale of property.*
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> ***Finding of CIT (A)** : Ld. CIT (A) quashed the assessment order on technical ground holding that Approval for issuing notice u/s 148 was accorded by the concerned CIT whereas as per section 151(2) satisfaction should be recorded by the concerned Joint Commissioner of Income Tax / Addl. Commissioner of Income Tax. Ld. CIT (A) squarely relied of decision of Jurisdictional High Court in the case of CIT Vs. SPL's Sidhartha Ltd. (2012) 17 Taxmann. Com 138.*
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> ***Revenue's Submission before the Hon'bie Bench** :(1) Ld. CIT (A) while relying upon the judgment of Hon'bie Delhi High court in the case of CIT Vs. SPL's Sidhartha Ltd. (supra) ignored the distinguishable facts of the case under reference. Glaring factual differences in both the cases are given in tabulated form as under:*

The Case under reference	***Case of SPL's Sidhartha Ltd.***
1. AO had sought approval from Addl. DIT (Int. Tax.) Range-3 by noting as *"Sanction to issue notice u/s 148 is therefore*	*1. AO has specially sought approval from the Commissioner of Income Tax by noting as:* *"Since 4 years have been elapsed, the*

sought under section 151 of the I.T.Act. Submitted for kind perusal and approval". (copy of note sheet is enclosed herewith for ready reference.)	*assessment record is being submitted for kind perusal and approval of the Commissioner of Income tax, Delhi-Ill, New Delhi according to section 151(1) of the IT Act, 1961 for issuance of notice u/s 148 of the I.T.Act.' (copy of judgment is enclosed herewith for ready reference.)*
*2. Addl. DIT (Int. Tax.) Range-3 duly recorded his satisfaction for reopening of case by noting as under: **'We may proceed to reopen the case u/s 147 as proposed above. I am satisfied that this is a fit case for issue of notice u/s 148".** Sd/- 22.03.2012*	*2. Addl. CIT, Range -9, New Delhi not recorded his satisfaction and just referred the matter to the CIT -III, Delhi by noting as under: "CIT may kindly **accord** sanction" Sd/- 12.03.2009*
3. Case was inadvertently referred to DIT by the Addl. DIT instead sending it to the AO but no approval was sought by him.	*3. Case was deliberately referred to the CIT by the Addl. CIT seeking his sanction.*
4. As stipulated in section 151(2) personal satisfaction of Joint Commissioner/ Addl. Commissioner was recorded.	*4. No such satisfaction was recorded at all by the Addl. Commissioner.*

(2) Section 151(2) reads as under:

"In a case other than a case falling under sub-section (I), no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of Deputy 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."

From the plain reading of sub section 2 of the section 151 of the IT Act it appears that for reopening of such case after 4 years from the end of the relevant assessment year wherein no regular assessment has been completed u/s 143{3) or 147, satisfaction of Joint Commissioner is mandatory. From the facts of the case under reference it is proved that Addl. DIT Range -3, International Tax, Delhi has duly recorded his satisfaction for reopening the case and issue of notice u/s 148. This fact apparently distinguishable from the facts of the case relied upon by the Ld. CIT. In fact, Ld. CIT (A) has misplaced the facts of the case while relying on the said judgment.

3. Merely on the basis that Addl. DIT had after recording his satisfaction sent the file to the DIT instead of sending it back to the AO cannot be the basis of quashing

assessment order. Such type of inadvertent procedural mistake is curable u/s 92BB of the Income Tax Act. 1961. It is therefore requested that considering the facts of the case the order of the Ld. CIT (A) may be set aside and the appeal of the Revenue be allowed."

5. On the other hand, the ld. AR of the assessee relied on the order of the ld. CIT(A) and submitted that there being various legal flaws on the part of the Assessing Officer for initiating the proceedings u/s. 147, as noted by the ld. CIT(A), the impugned order does not call for any interference.

6. We have considered the rival submissions and the orders of the authorities below in the light of relevant material available on record including the proposal sent for approval and the case laws relied upon. As regards the approval sought by the AO for initiating proceedings u/s. 147, we find that the ld. CIT(A) has not considered the distinguishing features in the decision relied upon by him in the case of SPL's Siddhartha Ltd. (supra) vis-à-vis the case of assessee. In the reported case, proposal for approval was sent by the Assessing Officer to the ld. CIT through the Addl. CIT and the Addl. CIT did not record any of his satisfaction on initiation of proceedings, but referred the matter to CIT to accord the requisite approval, meaning thereby there was complete absence of approval by the competent authority in that case. In the instant case, the AO sent the proposal for approval to the Addl. DIT, who was the competent authority envisaged u/s. 151, for perusal

and approval and the Addl. DIT after due application of his mind recorded his satisfaction as under :

> "*We may proceed to reopen the case u/s. 147 as proposed above. I am satisfied that this is a fit case for issue of notice u/s. 148.*"

7. This noting of the Addl. DIT, in our considered opinion, does constitute the approval of the competent authority in the instant case. Merely on the basis that Addl. DIT after recording his satisfaction sent the file to the DIT instead of sending it back to the AO and the DIT having given second approval in the matter, it cannot be said, in the peculiar circumstances of the case, that the competent authority, i.e., Addl. DIT did not accord its approval for initiating proceedings u/s. 147 against the assessee nor does the second approval given by DIT go to mitigate the authenticity of approval given by ld. Addl. DIT, as noted above. In fact, the first approval was given by the competent authority in the instant case. Such facts do not exist in the reported case relied by the ld. CIT(A). Therefore, the decision reached by the ld. CIT(A) on this count cannot be supported.

8. Adverting to the second issue regarding variance between the proposal sent for approval and the reasons recorded as supplied to the assessee, which led the ld. CIT(A) to hold the re-assessment proceedings as

invalid, we find that none of the parties before us have submitted the copy of reasons supplied to the assessee. The reasons recorded, as supplied to the assessee, are also not reproduced in any of the orders of authorities below. The contention of the ld. DR is that there is no variance in the reasons supplied to assessee and those proposed for approval. The substance of both is one and the same. In absence of copy of reasons supplied to the assessee before us, it is not possible to verify the alleged variance and to decide this issue at this stage. It is, however, nowhere mentioned that the addition made by the AO in re-assessment is not in consonance with the reasons recorded or has no nexus therewith. We, therefore, restore this issue to the file of ld. CIT(A) to examine whether the pith and substance of the reasons recorded as supplied to the assessee and the reasons contained in the proposal for approval is same or not. The difference in terminology, if any, used both in proposal and reasons recorded, would, in our opinion, not go to invalidate the proceedings unless it is found that the additions made u/s. 147 are not in consonance with the reasons recorded. In case, it is found that the alleged difference has no material bearings on validity of re-assessment proceedings, the ld. CIT(A) shall proceed to decide the other issues raised by assessee on merits of addition, which he restrained from deciding the same in the impugned order. Needless to say, the both the parties shall be given

adequate opportunity of being heard. Accordingly, the appeal of the Revenue deserves to be allowed for statistical purposes.

9. In the result, the appeal of the Revenue is allowed for statistical purposes.

Order pronounced in the open court on 27.10.2017.

Sd/- Sd/-

(H.S. Sidhu) **(L.P. Sahu)**
Judicial member **Accountant Member**

Dated: 27.10.2017
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Copy of order forwarded to:

(1)	*The appellant*	*(2)*	*The respondent*
(3)	*Commissioner*	*(4)*	*CIT(A)*
(5)	*Departmental Representative*	*(6)*	*Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi