IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA (SMC) BENCH: AGRA

BEFORE SHRI A. D. JAIN, JUDICIAL MEMBER

I.T.A No. 238/Agra/2018
(ASSESSMENT YEAR-2008-09)

Shri Ghanshyam, S/o Shri Mohan Lal, Saraswat Para, Farrah, Mathura. PAN No.HDUPS9702M **(Assessee)**	**Vs.**	ITO, 3(2), Mathura. **(Revenue)**

I.T.A No. 129/Agra/2018
(ASSESSMENT YEAR-2008-09)

Shri Ghanshyam, S/o Shri Mohan Lal, Saraswat Para, Farrah, Mathura. PAN No.HDUPS9702M **(Assessee)**	**Vs.**	ITO, 1, 3(2), Mathura. **(Revenue)**

Assessee by	**Shri Anurag Sinha, AR.**
Revenue by	**Shri Waseem Arshad, Sr.DR.**

Date of Hearing	**07.06.2018**
Date of Pronouncement	**19.06.2018**

ORDER

I.T.A No. 238/Agra/2018

This is assessee's appeal for assessment year 2008-09, taking the following grounds:

"1. BECAUSE, upon due consideration of facts and in the overall circumstances of the case 'appellant' denies its liability to be assessed in terms of Notice dated 26.03.2015 said to be issued under section 148 of the 'Act'.

2. BECAUSE, the Ld CIT(A) has not appreciated the fact that the purported 'Reasons' are No 'Reasons' in the eyes of Law. The so called 'Reasons' do not show any application of mind on part of the 'AO' to show that any Income liable for Tax has escaped Assessment warranting recourse to Notice under section 148 of the Act.

WITHOUT PRETUDICE TO THE ABOVE

3. BECAUSE, while making the addition of Rs. 22,65,000/- the authorities below failed to consider that 'appellant' being an Agriculturist having no other source of Income liable for Tax and therefore, no addition was called for in peculiar facts of the case.

4. BECAUSE, while making the addition of Rs. 22,65,000/- the authorities below failed to consider that 'appellant' has entered into an agreement with Ghasi Ram another Agriculturist who has provided funds to the 'appellant' from which Agriculture Land was purchased.

5. BECAUSE, in any case and in any view of the matter impugned additions/disallowances and impugned assessment order is bad in law, illegal, unjustified barred by limitation, contrary to facts

and law based upon incorrect assumption of facts and further without allowing adequate opportunity of hearing in violation of principals of natural justice and therefore, the additions made deserves to be quashed."

2. An additional ground has also been taken, as follows:

"Because the mechanical approval, without application of mind granted by the Additional Commissioner of Income Tax, Range-3, Mathura under section 151 for issuing notice dated 27.03.2015 under section 148 of the 'Act' has vitiated the assessment order dated 30.03.2016 and the said assessment is liable to be declared illegal and void ab-initio."

3. The additional ground is a legal issue going to the root of the matter, not requiring any further material to be gone into. Accordingly, it is admitted.

4. Apropos the merits of the additional ground, the following is the approval granted by the Addl. CIT for initiation of proceedings u/s 147 of the IT Act:

"Whether the Addl. Commissioner / Board is satisfied on the reasons recorded by the ITO / ACIT	*' Ji Haan Main Santusht Hoon'.*

(A) that it is a fit case for the issuance notice u/s 148	

5. The ld. Counsel for the assessee has contended that the approval is no approval in the eye of the law, having been granted without application of mind. The following decisions have been relied on:

1. *'Sunil Agrawal vs. ITO', in ITA No. 988/Del/2018.*
2. *'Virat Credit & Holdings (P) Ltd. Vs. ITO', in CO No. 57/Del/2012 in ITA No.89/Del/2012.*
3. *'Hari Ram Gupta vs. ITO', ITA No.5111/Del/2013.*
4. *'Tara Alloys Ltd. Vs. ITO', in ITA No.2421/Del/2017.*

6. On the other hand, the ld. DR has placed strong reliance on the approval granted by the Additional CIT. The following decisions have been relied on:

i. 'S. Narayanappa vs. CIT', 63 ITR 219 (SC).

ii. 'Chhugamal Rajpal vs. S.P. Chaliha', 79 ITR 603 (SC).

iii. 'CIT vs. M/s G.S. Tiwari and Co.', 38 taxman.com 259 (All).

iv. 'M/s Ginni Filaments vs. CIT', Writ Tax No. 1402 of 2004 (All. H.C.)

v. 'Sushrut Institute of Plastic Surgery vs. Dy. CIT', Misc. Bench No 219 of 2014 (All. H.C.)

vi. 'Sanjay Kumar Agarwal, HUF vs. DCIT', ITA No.290/Agra/2010 (ITAT-Agra).

vii. 'ITO vs. Purushottam Das Bangur', 224 ITR 362 (SC).

viii. 'Anil Kumar Singhal vs. ITO', 33 taxman. Com 434 (Agra Trib.) (SMC Bench).

ix. 'Abdul Majid vs. CIT', 281 ITR 366 (All).

7. Heard. In the above quoted approval granted by the Additional CIT, the approval has been granted by observing thus:

"*Ji Haan Main Santusht Hoon.*"

8. Translated, this approval states: 'Yes, I am satisfied'. Question is whether this approval is in accordance with law.

9. In the case of 'Sunil Agrawal vs. ITO', the ITAT, Delhi vide order dated 24.05.2018 in ITA No. 988/Del/2018 (APB-19-49) held that:-

"6.3 It is further noted that the proceedings have been initiated on the basis of no material much less any tangible and, relevant material and as such reasons record do not constitute valid reason to believe for initiating proceedings u/s. 147 of the Act. It is further

noted that the approval granted by the competent authority is a mechanical approval and action has been taken mechanically because on perusing the reasons recorded, it demonstrates that Joint CIT has written "Yes, in view of reasons recorded by the AO, I am satisfied that this is fit case for issue of notice u/s. 148 and similarly, the Ld. CIT, Dehradun has mentioned "Yes, I am satisfied" which establishes that both the authorities have not recorded proper satisfaction / approval, before issue of notice u/s. 148 of the Act. Thereafter, the AO has mechanically issued notice u/s. 148 of the Act, on the basis of information allegedly received by him from the DCIT, Central Circle, Dehradun. Keeping in view of the facts and circumstances of the present case and the case law applicable in the case of the assessee, we are of the considered view that the reopening in the case of the assessee for the asstt. Year in dispute is bad in law and deserves to be quashed. Our aforesaid view is fortified by the following decisions:-

(A) Hon'ble Delhi High Court in the case of Pr. CIT vs. M/s NC Cables Ltd. in ITA No. 335/2015 has held as under:-

11. Section 151 of the Act clearly stipulates that the CIT(A), who is the competent authority to authorize the reassessment notice, has to apply his mind and form an opinion. The mere appending of the expression 'approved' says nothing. It is not as if the CIT(A) has to record elaborate reasons for agreeing with the noting put up. At the same time, satisfaction has to be recorded of the given case which can be reflected in the briefest possible manner. In the present case, the exercise appears to have been ritualistic and formal rather than meaningful, which is the rationale for the safeguard of an approval by a higher ranking officer, For these reasons, the Court is satisfied that the findings by the ITAT cannot be disturbed."

(B). Hon'ble High Court of Madhya Pradesh in the case of CIT vs. S. Goyanka Lime & Chemicals Ltd. reported in (2015) 56 taxmann.com 390 (MP) has held as under:-

"7. We have considered the rival contentions and we find that while according sanction, the Joint Commissioner, Income Tax has only recorded so "Yes, I am Satisfied". In the case of Arjun Singh vs. Asstt. DIT (2000) 246 ITR 363 (MP), the same

question has been considered by a Coordinate Bench of this Court and the following principles are laid down:-

"The Commissioner acted, of course, mechanically in order to discharge his statutory obligation properly in the matter of recording sanction as he merely wrote on the format "Yes, I am satisfied" which indicates as if he was to sign only on the dotted line. Even otherwise also, the exercise is shown to have been performed in less than 24 hours of time which also goes to indicate that the Commissioner did not apply his mind at all while granting sanction. The satisfaction has to be with objectivity on objective material.

8. If the case in hand is analyzed 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 148, 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."

(C.) Hon'ble Supreme Court of India in the case of CIT vs. S. Goyanka Lime & Chemical Ltd. reported in (2015) 64 taxmann.com 313 (SC) in the Head Notes has held that "Section 151, read with section 148 of Income Tax Act, 1961 – Income escaping assessment – Sanction for issue of notice (Recording of satisfaction) – 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 the Assessee)."

6.4 In the background of the aforesaid discussions and respectfully following the precedents, as aforesaid, we are of the considered view that proceedings initiated by invoking the provisions of section 147 of the Act by the AO and upheld by the Ld. CIT(A) are non est in law and without jurisdiction, hence, the re-assessment is quashed. Since we have already quashed the re-assessment, the other grounds have become academic and are

therefore not adjudicated and accordingly, the assessee's appeal is allowed."

10. In the case of 'Virat Credit & Holdings (P) Ltd. vs. ITO', (CO No. 57/Del/2012 in ITA No. 89/Del/2012), the ITAT, Delhi, vide its order dated 09.02.2018 (PBP - 50-62) has held that:-

> "11. In response to aforesaid question no.13 in the prescribed proforma, Addl. CIT has written "Yes. I am satisfied." No doubt, columns of reasons recorded was there and it is also mentioned in column no.12 that reasons for belief that income has escaped assessment are as per annexure enclosed but such annexure has not been produced before the Bench for perusal.
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> 12. Apparently, from the approval recorded and words used that "Yes. I am satisfied.", it has proved on record that the sanction is merely mechanical and Addl. CIT has not applied independent mind while according sanction as there is not an iota of material on record as to what documents he had perused and what were the reasons for

his being satisfied to accord the sanction to initiate the reopening of assessment u/s 148 of the Act."

11. In the case of 'Hari Ram Gupta Vs ITO', in ITA No. 5111/Del/2013 in ITAT, Delhi vide its order dated 07.07.2016 (ABP-63-67) has quashed the assessment based on approval mentioning , as in the present case, "Yes I am satisfied" (Para 6).

12. Again, the ITAT, Delhi Bench in the case of 'M/s Tara Alloys Ltd. Vs. ITO', in ITA No. 2421/Del/2017 (APB- 68-108) likewise quashed the assessment based on approval mentioning "Yes I am satisfied that it is a fit case for reopening u/s 147". (Paras 8 to 10)

13. Apropos the decisions cited by the ld. DR, they are dealt with as follows.

14. In the Hon'ble Supreme Court's Judgment in the case of 'Parashuram Pottery Works Co. Ltd. Vs. ITO', 106 ITR 1 (SC) (relied on by both the sides, copy at APB- 109-118), the Hon'ble Apex Court held that "It has been said that the taxes are the price that we pay for civilization. If so, it is essential that those who are entrusted with the task of calculating and realizing that price should familiarize themselves with the relevant provisions and become well-

versed with the law on the subject. Any remission on their part can only be at the cost of the national exchequer and must necessarily result in loss of revenue". (Para-15)

15. In 'Chhugamal Rajpal vs. S.P. Chaliha', 79 ITR 603 (SC), the Hon'ble Supreme Court held that the ITO had no material before him which could satisfy the requirements of either clause (a) or clause (b) of section 147 and that therefore, he could not have issued a notice under section 148. The Hon'ble Supreme Court further held that "Further, the report submitted by him under section 151(2) does not mention any reason for coming to the conclusion that it is a fit case for the issue of a notice under section 148."

16. The Hon'ble Court concluded that "We are also of the opinion that the Commissioner has mechanically accorded permission. He did not himself record that he was satisfied that this was a fit case for the issue of a notice under section 148. To question No. 8 in the report which reads "Whether the Commissioner is satisfied that it is a fit case for the issue of notice under section 148", he just noted the word "Yes" and affixed his signature there-under. We are of the opinion that if only he had read the report carefully, he could never have come to the conclusion on the material before him that this is a fit case to issue notice under section 148. The important safeguards provided in sections 147 and 151 were lightly treated by

the Income-tax Officer as well as by the Commissioner. Both of them appear to have taken the duty imposed on them under these provisions as of little importance. They have substituted the form for the substance".

17. In 'CIT vs. M/s G.S. Tiwari and Co.', 38 taxman.com 259 (All), it was held by the Hon'ble jurisdictional High Court that under the garb of review, a completed assessment cannot be reopened. No re-hearing is permissible on merit. Scope of review is very limited.

18. In 'M/s Ginni Filaments vs. CIT', Writ Tax No. 1402 of 2004 (All), the assessee had not valued its closing stock as per the provisions of Section 145A of the IT Act. Notice under section 148 was issued, which was challenged before the Hon'ble High Court. The Hon'ble High Court, while sustaining the notice under section 148, held that at this stage, it can be said that there is relevant material on the record to form a reasonable belief that the taxable income of the assessee has escaped assessment, in view of section 145-A of the Act. The present controversy was not involved therein.

19. In 'Sushrut Institute of Plastic Surgery vs. Dy. CIT', Misc. Bench No. 219 of 2014 (All), the Hon'ble High Court, upholding the validity of the notice u/s 148, found that the only requirement of section 147 is that the Assessing Officer must

have good reason to believe that some income had escaped assessment. It was observed that 'A bare perusal of letter dated 14.05.2013 (Annexure No.4) written by the Deputy Commissioner of Income Tax Range-VI- Lucknow, shows that in the return for assessment year 2006-07 the petitioner declared its total income "Nil". However, during the said year share capital increases from Rs. 47,82,000/- to Rs.58,82,000/- and secured loan increases from Rs.1,23,54,001/- to Rs. 2,78,21,882/- which shows the increase of Rs. 1,54,67,871/- Investment in building increased from Rs.7,09,770/- to Rs.1,50,99,423/- but the petitioner did not explain the source of increment, similarly other current assets also increased. Therefore, apart from the District Valuer Report we find that there are sufficient reasons for the Assessing Officer to believe that the income chargeable to tax has escaped assessment. Thus we find that ingredient of section 147 is available to reopen the proceeding of assessment for the assessment year 2006-07. These are nowhere the facts of the present case'.

20. In 'Sanjay Kumar Agarwal, HUF vs. DCIT', ITA No. 290/Agra/2010-ITAT-Agra, the Agra Bench of the Tribunal upheld the notice issued under section 148 of the Act based on the report of the Investigation Wing. The issue of validity or otherwise of the approval granted, which is the issue at hand, was not present therein.

21. In 'ITO vs. Purushottam Das Bangur', 224 ITR 362 (SC), re-assessment proceedings were upheld where the Assessee claimed that he had incurred capital loss on sale of shares held in a company, which was based on official quotation at Calcutta Stock Exchange and the same was allowed in original assessment. Subsequently, the ITO received a letter from the Directorate of Investigation, giving detailed particulars collected from the Bombay Stock Exchange, which revealed that the quotation appearing at the Calcutta Stock Exchange was a result of manipulated transaction. On the very next day of receipt of the letter, the ITO issued notice under section 147(b). The Hon'ble Supreme Court found that the letter from the Directorate contained definite information derived from the Bombay Stock Exchange Directory about the financial condition of Maharaja Shree Umaid Mills Ltd. during the period 1965-70, which indicated that during this period, the company had prospered and that the book value per equity share had risen from Rs. 318.55 for the year ending 31-12-1965 to Rs. 401 for the year ending 31-12-1970, that the earning per share rose from Rs. 8.37 per share to Rs. 44 per share and that the dividend percentage had also risen from 2 per cent to 10 per cent for the same period, which falsified the claim of the assessee and accordingly notice under section 148 was upheld. These facts are absent herein.

22. In 'Anil Kumar Singhal vs. ITO', 33 taxman.com434 (Agra Trib) (SMC Bench), ITAT upheld the initiation of proceedings under section 148 of the Act after having found that after receipt of report from the Investigation Wing, the AO had applied his mind to such information and had then issued the notice to the assessee. No issue of non-application of mind by the AO, however, stands raised in the present case.

23. In 'Abdul Majid Vs. CIT', 281 ITR 366 (All), the assessee moved an application for addition of grounds in grounds of appeal before Tribunal on the ground that since the reasons were not recorded before issuing the notice, the requirement of section 148(2) was not complied with and, therefore, the proceedings were invalid and void ab initio. However, the ITAT did not permit the assessee to raise this plea. On appeal before the Hon'ble High Court, it was held that even if a plea, relating to lack of jurisdiction of officer on ground that no reason was recorded before issue of notice under section 148(2), is not raised at the first instance before the assessing authority, it can be raised before the appellate authority at a later stage and that therefore, the Tribunal had erred in not allowing the assessee to raise the additional grounds challenging the validity of the assessment order on the basis of illegal initiation of proceedings under section 148.

24. Coming back to the facts of the present case, the ld. Additional CIT granted the approval by observing merely that he was satisfied.

25. Sections 147 and 148 of the IT Act, it is trite, are charter to the Revenue to reopen completed assessments. Section 151 of the Act provides a safe-guard that the sword of section 147 of the Act may not be used unless the competent statutory officer is satisfied that the AO has good and adequate reasons to invoke the reopening provisions. As per the mandate of section 151 (2) of the Act, the Competent Authority has to examine the reasons, material or grounds on which the reopening is sought to be based and to judge as to whether they are sufficient and adequate to the formation of the necessary belief of escapement of income from taxation on the part of the AO. It is if and only if the Competent Authority, after applying his mind, is of the opinion that the AO's belief is well reasoned and bonfide, that he will accord his sanction thereon.

26. In 'Narayanappa' (supra), it has been held that the stage for obtaining the sanction of the Competent Authority is administrative in character and not quasi-judicial . However, in 'Chhugamal Rajpal vs. S.P. Chaliha', 79 ITR 603 (SC) (supra), it has been held that where the Commissioner, while granting the sanction just noted the word "Yes" and affixed his signature thereunder, he had only

mechanically accorded permission, and that the important safe-guards provided in section 151 were lightly treated.

27. 'Narayanappa' (supra) is dated 27.09.1966, whereas 'Chhugamal' (supra) was handed down on 21.01.1971. Both these judgments have been rendered by co-equal Benches of the Hon'ble Apex Court. Now, it is well settled that in such a situation, the judgment of the Hon'ble Supreme Court, which is later in point of time has to be followed.

28. Thus, in keeping with the position of law on the issue, as discussed hereinabove, the approval in the case at hand is clearly an approval granted without application of mind, and therefore, it is not at all a legally tenable approval.

29. Accordingly, the said approval and all proceedings pursuant thereto, culminating in the impugned order are quashed. Nothing further survives for adjudication, nor was anything else argued.

30. Hence, the appeal is allowed.

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31. In this appeal, the assessee has challenged the levy of penalty of Rs.7,12,090/- imposed by the AO on the assessee u/s 271(1)(c) of the Act and confirmed by the ld. CIT(A).

32. The genesis of the penalty in question lies in the subject matter of ITA No. 238/Agra/2018, which I have allowed, as above. Since the very basis of the levy of penalty, as such, is no longer is existence, this penalty is deleted.

33. Thus, this appeal is also allowed.

34. In the result, both the appeals are allowed.

Order pronounced in the open court on 19/06/2018.

Sd/-

(A.D. JAIN)
JUDICIAL MEMBER

AKV
Copy forwarded to:

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

ASSISTANT REGISTRAR