

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.381/Ind/2017
Assessment Year : 2012-13**

ITO 4(4), Indore	बनाम/ Vs.	Shri Yogendra Singh Thakur, Village Birgoda, Tehsil Depalpur, Indore
(Appellant)		(Revenue)
P.A. No. ADMPT3091K		

Revenue by	Shri K. G. Goyal, Sr. DR
Respondent by	None
Date of Hearing:	18.07.2018
Date of Pronouncement:	26.07.2018

आदेश / O R D E R

PER MANISH BORAD, A.M.:

This appeal filed by the Revenue pertaining to A.Y. 2012-13 is directed against the order of Ld. Commissioner of Income Tax(Appeals)-II Indore, (in short 'CIT(A)'), vide appeal No. IT-521/15-16 order dated 15.02.2017 which is arising out of the order u/s 143(3) of the Income Tax Act 1961(hereinafter called as the 'Act') framed on 04.11.2005 by ITO-4(4), Indore.

2. When the case was called up, non attended at assessee's behest and no adjournment application was filed, therefore, the case was heard with the assistance of Ld. DR.

3. At the very outset, Ld. DR referring to Ground no.1 & 2 challenging the finding of Ld. CIT(A) of allowing the appeal by holding that the initiation of proceedings u/s 147/148 of the Act are bad in law and also quashing the assessment made u/s 147 r.w.s 143(3) of the Act submitted that the Ld. CIT(A) did not consider the ratio of judgment given by Hon'ble High Court of Delhi in the case of Pr. CIT vs. Paramount Communication (P.) Ltd. (2017) 79 taxmann.com 409 (Delhi). He submitted that the case of assessee was reopened on the basis of the information received from investigation wing of the income tax department. The Ld. CIT(A) quashed the reassessment proceedings by referring to various judgments thereby giving a finding that the Ld. AO has merely acted in a mechanical manner on receipts of information from ADIT(investigation) and has formed his opinion merely on the basis of the information supplied to him and has not recorded his own independent satisfaction for assuming the jurisdiction u/s 148 of the Act.

4. Ld. DR also submitted that in the case of Paramount Communication (supra) Hon'ble High Court has held that the information received from Director of Revenue Intelligence (DRI) would be a tangible material outside the records and power to reopen the concluded assessment can validly be exercised on its basis. Against the judgments of Hon'ble Delhi High Court the assessee i.e. Paramount Communication filed special leave petition before Hon'ble Apex Court but the same was dismissed vide dated

14th July 2017 in the same stands report in 2017, 84 taxmann.com 300(SC).

5. We have heard the Ld. DR, perused the record placed before us and gone through the judgments carefully.

6. Brief facts of the case are that information was received by the Ld. AO from the investigation wing i.e. ADIT(Invt.) Indore that the assessee has acquired agricultural land situated at village Birgoda, Tehsil Depalpur, Indore for Rs.28,63,500/- vide sale deed dated 11.01.2012. On the basis of this information Ld. AO issued notice u/s 148 of the Act on 26.03.2015 and in response thereto the assessee filed return of income on 28.05.2014 declaring income of Rs. 14093/-. Subsequently, assessment proceedings were initiated and notice u/s 142(1) of the Act was duly served upon the assessee. During the course of proceedings in the beginning authorized representative of the assessee request for supply of reason and copy of information supplied by the DDIT (Investigation). Thereafter on various occasions even after the issuance of notices non appeared on behalf of the assessee and therefore on the basis of the information on record. Ld. AO made certain additions. The assessee challenged the additions as well as reopening of assessment u/s 147 of the Act before the Ld. CIT(A) and succeeded as ld. CIT(A) on the basis of various judgments referred and relied in his appellate order took a view that the reopening of assessment was based only on receipts of information from investigation wing but AO has not recorded satisfaction independently nor as he corroborated the information in an independent manner.

7. It is also brought to our notice by the Ld. DR that similar type of issue came up before the Hon'ble High court of Delhi in the case of Paramount Communication(supra) wherein revenue succeeded as Hon'ble court setting aside the finding of the Tribunal held that the reopening of the assessment on the basis of the information received from Director of Revenue Intelligence was valid. Relevant extract of the judgment is reproduced below:

“7. In the present case, no application of mind by the higher authority while granting permission resulted in an invalid notice under Section 147. Though the ITA T granted relief, it did not record any reasons for it. In these circumstances, the order was rectified and the reasons recorded on 05.01.2017. It is submitted that in all cases, especially for A Y 2003-04; the materials relied upon, i.e. the information with respect to the alleged bogus transaction was one. Learned counsel points out that the details of the Commissioner of Central Excise, the date of the report and some rudimentary material contained in it are not even subject matter of the "reasons to believe" issued by the AO in the present case.

8. As far as A Y 2004-05 is concerned, this Court is of the opinion that in the reference to the bogus purchase made by the assessee from M/s. Kashish Impex Pvt. Ltd. and the information received for the period 17.09.2002 to 20.05.2005 and the amount of bogus purchase for the period under consideration amounted to Rs. 1.64 crores was entirely based upon the information received from the Directorate of Revenue Intelligence (DR!) Regional Unit at Jaipur. This in turn was based upon information given by the Central Excise Department. While it is true that the court is conscious that the reassessment notice should not have been routinely issued, at the same time, the nature of power is wide enough that when there an escapement of income and the Revenue has information ruling that this escapement is also relatable to suppression of material facts (which could

include false claims), the power to reopen concluded assessment can validly be exercised. The consideration which ought to weigh with the Revenue and are considered valid are the existence of tangible material or information - in the light of the judgment in CIT v. Kelvinator of India [2010] 320 ITR 561 (SC).

9. Having regard to the contents of the notice for A Y 2003-04, the court is unable to agree with the findings of the IT AT. It constitutes reference to tangible material "outside" the record, i.e. information based upon the investigation of the Commissioner of Central Excise with respect to the purchases made by the assesses. However, as far as the second issue is concerned, the Court is of the opinion that even the rectified order does not address the issues squarely. Thus, arguendo such arguments could be validly raised. At the same time, the court notices that for both A Ys 2004-05 and 2005-06, the note discloses the source of the information, i.e. DR! Local Unit at Jaipur, sending information based upon the Commissioner of Central Excise's investigations. To require the Revenue to disclose further details regarding the nature of documents or contents thereof would be virtually rewriting the conditions in section 147. After all, Section 147 merely authorises the issuance of notice to reopen with conditions. If the Court were to dictate the manner and contents of what is to be written, the statutory conditions would be added as it were. In this context, it needs to be emphasized that the court would interpret the statute as they stand in their own terms, but at the same time being conscious of the rights of the citizens. So viewed, Kelvinator of India (supra) strikes just balance. To add further conditions to the nature of discussion/reasons that the officer authorising the notice would have to discuss in the note or decision would be beyond the purview of the Courts and would not be justified. For the above reasons, this Court is of the opinion that the impugned order - and the consequential order of 05.01.17 cannot be sustained. They are accordingly set aside. The question of law urged by the Revenue is answered in its favour. The parties are directed to be present before the ITAT on 06.03.2017. The ITA T shall proceed to hear the Revenue's appeals on its merits and render decision in accordance with law. All rights and contentions of the parties

with respect to the merits are reserved.”

8. Subsequently, against the above judgment of Hon'ble Delhi High Court the assessee filed a special leave petition which was dismissed by Hon'ble Apex Court on 14th July 2017, thereby confirming the view taken by the Hon'ble Delhi High Court. In the backdrop of the above judgment as well as finding of the Ld. CIT(A), we find that the issue of validity of assessment u/s 147 r.w.s. 143(3) and issuance of notices u/s 148 of the Act needs to be reexamined by the Ld. CIT(A) in light of the above quoted judgments which have not been considered by him.

We also find that during the course of assessment proceedings assessee was not provided necessary information and opportunity for cross examination. Major additions have been made by the Ld. Assessing Officer only on the basis of information available on record and there were no submissions by the assessee. Even, Ld. CIT(A) while framing the appellate order did not adjudicate the issues raised on merits nor any remand report was called from the Ld. AO. We therefore, direct the Ld. CIT(A) that apart from the legal issue relating to validity of issuance of notice u/s 148 of the Act as well as against proceedings, would also adjudicate the issues raised on merits after giving due opportunity to both the parties. Accordingly, all the issues relating to legality of the reassessment proceedings as well as issues raised on merits are set aside for de novo adjudication to Ld. CIT(A). We allow the Revenue's appeal for statistical purposes.

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

Order was pronounced in the open court on 26 .07.2018.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Indore; दिनांक Dated : 26/ 07/2018

Patel, P.S./नि.स.

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order
Private Secretary/DDO, Indore