

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

**BEFORE SH. K. N. CHARY, JUDICIAL MEMBER
AND
DR. MITHA LAL MEENA, ACCOUNTANT MEMBER**

ITA No.1221/DEL/2018
Assessment Year: 2008-09

Prabhu Finsec Pvt. Ltd.403, 405 M G House, Community Centre, Wazirpur Industrial Area, New Delhi-110052 PAN AAACP5228J	Vs	ITO Ward – 20 (1) New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Shri Suresh Kumar Gupta, CA
Respondent by	Sh. S.L. Anuragi, Sr. DR

Date of hearing:	26/12/2018
Date of Pronouncement:	28 /12/2018

ORDER

Per, Dr. M. L. Meena, AM:

This appeal by the assessee is directed against the order dated 15/12/2017 of the Commissioner of Income Tax, Appeals-XXV [In short "CIT(A)"], New Delhi for Assessment Year 2008-09. The assessee has raised following grounds of appeal :-

"1. The Ld. CIT(A) has erred both in law and in facts in upholding the validity of reassessment proceedings and the assessment order ignoring the fact that the Assessing



Officer has not assumed jurisdiction u/s 147 of the Act without complying with the mandatory requirements of the above section.

2. *The Ld. CIT(A) has dismissed the additional ground raised by the appellant during appellate proceedings challenging the validity of the reassessment proceedings on the ground that the competent authority has not applied his mind while recording satisfaction u/s 151 of the IT Act and the assessment order passed consequent to culmination of such reassessment proceedings need be set aside.*

3. *The Ld. CIT(A) has erred both on facts and in law and in the circumstances of the case in confirming addition of Rs.10,00,000/- u/s 68 of IT act on account of share application money accepted by it having held the same as unexplained cash credits within the meaning of above deeming provisions.*

4. *The Ld. CIT(A) has erred both on facts and in law and in the circumstances of the case in confirming addition of Rs.18,000/- u/s 69 of IT Act on account of commission paid on the cash credit in ground no.3 as such addition are based on mere conjectures and surmises and there is no material before the Assessing Officer on which this addition can be supported.*

5. *The appellant craves leave to add, delete, modify / amend the above grounds of appeal with the permission of the Hon'ble appellate authority. "*

2. Apropos, ground no. 2, the assessee has challenged the validity of the reassessment proceedings on the ground of non application of mind by the competent authority while recording satisfaction u/s 151 of the IT Act. Since, this is a legal issue which goes to the root of the matter and hence, taken up for adjudication on priority.

3. Briefly, the facts of the case are that the assessee is a private limited company, engaged in the business of finance and investment. The Assessing Officer had issued notice u/s 148 dated 11.03.2015 based on the information received from the Direction of Income Tax, (Investigation), stated to be pertaining to



accommodation entries business done by M/s. S. R. Jain group. During the course of reassessment proceedings, the Assessing Officer (The AO) has identified the two companies namely M/s. S. R. Cables and M./s. GSK Infrastructure (formerly named M/s. Nisha Holding P Ltd) to be related to the S.K. Jain Group as dummy entities from whom assessee has received accommodation entries of 5,00,000/- each. Accordingly the Assessing Officer has completed the assessment proceedings with the made addition of Rs. 10 lacs and Rs. 18000 u/s 68 of the IT Act on account of unexplained cash credit and commission income @ 1.8 % as expenditure incurred for the said accommodation entries.

4. Aggrieved assessee, filed appeal before the Ld. CIT(A) taking up the subject legal issue, vide ground No.2 and 3 in the 1st appellate Proceedings. The assessee has challenged the validity of the assessment on the ground of non application of mind before the Id. CIT(A) as under :-

"2. The Assessing Officer has assumed jurisdiction u/s 147 without applying mind on the information passed on by the DI investigation and reopening is based on mere subjective opinion as per information not backed by any material.

3. The reopening of assessment u/s 147 is bad in law as the reason recorded u/s 148 are non specific vague and general and the same does not demonstrate as to how Assessing Officer formed a belief that income chargeable to tax has escaped assessment and therefore consequent assessment need be set aside."

5. While rejecting the assessee appeal, the Ld. CIT(A) dispose of the legal ground summarily as follows :-

g. "The appellant has raised a basic challenged on the raisen detre of this reopening. The approval under section 151 is contrary to the position



of law as devolving from the judgment of the Hon'ble Jurisdictional High Court. It has been contended that the competent authority has not disclosed as to how the case was fit for issue of notice u/s 148. The requirement of section 151 is require competent authority u/s 151 to satisfy itself about sufficient reason for invoking the provisions of reopening as to whether it is a fit case for reassessment. Hon'ble Delhi High Court in Pr. Commissioner of Income Tax-06 Vs. M/s. N. C. Cables Ltd. ITA No. 335/2015 vide order dated 11.01.2017 given relief to the appellant on the same issue. The same is not a ratio decidendi as it is based on case specific facts. The supervisory officer has recorded clear and conspicuous satisfaction in this case, hence the ruling does not help the appellant."

6. The Id. Counsel for the assessee has reiterated the submissions made before the CIT(A) and filed brief synopsis in of support the legal issue alongwith a paper book, APB 1- 125. The Ld. AR has filed a copy of notice dated 11.03.2015 issued u/s 148 of the IT Act (APB page 250), copy of reasons recorded for reopening of the case (APB 26 to 27), copy of letter dated 27.1.2016 raising objections to assumption of jurisdiction by the Assessing Officer (APB page 28 to 29), copy of letter dated 26.08.2016 disposing of the objection of the appellant (APB 30 to 35), a copy of show cause notice dated 07.03.2016 issued by the Assessing Officer with annexures A and B (APB 36 to 60), copy of documents submitted before the Assessing Officer in support of share application money of Rs. 5 lacs each from S. R. Cables Private Limited and M./s. Nisha Holding Private Limited, the confirmation certificate of incorporation company data, list of two directors down



from MC Portal copy of share application entry dissolution of board of directors, bank statement of relevant period, copy of ITR assessment 2008-09, copy of audited report assessment years 2008-09(APB 61 to 93), copy of confirmations by the share applicant companies (APB 94 to 113), copy of letter dated 12.02.2016 to Assessing Officer submitting the documents regarding the share application accepted, copy of letter dated 14.03.2016 to the Assessing Officer requested the statement of persons concern, copy of return allotment dated 31.03.2008 (APB 116 to 120) and copy of summons dated 14.03.2016 acknowledge dated 16.03.2016 filed with the Assessing Officer (ABP 121 to 125).

7. The Id. AR brought to our notice, the copy of printed proforma of obtaining approval u/s. 151 of the Act along with reasons recorded, (APB,26-27), that in column 12 Addl. CIT has granted approval without application of mind by writing only 'Yes, I am satisfied' Fit for issue of notice u/s 148 of the IT Act. The Id. AR relying on the decision of Hon'ble Madhya Pradesh High Court in the case of CIT vs. M/s. S. Goyanka Lime and Chemicals Ltd. 231 Taxman 0073 (MP), where it was held that the Joint Commissioner recorded satisfaction in mechanical manner and without application of mind to accord sanction for issuing notice u/s. 148 of the Act and has only recorded so "Yes, I am satisfied" then, the reopening assessment has to be held as invalid. In support, the Ld. AR placed reliance on the following judgments of Jurisdictional High Court.

- 1) Pr. CIT vs. Meenakshi Overseas(P) Ltd 395 ITR 677 (Del)
- 2) Pr. CIT vs. G & G Pharma India Ltd 384 ITR 147 (Del)
- 3) Pr. CIT vs. RMG Polyvinyl (I) (2017) Ltd 396 ITR 5 (Del)



8. The Id. AR drew our attention towards reasons recorded and submitted that there is no nexus established or to substantiate the reasons recorded which shows a casual approach of the AO while recording the reasons. The Id. AR submitted that as per decision of Hon'ble Jurisdictional High Court of Delhi in the case of PCIT vs. Meenakshi Overseas P. Ltd. 395 ITR 677 (Del) if the reasons failed to demonstrate the link between the tangible material and formation of the reasons to believe that the income has escaped assessment then, it would amount to borrowed satisfaction and it has to be presumed that there is no independent application of mind by the AO to the tangible material which forms the basis of the reason to believe that income has escaped assessment.

9. The Id. AR vehemently contended that in the reasons recorded, the AO, made a short note without applying mind to the information received from the Investigation Wing, and recorded that he has reason to believe that an income of Rs. 10,00,000/- has escaped assessment which clearly shows that the AO proceeded to initiate assessment proceedings and reopening of assessment without having any valid satisfaction on the basis of borrowed satisfaction as there was no independent application of mind to the tangible material received from Investigation Wing, which could form the basis for reason to believe that income has escaped assessment.

10. Again, placing reliance on the decision of Hon'ble High Court of Delhi in the case of PCIT vs. G&G Pharma India Ltd. (Supra), the Id. AR submitted that reopening of assessment by an AO based on the information received from the Director of Investigation without making any effort to discuss the materials on the



basis on which he formed a prima facie opinion that income had escaped assessment. The Court held that the basic requirement of s. 147 of the Act that AO should apply independent mind in order to form reasons to believe that income had escaped assessment had not been fulfilled.

11. Further, the Id. Counsel for the assessee submitted that as per ratio of the decision of Hon'ble High Court of Delhi in the case of PCIT vs. RMG Polyvinyl (I) Ltd. reported in 396 ITR 5 (Del), it was held that where information was received from investigation wing that assessee was beneficiary of accommodation entries but no further inquiry was undertaken by AO, said information could not be said to be tangible material as per se and, thus, reassessment on said basis was not justified. Finally, the Id. AR submitted that the impugned initiation of reassessment proceedings, notice and all consequent proceedings and orders are not valid and bad in law therefore, the same may kindly be quashed.

12. Per contra, the Id. DR submitted that the copy of proforma for obtaining approval u/s. 151 of the Act and reasons recorded by the AO are the internal departmental communication between the PCIT and ACIT and the Addl. CIT being administrative head of the Range and senior to the ACIT has power to peruse the approval u/s. 151 of the Act and his signs thereon does not make the same as mechanical and without application of mind and the same cannot be termed or alleged as invalid or bad in law. The Id. DR submitted that in column 12 of approval, the AO has been granted valid approval by noting that "Yes, I am satisfied", fit for issue of notice u/s 148 of IT Act., which is sufficient to comply with the provisions of s. 151 of the Act.



13. The Id. AR submitted that facts on record clearly show that the AO has acted on suspicion only and not on any credible input available to him through DDIT (investigation) information or otherwise on the basis of any exercise or application of mind by himself. Therefore, the reassessment proceedings and all consequent orders are not sustainable and bad in law. Reiterating his earlier arguments, the Id. AR vehemently pointed out that the approval/sanction given in para 12 of the proforma is not a valid sanction as per ratio of the various decisions including decision of Hon'ble High Court of Madhya Pradesh in the case of S. Goyanka Lime and chemicals Ltd. (supra), which has been upheld by Hon'ble Supreme Court by dismissing SLP of the Revenue reported in 237 Taxman 378 (SC) and therefore, initiation of reassessment proceedings u/s. 147 of the Act, notice u/s. 148 of the Act, reassessment proceedings and all consequent orders may kindly be quashed. The decisions relied by the Ld. Sr. DR are distinguished on peculiar facts as those are on prima face belief.

14. Heard. After careful consideration of above rival submissions, we may point out that from the proforma of approval u/s. 151 of the Act placed at pgs. 26-27 of the assessee paper book, it is clear that the ACIT was granted approval for the issue of notice u/s. 148 of the Act, in column 12 by writing that "Yes, I am satisfied", fit for issue of notice u/s 148 of IT Act which is not sufficient to comply with the requirement of s. 151 of the Act.

15. It is evident that such approval or satisfaction recorded in the standard printed format is too mechanical and without any application of mind. In the case of "CIT Vs. M/s. S. Goyanka Lime and Chemicals Ltd. (supra)" it was held that Joint



Commissioner of Income Tax recorded satisfaction in mechanical manner and without application of mind to accord sanction for issuing notice u/s 148 of the Act, reopening of assessment was invalid.

16. In the reasons recorded, the Assessing Officer has reproduced the information received from investigation wing without conducting any enquiries on such information received that shows non application of mind as evident from the facts stated by the Assessing Officer in the last para the information received from the investigation wing is considered with reference to the return of income available on record, having satisfaction with the application / information received in the case of the assessee, I have reason to believe that income has escaped assessment. However, he has not mentioned the factum of quantum income of Rs.10 lacs of share application money and the name of the suspicious accommodation entry providers for A. Y. 2008-09 to establish/substantiate reason to believe and the escaped assessment within meaning of the provision of section 147 of the IT Act 1961.

17. The above information in the reasons recorded clearly shows that the Assessing Officer has simply relied on the information received from the investigation wing without verifying the same with reference to the facts of the case; that the Assessing Officer has not even mentioned the name of the entity from whom so called entry of share application money was accepted by the assessee, instrument number, bank account and date on which the entry was made which are essential information to support the application of mind by the Assessing Officer. The judgment of Hon'ble Delhi High Court vicisiate by the Assessing Officer and



Hon'ble Supreme Court relied upon by the Ld. DR (supra). While rejecting the objection on the ground the information received contain minisure detail of the entry should operator and the above named particulars. In the absence of the said essential detail being part of the reason, the reason recorded is ambiguous vague and non communicative thus, the reason does not stand at its footing and not self contain.

18. As per ratio of the decision of High Court of Madhya Pradesh in the case of CIT v. M/s. S. Goyanka Lime and Chemical Ltd. (supra), where the JCIT/ACIT has only recorded "Yes, I am satisfied" then, it has to be held that the approving authority has recorded satisfaction in a mechanical manner and without application of mind to accord sanction for issuing notice u/s. 148 of the Act for reopening of assessment and in this situation initiation of reassessment proceedings and reopening of assessment has to be held as invalid and bad in law. Therefore, we are hold that the reopening of assessment and notice u/s. 148 of the Act are bad in law and consequently all subsequent proceedings in pursuant thereto are also bad in law and the same cannot be held as valid and sustainable.

19. In view of decisions of Hon'ble High Court of Delhi in the cases of PCIT vs. Meenakshi Overseas (supra), PCIT vs. G&G Pharma (I) Ltd. (supra) and decision in the case of PCIT vs. RMG Polyviny (I) Ltd. (supra), where information was received from investigation wing that assessee was beneficiary of accommodation entries but no further inquiry was undertaken by AO, said information could not be said to be tangible material per se and, thus, reassessment on said basis was not justified. In the case of Meenakshi Overseas (supra), their lordship speaking for the Hon'ble



Jurisdictional High Court held that where the reasons recorded by the AO failed to demonstrate the link between the tangible material and the formation of the reasons to believe that income has escaped assessment then, indeed it is a borrowed satisfaction and the conclusion of the AO based on reproduction of conclusion drawn in the investigation report cannot be held as valid reason to believe without application of mind. In this judgment their lordship also held that where nothing from the report of investigation wing is set out to enable the reader to appreciate how the conclusions flow there from then there is no independent application of mind by the AO to the tangible material which form the very basis of the reasons to believe that income has escaped assessment.

20. In the instant case, as we have noted above, the note of satisfaction recorded by the AO in para 10 of the reasons is based on the information received from the director of investigation wing and the AO without making any effort to examine and discuss the material received from the Investigation Wing with the support of tangible material gathered by way of conducting inquiry shall be held as without application of the mind since, he has used the same to form reason to believe that income had escaped assessment. This also shows that the AO proceeded to initiate reassessment proceedings on the basis of borrowed satisfaction without any application of mind and exercise on the information received from the Investigation Wing of the Department. Therefore, we have no hesitation to hold that the AO proceeded to initiate reassessment proceedings u/s. 147 of the Act and to issue notice u/s. 148 of the Act on the basis of borrowed satisfaction and without any application of mind and examination of the so called material and



information received from the investigation wing to establish any nexus, even prima facie, with the such information. Therefore, in our considered opinion the initiation of reassessment proceedings u/s. 147 of the Act, notice u/s. 148 of the Act, reassessment proceedings and all consequent proceeding and orders, including impugned reassessment and first appellate order, are bad in law and thus, not sustainable and we hold so.

21. In the above view, as such, the impugned proceedings, notice u/s. 148 of the Act and all consequent orders are quashed.

22. Since, we have quashed initiation of reassessment proceedings u/s. 147 of the Act, notice u/s. 148 of the Act, reassessment proceedings and impugned reassessment & first appellate order therefore, other grounds of the assessee on merits become academic and infructuous.

(Order Pronounced in the Open Court on ..28 /12/2018).


(K. NARSIMHA CHARY)
JUDICIAL MEMBER


(Dr. Mitha Lal Meena)
ACCOUNTANT MEMBER

Dated: 28 /12/2018

Neha/Doc

Copy forwarded to:

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

ASSISTANT REGISTRAR

Date of dictation	27.12.2018
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	