

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "SMC" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.5049/Del./2018  
Assessment Year 2008-2009

Print Pack Industries, Kotdwar, Pauri Garhwal, Uttarakhand – 246 149 PAN AAKFP1236D C/o. Chaurasia & Associates, C-2302, ATS Advantage, Indirapuram, Ghaziabad – 201 014.	vs.	The Income Tax Officer,  Kotwar,  Uttarakhand.
(Appellant)		(Respondent)

For Assessee :	Ms. Rano Jain & Shri Venktesh Chourasia, Advocates.
For Revenue :	Shri S.L. Anuragi, Sr.D.R.

Date of Hearing :	28.02.2019
Date of Pronouncement :	15.03.2019

**ORDER**

This appeal by assessee has been directed against the order of Learned CIT(A), Dehradun, Dated 28th June 2018, for the assessment year 2008-2009, challenging the initiation of reassessment of proceedings under sections 147 148 of the Income Tax Act 1961, addition of Rs.17,84,000/-

under section 68 of the Income Tax Act and addition of Rs.87,115/- on account of bogus credit.

2. Briefly, the facts of the case are that assessee did not file return of income for the assessment year under appeal although, investments amounting to Rs.43,24,678/- were made by the assessee firm during the relevant previous year. The assessing officer, therefore, recorded reasons for reopening of the assessment. The assessing officer issued notice under section 148 of the Income Tax Act on 27th March 2015. The assessee, in response thereto, filed return of income declaring income at Rs.NIL. The assessee produced details which were examined by the assessing officer. The assessing officer noted that during the year, assessee firm is engaged in the process of establishing a manufacturing plant at Kotdwar. The assessee had made investment of Rs.43,24,678/- in assessment year under appeal. The assessee had taken unsecured loans of Rs.19,63,236/- from 13 different persons during the year, out of which, loan amounting to Rs.17,84,000/- was received in cash from 12 different persons who were claimed

to be either the family members or family friends of the assessee. Assessing officer asked to furnish complete address along with copy of account and confirmatory letters from all the creditors as well as to submit copy of the ITRs, copy of bank accounts of the lenders. The assessee filed confirmation of accounts from lenders regarding unsecured loans to the assessee during the year along with copy of PAN and copy of the ITRs for assessment year 2008-2009 of some of the lenders. The assessee further submitted that all the lenders were either relatives/friends or partners of the assessee firm. Some of them did not have any bank accounts at that time and the assessee was in need of funds, hence, due to business exigency assessee had taken loans in cash so as to make payments to the labour. The assessee was directed to provide copy of the bank accounts of the lenders, but, there was no response to the same. The assessing officer further asked the assessee to provide names of relatives/lenders, who did not have any bank account at that time and file copy of the ITRs for preceding two assessment years i.e., 2006-2007 and 2007-2008.

However, no reply was submitted. The assessing officer also noted that assessee had accepted loans in amounts less than Rs.20,000/-. The details of all the lenders are mentioned that page-3 of the assessment order, who are 12 persons. In 04 cases, no ITR copies were filed. The assessing officer noted that these lenders have given loans more than the amount declared by them as income in their ITRs. No documentary evidences were submitted to prove creditworthiness of the lenders and genuineness of the transaction in the matter. The assessing officer, therefore, noted that assessee was already having a firm prior to establishment of the firm at Kotdwar. Therefore, assessee was aware of the relevant Law. No copy of the ITRs for preceding assessment year have been filed and no bank details have been filed. The assessing officer, therefore, treated the same as unexplained credit under section 68 of the Income Tax Act and made the addition of Rs.17,84,000/-.

2.1. The assessing officer further noted that during the year under consideration, assessee claimed total liability

of Rs.6,76,000/- being sundry creditors. However, on confirmation of the accounts from one of the creditors namely M/s. Uttranchal Iron & Ispat Ltd., Kotdwar, this creditor confirmed NIL balance against the liability claimed by assessee of Rs.87,115/-. The assessee failed to explain the same. Therefore, it was treated as unexplained bogus liability and addition of Rs.87,115/- was made. The income was computed at Rs.18,71,120/-.

3. The assessee challenged the additions before the Learned CIT(A). The assessee also filed application for admission of the additional ground challenging the reopening of the assessment. The assessee also filed additional evidences before Learned CIT(A), in which it was explained that assessee firm came into existence on 17th July 2007 and assessee firm has started new unit for manufacturing of Corrugated Boxes at Kotdwar with the motto of Employment generation. The assessee being a new unit, could obtain loan amounting to Rs.18,13,000/- from the Bank. Assessee purchased land for Factory at Kotdwar by paying an amount of Rs.7,78,205/-. During the

assessment year under appeal, construction of factory premises was going on and in case of need of funds to meet the expenses, loans from the relatives and friends have been taken. Family members started help and they being from rural background, therefore, they were not having bank accounts and they keep the cash at house. No business activity was conducted during assessment year under appeal, therefore, no income was earned. Since, the assessee was new to the business, therefore, he could not file the documents before assessing officer. The Learned CIT(A) call for the remand report from the assessing officer on additional evidences and additional ground of appeal. The assessing officer more or less repeated the same contents as were recorded in the assessment order. The assessee, in the rejoinder, reiterated the same facts and also submitted that assessee furnished copy of the PAN card, Election Card, Aadhar Card, Computation of income, Confirmation of Account and Confirmation of Ledger and in some cases copy of ITRs of the creditors were also filed. The assessee relied upon several decisions in support of the

contention that assessee proved genuine credit in the matter. The Learned CIT(A), however, noted that the documents and confirmation filed on record, at the most established the identity of the lenders and in some cases copy of the ITRs is filed, but, these documents would not prove the creditworthiness of the creditors. The addition on merit was, therefore, confirmed. Reopening was also held justified. Therefore, appeal of assessee was dismissed.

4. I have heard the Learned Representatives of both the parties and perused the material available on record. Learned Counsel for the Assessee as regards the reopening of assessment argued that the Joint Commissioner of Income Tax (“JCIT”) while giving satisfaction/approval to the reopening of the assessment has merely mentioned “Yes”. *I am satisfied that it is a fit case for issue of notice under section 148.*” Learned Counsel for the Assessee relied upon order of the ITAT, Delhi Bench, in the case of Sunil Agarwal vs., ITO, Ward-1(3)(3), Haridwar 2018(7)-TMI-231, in which the Tribunal held as under :

“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 I.T. 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 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 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 nonest 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.*

7. *In the result, the Appeal filed by the Assessee stands allowed."*

4.1. Similar Order of ITAT in the case of Shri Krishan Gopal 2017-(5)-TMI-836-Delhi was relied upon.

5. On the other hand, the Learned D.R. submitted that there is no Law as to how satisfaction have to be recorded by the JCIT. It is a Proforma provided by the Department which is correctly taken care by the JCIT.

6. After considering the rival submission, I am of the view that the issue is covered in favour of the assessee by the order of ITAT Delhi Bench in the case of Sunil Agarwal (supra). Facts of this case are similar to the case of the assessee. Therefore, following the same decision, I hold that initiation of reassessment proceedings under section 147 of the Income Tax Act, 1961, by the assessing officer and uphold by the Learned CIT(A) is non-est in Law and without jurisdiction. I, therefore, set aside the Orders of the authorities below and quash the reopening of the assessment. The appeal of assessee on this ground is allowed.

7. Learned Counsel for the Assessee further submitted that addition of Rs.17,84,000/- is unjustified and reiterated the submission made before the authorities below. She has referred to the documents filed before the authorities below in this regard.

8. On the other hand, Learned D.R. relied upon orders of the authorities below.

9. I have considered the rival submissions. It is not in dispute that assessee firm came into existence on 17th July 2007, the day when Partnership Deed [PB-29] was executed between the Partners, who have formed the Partnership-Firm in the name of Print Pack Industries [Assessee]. It is also not in dispute that assessee filed return of income at Rs.NIL and the assessing officer also assessed the NIL business income. The assessing officer in the assessment order noted that during the assessment year under appeal, assessee was engaged in process of establishing a manufacturing plant at Kotdwar. The balance sheet and other documents filed on record also suggest that no business activity was carried on by the assessee during assessment year under appeal. The assessee also pleaded before Learned CIT(A) that during the assessment year under appeal, assessee obtained loan from his Bank and purchased the land for setting-up of manufacturing unit and as such no business activity was carried-out and no income have been earned. The assessee further explained that since payment was to be made to the labour and others

for setting-up of the plant at Kotdwar, assessee-firm obtained loans from the relatives and the family friends. The assessee produced the documents and confirmations before the authorities below, which, according to the Learned CIT(A), has established the identity of the lenders. The lenders have also filed confirmations as well as filed some of the ITRs, which suggest that their income was less than the amount given as loan to the assessee. According to the authorities below, the assessee failed to prove the creditworthiness of the creditors. These facts clearly show that assessee-firm was constituted in the financial year relevant to the assessment year under appeal and assessee was in the process of establishing manufacturing plant at Kotdwar. The assessee did not have any business activity in the assessment year under appeal and no business income have been earned. It is, therefore, unbelievable that without setting-up a plant in previous year relevant to assessment year under appeal, the assessee would earn undisclosed income in the same year of establishment of manufacturing plant ? A manufacturing firm would take some time to earn

profit after setting-up its plant. Though the assessee may not be able to prove the creditworthiness of the creditors, but, the creditors have confirmed giving loans to the assessee for setting-up of the manufacturing unit. Hence, it could be reasonably assumed that cash credit entries represented the capital receipts. though, the assessee is not able to establish the creditworthiness of the creditors. I am fortified in my view by the Judgment of the Hon'ble Supreme Court in the case of CIT vs., Bharti Engineering & Construction Company [1972] 83 ITR 87 (SC) in which it was held as under :

*“The assessee, an engineering-construction company, commenced its business in May, 1943. In its accounts there were several cash credit entries in the first year of its business totalling Rs.2,50,000. Though the explanation regarding the cash credit entries was found to be false, the Appellate Tribunal held that these cash credits could not represent the income or profits of the assessee as they were all made very soon after*

*the company commenced its activities :*

*Held, that the inference drawn from the facts proved was a question of fact and the Tribunal's finding on that question was final. A construction company took time to earn profits and it could not have earned a huge profit within a few days after the commencement of its business. Hence, it was reasonable to assume that the cash credit entries represented capital receipts though for one reason or another the assessee had not come out with the true story as regards the source of the receipts.*

*Decision of the Allahabad High Court affirmed.”*

9.1. Considering the totality of the facts and circumstances of the case, I set aside the Orders of the authorities below and delete the addition of Rs.17,84,000/-. This ground of appeal of assessee is allowed.

10. As regards addition of Rs.87,115/- on account of bogus creditor, Learned Counsel for the Assessee did not argue the same and no infirmity have been pointed-out in

the orders of the authorities below. Since it was found specifically that the creditor has denied the liability to the above amount, therefore, addition was correctly made against the assessee. Further, in the absence of any arguments from the side of the assessee, no interference is called for in the matter. This ground of appeal of assessee is dismissed.

11. In the result, appeal of Assessee partly allowed

Order pronounced in the open Court.

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Delhi, Dated 15<sup>th</sup> March, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :  
Delhi.