

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH: 'B', NEW DELHI)**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No:-819/Del/2016  
(Assessment Year: 2006-07)**

Income Tax Officer Ward – 44 (4), Room No.2610, 26th Floor, E-2, Civic Centre, Minto Road, New Delhi -110002	Vs.	Jadgish Kumar Yadav 368, Near SBI, Kapashera New Delhi PAN NO. AAOPY7980R
<b>APPELLANT</b>		<b>RESPONDENT</b>

**Appellant by** : Ms. Ashima Neb, Sr. DR  
**Respondent by** : Sh. Rohit Tiwari, Advocate

**Date of Hearing** : 29.05.2019  
**Date of Pronouncement** : 30.05.2019

**ORDER**

**PER: N. K. BILLAIYA, AM**

With this appeal the revenue has challenged the correctness of the order of the CIT(A)-15, New Delhi dated 29.12.2015 pertaining to A.Y 2006-07.

2. The grievance of the revenue read as under :-

1. *Whether on facts and circumstances of the case, the CIT(A) was right in law and on annulling the assessment order despite the fact that the Addl.CIT, Range-1, Gurgaon had given*

*approval to the AO after being certified for initiation of reassessment proceedings in the case of the assessee, vide letter dated 28/03/2013?*

2. *Whether on facts and circumstances of the case, the CIT(A) was right in law and on facts in admitting the additional evidences in the form of certificate dated 16.06.2015 from Tehsildar, Gurgaon and another from Executive Engineer, PWD, without giving an opportunity to the AO to examine these additional evidences and thereby ignoring the cardinal principle of "Audi Alteram Partem".*

3. *Whether on facts and circumstances of the case, the CIT(A) was right in law and on facts in deleting the addition of Rs. 3,50,80,035/- made by the Assessing Officer to the income of the assessee, on account of business income?*

4. *Whether on facts and circumstances of the case, the CIT(A) was right in law and on facts in deleting the addition of Rs. 45,00,000/- made by the AO to the income of the assessee, on account of unexplained credits in the form of advance for sale of agricultural land, under section 68 of the Income Tax Act, 1961?*

5. *The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.*

3. Grievance raised vide ground No.1 goes to the root of the matter as the assessment order has been annulled by the CIT(A).

4. Representatives of both the sides were heard at length. Case record carefully perused and the relevant documentary evidences brought in the form of the paper book have been considered in the light of rule 18(6) of the ITAT Rules.

5. The reasons for reopening the assessment read as under :-

*"From the information received from Deputy Commissioner of Income Tax, Central Circle-II, Faridabad a search and seizure operation was conducted in the Omax Autos Ltd Group of cases on fee course of search proceedings, documents related to sale of piece of land situated at Sadharna by the assessee to Omax Autos Limited were found. Perusal of documents has revealed that the assessee has received Rs. 4,26,37,200/- (including Rs. 1,50,00,000/- in cash) from M/s Omax Autos Ltd. Group - lieu of sale of said land.*

*A perusal of record of this office has revealed that the assessee has not filed its return of income for the relevant period*

*Thus, income of Rs. 4,26,37,200/- chargeable to tax as capital gains has escaped assessment by on the part of the assessee to disclose fully and truly all material facts necessary on the basis of the abovementioned grounds, I have reasons to believe that the income of escaped assessment to the extent of Rs, 4,26,37,200/- for the AY 2006-07 within the meaning of section 147 of the Income Tax Act."*

6. The approval given by the additional CIT(A), Range-1, Gurgaon read as under :-

**Government of India INCOME TAX DEPARTMENT Office of the Addl. Commissioner of Income-Tax, Range-1, Gurgaon HSIIDC Building, Udyog Vihar, Phase-V, Gurgaon.**

dl. CIT/Range-I/148/GGN/2012-13/10679

Dated: 28.03.2013

To,

The Assistant Commissioner of Income Tax, Circle- I(I), Gurgaon.

**Subject:- Approval for issue of Notice u/s 148 of the I.T Act, 1961 - regarding.**

Please refer to your office letter No 10624 dated 28.03.2013 on the above mentioned s

Approval is hereby accorded for issuance of notice u/s 148 of the Income Tax Act, 1961 in the following cases:

- (a) **Sh. Dharamvir, S/o Sh. Ram Chander, R/o H. No 1383/31, Laxman Vihar, Phase - I, Gurgaon (A.Y 2006-07)**
- (b) **Sh. Jagdish, S/o SH. Baluran^ 135/18, Laxmi Garden, Gurgaon (A.Y 2006-07)**

You are further directed to ensure the timely service of Notice u/s 148 upon the assessee. If any limitation is involved in it. Assessment record of the assessee sent by you in one volume is enclosed herewith.

**(MAMTA BANSAL)**

Addl. Commissioner of Income Tax,  
Range-1, Gurgaon

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7. Notice u/s. 148 of the Act dated 28.03.2016 is as under :-

"Office of the ASSTT. COMMISSIONER OF Income Tax Officer,CIRCLE-1(1), Gurgaon  
(5<sup>th</sup> Floor, HSIIDC Building Vanijaya Nikunj, Udyog Vihar, Phase-V, Gurgaon

F NO.ACIT/CIRCLE-1(1)/GGN/2012-13/ 10724

Dated: 28.03.2013

**Notice Under Section 148 of the Income Tax Act, 1981**

To

Sh. Jagdish S/o Sh, Baluram,  
H. No. 135/18, Laxmi Garden,  
Gurgaon

Sir/Madam,

Whereas i have reason to believe that your income/the income of in respect of which you are assessable/ chargeable to tax for the assesement year 2006-07 has escaped assessment within the meaning of section 147 of the Income Tax Act, 1961.

I, therefore, propose to assess/ re-assess the income/ re-compute loss/depreciation allowance for the said assessment year and I hereby require you to deliver to me on or before 26-04-2013 at 11.20 A.M. at my office, a return in the respect of which you are assessable for the said assessment year.

This notice has been issued after obtaining the prior approval of the Worthy Addl. Commissioner of Income Tax, Range-I, Gurgaon accorded vide her office letter F.No. Add.CIT/GGN/148/GGn/12-13/10679 dated 28.03.2013

Yours faithfully,

(Dinesh Antil)

Asstt. Commissioner of Income Tax

Circle -1 (1), Gurgaon"

8. In our considered view the so called approval brought on record cannot be considered as an approval within the frame work of provisions of section 151 of the Act.

9. Section 151 read as under :-

*(1) In a case where an assessment under sub-section (3) of section 143 or section 147 has been made for the relevant assessment year, no notice shall be issued under section 148 [by an Assessing Officer, who is below the rank of Assistant Commissioner [or Deputy Commissioner], 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] :*

*Provided that, after the expiry of four years from the end of the relevant assessment year, no such notice shall be issued unless the Chief Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer aforesaid, that it is a fit case for the issue of such notice.*

*(2) In a case other than a case falling under sub-section (1), no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of [Joint] 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.]*

*[Explanation.—For the removal of doubts, it is hereby declared that the Joint Commissioner, the Commissioner or the Chief Commissioner, as the case may be, being satisfied on the reasons recorded by the Assessing Officer about fitness of a case for the issue of notice under section 148, need not issue such notice himself.]”*

10. A simple reading of the provisions of Sec. 151 (1) with the proviso clearly show that no such notice shall be issued unless the Commissioner is satisfied on the reasons recorded by the AO that it is a fit case for the issue of notice which means that the satisfaction of the Commissioner is

paramount for which the least that is expected from the Commissioner is application of mind and due diligence before according sanction to the reasons recorded by the AO. In the present case, the approval which is placed on record show that the Addl. Commissioner has simply "approved" by way of a letter which also includes approval for one more assessee. Nowhere the Addl. CIT has recorded his satisfaction.

11. In the light of the above mentioned reasons, in our considerate view, Section 147 and 148 are charter to the Revenue to reopen earlier assessments and are, therefore protected by safeguards against unnecessary harassment of the assessee. They are sword for the Revenue and shield for the assessee. Section 151 guards that the sword of Sec. 147 may not be used unless a superior officer is satisfied that the AO has good and adequate reasons to invoke the provisions of Sec. 147. The superior authority has to examine the reasons, material or grounds and to judge whether they are sufficient and adequate to the formation of the necessary belief on the part of the assessing officer. If, after applying his mind and also recording his reasons, howsoever briefly, the Addl. Commissioner is of the opinion that the AO's belief is well reasoned and bonafide, he is to accord his sanction to the issue of notice u/s. 148 of the Act. In the instant case, we find from the perusal of the approval which is on record, the Addl. Commissioner has simply accorded approval and signed the letter thereby giving sanction to the AO. Nowhere the Addl. Commissioner has recorded a satisfaction note not even in brief. Therefore, it cannot be said that the Commissioner has accorded sanction after applying his mind and after recording his satisfaction.

12. Hon'ble Delhi High Court in the case of United Electrical Co. Pvt. Ltd. Vs CIT 258 ITR 317 has held that "the proviso to sub-section (1) of section 151 of the Act provides that after the expiry of four years from the end of the relevant assessment year, notice under section 148 shall not be issued unless the Chief Commissioner or the Commissioner, as the case may be, is satisfied, on the reasons recorded by the Assessing Officer concerned, that it is a fit case for the issue of such notice. These are some in-built safeguards to prevent arbitrary exercise of power by an Assessing Officer to fiddle with the completed assessment". The Hon'ble High Court further observed that "what disturbs us more is that even the Additional Commissioner has accorded his approval for action under section 147 mechanically. We feel that if the Additional Commissioner had cared to go through the statement of the said parties, perhaps he would not have granted his approval, which was mandatory in terms of the proviso to sub-section (1) of section 151 of the Act as the action under section 147 was being initiated after the expiry of four years from the end of the relevant assessment year. The power vested in the Addl. Commissioner to grant or not to grant approval is coupled with a duty. The Commissioner is required to apply his mind to the proposal put up to him for approval in the light of the material relied upon by the Assessing Officer. The said power cannot be exercised casually and in a routine manner. We are constrained to observe that in the present case there has been no application of mind by the Additional Commissioner before granting the approval".

13. The observations of the Hon'ble High Court are very much relevant in the instant case as in the present case also the Addl. Commissioner has simply mentioned "approved" to the report submitted by the concerned

AO. In the light of the ratios/observations of the Hon'ble High Court mentioned hereinabove, we have no hesitation to hold that the reopening proceedings vis-a-vis provisions of Sec. 151 are bad in law and the assessment has to be declared as void ab initio and rightly done so by CIT(A). No interference is called for.

13. As we have held that the reassessment is bad in law, we do not find it necessary to decide other issues which are on merits of the case.

14. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 30.05.2019.

Sd/-

**(SUDHANSHU SRIVASTAVA)**  
**JUDICIAL MEMBER**

Dated: 30.05.2019  
Neha

Sd/-

**(N.K.BILLAIYA)**  
**ACCOUNTANT MEMBER**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	
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	