

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : SMC : NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

I.T.A. No. 2978/Del/2019

Assessment Year: 2010-11

UMESH KUMAR TYAGI,  
C/O KAPIL GOEL, ADV.  
F-26/124, SECTOR-7,  
ROHINI,  
DELHI – 110 085  
(PAN: AFGPT9580F)  
**(ASSESSEE)**

vs. ITO, WARD-2(1),  
GHAZIABAD

**(RESPONDENT)**

Assessee by : Shri Kapil Goel, Advocate  
Revenue by : Shri Pradeep Singh Gautam, Sr. DR.

**ORDER**

The Assessee has filed this appeal against the impugned order dated 31.01.2019 passed by the Ld. CIT(A), Ghaziabad on the following grounds:-

*"1. That on facts and circumstances of the case and in law, action of AO in reopening of the case which is made in violation of mandatory jurisdictional conditions stipulated under the Act is bad in law and consequently all subsequent proceedings including orders passed by the AO and CIT(A) are also bad in law.*

*1.1 That on facts and circumstances of the case and in law, as evident from assessment order contents as nowhere Ld AO communicated reasons to believe with approval if any in prescribed format to assessee prior to assessment being completed which non supply makes all subsequent proceedings including orders passed by Ld AO and Ld CIT-A are also bad in law*

*1.2 That on facts and circumstances of the case and in law, reopening based on property sale information as known from assessment order cannot give rise to valid reasons to believe for income escaping assessment so entire foundation is invalid and all proceedings are bad in law,'*

1.3 That on facts and circumstances of the case and in law, there is no coherence in reopening ground stated in assessment order and assessment of capital gains made finally which makes entire foundation is invalid and all proceedings are bad in law;

1.4 That on facts and circumstances of the case and in law, since no valid notice u/s 143(2) is issued during assessment proceedings as evident from assessment order entire assessment made u/s 143(3)/147 falters and so all proceedings are bad in law;

1.5 That on facts and circumstances of the case and in law, notice issued u/s 148 dated 30.03.2017 is void ab initio and is without valid jurisdiction and authority of law and it makes all subsequent proceedings including orders passed by Id A 0 and are also bad in law,

2. That on facts and 'circumstances of the case and in law, Id CIT-A erred in confirming the addition of Rs 48,14,839 as long term capital gains without appreciating that assessee has no where sold the property in question and has simply received his share in amount to be obtained by his father which is amount received by way of inheritance/will and in contemplation or death of father (father) as exempted u/s 56 from taxation and so capital gains assessed on assessee treating assessee as a co-seller by Id A OICIT-A is based on hypothetical assumption and is perverse finding and therefore also frustrates the reopening made on non existing and factually incorrect reasons.

3. That on facts and circumstances of the case and in law, Id CIT-A erred in confirming the addition of Rs 48,14,839 as long term capital gains without appreciating that none of the contention is appreciated in objective manner by Id AO/Ld CIT-A and entire addition is made against the basic principles of law."

2. At the time of hearing, Ld. Counsel for the assessee only argued the legal ground no. 1.5 which is reproduced again hereunder:-

1.5 That on facts and circumstances of the case and in law, notice issued u/s. 148 dated 30.3.2017 is void ab initio and is without valid jurisdiction and authority of law and it makes all subsequent proceedings including

*orders passed by AO and Ld. CIT(A) are also bad in law."*

2.1 In this regard, he drew my attention towards Column No. 12 mentioned in the copy of reasons recorded by the AO and approval granted by the JCIT, wherein, the AO has erred in assumption of jurisdiction u/s. 147/148 of the Act on the basis of invalid and mechanical approval as evident from cursory look to reasons format as mere endorsement in column no. 12 was made as "Yes, I am satisfied that it is a fit case for issue of Notice u/s. 148", which shows that Ld. JCIT has not recorded proper satisfaction after due application of mind and gave the approval in a mechanical manner. He further stated that this legal ground is squarely covered by the decision of the ITAT, SMC, Bench, New Delhi dated 26.9.2019 in the case of Krishna Print Pack, Meerut vs. ITO, Ward 1(3), Meerut decided in ITA No. 5135/Del/2018 relevant to assessment year 2009-10 and therefore, he requested that the same ratio may be followed in the present case and appeal of the assessee may be allowed accordingly by quashing the reassessment proceedings.

3. On the contrary, Ld. DR relied upon the order of the Ld. CIT(A) and also relied upon the following case laws and requested that the same may kindly be considered with regard to reopening of cases u/s. 147 of the I.T. Act.

*1. Raymond Woollen Mills Ltd. v. ITO And Others [236 ITR 341 (Copy Enclosed) where Hon'ble Supreme Court held that in determining whether commencement of reassessment proceedings was valid it has only to be seen whether there was prima facie some material on the basis of which the department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage.*

*2. Yuvraj v. Union of India Bombay High Court [20091 315 ITR 84 (Bombay)/r20091 225 CTR 283 (Bombay) Points not decided while passing assessment order under section 143(3) not a case of change of opinion. Assessment reopened validly.*

*3. Devi Electronics Pvt Ltd Vs ITO Bombay High Court 2017-TIQL-92-HC-MUM- II*

*The likelihood of a different view when materials exist of forming a reasonable belief of escaped income, will not debar the AO from exercising his jurisdiction to assess the assessee on reopening notice..*

4. *Acorus Unitech Wireless (P.) Ltd. Vs ACIT Delhi High Court T20141 43 taxmann.com 62 (Delhi)/r20141 223 Taxman 181 (Delhi)(MAG)/r20141 362 ITR 417 (Delhi)*

*In terms of section 148, law only requires that information or material on which Assessing Officer records his or her satisfaction has to be communicated to assessee, without mandating disclosure of any specific document.*

5. *PCIT, Vs Paramount Communication (P.) Ltd. Delhi High Court [20171 79 taxmann.com 409 (Delhi)/r20171 392 ITR 444 (Delhi)*

*Information regarding bogus purchase by assessee received by DRI from CCE which was passed on to revenue authorities was 'tangible material outside record' to initiate valid reassessment proceedings.*

6. *Paramount Communication (P.) Ltd. Vs PCIT Supreme Court 2017-TIQL-253- SC-IT*

*SLP of assessee dismissed. Information regarding bogus purchase by assessee received by DRI from CCE which was passed on to revenue authorities was 'tangible material outside record' to initiate valid reassessment proceedings.*

7. *Amit Polyprints (P.) Ltd. Vs PCIT Gujarat High Court T20181 94 taxmann.com 393 (Gujarat)*

*Where reassessment proceedings were initiated on basis of information received from Investigation wing that assessee had received certain amount from shell companies working as an accommodation entry provider, reassessment could not be held unjustified.*

8. *Aaspas Multimedia Ltd. Vs PCIT Gujarat High Court T20171 83 taxmann.com 82 (Gujarat)*

*Where reassessment was made on basis of information received from Principal DIT (Investigation) that assessee was beneficiary of accommodation entries by way of share application provided by a third party, same was justified.*

9. *Murlihai Fatandas Sawlani Vs ITO Gujarat High Court 2016-TIQL-370-HC- AHM-IT*

*It is not open to the assessee to object to the reopening by asking the AO to produce the source from*

where the AO has gathered the information for forming a belief that income chargeable to tax has escaped assessment.

10. *Ankit Agrochem (P.) Ltd. Vs JCIT Rajasthan High Court [2018] 89 taxmann.com 45 (Rajasthan)*

Where DIT informed that assessee-company had received share application money from several entities which were only engaged in business of providing bogus accommodation entries to beneficiary concerns, reassessment on basis of said information was justified.

11. *Rakesh Gupta Vs CIT P&H High Court f20181 93 taxmann.com 271 (Punjab & Haryana)*

Where Assessing Officer received information from Principle Director of Income Tax (Investigation) that assessee had received bogus loss from his broker by client code modification, reassessment on basis of said information was justified.

12. *Home Finders Housing Ltd. Vs. ITO (2018) 94 taxmann.com 84 (SC). SLP dismissed against High Court's order that non-compliance of direction of Supreme Court in GKN Driveshafts (India) Ltd. Vs. ITO (2002) 125 Taxman 963 that on receipt of objection given by assessee to notice under section 148, Assessing Officer is bound to dispose objections by passing a speaking order, would not make reassessment order void ab initio.*

13. *Baldevbahi Bhikhabhai Patel vs. DCIT (Gujarat High Court) (2018) 94 Taxmann.co, 428(Gujarat)*

Where revenue produced bunch of documents to suggest that entire proposal of reopening of assessment alongwith reasons recorded by the Assessing Officer for same were placed before Additional Commissioner who, upon perusal of same, recorded his satisfaction that it was a fit case for issuance of notice for reopening assessment, reassessment notice issued against assessee was justified.

4. I have heard both the parties and perused the records, the impugned order as well as the case laws relied by both the parties, copy of Form FOR RECORDING THE REASONS FOR INITIATING PROCEEDINGS U/S. 147 AND FOR OBTAINING THE APPROVAL OF THE Addl./Joint Commissioner of Income Tax and especially the Column No. 12 wherein, the Ld. Joint Commissioner of Income Tax while granting approval for issue of notice u/s. 148 of the Act has only mentioned "Yes, I am satisfied that it is a fit case for issue of Notice u/s. 148", which establish that the approving authority has given approval to the reopening of assessment without recording satisfaction and without application of mind, therefore, on this account the reassessment is not sustainable in the eyes of law and needs to be quashed.

4.1 I have also perused the decision referred by the Ld. Counsel for the assessee of the decision of the ITAT, SMC, Bench, New Delhi dated 26.9.2019 in the case of Krishna Print Pack, Meerut vs. ITO, Ward 1(3), Meerut decided in ITA No. 5135/Del/2018 relevant to assessment year 2009-10 wherein, the similar and identical legal issue has been adjudicated and decided in favour of the assessee. For the sake of convenience, the relevant portion of the findings of the Tribunal are reproduced as under:-

*10. I have considered the rival arguments made by both the sides and perused the orders of the authorities below. I have also considered the various decisions cited before me. I find the Assessing Officer reopened the assessment by recording the following reasons:-*

*" Information is received as disseminated in the cases of M/s Uflex Ltd and M/s Montage Enterprises for F.Y. 2007-08 to 2011-12, wherein the above mentioned assessee is reportedly engaged in financial cash purchases amounting to above Rs 11,37,031/- and the transaction is not verifiable and hence, income above Rs 1,00,000/- has escaped assessment. The assessee has not furnished*

disclosed these cash purchases in return of income.

2. I have, therefore, reason to believe that the income of more than Rs 1 lacs chargeable to tax for the A.Y.2009-10 has escaped assessment within the meaning of Section 147 of the Income tax Act 1961.

Issue notice u/s 148 for the A.Y. 2009-10.”

11. I find the Joint Commissioner who has given approval for such reopening has simply mentioned: “Yes, it is a fit case for issue of notice u/s 148 of the Act, 1961.” A perusal of the approval given by the Joint CIT shows that he has not applied his mind properly and has in a mechanical manner written: “Yes, it is a fit case for issue of notice u/s 148 of the Act, 1961.” I find the Hon'ble Delhi High Court in the case of N.C. Cables Ltd. (supra) has held as under:-

" Reassessment-Issuance of Notice-Sanction for issue of Notice-Assessee had in its return for A Y 2001-02 claimed that sum of Rs. 1 Crore was received towards share application amounts and a further sum of Thirty Five Lakhs was credited to it as an advance towards loan-Original assessment was completed u/s 143(3)-However, pursuant to reassessment notice, which was dropped due to technical reasons, and later notice was issued and assessments were taken up afresh-After considering submissions of assessee and documents produced in reassessment proceedings, AO added back a sum of Rs.1,35,00,000-CIT(A) held against assessee on

legality of reassessment notice but allowed assessee's appeal on merits holding that AO did not conduct appropriate enquiry to conclude that share inclusion and advances received were from bogus entities-Tribunal allowed assessee's appeal on merits-Revenue appealed against appellate order on merits-Assessee's cross appeal was on correctness of reopening of assessment- Tribunal upheld assessee's cross-objections and dismissed Revenue's appeal holding that there was no proper application of mind by concerned sanctioning authority u/s Section 151 as a pre-condition for issuing notice u/s 147/148-Held, Section 151 stipulates that CIT (A), who was competent authority to authorize reassessment notice, had to apply his mind and form opinion- Mere appending of expression 'approved' says nothing-It was not as if CIT (A) had to record elaborate reasons for agreeing with noting put up-At same time, satisfaction had to be recorded of given case which could be reflected in briefest possible manner- In present case, exercise appears to have been ritualistic and formal rather than meaningful, which was rationale for safeguard of approval by higher ranking officer-Revenue's appeal dismissed."

12. Respectfully following the above decision, I hold that the reassessment proceedings initiated by the Assessing Officer are not as per law and has to be quashed.

13. *Even otherwise, also I find the reopening was made on the ground that the transaction of the assessee with M/s Uflex Ltd. and M/s Montage Enterprises are not verifiable and, hence, income above Rs.1 lakh has escaped assessment. A perusal of the assessment order shows that no such addition has been made, but, the addition has been made u/s 40A(3) of the IT Act on account of cash payments and no addition on the very basis on which the assessment was reopened has been made. It has been held in various decisions that when the assessment is reopened on a particular issue and no such addition has been made on that very issue, then, the Assessing Officer cannot make other additions which might have come to his notice during the course of completion of such reassessment. He has to issue separate notice. Since, in the instant case, the Assessing Officer has not made any addition for which the case was reopened, therefore, he lacks the jurisdiction to assess such other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of such proceedings. Therefore, on this ground also, the addition made by the Assessing Officer and sustained by the CIT(A) is not justified. I, therefore, set aside the order of the CIT(A) and the grounds raised by the assessee are allowed.*

14. *In the result, the appeal filed by the assessee is allowed.”*

4.2 Since in the present case the approving authority has given approval to the reopening of assessment in a mechanical manner without due application of mind by mentioning only **“Yes, I am satisfied that it is a fit case for issue of Notice u/s. 148”** in Column No. 12 of the Format for Recording the Reasons for Initiating Proceedings u/s. 147 and For obtaining the Approval of the Addl./JCIT Commissioner of Income Tax and therefore, the legal issue in

dispute is squarely covered by the aforesaid finding of the Tribunal, hence, respectfully following the aforesaid precedent i.e. ITAT, SMC, Bench, New Delhi decision dated 26.9.2019 in the case of Krishna Print Pack, Meerut vs. ITO, Ward 1(3), Meerut decided in ITA No. 5135/Del/2018 relevant to assessment year 2009-10, the reassessment is hereby quashed and accordingly the legal ground no. 1.5 is allowed. The judicial decisions relied upon by the Ld. Sr. DR have been duly considered. In my considered view, I do not find any parity in the facts of the decisions relied upon with the peculiar facts of the case in hand. Since the assessee succeeds on this legal ground challenging the validity of reassessment proceedings, the addition on merit is not being adjudicated being academic in nature. The appeal filed by the assessee is accordingly allowed.

5. In the result, the appeal filed by the assessee stands allowed.

Order pronounced on 22/11/2019.

**Sd/-**  
**[H.S. SIDHU]**  
**JUDICIAL MEMBER**

Date 22/11/2019

**"SRB"**

**Copy forwarded to: -**

1. Appellant -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT                      TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches