

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

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 2750/Del/2019
Assessment Year : 2010-11

JAI PAL,
H.NO. 2198, E-BLOCK,
ANSAL SUSHANT CITY,
PANIPAT
HARYANA
(PAN: ASCPS2095M)
(Appellant)

Vs. ITO, WARD-2,
PANIPAT

(Respondent)

Assessee by : Ms. Rano Jain, Adv. & Ms. Mansi Jain, CA
Department by : Sh. Pradeep Singh Gautam, Sr. DR.

ORDER

This appeal filed by the assessee is directed against the order passed by the Ld. CIT(A), Karnal on 23.01.2019 in relation to the assessment year 2010-11 on the following grounds:-

1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad, both in the eye of law and on the facts.
2. On the facts and circumstances of the case, Id. CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the initiation of the proceedings under Section 147, read with Section 148, made by A.O. is bad and liable to be quashed as the condition and procedure prescribed under the statute have not been satisfied and complied with.

3. On the facts and circumstances of the case, Ld CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the proceedings initiated are bad in law and liable to be quashed in the absence of service of statutory notice under section u/s. 148 of the Act.
4. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee, that the reassessment proceedings initiated by the AO are bad in the eye of law as the reasons recorded for the issue of notice under section 148 are bad in the eyes of law and are contrary to the facts.
5. On the facts and circumstances of the case, Ld. CIT(A) has erred both on facts and in law, in rejecting the contention of the assessee, that the order passed by the AO is bad in the eye of law and on facts, as the same is based on the reasons recorded without there being any independent application of mind.
6. On the facts and circumstances of the case, the order passed by learned A.O. is bad both in the eye of law and on facts, as the assessee had already disclosed fully and truly all material facts necessary for the assessment under Section 143(3).
7. On the facts and circumstances of the case, Ld. CIT(A) has erred both on facts and in law, in rejecting the contention of the assessee, that in the absence of any specific allegation against the assessee having not disclosed fully and truly all material facts relevant to assessment; the reasons become bad in law and all consequential proceedings are bad and liable to be quashed.
8. On the facts and circumstances of the case, Id. CIT(A) has erred both on facts and in law, in rejecting the contention of the assessee, that no proper approval as per section 151 having been taken, the proceedings become bad in law and liable to be quashed.
9. On the facts and circumstances of the case, Id. CIT(A) has erred both on facts and in law, in rejecting the contention of the assessee, that the order passed by the A.O. is bad in the eye of law and on facts, ignoring the fact that mere bank deposits do not tantamount to escapement of income.

10. On the facts and circumstances of the case, Id. CIT(A) has erred both on facts and in law, in confirming the addition of Rs. 12,28,862/- made by A.O. on account of bank deposits.
 - (ii) That the above said addition has been confirmed despite the assessee bringing on record all relevant material and evidences to prove the source of deposits in bank.
11. On the facts and circumstances of the case, Ld. CIT(A) has erred both on facts and in law, in confirming the addition despite the assessee bringing all material and evidences to prove the identity and creditworthiness of the donors and genuineness of the transaction.
12. On the facts and circumstances of the case, Ld. CIT(A) has erred both on facts and in law, in confirming the action of the A.a. in making addition on account bank interest.
 - (ii) That the bank interest so earned by the assessee is otherwise exempt from tax.
13. The appellant craves leave to add, amend or alter any of the grounds of appeal.

2. At the time of hearing, Ld. Counsel for the assessee has only argued the ground no. 8 which is in legal nature and drew my attention towards the Paper Book page no. 11 which is a copy of performa of reasons recorded by the AO and approval granted by the Pr. Commissioner of Income Tax, Karnal for issuance of notice u/s. 148 of the Act. She stated that that the AO has erred in assumption of jurisdiction u/s. 147/148 of the Act on the basis of invalid and mechanical approval granted u/s. 151 of the Act by the Pr. Commissioner of Income Tax, Karnal wherein it was mentioned "*Yes, it is a fit case for issue of notice u/s. 148 of the I.T. Act, 1961*", which shows that Ld. Pr. CIT, Karnal has not recorded proper satisfaction and without application of mind gave the approval in a mechanical manner. She further stated that this legal/jurisdictional ground is squarely covered by the decision of the ITAT, SMC, Bench, New Delhi dated 16.10.2019 in the case of Dharmender Kumar vs. ITO, Ward 65(5), New Delhi decided in ITA No. 2728/Del/2018 relevant to assessment year 2008-09 and therefore, she

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. Sr. DR relied upon the orders of the authorities below and stated that the reasons recorded and satisfaction / approval accorded is within the meaning of section 151 of the Act and need not to be quashed. He stated that apart from relying on the order of the Ld. CIT(A), the following cases laws may kindly be considered with regard to reopening of cases u/s. 147 of the I.T. Act:-

1. *Sonia Gandhi vs. ACIT (Delhi High Court) 29018) 97 taxmann.com 150 (Delhi).*

i) *Where Congress Party gave loan to AJL and assigned said loan to non-profit YI which subsequently issued shares to assesses at a price less than FMV, non-disclosure by assesses of allotment of shares in YI would be a reason to initiate reassessment proceedings.*

ii) *Relying on PCIT vs. Meenakshi Overseas Pvt. Ltd. ITA No. 651/Del/2016 dated 11.1.2016 (Hon'ble Delhi High Court) approval u/s. 151 upheld.*

2. *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.*

2.1 *Yuvraj v. Union of India Bombay High Court [2009] 315 ITR 84 (Bombay)/[2009] 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- IT*

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)/[2014] 223 Taxman 181 (Delhi)(MAG)/[2014] 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 [2017] 79 taxmann.com 409 (Delhi)/[2017] 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 [2018] 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 [2017] 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. *Murlibhai 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 carefully considered the case laws and the relevant documents available on record especially the assessment order, impugned order, reasons/satisfaction/approval recorded for issue of notice u/s. 148 of the Act placed at page no. 11 of the Paper Book, which is a copy of performa for recording the reasons for initiating proceedings u/s. 148 for obtaining approval of Pr. CIT, Karnal who has granted the approval in a mechanical manner for issuing notice u/s. 148 of the Income Tax Act, 1961 vide Column No. 12 by mentioning as under:-

"Yes, it is a fit case for issue of notice u/s. 148 of the I.T. Act, 1961."

4.1 After perusing the aforesaid remarks of the Pr. CIT, Karnal, I find that the approval granted by the Pr. CIT, Karnal is a mechanical and without application of mind, which is not valid for initiating the reassessment proceedings, because from the aforesaid remarks, it is not coming out as to which material; information; documents and which other aspects have been gone through and examined by the Pr. CIT, Karnal for reaching to the satisfaction for granting approval. Thereafter, the AO has mechanically issued notice u/s. 148 of the Act. 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. Keeping in view of the facts and circumstances of the present case and the case laws applicable in the case of the assessee, I am 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. My aforesaid view is fortified by the following decisions including the ITAT, SMC, Bench, New Delhi decision dated 16.10.2019 in the case of Dharmender Kumar vs. ITO, Ward 65(5), New Delhi decided in ITA No. 2728/Del/2018 relevant to assessment year 2008-09 wherein the following case laws were followed on similar facts and circumstances of the case.

A) United Electrical Company (P) Ltd. Vs. CIT & Ors. 258 ITR 317 (Del.) In this case, approval by the Addl. CIT u/s. 151 was given in the following terms:-

"Yes, I am satisfied that it is a fit case for issue of notice u/s. 148 of the Income Tax Act."

Analyzing, the above satisfaction/approval, it has been held that the CIT is required to apply his mind to the proposal put up to him for approval in the

light to the material relied upon by the AO. 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 Addl. CIT before granting the approval. (Para 19).

(B) 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) arising out of order of Hon'ble High Court of Madhya Pradesh in CIT vs. S. Goyanka Lime & Chemicals Ltd. (2015) 56 taxmann.com 390 (MP).

"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)."

4.2 In the background of the aforesaid discussions and respectfully following the precedents, as aforesaid, I am of the considered view that approval granted by the Pr. CIT, Karnal is a mechanical and without application of mind, which is not valid for initiating the reassessment proceedings issue of notice u/s. 148 of the I.T. Act, 1961 and is not in accordance with section 151 of the I.T. Act, 1961, thus, the notice issued

u/s. 148 of the Act is invalid and accordingly the reopening in this case is bad in law and therefore, the same is hereby quashed. Accordingly, the legal ground no. 8 raised by the assessee's counsel is allowed. Since the other grounds were not raised by the Assessee's counsel, the same are dismissed as such. Accordingly, the assessee's appeal is partly allowed.

5. In the result, the Appeal filed by the Assessee stands partly allowed

Order pronounced on 06-01-2020.

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Dated: 06-01-2020

SRB

Copy forwarded to:

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

AR, ITAT, NEW DELHI.