

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

Before Sh. H. S. Sidhu, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 3189/Del/2016 : Asstt. Year : 2007-08

Income Tax Officer, Ward-22(1), New Delhi	Vs	M/s S. Motors Pvt. Ltd., House No. 5, Block A-31, Main Shastri Gali, Maujpur, New Delhi-110053
(APPELLANT)		(RESPONDENT)
PAN No. AAICS1966J		

Assessee by : Sh. Deepak Ostwal, CA

Revenue by : Ms. Nidhi Srivastava, CIT DR

Date of Hearing: 18.12.2019

Date of Pronouncement: 07.01.2020

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the revenue against the order of Id. CIT (A)-28, New Delhi dated 22.03.2016.

2. The assessee raised the following effective ground:

"1. The Id. CIT (A) erred in holding that the AO has no jurisdiction to issue notice u/s 148 of the Income Tax Act, 1961 and hence the re-opening is bad in law without appreciating the facts that the reasons were duly recorded by the AO on 28.03.2014 that the assessee has received accommodation entries of Rs.10.70 crore during F.Y. 2006-07 after taking necessary approval u/s 151(2) of the I.T. Act.

Facts taken from the record of the Id. CIT (A).

3. In the case under consideration the revenue has challenged the quashing of reopening of the assessment on the ground that sufficient reasons have been recorded as per provision of section 148(2) of the Act.

Further reason recorded for taking approval from the Addl.CIT demonstrate that the Assessing Officer and the Addl. Commissioner have independently applied mind to the material available with them while recording reasons for reopening.

4. The Id. DR argued that the Assessing Officer has received information and the reopening proposal has been sent only after going through the entire information in hand and after due application of mind. She argued that the notices have been duly sent as per the address available in the PAN data base and as per the returns filed by the assessee. Hence, it cannot be said that the notices haven't been issued properly. It was argued by the Ld. DR that in the case under consideration, the notice under section 148 of the Income tax Act has been issued by the Assessing Officer after taking approval of the Addl.CIT on the basis of information received from the Investigation wing.

5. It was argued by the Id. AR that in the absence of reasons recorded by the A O before issue of notice u/s 148 is fatal to the impugned order which is liable to be vacated and declared *non-est* in law. Further, he reiterated non-recording of reasons by the ITO are fatal to the impugned action and orders which are liable to be declared void in law and accordingly should be quashed. The Id. AR argued that the reassessment proceedings should be quashed as the reopening was solely based on information received from DIT (Inv.) which was accepted by the Assessing Officer in a mechanical manner.

6. The Ld. AR relied on the decisions in support of his preposition viz. CIT vs Atul Jain 299 ITR 383 (Delhi), United Electrical Company (P) Ltd vs. CIT & Ors. 258 ITR 317 (Delhi), CIT vs. SFIL Stock Broking Ltd. 325 ITR 285 (Delhi), Sarthak Securities Co. (P) Ltd. vs. ITO 329 ITR 110 (Delhi) and Signature Hotels (P) Ltd. vs. ITO & Anr. 338 ITR 51 (Delhi). ITAT

Delhi in ITA No. 3751/Dei/2011 in Smt. Shakuntala Devi vs. ITO in ITA No. 2068/Del/2010 in the case of ACIT vs. Shri Devesh Kumar in ITA No. 187/Del/2010/2015.

7. Heard the arguments of both the parties and perused the material available on record.

8. The reason recorded provided by the A.O reads as under:

*Dated - M/s S Motors (P) Ltd Pan -AAICS1966J
A.Y 20007-08*

"Sub: Proceeding u/s 147/148 for the Asstt. Year 2007-08- Approval for reopening the case- Reg.-

"The proposal in prescribed format in the above mentioned case for issuing notice u/s 148 for the Income Tax Act 1961 for reopening the case for the A Y 2007-08 . In this case, information was received from the office of DIT (Inv), New Delhi that the above assessee has received bogus accommodation entries of Rs. 10,70,00,000/- during the F.Y. 2006-07. In this case more than four years elapsed from the end of the relevant Asstt. Year in which the accommodation entries were taken. It is therefore requested that necessary approval u/s 151(2) of the Act may be accorded to issue notice u/s 148. The limitation for issuing notice expires on 31/03/2013. Asstt to be completed for the 1st time u/s 143(3)."

9. We have carefully considered the fact of the case, provisions of the Act finding of the Assessing Officer and submission of both the parties. Plain readings of the reasons recorded reveal that the A.O. has not applied his mind to the material/information received from the office of the Director of Income Tax (Inv.). It fact there was neither any application of mind nor reason of belief that the income has escaped assessment as per the provision of the Act. The Assessing Officer even without forming a prima facie opinion, on the basis of such material, and without even recording reasons that he has reason to believe that income has escaped assessment sought approval necessary approval u/s 151(2) of the Act to issue notice under section 148 of the Act.

10. As per the reasons recorded, it is evident that the AO has neither corroborated nor examined the information received from the investigation wing not recorded his reason to belief before initiating the reassessment proceedings. Hence in the instant case, it is clear that the AO proceeded to initiate proceedings u/s 147 of the Act and to issue notice u/s 148 of the Act only on the basis of information received from the investigation wing of the Department. There is no material on record to show that the AO had applied an independent mind in forming a belief which may result in the required reason to believe as per the provisions of Section 147 and 148 of the Act. Hon'ble Apex Court in the case of Chuggamal Rajpal vs. S.P. Chaliha 79 ITR 603 (SC) dealing with a case where the AO had received certain communications from the CIT showing that the alleged creditors of the assessee were name lenders and that the transactions were bogus. The AO came to the conclusion that there were reasons to believe that income of the assessee had escaped assessment. The Hon'ble Supreme Court disagreed and observed that the AO had not even come to a prima facie conclusion that the transactions to which he referred were not genuine transactions.

11. It was further explained by the Hon'ble Supreme Court that:
"Before issuing a notice under S. 148, the ITO must have either reasons to believe that by reason of the omission or failure on the part of the assessee to make a return under S. 139 for any assessment year to the ITO or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year or alternatively notwithstanding that there has been no omission or failure as mentioned above on the part of the assessee, the ITO has in consequence of information in his possession reason to believe that income chargeable to tax has escaped assessment

for any assessment year. Unless the requirements of clause (a) or cl. (b) of Section 147 are satisfied, the ITO has no jurisdiction to issue a notice under Section 148.

12. Likewise in the case of CIT vs. SPL'S Siddhartha Ltd., the Hon'ble Delhi High Court has categorically held that it is an established principle of law that if a particular authority has been designated to record his/her satisfaction on any particular issue, then it is that authority alone who should apply his/her independent mind to record his/her satisfaction and further mandatory condition is that the satisfaction recorded should be "independent" and not "borrowed" or "dictated" satisfaction .

13. In the case under consideration the Assessing Officer has not properly assumed jurisdiction of this case, in view of the fact that the reasons recorded for reopening are without independent application of mind. We find that in the form for recording the reasons at column no. 11, the reasons for the belief were mentioned "as per Annexure A". We have given opportunity to the revenue to file the satisfaction recorded- "as per Annexure A" if any on their records. The revenue could not file any Annexure inspite of sufficient opportunity.

14. Hence, we decline to interfere in the reasoned order of the Id. CIT (A). The operative part is reproduced as under for the sake of conveyance:

"Under the circumstances and respectfully applying the ratio of the judgments rendered by the Jurisdictional High Court in CIT vs Atul Jain 299 ITR 383 (Delhi), United Electrical Company (P) Ltd vs. CIT & Ors. 258 ITR 317 (Delhi), CIT vs. SFIL Stock Broking Ltd. 325 ITR 285 (Delhi), Sarthak Securities Co. (P) Ltd. vs. ITO 329 ITR 110 (Delhi) and Signature Hotels (P) Ltd. vs. ITO & Anr. 338 ITR 51 (Delhi), and the decision in the case of Principal Commissioner of Income Tax vs. G & G Pharma India Ltd. in ITA no. 545/2015 order dt. 8.10.2015, it is held that in absence of reason to belief that the income has escaped assessment, the requirements of S. 147 are not satisfied. Accordingly it is held that the Assessing Officer has no jurisdiction to issue a notice under S. 148 of the Act and hence the

reopening in this case is bad in law. Accordingly, I hold the reassessment order as invalid for the year under appeal"

15. In the result, the appeal of the revenue is dismissed.

Order Pronounced in the Open Court on 07/01/2020.

Sd/-

(H. S. Sidhu)
Judicial Member

Dated: 07/01/2020

Subodh

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR