

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'SMC' BENCH, KOLKATA  
[Before Shri J. Sudhakar Reddy, Hon'ble Accountant Member]**

**I.T.A. No. 819/Kol/2019**  
Assessment Year: 2009-10

**Vivekananda Hospital Pvt. Ltd.....Appellant**  
**Dr. Zakir Hussain Avenue**  
**Bidhannagar**  
**Durgapur - 713 206**  
**[PAN: AABCV 6140 Q]**

**Vs.**

**Income Tax Officer, Ward-2(1), Kolkata.....Respondent**

**Appearances by:**

*Shri S.M. Surana, Advocate, appeared on behalf of the assessee.*

*Shri Jayanta Khanra, JCIT, Sr. D/R, appearing on behalf of the Revenue*

Date of concluding the hearing : December 10<sup>th</sup>, 2019

Date of pronouncing the order : January 8<sup>th</sup>, 2020

**O R D E R**

**Per J. Sudhakar Reddy, AM :-**

This appeal filed by the assessee is directed against the order of the Learned Commissioner of Income Tax (Appeals) – Durgapur, (hereinafter the “ld.CIT(A)”), passed u/s. 250 of the Income Tax Act, 1961 (the ‘Act’), dt. 28/02/2019, for the Assessment Year 2009-10.

2. The assessee is a company and it filed its return for the Assessment Year 2009-10 on 29/09/2009, declaring total Nil income. The Assessing Officer reopened the assessment u/s 147 of the Act, after recording the reasons for reopening and issuing notice u/s 148 of the Act, dt. 30/03/2016 and thereafter on 31/03/2016. He completed the assessment u/s 143(3)/147 of the Act, determining the total income of the assessee at Rs.21,00,000/-. Aggrieved the assessee carried the matter in appeal challenging the validity of the reopening. The ld. CIT(A) dismissed the appeal of the assessee.

3. Further aggrieved the assessee is in appeal before me.

4. The ld. Counsel for the assessee, Shri S.M. Surana, submitted that the reopening is bad in law for the following reasons:-

- a) The notice was issued u/s 148 of the Act, was dt. 30/03/2016 and whereas, in the order sheet entry, it is recorded that the ld. Pr. CIT, Durgapur has granted a statutory approval u/s 151(2) of the Act for issual of notice u/s 148 of the Act on 31/03/2016. Thus, the notice

u/s 148 of the Act, was issue prior to grant of approval and hence bad in law.

- b) The ld. CIT(A) states that another notice was issued on 31/03/2016, which was served both manually as well as through e-mail and hence, the approval was obtained from the ld. Pr. CIT prior to the issue of notice. On this finding, the ld. Counsel for the assessee, submits that unless the notice issued on 30/03/2016, reopening the assessment is cancelled or withdrawn, the assessment cannot be once again be reopened on 31/03/2016 by issue of one more notice u/s 148 of the Act and hence is bad in law.
- c) That recording reasons for initiating proceedings u/s 148 of the Act and for obtaining approval of ld. Pr. CIT, at Sr. No. 13, there is no signature of the ld. Pr. CIT, indicating that there is no approval. Hence there is grant of approval on date, by the ld. Pr. CIT as required u/s 151 of the Act, for reopening of assessment.
- d) That the assessee was not provided with copy of the reasons recorded as required by the judgment of the Hon'ble Supreme Court in the case of *GKN Driveshafts (India) Ltd. v. Income-tax Officer [2003] 259 ITR 19 (SC)*, though the specific request was made by way of letter dt. 28/04/2016, and hence the assessment was bad in law.
- e) That the reasons recorded were without any application of mind by the Assessing Officer, as the statement of a person who has certified the accounts of the assessee under the statute, contradicted the accounts and the correctness of the information given in the statement was not verified by the Assessing Officer.

5. The ld. D/R relied on the order of the ld. CIT(A) and submitted that each and every argument made by the assessee, was rebutted by the ld. CIT(A). On a specific question, whether approval of the ld. Pr. CIT for reopening of the assessment as required u/s 151 of the Act was obtained, the ld. D/R, had no reply. The assessment record produced before us does not contain the approval of the ld. Pr. CIT. The certified copy of the assessment record obtained by the assessee takes

us to a conclusion that no approval was obtained. The Id. Pr. CIT had not signed granting approval. Thus, the reopening is bad in law.

6. As we have quashed the reopening on this ground, we do not adjudicate the other issues raised by the Id. Counsel for the assessee as it would be an academic exercise.

7. In the result, appeal of the assessee is allowed.

***Kolkata, the 8<sup>th</sup> day of January, 2020.***

*Sd/-*

**[J. Sudhakar Reddy]**  
Accountant Member

Dated : 08.01.2020  
{SC SPS}

*Copy of the order forwarded to:*

**1. Vivekananda Hospital Pvt. Ltd**  
**Dr. Zakir Hussain Avenue**  
**Bidhannagar**  
**Durgapur - 713 206**

**2. Income Tax Officer, Ward-2(1), Kolkata**

3.

4. CIT(A)-

5. CIT- ,

6. CIT(DR), Kolkata Benches, Kolkata.

} Sent through e-mail.

True copy  
By order

Assistant Registrar  
ITAT, Kolkata Benches