

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI**

**BEFORE
SHRI R.K. PANDA ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

ITA No.2729/Del/2017
Asstt. Year: 2007-08

DCIT Circle, 1 Faridabad	Vs.	M/s. Henna Industries Pvt. Ltd. Plot No. 45, Sector 27A Faridabad PAN AABCH7692B
(Appellant)		(Respondent)

&
CO No. 148/Del/2017
Asstt. Year : 2007-08

M/s. Henna Industries Pvt. Ltd. Plot No. 45, Sector 27A Faridabad PAN AABCH7692B	Vs.	DCIT Circle, 1 Faridabad
(Appellant)		(Respondent)

Department by:	Shri Raghunath, Sr. DR
Assessee by :	Shri Gurjeet Singh, CA
Date of Hearing	23/10/2019
Date of pronouncement	17/ 01/2020

ORDER

PER SUDHANSHU SRIVASTAVA, JM:

This Appeal is preferred by the Department against order dated 28.2.2017 passed by the Ld. Commissioner of Income Tax (Appeals), Faridabad {CIT (A)} and pertains to assessment year 2007-08. The Cross Objection is preferred by the assessee.

2.0 The brief facts of the case are that the assessee company had filed its return of income declaring an income of Rs. 2,05,89,980/-. The return of income was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter called 'the Act') and subsequently, the assessee's case was reopened u/s 147 of the Act after issuing notice u/s 148. The reassessment was completed at Rs. 9,23,33,190/- after making addition of Rs. 7,15,97,205/-. The assessee, being aggrieved, approached the Ld. First Appellate Authority and challenged the assumption of jurisdiction u/s 147 of the Act. The assessee also challenged the assessment on merits. The Ld. CIT (A) came to the conclusion that the Assessing Officer (AO) had not obtained the sanction for reopening the case from the competent authority and, therefore,

the reopening u/s 147 / 148 was not as per the provisions of Act. The assessment was quashed. Now, the department has approached the Tribunal (ITAT) and has challenged the quashing of assessment by the Ld. CIT (A) by raising the following ground of appeal:-

- i) *“On the facts and circumstances of the case, the Ld. CIT(A) has erred on facts and in law in quashing the assessment on the ground that the requisite approval of Commissioner of Income Tax was taken instead of the Addl. Commissioner of Income Tax. ”*

3.0 The Ld. Sr. DR submitted that the impugned order was erroneous. It was submitted that the competent authority in this case was the Joint Commissioner of Income Tax, Faridabad i.e. the Range Head. It was further submitted that he had applied his mind at the time of issuance of notice u/s 148 of the Act and it was only after the application of mind that the proposal for reopening had been forwarded to the Ld. Commissioner of Income Tax (CIT), Faridabad. It was submitted that it cannot be said that the competent authority i.e. the Joint Commissioner of Income Tax had not applied his mind and the defect, as pointed out by the Ld. CIT (A) was merely a procedural defect which will not

make the order illegal. It was submitted that the order of the Ld. CIT (A) should be set aside and the order of the AO be restored.

4.0 In response, the Ld. AR submitted that the issue was covered against the revenue by two direct judgments of the Hon'ble Delhi High Court viz. CIT vs. Soyuz Industrial Resources Ltd. vide order dated 27th February, 2015 in ITA No. 158/2015 and Yum Restaurants Asia Pvt. Ltd. vs. Dy. Director of Income Tax vide order dated 31.8.2017 and reported in (2017) 99 CCH 0227 (Delhi High Court). The Ld. AR vehemently supported the order of the Ld. CIT (A) and submitted that no interference was required.

5.0 We have heard the rival submissions and have also perused the material on record. It is undisputed that the approval for reopening of the case u/s 147 was taken from the Ld. CIT, Faridabad and it was the contention of the assessee before the Ld. CIT (A) that the AO should have taken the approval from the Joint Commissioner of Income Tax, Faridabad. It was the contention of the assessee before the Ld. CIT (A) that since the approval had been wrongly obtained and wrongly given in

contradiction to the provision of section 151, the same was illegal. In our considered opinion, the Ld. CIT (A) has rightly accepted this contention of the assessee and has quashed the assessment.

5.1 Section 151 of the Act prescribes the procedure of sanction for issue of notice and the same is being reproduced hereunder for ready reference:-

“151. Sanction for issue of notice.-(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.”

5.2 A perusal of the above section [151(2)] clearly shows that in case no assessment has been framed u/s 143(3) and the case of any assessee is required to be reopened u/s 147/148 then the competent authority for granting the sanction for reopening is the Joint Commissioner of Income-Tax. In the present case the return of income was on 30.10.2007, no assessment was framed u/s 143(3) and the case was reopened by issue of notice u/s 148 on 31.3.2014. Thus, the case was reopened beyond the period of four years and the sanction of CIT, Faridabad was obtained in place of JCIT, Range-1, Faridabad. Exactly similar facts have been examined by the Hon'ble Delhi High Court in the case of CIT vs. SPL's Siddhartha Ltd. reported in (2012) 345 ITR 223(Delhi) wherein it has been held that if the AO has issued notice u/s 147 read with section 148 for reopening the assessment after expiry of four years from the end of the relevant assessment year without requisite approval of the Additional CIT, which is mandatorily required (even though the

CIT's approval was taken) the assessment needs to be quashed.

The Hon'ble Delhi High Court in this case held as under:

“- Held, AO was required to take approval of Competent Authority u/s 151 (1)-AO had specifically sought approval of Commissioner only – Therefore, it cannot be said that the Joint Commissioner /Additional Commissioner had granted the approval –Further, even though the file was routed through Additional Commissioner, he did not apply his mind or gave any sanction-Instead, he requested Commissioner to accord the approval-It, thus, cannot be said that it is an irregularity curable u/s. 292B- If a statutory authority has been vested with jurisdiction, he has to exercise it according to its own discretion-If discretion is exercised under direction or in compliance with some higher authorities instruction, then it will be case of failure to exercise discretion altogether-Therefore, the Tribunal has rightly decided the legal aspect.

5.3 Similar judgment has also been delivered by the Hon'ble Delhi High Court in the case of CIT vs. Soyuz Industrial Resources Ltd. reported in (2015) 232 Taxman 414 (Delhi) wherein the assessee had filed its returns in the normal course and the assessment was framed u/s 143(1). Based upon information received by the AO, a satisfaction note was recorded and a notice was issued beyond four years from the end of the

assessment year under proviso to section 147(1). Reassessment proceedings were completed and the Assessee claimed that the notice u/s 147 was unsustainable because it was not approved by the competent authority in accordance with Section 151. The CIT had sanctioned re-assessment proceedings through issuance of notice u/s 148. ITAT allowed the assessee's appeal by holding that the CIT lacked the authority to sanction re-assessment proceedings through issuance of notice u/s 148. The Hon'ble Delhi High Court held that the Privy Council in Nazir Ahmad V. Emperor had laid down that if the statute mandates that something be done in a particular manner, it should be done in that manner or not at all. Thus, it was not court's job to render, in the process of interpretation, an entire provision academic or inoperative. As per Section 151, in case the original assessment was completed "other than" i.e. otherwise than u/s 143(3) or during the course of re-assessment proceedings, competent authority would be the Joint Commissioner. It was observed by the Hon'ble Delhi High Court that the Court had to give effect to plain words of the statute which unambiguously stated that the competent authority in such cases was the Joint Commissioner

and not the Chief Commissioner or the Principal Commissioner. Since the original assessment was completed u/s 143(1), thus, clearly Section 151(2) would be applicable. No infirmity was found in the order of the ITAT and the Revenue's appeal was dismissed.

5.4 A similar judgment was rendered by the Hon'ble Delhi High Court in the case of Yum! Restaurants Asia PTE. Ltd. vs. Dy. Director of Income Tax and Others (supra) wherein the Hon'ble Delhi High Court held that where the original assessment was processed u/s 143 (1) of the Act and reopening was sought to be done after expiry of four years from the end of the relevant assessment year, mandatory requirement u/s 151 (2) was that the approval for reopening of assessment should be obtained from the officer of rank of Joint Commissioner and not any other officer including the superior officer.

5.5 In the instant case since the mandatory requirement u/s 151(2) had not been fulfilled, the reopening of assessment for assessment year in question has been rightly held to be bad in law by the Ld. CIT (A). The Ld. CIT (A), while quashing the

assessment, followed the order of the Hon'ble Delhi High Court in the case of CIT vs. Soyuz Industrial Resources Ltd. (supra) and the department has not been able to bring to our notice any judgment contrary to the proposition laid down by the Hon'ble Jurisdictional High Court. Therefore, we find no reason to interfere with the findings recorded by the Ld. CIT (A) in the impugned order and we dismiss the grounds raised by the Department.

6.0 In the result the appeal of the Department stands dismissed.

7.0 Since we have upheld the quashing of assessment by the Ld. CIT (A), the grounds raised in the CO of the assessee do not need any adjudication as the same have become academic in nature.

8.0 In the result CO of the assessee also stands dismissed as having become *in fructuous*.

9.0 In the final result both the Department appeal as well as Cross Objection of the assessee stand dismissed.

Order pronounced in the open court on 17th January, 2020.

sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

sd/-

(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Dated: 17/01/2020

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Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi