

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

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 3106/Del/2019
Assessment Year : 2010-11

SMT. KAUR TAJINDER,
HOUSE NO. 651, 1ST FLOOR,
SECTOR-10A, NR. MEENAKSHI
PUBLIC SCHOOL,
GURGAON
HARYANA - 122001
(PAN: AFHPT4778C)
(Appellant)

Vs. ITO, WARD-2(3),
GURGAON, HARYANA

(Respondent)

Assessee by : Mr. M.R. Sahu, CA
Department by : Ms. Parul Singh, Sr. DR.

ORDER

This appeal filed by the assessee is directed against the order passed by the Ld. CIT(A)-I, Gurgaon on 22.01.2019 in relation to the assessment year 2010-11 on as many as 08 grounds.

2. But later on, the assessee has filed the following 02 additional grounds and prayed to accept the additional grounds of appeal having regard to the ratio of the decision of the Hon'ble Supreme Court of India in the case of National Thermal Power Corporation vs. CIT (1998) 229 ITR 383 (SC).

1. That on the facts and in the circumstances of the case and in law, the appellant submits that High Authority has sanctioned the "Income Assessment Proceedings" under section 151 in a mechanical way and without application of independent mind, accordingly initiation of "Income Assessment

Proceedings" is not valid having regard to the ratio of the decision of Hon'ble Delhi High Court in the case of "United Electric Co. Pvt. Ltd. vs. CTI (2002) 258 ITR 317 (Del. HC).

2. That on the facts and in the circumstances of the case and in law, it is submitted that no specific section was mentioned by AO for treating cash deposited in the bank account as 'unexplained income', before CIT(A) assessee claimed addition was made u/s. 68, CIT(A) applying Agra Tribunal decision in the case of Smt. Renu Aggrwal vs. ITO (2012) 75 DTR (Agra) TM 48 holds that addition can be made either u/s. 68 or u/s. 69, appellants submits that Agra Tribunal decision in the case of Renu Aggrwal vs. ITO (2012) 75 DTR (Agra) TM 48 is not applicable to the facts of the appellant's case and appellant is praying to treat the addition on account of cash deposited in the bank account as 'unexplained income' u/s 68 having regard to the ratio of the decision of the Hon'ble Madras High Court in the case of CIT vs. Bosotto Berothers Ltd. (1940) 8 ITR 41 (Mds. HC).

3. However, at the time of hearing, Ld. AR of the assessee only argued the additional ground no. 1 and stated that this additional ground is purely legal which goes to the root of the matter and all facts and material required for this ground already available on record and therefore, the same needs to be admitted, in view of the Hon'ble Supreme Court decision in the case of NTPC 229 ITR 383 (SC). He further drew my attention towards Page No. 4 of Assessee's Small Paper Book which is a copy of approval granted by the Pr. Commissioner of Income Tax, Gurgaon wherein, he has granted the approval by mentioning that "***On consideration of the reasons recorded by the Assessing Officer, I am satisfied that it is a fit case for the issue of notice u/s. 148 of the Income Tax Act, 1961 for the***

assessment year 2010-11”, which shows that Ld. Pr. CIT, Gurgaon has not recorded proper satisfaction and without application of mind gave the approval in a mechanical manner. He further stated that this legal ground is squarely covered by the decision of the Hon’ble Delhi High Court in the case of United Electrical Company (P) Ltd. Vs. CIT & Ors. 258 ITR 317 (Del.). 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.

4. On the contrary, Ld. DR stated that since this additional ground was not taken before the Ld. CIT(A), hence, the same may not be admitted and appeal of the assessee may be dismissed. He further relied upon the orders of the authorities below and the case laws cited therein.

5. I have heard both the parties and perused the records, especially the additional ground filed by the assessee and the case law supporting the case for admission of additional ground and on which the Ld. Sr. DR requested not to admit the additional ground. In my considered view, the additional ground is in legal and jurisdictional nature and needs to be admitted in the interest of justice, in view of the Hon’ble Supreme Court decision in the case of NTPC 229 ITR 383 (SC). Hence, I admit the same and only deciding the additional ground no. 1 as argued by the Id. Counsel for the assessee. For the sake of convenience, the additional ground no. 1 is again reproduced as under:-

“That on the facts and in the circumstances of the case and in law, the appellant submits that High Authority has sanctioned the “Income Assessment Proceedings” under section 151 in a mechanical way and without application of independent mind, accordingly initiation of “Income Assessment Proceedings” is not valid having regard to the ratio of the decision of Hon’ble Delhi High Court in the case of “United Electric Co. Pvt. Ltd. vs. CITI (2002) 258 ITR 317 (Del. HC).”

6. 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 in paper book, especially page no. 4 of the paper book, wherein the Pr. CIT, Gurgaon granted the approval for issuing notice u/s. 148 of the Income Tax Act, 1961 by mentioning as under:-

"On consideration of the reasons recorded by the Assessing Officer, I am satisfied that it is a fit case for the issue of notice u/s. 148 of the Income Tax Act, 1961 for the assessment year 2010-11".

6.1 After perusing the aforesaid remarks of the Pr. CIT, Gurgaon, I find that the approval granted by the Pr. CIT, Gurgaon 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, Gurgaon for reaching to the satisfaction for granting approval. Thereafter, the AO has mechanically issued notice u/s. 148 of the Act. 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)."

6.2 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, Gurgaon 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. 1 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.

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

Order pronounced on 19-02-2020.

Sd/-

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

Dated: 19-02-2020

SRB

Copy forwarded to:

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

AR, ITAT, NEW DELHI.