

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

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA Nos. 1483 & 1484/Del/2019
Assessment Years : 2009-10 & 2010-11

M/S ANANYA PORTFOLIO PVT.
LTD.,
1594, MJ BUILDING, 3RD FLOOR,
SHOP NO. 3, BHAGIRATH PLACE,
NEW DELHI – 110 006
(PAN: AAHCA8899B)
(Appellant)

Vs. ITO, WARD-2(4),
NEW DELHI

(Respondent)

Assessee by : Sh. Ravi Pratap Mall, Advocate & Sh.
Shayam Sunder, Advocate
Department by : Sh. Pradeep Singh Gautam, Sr. DR.

ORDER

These appeals filed by the assessee are directed against the different orders passed by the Ld. CIT(A)-I, New Delhi on 10.09.2018 & 07.9.2018 respectively in relation to the assessment years 2009-10 & 2010-11. At the time of filing the present appeals the assessee has raised various grounds on legal issue as well as on merits. But on 18.02.2020, Assessee has filed an Application for raising additional grounds of appeal in both the appeals. For the sake of convenience, the additional grounds raised by the assessee are reproduced as under:-

1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of AO in framing the impugned reassessment order and that too without serving the mandatory notice u/s. 143(2) as per law.

2. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of AO in framing the impugned reassessment order without appreciating that the proceedings u/s. 147 of the Act has been initiated on the basis of the alleged documents / information found during the course of search u/s. 132(1) of the Act which is impermissible as on the basis of such document / information, only proceedings u/s. 153C of the Act can be initiated and hence assumption of jurisdiction u/s. 147 of the Act is bad in law and liable to be annulled.

2. Ld. Counsel for the assessee stated that the aforesaid additional grounds are legal in nature and as such the same may be admitted, in view of the Hon'ble Supreme Court decision in the case of NTPC vs. CIT reported in 229 ITR 383.

3. On the admission of additional grounds of appeal, Ld. Sr. DR objected the same and stated that assessee has not filed these additional grounds before the Ld. CIT(A) and therefore at this stage these additional grounds are not permissible, hence, the same may be rejected.

4. At the time of filing the appeal on 22.2.2019 the Registry has raised objection by stating that both the appeals are time barred by 49 days. In response to the same, assessee has filed the application for condonation of delay supported by affidavit of Sh. Suman Aggarwal, W/o Pradeep Kumar Aggarwal, Director of M/s Ananya Portfolio Pvt. Ltd.

5. I have perused the contention raised by the assessee in the application for condonation of delay supported by the affidavit dated 17.02.2020. I find that the assessee could not file the appeal due to lull in the business and

also assessee could not employ any employee to support the business. Secondly, the order passed by the Ld. CIT(A) was not received by the assessee. It was received by Sh. Gopal Dutt, a Guard of the building where the office of the assessee is situated, but the Guard has handed over the order of the Ld. CIT(A) in the month of February, 2019 and immediately thereafter, the assessee filed the appeal before the Tribunal. No doubt that assessee has mentioned various other reasons for condonation of delay of 49 days alongwith the affidavit and balance sheet as on 31.3.2019 showing its financial position. Keeping in view of the facts and circumstances of the present case and the delay of 49 days for which the assessee has given various reasons in the application for condonation of delay which has strongly been opposed by the Ld. DR, but in the interest of justice, I am of the view that no one can be debarred from filing the appeal which is a statutory right of the assessee only because the appeal filed by the assessee is delayed by 49 days. In the interest of justice, I am of the view that the delay of 49 days in filing the present appeals deserve to be condoned, therefore, I condone the delay of 49 days in both the appeals and admit both the appeals for adjudication on the basis of the original grounds raised by the assessee as well as the additional grounds raised by the assessee.

6. At the time of hearing, Ld. Counsel for the assessee has only argued additional ground no. 1 and stated that assessee has filed the original return declaring NIL income which was processed u/s. 143(1) of the I.T. Act. But later, on the information received from the office of the Director of Income Tax (Investigation-II), New Delhi Jhandewalan Extension, New Delhi, the case of the assessee was reopened by the Assessing Officer by issuing the notice dated 28.3.2016 u/s. 148 of the Act with the approval of the competent authority requiring the assessee to furnish its return of income for the year under consideration. In response to the notice dated 28.3.2016, assessee vide its letter dated 21.6.2016 stated that the return

of income filed by the assessee u/s. 139(1) of the Act may be treated as return filed in response to the notice dated 28.3.2016 u/s. 148 of the Act. The assessee in response to the notice u/s. 148 of the Act appeared before the AO on 21.6.2016 and filed its letter dated 21.6.2016 stated that the return of income filed by the assessee u/s. 139(1) of the Act may be treated in response to the notice issued u/s. 148 of the Act and on the same day AO issued a notice dated 21.6.2016 u/s. 143(2) of the I.T. Act, 1961 requiring the assessee to attend his office on 05.7.2016 at 10.30 AM either in person or by a representative duly authorized in writing in this behalf or produce or cause there to be produced at the said time any documents, accounts and any other evidence on which it may rely in support of the return filed by it. Ld. Counsel for the assessee stated that the notice u/s. 143(2) of the Act dated 21.6.2016 was issued to the assessee on the same date i.e. when he appeared before the AO on 21.6.2016, which is not valid notice arising the jurisdiction u/s. 147 of the Act and u/s. 143(3) of the Act to pass the assessment order against the assessee. To support this argument he has filed a copy of notice dated 21.6.2016 issued by the AO u/s. 143(2) of the I.T. Act. He submitted that the said additional ground no. 1 i.e. the issue in dispute is covered in favour of the assessee by the decision of the Hon'ble Delhi High Court in the case of Director of Income Tax vs. Society for Worldwide Interbank Financial Telecommunications (2010) 323 ITR 249 (Del.). He further stated that the ITAT, Delhi Bench has adjudicated and decided the similar issue in favour of the assessee by deleting the addition and declaring notice u/s. 143(2) of the Act as invalid and resultantly the reassessment was quashed. In support of his contention, he filed a Paper Book containing pages 1-222 in which he has attached the various orders of the ITAT and the judgement of the Hon'ble High Court and requested that the addition in dispute may be deleted and

notice u/s. 143(2) of the Act may be held as invalid and subsequent assessment may be quashed.

7. On the contrary, Ld. DR relied upon the orders of the revenue authorities and stated that the additional ground raised by the assessee has not been raised before the Ld. CIT(A), may not be admitted. He has also filed some written submissions dated 18.2.2020 to controvert the arguments advanced by the Ld. Counsel for the assessee and finally stated that appeal filed by the assessee may be dismissed because a well reasoned order has been passed by the Ld. CIT(A).

8. I have heard both the parties and perused the orders of the revenue authorities alongwith written submissions filed by both the parties and the contentions raised by the assessee in the additional ground No.1 which is purely legal in nature, as argued by the Ld. Counsel for the assessee. In view of the facts and circumstances of the present case and the contention raised in the additional ground no. 1 which is legal in nature raised by the assessee alongwith order passed by the Hon'ble Delhi High Court and the Tribunals adjudicating the similar issues involved in the additional ground of appeal. In view of the Hon'ble Supreme Court of India decision in the case of NTPC vs. CIT 229 ITR 383 (SC), I admit the additional ground no. 1, as argued by the Ld. Counsel for the assessee, as aforesaid and first adjudicate the same as under:-

I am of the view that assessee company filed the original return of income for the assessment year in dispute declaring NIL income which was processed by the Assessing Officer u/s. 143(1) of the Act. Later on, the information received from the Director of Income Tax (Investigation-II), Jhandewalan Extension, New Delhi, the case of the assessee was reopened by issuing the notice u/s. 148 of the Act dated 28.3.2016. After recording the reasons and after getting the approval from the competent authority, a

notice u/s. 148 of the Act was issued on 28.3.2016 requiring the assessee to file the return of income. As per the assessment order Page no. 17 & para no. 17, it is noted that the AO after examination of the documents i.e. return of income and information provided by the Investigation Wing of the Department, New Delhi and duly satisfying himself, issued notice dated 28.3.2016 u/s. 148 of the Act with the prior approval of the Pr. CIT-I, New Delhi was issued requiring the assessee to furnish its return of income for the year under consideration. As per para 18 at page 17 of the assessment order, in response to the notice, assessee vide its letter dated 21.6.2016 stated that the return of income filed by the assessee u/s. 139(1) of the Act may be treated as returned filed in response to notice u/s. 148 of the Act. Statutory notice u/s. 143(2) of the Act was also issued. Ld. Counsel for the assessee filed a copy of notice u/s. 143(2) of the Act dated 21.6.2016 issued by Sh. Anil Kumar, Income Tax Officer, Ward 2(4), New Delhi requiring the assessee to attend his office on 05.7.2016 at 10.30 AM either in person or by a representative duly authorized in writing in this behalf or produce or cause there to be produced at the said time any documents, accounts and any other evidence on which assessee may rely in support of the return filed by the assessee. I am of the view that the notice issued u/s. 143(2) of the Act to the assessee dated 21.6.2016 was issued on the same date when the assessee filed its letter dated 21.6.2016 stating therein that the return filed u/s. 139(1) of the Act may be treated as return filed in response to the notice u/s. 148 of the Act.

Keeping in view of the order of the Hon'ble Delhi High Court in the case of Director of Income Tax vs. Society for Worldwide Interbank Financial Telecommunications (2010) 323 ITR 249 (Del.) dated 13.4.2010 (Supra) and various orders passed by the ITAT, Delhi Benches, copies thereof has been filed by the assessee in the shape of paper book containing pages 1-222 including the order passed by the ITAT, Delhi SMC Bench dated

14.5.2018 in the case of Micron Enterprises Pvt. Ltd. vs. ITO in ITA No. 901/Del/2016 (AY 2006-07). The relevant portion of the Tribunal's decision in the case of Micron Enterprises Pvt. Ltd. i.e. para no. 2 to 9 at page no. 2 to 9 are reproduced as under:-

"2. Briefly, the facts of the case are that assessee is a company filed return of income declaring NIL income. The case was subsequently reopened under section 147 of the I.T. Act, after recording reasons and notice under section 148 of the I.T. Act, was issued on 29th March, 2013. Reply to the notice under section 148 of the Act has been filed by assessee on 26.11.2013. Notice under section 143(2) was issued on the same day on 26.11.2013 in response to which, assessee-company appeared and the A.O. after discussion made the addition of Rs.10 lakhs on account of unexplained investment under section 68 of the I.T. Act, 1961 vide order dated 28.02.2014 under section 147 read with section 143(3) of the I.T. Act. The assessee challenged the addition before the Ld. CIT(A). However, the appeal of assessee has been dismissed by the Ld. CIT(A).

3. The assessee filed an application dated 19th September, 2017 for admission of following additional grounds of appeal :

"1.That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not quashing the impugned reassessment order passed by Ld. AO u/s 147/143(3) and that too without assuming jurisdiction as per law and without complying with the

mandatory conditions u/s 147 to 151 as envisaged under the Income Tax Act, 1961.

2. That in any case and in any view of the matter, action of Ld. CIT(A) in not quashing the impugned reassessment order passed by Ld. AO u/s 147/143(3), is bad in law and against the facts and circumstances of the case.

3. That having regard to the facts and circumstances of the case. Ld. CIT(A) has erred in law and on facts in not quashing the impugned reassessment order passed by Ld. AO u/s 147/143(3) and that too without issuing/serving the mandatory notice u/s 143(2) as per law.”

4. The Learned Counsel for the Assessee submitted that these are legal in nature and may be admitted for hearing and no fresh facts are required for disposal of additional grounds. There is no challenge to the request of admission of the additional grounds of appeal by the Ld. D.R. Considering these additional grounds are legal in nature which are also not opposed by the Revenue, I admit the additional grounds for the purpose of disposal of the appeal.

5. Learned Counsel for the Assessee submitted that assessee filed reply to the notice under section 148 of the I.T. Act on dated 26.11.2013 which is noted in the assessment order, copy of which, is filed at page-11 of the paper book, in which, assessee explained that the return already filed under section 139(1) may be treated as

return filed in response to notice under section 148 of the I.T. Act. He has submitted that on the same day A.O. issued notice under section 143(2) i.e., on 26.11.2013, copy of which, is filed at page-12 of the paper book. He has, therefore, submitted that the A.O. has not validly assumed jurisdiction under section 147 and 143(3) of the I.T. Act to pass the assessment order against the assessee. He has submitted that the issue is covered in favour of the assessee by the judgment of the Hon'ble Delhi High Court in the case of Director of Income Tax vs. Society for Worldwide Interbank Financial Telecommunications (2010) 323 ITR 249 (Del.) in which it was held as under :

"Both the CIT(A) and the Tribunal have returned a concurrent and clear finding of fact that the notice under s. 143(2) was issued on 23rd March, 2000 and since the return was filed on 27th March, 2000, the notice was not a valid one and, therefore, the assessment completed on the basis of the notice was also invalid and was consequently set aside. It is for the first time that the counsel for the appellant contends that the notice, in fact, was issued on 27th March, 2000 and not on 23rd March, 2000, the date which is recorded on the notice itself. No such contention was raised before the lower appellate authorities. Consequently, the said contention cannot be raised before the Court for the first time. The appellant has stated that the return was filed by the assessee on 27th March, 2000 and the notice

under s. 143(2) was served upon the Authorized Representative of the assessee by hand when the Authorized Representative of the assessee came and filed return. However, the date of the notice was mistakenly mentioned as 23rd March, 2000. Assuming the aforesaid to be true, the notice was served on the Authorized Representative simultaneously on his filing the return which clearly indicates that the notice was ready even prior to the filing of the return. The provisions of s. 143(2) make it dear that the notice can only be served after the AO has examined the return filed by the assessee. Whereas it is dear that when the assessee came to file the return, the notice under s. 143(2) was served upon the Authorized Representative by hand. Thus, it would amount to gross violation of the scheme of s. 143(2)."

5.1. *And the conclusion is as under :*

"Assessment made in pursuance of a notice under section 143(2) issued on 23rd March, 2000 when the return was filed on 27th March, 2000 is invalid."

6. *He has submitted that the same order have been followed by ITAT, Delhi Bench, in the case of Shri Harsh Bhatia, New Delhi vs. ITO, Ward-50(3), New Delhi in ITA.No.1262 and 1263/Del./2017 dated 17.10.2017 in which the Tribunal held as under :*

10. *"It was further argued by the Id. counsel for the*

assessee Dr. Rakesh Gupta that notice u/s 143(2) of the Act, was issued on 17.09.2014 and which is the same date on which return was filed. This is apparent from the Assessing Officer's order in para 3 at page 1. Therefore, the Assessing Officer has not applied his mind independently while issuing notice u/s 148 of the Act. On this count also, the assessment deserves to be quashed. Accordingly, under the facts and circumstances of the case, the legal grounds of the assessee are allowed."

7. *On the other hand, Ld. D.R. submitted that assessee did not file return under section 148 within the specified period. Therefore, this ground of appeal of assessee may be dismissed.*

8. *After considering the rival submissions, I am of the view that the issue is covered in favour of the assessee by the Judgment of Hon'ble Delhi High Court in the case of Director of Income Tax vs. Society for Worldwide Interbank Financial Telecommunications (supra) and Order of ITAT, Delhi Bench in the case of Shri Harsh Bhatia, New Delhi vs. ITO, Ward-50(3), New Delhi (supra). It is an admitted fact that assessee filed reply in response to the notice under section 148 of the I.T. Act on 26.11.2013 and submitted before A.O. that original return filed before him may be treated as return filed in response to the notice under section 148 of the I.T. Act. The A.O. on the same day served notice under section 143(2) upon assessee-company whose signature tally on the said notice. Therefore, notice issued under section 143(2) is invalid and resultantly, the assessment is vitiated and is liable to be quashed. I, accordingly, set aside the*

orders of the authorities below and quash the re-assessment proceedings in the matter. Resultantly, all additions stands deleted. In view of the above, there is no need to decide other contentions raised by Learned Counsel for the Assessee.

9. In the result, appeal of assessee is allowed.”

9. I have gone through the contention raised by the assessee in its written submissions, legal additional ground no.1 raised by the assessee which is legal in nature challenging the notice u/s. 143(2) of the Act issued on 21.6.2016 i.e. on the same date when the assessee appeared before the AO and filed a letter dated 21.6.2016 stating therein that the return filed u/s. 139(1) of the Act may be treated as return filed in response to the notice u/s. 148 of the Act. After thoroughly gone the orders passed by the Hon'ble Delhi High Court in the case of Director of Income Tax vs. Society for Worldwide Interbank Financial Telecommunications (2010) 323 ITR 249 (Del.) (Supra) and orders of the ITAT, Delhi Bench which the assessee has filed in the shape of paper book as well as one decision in the case of Micron Enterprises Pvt. Ltd. (Supra) which I have reproduced above, I am of the considered view that issue involved in the additional ground no. 1 which is legal in nature raised by the assessee is similar to the facts and circumstances of the aforesaid cases. I am of the view that the notice dated 21.6.2016 u/s. 143(2) of the Act is invalid and resultantly the assessment is not sustainable in the eyes of law, hence, I quash the same by setting aside the orders of the authorities below and deleted the addition in dispute by accepting the appeal of the assessee.

10. Keeping in view of above, there is no need to decide other contention raised by the assessee in the grounds of appeal which have now become academic. No contrary order has been produced by the Ld. DR of the higher

authorities to controvert the arguments of the Id. counsel for the assessee on the legal issue.

11. In the result, both the appeals filed by the assessee stand partly allowed.

Order pronounced on 20-02-2020.

Sd/-

[H.S. SIDHU]
JUDICIAL MEMBER

Dated: 20-02-2020

SRB

Copy forwarded to:

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

AR, ITAT, NEW DELHI.