

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : SMC : NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 9316/Del/2019
Assessment Year : 2008-09

M/S ARINA GROVER,
D-25, 2ND FLOOR,
AJAY ENCLAVE,
NEW DELHI – 110 027
(PAN: AKEPG0821F)
(Appellant)

Vs. ACIT, CIRCLE 45(1),
NEW DELHI

(Respondent)

Assessee by : Sh. Rohit Tiwari, Advocate & Sh. Vinay
Verma, Advocate
Department by : Sh. Pradeep Singh Gautam, Sr.DR.

ORDER

This appeal filed by the assessee is directed against the order passed by the Ld. CIT(A)-15, New Delhi on 16.10.2019 in relation to the assessment year 2008-09.

2. The brief facts of the case are that assessee filed her return of income on 22.02.2010 declaring income of Rs. 8,34,081/- which was processed by the Assessing Officer u/s. 143(1) of the Income Tax Act, 1961 (hereinafter called "The Act"). Thereafter, on the information from the Asstt. Director of Income Tax (Investigation), Unit I(2), New Delhi dated 10.03.2015 stating therein that during the course of search of office premises of the assessee, an agreement was found which was signed on 12.09.2007 between Sh. Kulwant Singh, S/o Sh. Natha Singh, R/o 2/27, Subhash Nagar, New Delhi and Mrs. Arina Grover wife of Sh. J.K. Grover for sale/purchase of property No. 2/27, Subhash Nagar, New Delhi. The sale consideration for the said deal was fixed at Rs. 95,00,000/- and details of the same were also given in the agreement. But the sale deed was registered on 03.3.2008 for

only Rs. 19,11,000/-. On the basis of this information, the reassessment proceedings were initiated u/s. 147 of the Act after taking approval of the Addl. CIT and notice u/s. 148 of the Act was issued upon the assessee on 27.3.2015. In response to the same, the AR of the Assessee appeared and filed a letter dated 27.4.2015 stating therein that the return filed under section 139 of the Act as return filed in compliance with notice u/s. 148 of the Act and also requested to provide copy of reasons recorded for issuing the notice u/s. 148 of the Act, which was provided by the AO to himself. Later on CBI also searched the premises of the assessee on 18.05.2019 and found the said agreement which was recovered and seized in which the details of receipt of money has also been mentioned. On the basis of the said documentary evidences seized by the CBI, the AO issued show cause notice dated 29.2.2016 to the assessee asking to explain why the actual sale price of the property should not be considered at Rs. 95,00,000/- and Rs. 18,37,500/- and difference of Rs. 76,62,500/- should not be treated as unexplained income of the assessee and tax liability be computed accordingly.

2.1 In response to the same, assessee submissions dated 07.3.2016 which the AO has reproduced at para no. 4.1 at page no. 4 & 5 of the assessment order stating therein that the said agreement to sell dated 12.9.2017 is merely a fabricated document and had no bearing on the transaction of purchase of said property on account of that agreement of sale is not registered agreement as well as not signed by the witnesses. Assessee further replied that the CBI during their investigation did not find any cash transaction in the bank account of the seller Mr. Kulwant Singh nor in the bank account of the purchaser Mrs. Arina Grover/Assessee. In view of the reply filed by the assessee, the assessee requested that the said agreement was a fabricated/forged document not having the assessee signature on page no. 1 & 2 and page no. 3 of some other agreement. The submission of

the assessee was considered and rejected by the Assessing Officer by holding that this agreement is signed by both the parties and the witnesses as well as duly notarized and CFSL in its support opined that Kulwant Singh had signed the original agreement dated 12.9.2007 for sale and purchase of the property with assessee. Therefore, the contention of the assessee that the agreement for sale and purchase dated 12.9.2017 is fabricated, cannot be accepted and finally after discussing in detail, the evidences produced by the assessee, the AO finally concluded that assessee has paid Rs. 95,00,000/- in the purchase of the property situated at 2/27, Subhash Nagar, New Delhi measuring 102 yards by it has shown amount of Rs. 18,37,500/- in its books of accounts. Therefore, the difference of Rs. 76,62,500/- was treated as undisclosed business, un-accounted investment of the assessee and the same was added to the income of the assessee by completing the reassessment u/s. 143(3)/147 of the Act on 30.3.2016. Aggrieved by the same, assessee filed her appeal before the Ld. CIT(A), who vide impugned order dated 16.10.2019 dismissed the appeal of the assessee. Against the impugned order of the Ld. First Appellate Authority, assessee is in appeal before the Tribunal.

3. Ld. Counsel for the assessee stated that assessee has challenged the reopening u/s. 147 of the Income Tax Act, 1961 on various grounds which have already been adjudicated and decided in favour of the assessee by the various decisions of the ITAT and the Hon'ble High Courts. He argued that the impugned order passed by the Ld. CIT(A) is without jurisdiction, erroneous and wrongly been passed, because the reassessment passed by the AO u/s. 143(3)/147 of the I.T. Act, 1961 is invalid on the basis of the notice u/s. 147 of the Act which is invalid and has been issued without applying his mind only on the basis of the Investigation Report of the CBI stating that the sale deed registered on 03.03.2008 between Sh. Kulwant Singh and the assessee for Rs. 19,11,000/- is under-valued whereas the

agreement to sell and purchase of property dated 12.9.2007 executed between both the parties for Rs. 95,00,000/- which was recovered by the CBI from the premises of the assessee. Ld. Counsel for the assessee stated that the AO has not investigated the matter himself and has not made any enquiry to corroborate the Report of the Investigation on which basis the case of the assessee has been reopened, meaning thereby the AO has not applied his mind and only issued notice u/s. 148 of the Act on the basis of the CBI Court which has later been thoroughly investigated by the CBI itself and assessee has been discharged by the CBI on the basis of the CBI Court decision. Therefore, he submitted that the basic Report of the CBI has remained no more and subsequent notice u/s. 147 of the Act is invalid. To support the aforesaid contention, he draw my attention towards the order of the Hon'ble Supreme Court of India in the case of ACIT vs. Dhariya Construction Co. (2011) 197 Taxman 202 (SC); Hon'ble Delhi High Court decisions in the case of Pr. CIT vs. RMG Polyvinyls (I) Ltd. (2017) 83 taxmann.com 348 (Delhi); Pr. CIT vs. Meenakshi Overseas P Ltd. vs. ITO 395 ITR 677 (Del.) and Pr. CIT vs. G&G Pharma India Ltd. 384 ITR 147 (Del.).

3.1 Secondly, he drew my attention towards Page No. 40-42 of Assessee's Paper Book which is a copy of the reasons recorded by the AO and approval granted by the Addl. CIT, Range-45, New Delhi, wherein he has granted the approval by mentioning that **"After perusing the reasons given above I am satisfied that it is a fit case for issue of notice u/s. 148 of the I. Tax Act, 1961."**, which shows that Ld. Addl. CIT, Range-45, New Delhi has not recorded proper satisfaction and without application of mind gave the approval in a mechanical manner. He further stated that this issue 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.

3.2 Thirdly, Ld. Counsel for the assessee stated that on the merits, he has failed the written submissions supported by the documentary evidences in the shape of paper book containing pages 1-212 which may be read as part of the argument of the assessee and requested that addition in dispute may be deleted and assessment may be quashed. He has also argued that the reasons recorded by the AO before issue the notice u/s. 148 of the Act is undated and similarly the approval given by the Addl. CIT, Range-45, New Delhi is also undated, hence, the reassessment in this case is invalid. To establish the same, he drew my attention towards page no. 42 of the Paper Book. In view of above, he requested to quash the re-assessment.

4. On the contrary, Ld. DR relied upon the orders of the authorities below and has also filed the written submissions. For the sake of convenience, the written submissions are reproduced as under:-

"Sub: Written Submission in the above case- reg.

In the above case, it is humbly submitted that apart from relying on the decision of learned CIT(A) and oral arguments made by the undersigned, following facts and case laws may be considered w.r.t. various grounds of appeal filed by the assessee:-

- 1. The incriminating document/agreement was found and seized by the CBI which clearly establishes cash and cheque entries. As cheque entries are matching, so cash entries have to be taken as correct as well. The contents of the document have already been verified by experts of the forensic labs.*

2. *The assessee's argument that the assessee has been exonerated as co-accused by the CBI court has no bearing in this case. Ld. CBI court has only ruled that the assessee's income may not be clubbed with that of her husband Sh. J. K. Grover for corruption and dis-appropriate assets case. It means that the incriminating document and the undisclosed cash component paid belongs to the assessee only for Income Tax purposes.*
3. *The AO has applied his mind while recording the reasons. He has perused the report and incriminating documents and compared the undisclosed income shown therein with the ITR filed by the assessee. All such observations find mention in the reasons recorded by the AO.*
4. *Ld. CIT(A) ha also perused the assessment records and then observed as per paragraph 4.2 of his order that approval was taken from the competent authority on 27.03.2015. Following case laws also squarely cover the issues raised by the assessee in favour of revenue:-*
 - "1. *PCIT Vs Paramount Communication (p.) Ltd. (2017 - TIOL-253-SC-IT) (Copy enclosed) where Hon'ble Supreme Court dismissed SLP of assessee. Information regarding bogus purchase by assessee received by DRI from CCE which was passed on to revenue authorities was 'tangible material outside record' to initiate valid reassessment proceedings.*

PCIT Vs Paramount Communication (P.) Ltd. [2017] 79 taxmann.com 409 (Delhi)/[2017] 392 ITR 444 (Delhi)

where Hon'ble Delhi High Court held that Information regarding bogus purchase by assessee received by DRI from CCE which was passed on to revenue authorities was 'tangible material outside record' to initiate valid reassessment proceedings.

2. *Ankit Financial Services Ltd. Vs DCIT [2017] 78 taxmann.com 58 (Gujarat((copy enclosed)*

where Hon'ble Gujarat High Court held that where material recovered in search of another person indicated that assessee had received bogus share applications through accommodation entries, since assessee was beneficiary, initiation of re-opening was justified.

3. *Yogendrakumar Gupta Vs ITO (51 taxmann.com 383) (SC)/[2014] 227 Taxman 374 (SC)*

where Hon'ble Supreme Court held that where subsequent to completion of original assessment, Assessing Officer, on basis of search carried out in case of another person, came to know that loan transactions of assessee with a finance company were bogus as said company was engaged in providing accommodation entries, it being a fresh information, he was justified in initiating reassessment proceeding in case of assessee.

4. *Raymond Woollen Mills Ltd. v. ITO And Others [236 ITR 34] (Copy Enclosed)*

where Hon'ble Supreme Court held that in determining whether commencement of reassessment proceedings was valid it has only to be seen whether there was prima facie some material on the basis of which the department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage

5. *Dr Chhangur Rai Vs CIT (2017-TIOL-660-HC-ALL-IT)*

where Hon'ble Allahabad High Court held that non-disclosure of corresponding income by the assessee so as to prove the source of investment in residential property, is sufficient for belief of escaped assessment.

6. *Sonia Gandhi Vs ACIT (Delhi High Court) [2018] 97 taxmann.com 150 (Delhi)/[2018] 257 Taxman 515 (Delhi)/[2018] 407 ITR 594 (Delhi)*

- i) *Where Congress Party gave loan to AJL and assigned said loan to non-profit company YI which subsequently issued shares to assesseees at a price less than FMV, non-disclosure by assesseees of allotment of shares in YI would be a reason to initiate reassessment proceedings.*
- ii) *Relying on PCIT Vs Mis. Meenakshi Overseas Pvt. Ltd. ITA No. 651/Del/2015 dated: 11.01.2016 (Delhi High Court) approval u/s 151 upheld.*

7. *PCIT Vs MIs. Meenakshi Overseas Pvt. Ltd (Delhi High Court) [2016] ITA No 651IDel/15 dated: 11.01.2016 (regarding section 151)*

"16 ... For the purpose of Section 151 (1) of the Act, what the Court should be satisfied about is that the Additional CIT has recorded his satisfaction "on the reasons recorded by the Assessing Officer that it is a fit case for the issue of such notice". In the present case, the Court is satisfied that by recording in his own writing the words: "Yes, I am satisfied", the mandate of Section 151 (1) of the Act as far as the approval of the Additional CIT was concerned, stood fulfilled."

5. I have heard both the parties and carefully considered the rival submissions and perused the orders of the authorities below alongwith Ppaer Book filed by the assessee and the case laws relied upon. I note that in this case the AO while recording the reasons for the belief that income has escaped assessment has recorded the reasons as under:-

Smt. Arina Grover
PAN-AKEPG0821F
A.Y. 2008-09

Reason for issue of notice u/s 148

In this case, information has been received pertaining to A.Y. 2008-09 from Asstt. Director of Income Tax (Investigation), Unit-1(2), New Delhi vide F. No. ADIT(Inv)/ Unit1(2)/ 2014-15/776 dated 10.3.2015 regarding alleged property transactions between Smt.Arina Grover w/o J K Grover and Sh. Kulwant Singh.

2. Agreement to sale was executed between Smt. Arina Grover w/o Sh. J K Grover and Sh. Kulwant Singh for the purchase of property i.e. 2/27, Subhash Nagar, Tihar-I. New Delhi for Rs. 19,11,000/- which was registered on 14.02.2008, a General Power of Attorney was also executed by Sh. Kulwant Singh in favour of Sh. J K Grover in respect of said property i.e. a double storey built up property.

3. Investigation of CBI further revealed that again a sale deed was executed on 03.03.2008 between Sh. Kulwant Singh r/o 2/27, Subhash Nagar, New Delhi and Mrs. Arina Grover w/o J K Grover r/o 3/16, Subhash Nagar, New Delhi for purchase of the property located at 2/27, Subhash Nagar, New Delhi for Rs. 19,11,000/- and registered on 04.03.2008. The details of payments are as under:-

1	Rs. 5,00,000/- through Cheque No. 478018 drawn on IDBI Bank, Rajouri Garden, New Delhi dated 12.09.2007.
2	Rs. 7,50,000/- through Cheque No. 223232 drawn on Bank of India, Tilak Nagar, New Delhi dated 01.10.2007.
3	Rs. 2,50,000/- through Cheque No. 478019 drawn on IDBI Bank, Rajouri Garden, New Delhi dated 02.10.2007.
4	Rs. 3,00,000/- through Cheque No. 515005 drawn on IDBI Bank, Rajouri Garden, New Delhi dated 12.09.2007.
5	Rs. 37,500/- in cash.

4. However, during the search conducted by CBI at the office premises of Smt. Arina Grover, w/o J K Grover on 18.05.2009, an agreement to sale and purchase dated 12.09.2007 executed between Sh. Kulwant Singh and Smt. Arina Grover for the purchase of double storey house located at 2/27, Subhash Nagar, New Delhi was recovered and seized. This agreement was executed on a non-judicial stamp paper of Rs. 50/-. As per agreement, Smt. Arina Grover had agreed to purchase the said property at a cost of Rs. 95,00,000/-. The handwritten money receipt amounting to Rs. 95,00,000/- was also recovered and seized by CBI. This agreement to sale and purchase has not been registered. The details of payment are as under:-

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1	12.09.2007	Rs. 5,00,000/- vide cheque no. 478018 drawn on IDBI Bank, Rajouri Garden, New Delhi.
	12.09.2007	Cash of Rs. 7,00,000/-
2	30.09.2007	Rs. 7,50,000/- vide cheque no.223231 dated 01.10.2007 drawn on Bank of India, Tilak Nagar, Delhi
3	30.09.2007	Rs. 2,50,000/- vide cheque no.478019 drawn on IDBI, Rajouri Garden, New Delhi 02.10.2007.
4	12.10.2007	Cash of Rs. 30,00,000/-

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5	11.03.2008	Rs. 3,00,000/- through chequ No. 515005 drawn on IDBI, Rajouri Garden, Delhi dated. 14.02.2007.
6	11.03.2008	Cash of Rs. 7,00,000/-
7	11.03.2008	Rs. 19,00,000/- will be adjusted against the construction of Plot No. 12, Chand Nagar, New Delhi.

Balance of Rs. 14,00,000/- at the time of final possession of 2/27, Subhash Nagar, New Delhi

5. On the basis of above facts, it appears that Smt. Arina Grover w/o J K Grover has paid total sum of Rs. 95,00,000/- to Sh. Kulwant Singh towards consideration amount for the property located at 2/27, Subhash Nagar, New Delhi whereas sale deed executed for Rs. 18,37,500/- and there was an evasion of income tax of Rs. 76,62,500/-. On further enquiry, it was noticed that assessee has declared income Rs. 8,93,082/- in the Income Tax Return for A.Y. 2008-09, which clearly reflects that she has not declared true particulars of her income for A.Y. 2008-09.

6. In view of the above, approval of the competent authority is solicited for issuance of notice u/s 147/148 as per provisions of Section 147(b) read with section 151(2) of the IT Act, 1961.

7. On the basis of above information I have reasons to believe that an amount of Rs. 76,62,500/- for A.Y. 2008-09 has escaped assessment, therefore, notice u/s 148 is required to be issued to the assessee.

P. S. Singh
Asstt. Commissioner of Income Tax,
Cir 45(1) New Delhi

~~Addy Cir 45~~
After perusing the reasons given above I am satisfied that it is a fit case for issuing notice u/s 148 of the IT Act 1961
[Signature]

5.1 After perusing the aforesaid reasons recorded, I find that it is a case where action for reopening is taken mechanically on the information from the Asstt. Director of Income Tax (Investigation), Unit I(2), New Delhi dated 10.03.2015 stating therein that during the course of search of office premises of the assessee, an agreement was found which was signed on 12.09.2007 between Sh. Kulwant Singh, S/o Sh. Natha Singh, R/o 2/27, Subhash Nagar, New Delhi and Mrs. Arina Grover wife of Sh. J.K. Grover for sale/purchase of property No. 2/27, Subhash Nagar, New Delhi. The sale consideration for the said deal was fixed at Rs. 95,00,000/- and details of the same were also given in the agreement. But the sale deed was registered on 03.3.2008 for only Rs. 19,11,000/-. On the basis of this information, the reassessment proceedings were initiated u/s. 147 of the Act after taking approval of the Addl. CIT and notice u/s. 148 of the Act was issued upon the assessee on 27.3.2015. In response to the same, the AR of the Assessee appeared and filed a letter dated 27.4.2015 stating therein that the return filed under section 139 of the Act as return filed in compliance with notice u/s. 148 of the Act and also requested to provide copy of reasons recorded for issuing the notice u/s. 148 of the Act, which was provided by the AO to himself. Later on CBI also searched the premises of the assessee on 18.05.2009 and found the said agreement which was recovered and seized in which the details of receipt of money has also been mentioned. On the basis of the said documentary evidences seized by the CBI, the AO issued show cause notice dated 29.2.2016 to the assessee asking to explain why the actual sale price of the property should not be considered at Rs. 95,00,000/- and Rs. 18,37,500/- and difference of Rs. 76,62,500/- should not be treated as unexplained income of the assessee and tax liability be computed accordingly. It is noted that AO has not investigated the matter himself and has not made any enquiry to corroborate the Report of the Investigation on which basis the case of the

assessee has been reopened, meaning thereby the AO has not applied his mind and only issued notice u/s. 148 of the Act on the basis of the CBI Report which has later been thoroughly investigated by the CBI itself and assessee has been discharged by the CBI on the basis of the CBI Court decision. Since the basic Report of the CBI has remained no more and subsequent notice u/s. 148 of the Act is invalid and resultantly the reassessment is void ab initio. Thus, the AO has acted mechanically and without any independent application of mind. It is further noted that initiation of proceedings is based on non application of mind much less independent application of mind but is a case of borrowed satisfaction. Nothing is independently examined or considered by the AO which can demonstrate application of mind by him. To support my aforesaid view, I draw support from the following decisions:-

i) ACIT vs. Dhariya Construction Co. (2011) 198 taxman 202 (SC) wherein the Hon'ble Court has held that :

"Section 147 of the Income Tax Act, 1961 – Income escaping assessment – Non-disclosure of primary facts – Whether opinion of District Valuation Officer (DVO) per se is not an information for purposes of reopening of an assessment under section 147; Assessing Officer has to apply his mind to information, if any, collected and must form a belief thereon – Held, yes."

ii) Pr CIT v. RMG Plyvinyl (I) Ltd. (2017) 83 taxmann.com 348 (Hon'ble Delhi High Court has observed as under:-

11. There can be no manner of doubt that in the instant there was a failure of application of mind by the AO to the facts. In fact he proceeded on two wrong premises - one

regarding alleged non-filing of the return and the other regarding the extent of the so-called accommodation entries.

12. Recently, in its decision dated 26th May, 2017 in ITA NO.692/2016 (Principal Commissioner of Income Tax-6 v. Meenakshi Overseas Pvt. Ltd.), this Court discussed the legal position regarding reopening of assessments where the return filed at the initial stage was processed under Section 143(1) of the Act and not under Section 143(3) of the Act. The reasons for the reopening of the assessment in that case were more or less similar to the reasons in the present case, viz., information was received from the Investigation Wing regarding accommodation entries provided by a 'known' accommodation entry provider. There, on facts, the Court came to the conclusion that the reasons were, in fact, in the form of conclusions "one after the other" and that the satisfaction arrived at by the AO was a "borrowed satisfaction" and at best "a reproduction of the conclusion in the investigation report."

13. As in the above case, even in the present case, the Court is unable to discern the link between the tangible material and the formation of the reasons to believe that income had escaped assessment. In the present case too, the information received from the Investigation Wing cannot be said to be

tangible material per se without a further inquiry being undertaken by the AO. In the present case the AO deprived himself of that opportunity by proceeding on the erroneous premise that Assessee had not filed a return when in fact it had.

14. To compound matters further the in the assessment order the AO has, instead of adding a sum of 78 lakh, even going by the reasons for reopening of the assessment, added a sum of Rs.1.13 crore. On what basis such an addition was made has not been explained.

15. For the aforementioned reasons, the Court is satisfied that no error was committed by the ITAT in holding that reopening of the assessment under Section 147 of the Act was bad in law."

iii) 395 ITR 677 (Del) Pr. CIT v. Meenakshi Overseas (P) Ltd.

"36. In the present case, as already noticed, the reasons to believe contain not the reasons but the conclusions of the AO one after the other. There is no independent application of mind by the AO to the tangible material which forms the basis of the reasons to believe that income has escaped assessment. The conclusions of the AO are at best a reproduction of the conclusion in the investigation report. Indeed it is a 'borrowed satisfaction'. The reasons fail to demonstrate the link between the tangible material and the formation of the reason to believe that income has escaped assessment.

37. For the aforementioned reasons, the Court is satisfied that in the facts and circumstances of the case, no error has been committed by the ITAT in the impugned order in concluding that the initiation of the proceedings under Section 147/148 of the Act to reopen the

assessments for the AYs in question does not satisfy the requirement of law.

38. The question framed is answered in the negative, i.e., in favour of the Assessee and against the Revenue. The appeal is, accordingly, dismissed but with no orders as to costs.

5.1.1 I have perused the orders of the revenue authorities, written submissions filed by both the parties and the case laws relied therein as well as the Paper Book filed by the Ld. Counsel for the Assessee, I am of the considered view that the issue in dispute has already been adjudicated and decided in favour of the Assessee by the various decisions of the Hon'ble Supreme Court and the Hon'ble High Courts, as relied upon by the Ld. Counsel for the assessee, which have been respectfully followed by the Tribunal. Therefore, I have no other alternative except to respectfully follow the same case laws, because no contrary decision has been brought to my knowledge by the Ld. DR under the similar facts and circumstances of the case.

5.2 Keeping in view of the facts and circumstances of the case as explained above and respectfully following the precedents, as aforesaid, the proceedings initiated by invoking the provisions of section 147 of the Act by the AO and upheld by the Ld. CIT(A) are nonest in law and without jurisdiction and needs to be quashed.

5.3 Further, after perusing the Page No. 40-42 of Assessee's Paper Book, as reproduced above, which are the copies of the reasons recorded by the AO and approval granted by the Addl. CIT, Range-45, New Delhi, wherein the Addl. CIT, Range-45, New Delhi has granted the approval by mentioning that **"After perusing the reasons given above I am satisfied that it is a fit case for issue of notice u/s. 148 of the I. Tax Act, 1961."**, which shows that Ld. Addl. CIT, Range-45, New Delhi has not recorded proper

satisfaction and without application of mind gave the approval in a mechanical manner. 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)."

5.4 In the background of the aforesaid discussions and respectfully following the precedents, as aforesaid, I am of the considered view that the proceedings initiated by invoking the provisions of section 147 of the Act by the AO and upheld by the Ld. CIT(A) are nonest in law and without jurisdiction and also the approval granted by the Addl. CIT, Range-45, New Delhi 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 on both counts, raised by the assessee's counsel, as aforesaid, is allowed. Since I have quashed the reassessment, hence, other grounds have become academic and therefore, are not being adjudicated.

6. In the result, the Appeal filed by the Assessee stands 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.