

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "C" NEW DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A No.4957/Del/2015  
निर्धारणवर्ष/Assessment Year:2006-07

M/s Home Developers Pvt. Ltd. D-22, Defence Colony, New Delhi.	बनाम Vs.	ACIT Central Circle-14, New Delhi.
PAN No. AAECM7613E		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे /Assessee by	Shri Salil Aggarwal, Adv. Shri Shailesh Gupta, Adv.
राजस्वकीओरसे /Revenue by	Ms. Rakhi Vimal, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	14.02.2020
उद्घोषणाकीतारीख/Pronouncement on	21.02.2020

आदेश /O R D E R

PER BHAVNESH SAINI, J.M.

1. This appeal by assessee has been directed against the order of Ld. CIT(Appeals)-XXVI, New Delhi dated 28.05.2015 for Assessment Year 2006-07 on the following grounds:

- 1) "The Ld. CIT(A) erred on facts and in law in confirming the reopening of case for reassessment u/s 147 of Income Tax Act, even when the said reopening was barred by law under first proviso to Section 147 as the period of 4 years had already elapsed.
- 2) The Ld. CIT(A) erred on facts and in law in rejecting the claim of the assessee that reopening of the case u/s 147 was not permissible as the concerned assessment year 2006-07 was

*part of 'block assessment year' and reassessment had already taken place u/s 153A.*

- 3) The Ld. CIT(A) erred on facts and in law in confirming the addition of Rs. 1,66,00,000/- (Rupees one crore sixty six lakh only) made by the Ld. AO u/s 68 of Income Tax Act merely on the basis of some internal information received from Addl. Director of Income Tax (Investigation)-Unit-VI, New Delhi without confronting the assessee with the evidence and without following the establish procedure of evidence and completing the assessment with predetermined mind set without giving reasonable opportunity to assessee to cross examine witnesses and rebuttal evidences.*
- 4) The Ld. CIT(A) erred on facts and in law in confirming the addition of Rs. 83,000/- (Rupees eighty three thousand only) as commission.”*

2. We have heard Ld. Representatives of both the parties and perused the material on record. Vide order dated 07.10.2019 arguments were partly heard and Ld. DR was directed to produce assessment records. The appeal was, thereafter, adjourned time to time and is finally heard on 14.02.2020. Ld. DR produced the assessment record for our inspection.

3. Briefly the facts of the case are that a return declaring an income of Rs. 1,76,77,222/- was filed by assessee on 17.11.2006 and the case was assessed u/s 143(3) of the Act at an income of Rs. 11,59,39,654/- on 31.12.2007. Thereafter, on the basis of information received from Investigation Wing with reference to beneficiary of accommodation

entries received from certain entry operators identified by the Investigation Wing of the Department, the case was reopened by recording satisfaction note and by application of provisions of Section 147/148 of the Act. The notice u/s 148 of the Act was issued on 22.03.2013. Notice u/s 143(2) was also issued. The reasons recorded for reopening of assessment were furnished to the assessee vide letter dated 19.02.2014 which is reproduced in the assessment order. The AO at the assessment stage found that assessee has received share capital/share premium from ten parties. The AO issued summons and examined the issue in detail. The AO ultimately was not satisfied with the explanation of assessee and made addition of Rs. 1.66 crores u/s 68 of the Act. The AO also made addition of Rs. 83,000/- on account of commission. The AO further made addition of Rs. 1.54 crores u/s 68 of the Act and passed the assessment order u/s 147/148 of the Act dated 18.03.2014. The assessee challenged the reopening of the assessment as well as additions on merits. The Ld. CIT(A) confirmed the reopening of the assessment and confirmed the addition of Rs. 1.66 crores as well as Rs. 83,000/-. However, as regards addition of Rs. 1.54 crores, AO was directed to verify the fact from the record whether surrendered amount was reflected in the returned income and, thereafter, delete the same. Appeal was thus, partly allowed.

4. Ld. Counsel for assessee at the outset, referred to PB 158 to 162 which are noticed u/s 148 of the Income Tax Act, letter of ITO (Hqrs)

dated 21.03.2013 conveying satisfaction of the CIT and Performa for approval of the Commissioner of Income Tax u/s 151(2) of the Act and submitted that the CIT (Central)-II, New Delhi did not record any satisfaction before granting approval to reasons u/s 147 of the Act and there is no signature of the CIT(Central)-II, New Delhi. He has submitted that Department was directed to produce the assessment record and the record, if any, satisfaction has been recorded by the CIT (Central). The Department has, however, failed to produce any satisfaction of the CIT, therefore, reopening of the assessment is bad in law. He has submitted that since no satisfaction has been produced on record, therefore, adverse inference may be drawn against the Revenue Department and relied upon judgment of the Madras High Court in the case of CIT Vs. Krishnaveni Ammal 158 ITR 826.

5. Ld. DR produced the assessment record which contained the same copy of Performa obtaining approval u/s 151, copy of which is filed at page 160 to 162 of the PB and Ld. DR submitted that there is no signature on the same of CIT (Central)-II. Ld. DR, however, referred to PB 159 which is letter of ITO (Hqrs.) dated 21.03.2013 in which the ITO (Hqrs.) has conveyed to the AO the satisfaction of the CIT (Central)-II. She has, therefore, submitted that though original sanction is not available on record but this itself is sufficient to prove satisfaction was recorded and signed by the CIT(Central)-II, New Delhi. Ld. DR also placed on record letter dated 11.02.2020 of ACIT, Central Circle-14, New Delhi in which it

is stated that old records are not traceable as now and efforts are still being made to trace the same. Therefore, assessee should not get benefit of non production of the record.

6. We have considered the rival submission of this point. Section 151 of the Act as is applicable to assessment year under appeal reads as under:

***“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.”***

7. In the present case, the reassessment order is passed by DCIT(Central Circle)-15, New Delhi. It is also an admitted fact that assessee originally filed return of income on 17.11.2006 and case was assessed u/s 143(3) of the Act. Thus, the four years have expired from the end of the relevant assessment year when notice u/s 148 was issued on 22.03.2013. The proviso to section 151(1) of the Act, therefore, will

apply in the case of the assessee. The satisfaction of Chief Commissioner or Commissioner shall have to be obtained before issuing a notice u/s 147/148 of the Act. It is a condition precedent and shall have to be followed by the Income tax Authorities. In the present case, the record revealed that AO(DCIT), Central Circle-21, New Delhi has sent the Performa for obtaining approval of CIT u/s 151(1) of the Act for initiating the proceedings u/s 147/148 of the Act in the case of the assessee and para 13 of the Performa (PB 162) reads as under:

*13. Whether the Commissioner is satisfied on the reasons recorded by the ITO/AC/that it is a fit case for the issue of a notice u/s 148.*

*Blank*

*(unsigned)  
(A D MEHROTRA)  
Commissioner of Income Tax  
Central-II, New Delhi*

8. It would, therefore, reveal that satisfaction of the CIT (CC)-II, New Delhi is nowhere recorded and same is also unsigned. Ld. DR also confirmed that original of this Performa is available on record and in the original also no satisfaction of the CIT has been recorded and no signature of the CIT (Central)-II, New Delhi has been appended on the same. It is, therefore, clear that no sanction of the CIT has been obtained u/s 151 of the Act before issue a notice u/s 148 of the Act. Ld. DR, however, referred to the letter dated 21.03.2013 of ITO(Hqrs.) of the Office of CIT (Central)-II, New Delhi which is addressed to the DCIT (Central Circle)-21, New Delhi in which the comments of the CIT

(Central)-II, New Delhi have been conveyed to the AO which reads as under:

*“On the basis of reasons recorded by the AO (CC-21), I am satisfied that the case of M/s Home Developers Pvt. Ltd. for AY 2006-07 is fit for issue of notice u/s 148.”*

9. It would also show that this sanction/approval is not accorded by the CIT (Central)-II, New Delhi because it is a letter written by ITO(Hqrs.) on behalf of CIT (Central)-II, New Delhi. Since, it is mandatory to obtain sanction of Commissioner before issue a notice u/s 147/148, therefore, he cannot delegate his authority to the ITO (Hqrs.). Such act shall have to be performed by the Commissioner only. Further, this letter is not supported by any evidence or material, if CIT (Central)-II, New Delhi has recorded his satisfaction in the present case or signed the satisfaction as per law. Therefore, there is no reason for ITO (Hqrs.) to convey sanction of CIT(CC). Therefore, the condition precedent for obtaining sanction u/s 151 before issuing a notice u/s 148 have not been proved and satisfied by the Revenue Department. Ld. DR produced the letter of the AO in which it is conveyed that since old records are not traceable as of now and efforts are still being made to trace the same. Therefore, assessee should not get benefit of the same. This appeal was partly heard on 07.10.2019 and Ld. DR was directed to produce assessment record. Thereafter, the appeal was adjourned six times. No record has been produced before us to prove, if sanction of CIT u/s 151 has been given as per law before issue of notice u/s 148. Since, it is a document

in possession of the Department and Department has failed to produce the same for our inspection, therefore, we draw adverse inference against the Revenue Department and hold that no sanction has been accorded u/s 151(1) of the Act by CIT(Central)-II, New Delhi to the AO before issuing notice u/s 148 of the Act. Therefore, entire reassessment proceedings are vitiated and are liable to be quashed. In this view of the matter, we set aside the orders of the authorities below and quash the reopening of the assessment in the matter. Resultantly all additions stand deleted. In view of the above, we do not propose to decide the remaining questions raised in the present appeal which are left with academic discussion only.

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

Order pronounced in the open court.

**Sd/-**  
**(PRASHANT MAHARISHI)**  
**ACCOUNTANT MEMBER**

**sd/-**  
**(BHAVNESH SAINI)**  
**JUDICIAL MEMBER**

Dated: 21<sup>st</sup> February, 2020

*\*Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

**By order**

**Assistant Registrar, ITAT: Delhi Benches-Delhi.**