

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

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 821/Del/2019
Assessment Year : 2010-11

RISHENDRA PAL SINGH,
C/O RAJ KUMAR &
ASSOCIATES,CAS
L-07A (LGF), SOUTH EXTENSION,
PART-II, NEW DELHI – 110 049
(PAN: AODPP8827P)
(Appellant)

Vs. ITO, WARD-64(3),
NEW DELHI

(Respondent)

Assessee by : Mr. Raj Kumar, CA & Sh. Sumit Goel, 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)-21, New Delhi on 05.12.2018 in relation to the assessment year 2010-11 on as many as 05 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 under the facts and circumstances no proceedings u/s. 147/148 could had been initiated on the basis of seized material in search of a 3rd party against correctly only us. 153C of the I.T. Act.*

2. *That the initiation of proceedings u/s. 147/148 are illegal and incompetent on account of fatally defective approval u/s. 151 of the I.T. Act."*

3. However, at the time of hearing, Ld. AR of the assessee only argued the additional ground no. 2 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, Column No. 10 of Assessee's Paper Book which is a copy of approval granted by the Addl. Commissioner of Income Tax, Range-55, New Delhi wherein he has granted the approval by mentioning that **"It is a fit case for issue of notice u/s. 148"** which shows that Ld. Addl. CIT, Range-55 has not recorded proper satisfaction and without application of mind gave the approval in a mechanical manner. He further drew my attention towards Page No. 4, Column No. 11 of Assessee's Paper Book which is a copy of further approval granted by the Pr. Commissioner of Income Tax, Delhi-19, New Delhi wherein he has granted the approval by mentioning that **"Yes, As per facts / reasons recorded, I am satisfied that it is a fit case for issue of notice u/s. 148"** which shows that Ld. Pr. CIT, Delhi-19, New Delhi has also 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 no. 2 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. 2 as argued by the Id. Counsel for the assessee. For the sake of convenience, the additional ground no. 2 is again reproduced as under:-

"That the initiation of proceedings u/s. 147/148 are illegal and incompetent on account of fatally defective approval u/s. 151 of the I.T. Act."

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 i.e. Column no. 10, wherein the Addl. CIT, Range-55, New Delhi granted the approval for issuing notice u/s. 148 of the Income Tax Act, 1961 by mentioning as under:-

"It is a fit case for issue of notice u/s. 148"

6.1 Further on perusal of page no. 4 i.e. column no. 11 wherein the Ld. Pr. Commissioner of Income Tax, Delhi-19, has granted the approval by mentioning that ***"Yes, As per facts / reasons recorded, I am satisfied that it is a fit case for issue of notice u/s. 148"*** which shows that Ld.

Pr. CIT, Delhi-19, has also not recorded proper satisfaction and without application of mind gave the approval in a mechanical manner.

6.1 After perusing the aforesaid remarks of the Addl. CIT, Range-55, New Delhi as well as Pr. CIT, Delhi-19, New Delhi, I find that the approval granted by both the authorities are mechanical and without application of mind, which are 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 Addl. CIT, Range-55, Delhi as well as Pr. CIT, Delhi-19 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 Addl. CIT, Range-55, New Delhi and also by the Pr. CIT, Delhi-19, 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 additional ground no. 2 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 02-03-2020.

Sd/-

[H.S. SIDHU]
JUDICIAL MEMBER

Dated: 02-03-2020

SRB

Copy forwarded to:

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

AR, ITAT, NEW DELHI.