

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'I-2+SMC', NEW DELHI**

Before Ms. Suchitra Kamble, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 5423/Del/2018 : Asstt. Year : 2010-11

Vijay Garg, 34/1, Vikas Apartments, East Punjabi Bagh, New Delhi-110026	Vs	Income Tax Officer, Ward-42(5), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAJPG5770Q		

Assessee by : Sh. Tarun Batra, CA

Revenue by : Sh. Pradeep Singh Gautam, Sr. DR

Date of Hearing: 27.02.2020

Date of Pronouncement: 06.05.2020

ORDER

Per Dr. B.R.R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT (A)-14, New Delhi dated 07.06.2018.

2. Following grounds have been raised by the assessee:

"1. The Assessing Officer has erred in taking action under section 147/148 of the Act on the basis of information received from ADIT(Inv.)-1, Faridabad, only and the Learned CIT(Appeals) has erred in confirming the action taken by the Assessing Officer, whereas she has not formed any of her opinion for reopening of the case which is against the law & facts of the case & deserves to be quashed.

2. The Assessing Officer has erred in making an addition of Rs.13,00,320/- to the declared income as unexplained credit u/s 69 of the Income Tax Act, 1961 and learned CIT(Appeals) has erred in confirming the action taken by the Assessing Officer,

whereas the action taken is not justified in confirming the addition and deserves to be deleted.

3. The Learned CIT(Appeals) has failed to appreciate that reasons recorded mechanically without application of mind do not form a valid reasons to believe for assumption of jurisdiction u/s 147 of the Act.

4. The Assessing Officer has erred in taking action under section 147/148 of the Act."

3. The germane facts required for the adjudication are as under:

4. The AO having obtained information from ADIT, Unit-1, Fardidabad, that the M/s Shrinath Filling Station has received a sum of Rs.3,00,000/- from the Global Trade Corporation, the approval of the Principal Commissioner has been obtained by the AO to issue notice u/s 148 of the Income Tax Act, 1961.

5. We have gone through the approval given by the Id. PCIT at page no. 14 of the paper book. The approval has been accorded to M/s Shrinath Filling Station at 116/8, Ghevra, Khanjhawala Road, New Delhi-110081. The PAN number is ACNFS6053Q. The status of the assessee is "FIRM". The date of approval by the Id. PCIT was 31.03.2017. The reasons mentioned states that "perusal of ITD data base reveals that the assessee has not filed his ITR for the assessment year 2010-11 and as such an amount of Rs.3,00,000/- received has escaped assessment within the meaning of Explanation 2(a) of Section 147".

6. Having obtained approval, the AO has issued notice u/s 148 of the Income Tax Act, 1961 on 31.03.2017 in the name of M/s Shrinath Filling Station, PAN-ACNFS6053Q.

7. Having issued the notice, the assessment has been completed in the name of Sh. Vijay Garg proprietor of M/s Shrinath Filling Station, PAN-AAJPG5770Q-----why?

8. From the records, we find that the partnership firm has come to existence from 14.01.2014 in which Sh. Vijay Garg one of the partners. For the assessment year 2010-11, the firm to which the notice u/s 148 issued was not even an existence. Having realized the mistake, the AO proceeded to complete the assessment in the name of Sh. Vijay Garg. We find that a confusion has been crept into minds of the revenue authorities owing to the similar name of the proprietary concern and the firm.

9. From the facts gathered above, it can be unequivocally said that there has been lack of application of mind by the Assessing Officer as well as the Pr. CIT in according the approval for issue of notice u/s 148 to a non-existing firm. The reason accorded by the AO that he has gone through the ITD data base and no return has been filed cannot be held to be valid as truthful reason as the firm was not even existence during the assessment year 2010-11.

10. Hence, the assessment completed in the name of Sh. Vijay Garg, while the reasons have been recorded and the notice has been issued in the name of firm cannot be held to be legally valid as the AO has not applied his mind and not

come to a correct conclusion that he has reasons to believe that the income of the assessee has escaped assessment which was the jurisdictional requirement for reopening of the assessment u/s 148 of the Act. Unless, the basic jurisdictional requirement is satisfied any exercise of analyzing the material produced subsequent to the reopening will not rescue an inherently defective reopening order from invalidity.

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

Order Pronounced in the Open Court on 06/05/2020.

Sd/-

(Suchitra Kamble)
JUDICIAL MEMBER

Sd/-

(Dr. B.R.R. Kumar)
ACCOUNTANT MEMBER

Dated: 06/05/2020

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR