

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI O.P. KANT, ACCOUNTANT MEMBER**

I.T.A. No.828 /DEL/2020
Assessment Year 2010-11

M/s. G.K. Business Centre (P) Ltd., E-48, Greater Kailash Part-I, New Delhi.	v.	ITO, Ward-10(4), New Delhi.
TAN/PAN: AAACG2359M		
(Appellant)		(Respondent)

Appellant by:	Shri Raj Kumar, CA		
Respondent by:	Shri Gurmel Singh, Sr.D.R.		
Date of hearing:	15	01	2021
Date of pronouncement:	02	02	2021

ORDER

PER AMIT SHUKLA, J.M.:

The aforesaid appeal has been filed by the assessee against the impugned order dated 12.04.2019 passed by Commissioner of Income Tax (Appeals)-IV, New Delhi for the quantum of assessment passed u/s. 143(3)/147 for the Assessment Year 2010-11. In the grounds of appeal, the assessee has raised following grounds of appeal:

- 1. That under the facts and circumstances the proceedings u/s.147 / 148 initiated and completed on the basis of reasons recorded by the A.O. Ward-10(l) who was not having the jurisdiction and no fresh reasons being recorded by the jurisdictional A.O. of Ward-10(4). the whole proceedings are without jurisdiction, illegal and unsustainable in law.*

2. That under the facts and circumstances, proceedings u/s. 147/148 initiated since without jurisdiction, without application of mind, on wrong facts, initiated mechanically and on borrowed satisfaction, hence illegal and unsustainable in law.

3. That the Ld. A.O., since failed in adjudicating all objections against reopening proceedings, properly, as per law and in totality and as per the directions of Hon'ble Supreme Court in the case of G.K.N. Drive Shafts, hence consequential proceedings and impugned asstt. is illegal and without jurisdiction.

4. That under the facts and circumstances, the approval u/s. 151 is fatally defective, given on reasons recorded by the A.O. having no jurisdiction, mechanical and without application of mind which makes the whole proceedings without jurisdiction, illegal and unwarranted.

5. That under the facts and circumstances, addition of Rs.62,00,000/- u/s.68 for alleged share application money / capital reed, from following 04 companies is unsustainable in law as well as on merits:-

Ethoria Capital Pvt. Ltd. Rs. 10,50,000/-

Prasandhi Leasing & Finance Pvt. Ltd. Rs. 15,00,000/-

Mayank Medilab Pvt. Ltd. Rs. 7,50,000/-

Instant Travels & Tours Pvt. Ltd. Rs. 19.00.000/-

Total Rs.62.00.000/-

5.1 That without prejudice, Rs.7,50,000/- out of Rs.62,00,000/- shown to have been received from M/s Mayank

Medilab (P) Ltd. were returned back immediately, in the same year, hence, no benefit derived, therefore under no circumstance this amt. can be considered u/s.68.

5.2 That without prejudice, Rs. 10,50,000/- out of Rs.62,00,000/- alleged to be received from Europhia Capital (P) Ltd. were never received from any such company, hence under no circumstance this amt. can be considered u/s.68 of the I.T. Act.

5.3 That the findings of A.O. are unsustainable for addition of Rs.62,00,000/- in the absence of providing the copies of all materials used against the assessee and by not providing cross-examination of persons whose statements have been relied upon, thus no proper and reasonable opportunity of hearing has been allowed and principles of natural justice is grossly violated which makes the impugned asstt. unsustainable in law.

6. That under the facts and circumstances, addition of Rs. 1,24,000/- u/s.69C as unexplained expenditure being alleged commission expenses @ 2% of Rs.62,00,000/- is unsustainable in law as well as on merits.

7. That under the facts and circumstances, no interest U/s. 234A/B/C should had been charged. Without prejudice, in any case, the calculations are grossly erroneous and excessive.”

2. The brief facts qua the legal issue that proceedings u/s.147/148 have been initiated and completed on the basis of ‘reasons recorded’ by the Non-Jurisdictional Assessing Officer and that the assessee has been filing its return of

income with ITO, Ward-10(4) wherein as per the PAN and also otherwise the correct jurisdiction lies before the ITO Ward-10(4) only. The assessee has filed its return of income on 27.09.2010 before the ITO, Ward-10(4) which was duly processed also u/s. 143(1). Thereafter, notice u/s.148 has been issued on 31.03.2016 which has been assigned and issued by ITO, Ward-10(1), New Delhi who apparently did not had jurisdiction upon the assessee. The copy of 'reasons recorded' as incorporated in the assessment order reads as hereunder:

"The assessee filed return of income for the A.Y. 2010-11 on 27.09.2010 declaring income of Rs.5,690/-. The return was processed u/s 143(1).

Information was forwarded to this office through the Addl.CIT, Range-10, New Delhi that search & seizure action was conducted by Inv. Wing at the office of Sh. Pradeep Kumar Jindal where various incriminating documents/materials were seized during the course of search. During the post search investigation and perusal of seized documents it was observed that Sh. Pradeep Kumar Jindal was engaged in the business of providing accommodation entries by providing cheques/PO/DD in lieu of cash to a large number of beneficiary companies thorough various paper and dummy companies floated and controlled by them. It was also evidently established by the Investigation Wing that Sh Pradeep Kumar Jindal is known entry providers and is the actual controller of various companies/proprietary firms/partnership firms. They control these entities through various persons by appointing them as directors/ partners /proprietors apart from nominating them as authorized

signatories for maintaining the bank accounts of these entities but in fact all these persons act only as their stooges. The cash received from the recipient parties for providing the accommodation entries was first deposited in the accounts of these dummy firms/companies in the disguise of the cash received against the bogus sales, duly shown in the books of accounts. From there, this cash was transferred to the different paper companies floated by Sh, Pradeep Kumar Jindal through a complex trail of transactions, so as to hide the actual sources of funds of the last set of recipient companies of Sh. Pradeep Kumar Jindal.

In this way, the reserve & surpluses and the capital account of a specific set of companies are enhanced with the help of the unexplained cash received by Shri Pradeep Kumar Jindal, which is routed to these companies through their dummy firm/companies. Once the funds of these companies have been enhanced sufficiently, accommodation entries through RTGS/ Cheque in the shape of the share capital, capital gains or loans as per the specific requirement of the recipient clients were provided to them in lieu of the cash received from them. In this way, the chain for providing an accommodation entry gets completed.

It is noticed from the list of entries that the assessee M/s G.K. Business Centre P. Ltd. has taken following accommodation entries as per details here under:-

AMOUNT	Date	Conduit companies through which cheque issued
1000000	01.07.2009	M/s.Euthoria Capital Pvt. Ltd
1500000	02.07.2009	M/s. Parsandi Leasing & Finance Pvt. Ltd
700000	04.07.2009	M/s, Mayank Medilab Pvt. Ltd.
1800000	07.07.2009	M/S. Instant Travels 8i Tours Pvt. Ltd.
1100000	10.07.2009	M/S. Instant Travels & Tours Pvt. Ltd.
50000	16.07.2009	M/s.Euthoria Capital Pvt. Ltd
50000	20.07.2009	M/s. Mayank Medilab Pvt. Ltd.

On the basis of the reports received from the investigation Wing , I have downloaded the return from the ITD portal and verified the records and it is clear that the assessee company has not disclosed fully and truly all material facts necessary for its assessment for the assessment year under consideration as it emerges that transactions shown in the return are not genuine. The value of share premium appears to be very high keeping in view the turnover shown by the assessee as the turnover during the year under consideration is Nil. I am in possession of certain material like statement recorded during search of dummy directors of companies of Shri Pradeep Kumar Jindal) that discredits and impeaches the particulars furnished by the assessee company and also establishes the link with the self-confessed "accommodation entry providers", whose business is to help assesseees bring back their unaccounted money into their books of account. Thus, there is a direct link between the information/available with the department and the income escaping assessment.

I have, therefore, reasons to believe that income to the extent of Rs.62,00,000/- has escaped assessment relevant to A.Y,2010-

11. Thus, the same is to be brought to tax under section 147/148 of the I.T. Act 1961.

Moreover, as the case pertains to a period beyond four years from the end of relevant assessment year, for issuing the notice u/s 148, necessary approval / sanction may kindly be accorded by the Pr. Commissioner of Income Tax, Delhi-4, New Delhi in view of the amended provision of section 151 w.e.f 01.06.2015.

Date : 27.03.2017

Sd/-
(H.K. Sharma)
Income Tax Officer
Ward-10(1), New Delhi.”

3. Ld. Counsel for the assessee submitted that notice u/s 148 has been issued by ITO, Ward-10(4) who is jurisdictional Assessing Officer, but the reasons have been recorded by the different Assessing Officer. He pointed out that while seeking approval in terms of Section 151, the format clearly shows that the approval has been sought on the reasons recorded by ITO, Ward-10(1) who did not had jurisdiction. Thereafter, the notice u/s.148 has been issued on 31.03.2017 by ITO, Ward-10(4), New Delhi. Even the assessment order u/s.147/143 (3) has been passed by ITO, Ward-10(4) on 30.12.2017. Thus, proceedings u/s.147 have been initiated by non Jurisdictional Assessing Officer, i.e., ITO, Ward-10(1) and even the approval u/s.151 from the higher authorities have also been granted on the reasons recorded by the non Jurisdictional Assessing Officer, i.e., ITO, Ward-10(1). It is a well settled law that the reasons should be recorded only by the Jurisdictional

Assessing Officer and not by different Assessing Officer. In support of his contention, he strongly relied upon the judgment of Hon'ble Gujarat High court in the case of **Pankaj Bhai Jayshuklal Shah vs. CIT, reported in (2020) 425 ITR 70**; and decision of ITAT Delhi Bench in the case of **Manoj Kumar vs. ACIT reported in 79 ITR (Tribunal) 158 Delhi**.

4. During the course of hearing, we had directed the ld. DR to obtain a report from the Assessing Officer, as to whether any reasons have been recorded by ITO, Ward-10(4), i.e., jurisdictional Assessing Officer and whether any approval has been given u/s.151 on such reasons recorded. After obtaining the information from the Assessing Officer, the ld. DR informed in the open court that the reasons as incorporated in the assessment order are the only reason which has been recorded and signed by the ITO, Ward-10(4). However, he submitted that, this will not making any difference, because reasons have been duly recorded based on tangible material and information on the basis of which proceedings have been initiated u/s.147 and assessment has been framed, therefore, there is no illegality in such proceedings.

5. We have heard the rival submissions and also perused the relevant finding given in the impugned order as well as the material placed on record on the issue raised in ground no.1 by the assessee. It is an admitted fact that the correct jurisdiction of the assessee lies with ITO, Ward-10(4) and prior to the issuance of notice u/s 148, the income tax

returns, for Assessment Year 2015-16 and 2016-17 were filed before ITO, Ward-10(4). This information was already there on the record and even the PAN jurisdiction mentioned the jurisdiction of the assessee is before ITO, Ward-10(4). However, the reasons as incorporated in the assessment order have been recorded by ITO, Ward-10(1), New Delhi and the approval u/s.151 has been sought from PCIT on the 'reasons recorded' by ITO, Ward-10(1) on 30.03.2017, thereafter the notice u/s.148 issued by ITO, Ward-10(4) on 31.03.2017 and the assessment has been framed by the same officer on 30.12.17. Following chronology of event from the records placed in the paper-book makes it very clear:

<i>Date</i>	<i>Event</i>	<i>Pg. No. In PB</i>
<i>27.03.17</i>	<i>Reasons recorded by ITO Ward-10(1) New Delhi</i>	<i>2-3</i>
<i>30.03.17</i>	<i>Approval u/s.151 by PCIT on reasons recorded by ITO Ward-10(1)</i>	<i>16-17</i>
<i>31.03.17</i>	<i>Notice u/s.148 issued by ITO Ward-10(4) New Delhi</i>	<i>4</i>
<i>30.12.17</i>	<i>Asstt. framed by ITO Ward-10(4) New Delhi</i>	

6. Thus, it is an undisputed fact that the proceedings have been initiated u/s.147 by recording the reasons by non Jurisdictional Assessing Officer and therefore, notice u/s.148 and consequent assessment order has been framed by the jurisdictional Assessing Officer. It is a trite law that the notice u/s.148 is a jurisdictional notice and the Assessing Officer can validly acquire jurisdiction u/s.147 after recording the

reasons and thereafter issuing and serving a notice u/s 148 in accordance with law. The reasons have to be recorded by the jurisdictional Assessing Officer for reopening the assessment as contemplated u/s. 148(2) and the same officer, i.e., jurisdictional Assessing Officer has to issue a notice u/s.148(1). Being the matter of jurisdiction, it cannot be envisaged that a non jurisdictional Assessing Officer records the reasons and seeks approval from the higher authorities and then jurisdictional Assessing Officer takes over the proceedings and passed the assessment order. Such an action has been held to be illegal, in the case of Pankajbhai Jaisukh vs. ACIT (supra) wherein the issue involved was that, the reason for reopening the assessment was recorded by the jurisdictional Assessing Officer. However the notice u/s.148 was issued by non jurisdictional Assessing Officer. On these facts their Lordships held that such proceedings are bad in law. The relevant observations are as under:

Held, allowing the petition, that while the reasons for reopening the assessment had been recorded by the jurisdictional Assessing Officer, viz., the Deputy Commissioner, Circle 2, the notice under section 148(1) had been issued by the Income-tax Officer, Ward 2(2), who had no jurisdiction over the assessee, and hence, such a notice was bad on the count of having been issued by an Officer who had no authority to issue such notice. It was the Officer recording the reasons who had to issue the notice under section 148(1) whereas the reasons had been recorded by the jurisdictional Assessing Officer and the notice had been issued by an

Officer who did not have jurisdiction over the assessee. The notice under section 148 being a jurisdictional notice, any inherent defect therein could not be cured under section 292B. It was not possible for the jurisdictional Assessing Officer, viz., the Deputy Commissioner to issue the notice under section 148 on or before March 31, 2018 as migration of the permanent account number was not possible within that short period and therefore, the Income-tax Officer had issued the notice instead of the jurisdictional Assessing Officer. Thus there was an admission on the part of the Department that the Deputy Commissioner, Circle 2, who had jurisdiction over the assessee had not issued the notice under section 148 but it was the Income Tax Officer, Ward 2(2) who did not have any jurisdiction over the assessee who has issued such notice. No proceedings could have been taken under section 147 in pursuance of such invalid notice. The notice under section 148(1) and all the proceedings taken pursuant thereto could not be sustained.

7. Here in this case, though situation is reversed that reasons have been recorded by non jurisdictional Assessing Officer but notice was issued by jurisdictional Assessing Officer. Here in this case, jurisdictional Assessing Officer has not recorded the reasons as mandated in Section 148 (2). Thus, it can be clearly inferred that the notice u/s. 148(1) has been issued without recording the reasons, because reason recorded by non jurisdictional Assessing Officer cannot give jurisdiction to the present Assessing Officer. The same principle of the Hon'ble High Court will apply in the present

case also. Hence, on this ground alone, we hold that the proceeding u/s.147/148 is *void ab initio* and without jurisdiction and same is quashed.

8. The other issues raised are purely academic and have been rendered infructuous.

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

Order pronounced in the open Court on 2nd February, 2021

Sd/-

[O.P. KANT]

ACCOUNTANT MEMBER

DATED: 2nd February, 2021

PKK:

Sd/-

[AMIT SHUKLA]

JUDICIAL MEMBER