

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DELHI**

Before Sh. Bhavnesh Saini, Judicial Member

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

(Through Video Conferencing)

ITA No. 9542/Del/2019 : Asstt. Year : 2010-11

Garg Zevar Palace Pvt. Ltd., C/o Kapil Goel, Adv., F-26/124, Sector-7, Rohini, New Delhi-110085	Vs	Income Tax Officer(E), Ward-1(3), Faridabad, Haryana
(APPELLANT)		(RESPONDENT)
PAN No. AACCG0565H		

Assessee by : Sh. Kapil Goel, Adv.

Revenue by : Sh. Prakash Dubey, Sr. DR

Date of Hearing: 20.01.2021

Date of Pronouncement: 26.03.2021

ORDER

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

The present appeal has been filed by the assessee against the order of the Id. CIT(A), Faridabad dated 31.10.2019.

2. Following grounds have been raised by the assessee:

"1. That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s 147/143(3) without appreciating that assumption of jurisdiction u/s 148 was by Ld AO was in violation of mandatory jurisdictional conditions stipulated under the Act;

1.1 That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Id AO u/s 147/143(3) without appreciating that entire proceedings in extant case

are based on stated material and information gathered from search operation u/s 132 conducted on one Mr. Pradeep Jindal as alleged by Ld AO (search dated 18.11.2015) so only available legit to Ld AO was provision of section 153C of the Act usage of provision of section 148 of void ab initio and is error of jurisdiction accordingly orders of Ld AO and Ld CIT-A may please be quashed.

1.2 That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s 147/143(3) without appreciating that "rubber stamp" reasons in present case (page 1 & 2 of assessment order) are based on borrowed satisfaction and are without independent application of mind as in reasons recorded

- a) firstly it is wrongly and incorrectly stated that first time assessment is proposed to be made in proforma of reasons recorded and in reasons also only reference is made to return of income leaving aside regular assessment framed in assessee's case for subject period vide order u/s 143(3) dated 08.02.2013 which shows patent and gross non application of mind on part of reasons recording authority and approving authority which have perfunctorily exercised extraordinary power of reopening in extant case,*
- b) secondly reasons are totally non communicative and lacks comprehension as nothing is divulged therein to link assessee's stated transactions with stated/alleged Mr. Pradeep Jindal for which no tangible material is surface;*
- c) Thirdly without giving reasons as requested in letter dated 08.12.2017, allegedly and purportedly objection is disposed off on very same day that is 08.12.2017 as noted in para 2.4 of impugned assessment order, which shows total lack of jurisdiction and fundamental flaw in proceedings which is in glaring contravention to Apex court ruling in GKN Driveshaft case 259ITR Page 19,*

- d) *Fourthly even after repeated prayer to offer cross examine Mr. Pradeep Jindal who is alleged person to form sole/mere basis of extant reopening and asst proceedings Ld AO put reverse burden on assessee to produce Mr. Pradeep Jindal (refer objection disposal dated 08.12.2017) acting in violation to settled law on burden of proof in reopening proceedings;*
- e) *Fifthly approval of PCIT by endorsing "I am satisfied" is mechanical approval not valid in eyes of law;*
- f) *Sixthly so called alleged information of investigation wing dated 20.03.2017 is no where placed on records so as to check what was in that information to implicate herein;*

accordingly orders of Ld AO and Ld CIT-A may quashed.

1.3 That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s 147/143(3) without appreciating that Mr. Pradeep Jindal who is revenue's exclusive and sole witness, was never lawfully cross examination despite repeatedly preyed before Ld AO & Ld CIT- A thus flouting Apex court verdict in GKN Driveshaft 259 ITR 19 which must nullify reopening proceedings and perverse findings of Ld CIT-A in para 20 to 24 are contrary to law and facts;

1.4 That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s 147/143(3) without valid approval from superior authority under the Act namely PCIT which shows serious jurisdictional flaw in reopening made, and accordingly orders of Ld AO and Ld CIT-A may please be quashed.

1.5 That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s 147/143(3) as none of the

assessee submission is appreciated while adjudicating the appeal;

1.6 That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s 147/143(3) as so called incriminating evidence found from search action only proceedings u/s 153C ought to initiated and action u/s 148 cannot be made on that CIT-A order para 7, 21 to 23).

1.7 That on the facts and in the circumstances of the law, Id CIT-A erred in sustaining the order passed by 147/143(3) when notice u/s 143(2) is issued on same return u/s 148 is filed showing blatant non application of mind & bias on part of Id assessing officer.

2. That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s 147/143(3) without appreciating that provisions of section 68 cannot apply to subject share application money /share capital merely on sole and mere basis of investigation wing directions/dictates without independent examination etc, so addition made by Ld AO (Rs.60 lacs) and confirmed by CIT-A in impugned order deserves to be deleted.

2.1 That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO 147/143(3) without appreciating that there is no basis of any of the addition of Rs.60 lacs and merely on basis of probabilities, is made/sustained;

2.2 That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s 147/143(3) without appreciating that all the additions made are without bringing legally admissible document on records;

2.3 That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s 147/143(3) without

appreciating that no cross examination of back witness is offered and even no meaningful/valid and objective enquiry is made from share holder's bank or income tax officer of share holder etc which is sufficient to delete the! additions made;

2.4 That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s 147/143(3) without appreciating that none of evidence on records as filed by assessee is overruled in accordance with law;

3. That on the facts and in the circumstances of the case and in law, Id CIT-A erred in not restoring the returned income declared by assessee in its return of income.

4. That on the facts and in the circumstances of the case and in law, Id CIT-A erred in not deleting the addition made by Ld AO which was also unlawful and made in violation of principles of natural justice as Mr. Pradeep Jindal is nowhere offered for cross examined to assessee during assessment proceedings despite request made in this regard which is sufficient to strike down the assessment framed."

3. The assessee filed return of income u/s 139(1) of the Income Tax Act, 1961 on 15.09.2010 for the assessment year 2010-11 for which assessment u/s 143(3) was completed vide order dated 08.02.2013 making disallowance of Rs.1,00,000/- on account of general expenses by the ITO, Ward-2(1), Faridabad.

4. The case was reopened u/s 147 with the prior approval of the Id. PCIT vide letter dated 29.03.2017. The reasons recorded by the Assessing Officer are as under:

"As per the information received from O/ o Assistant Director of Income Tax (Inv. I), Unit 2(1), New Delhi vide his letter F.No.ADIT(INV.)/UnU-2(1)/PKJ/2016-

17/175 dated 20.03.2017, the assessee M/s Garg Zevar Palace Pvt. Ltd. Shopping Complex, 1-2 Chowk, NIT, Faridabad has received bogus entries amounting of Rs.25,00,000/- from M/s Instant Travel & Tour Ltd. on 18.02.2010, Rs.15,00,000/- and Rs.10,00,000/- from M/s Hajima Resorts Ltd. on 23.02.2010 & 25.02.2010 respectively and Rs. 10,00,000/- from M/s Reena Oil Industry Pvt. Ltd. on 16.03.2010. During the F.Y. 2009-10 the assessee has obtained Rs.60,00,000/- as accommodation entries from the above mentioned concerns and the entry provider Sh. Pradeep Kumar Jindal Managing Director of the said companies has admitted the fact before the Income Tax Department.

2. It is found that the assessee filed its return of income for the A.Y. 2010-11 on 05.09.2010 declaring income of Rs.14,37,730/-. Hence, there is reason to believe that the assessee has earned income of Rs. 60,00,000/- from undisclosed sources by taking the bogus credit entries in his bank account. Therefore, the said unexplained income of Rs. 60,00,000/- and any other income that subsequently come to notice has escaped assessment for the A.Y. 2010-11 by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for computing correct income and filing his return of income for the A. Y. 2010-11.

3. Therefore, I have reason to believe that the income of the assessee has escaped assessment to the extent of Rs. 60,00,000/-. In order to bring undisclosed income to tax, proceedings u/s 148 of the Income Tax Act, 1961 are being initiated in the case of the assessee."

5. In the Column No. 8 of the recording of the reasons sent for approval to the Id. PCIT, mentions that the assessment is proposed to be made for the first time and the assessee has filed return voluntarily on 05.09.2012 which is factually an incorrect statement as in the instant

case the assessment has already been completed u/s 143(3) of the Act in the regular course of proceedings.

6. Since, four years have already elapsed, the case necessitates examination of provisions of Section 147 which reads as under:

"Income escaping assessment.

147. *If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year) :*

Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year:

Provided further that nothing contained in the first proviso shall apply in a case where any income in relation to any asset (including financial interest in

any entity) located outside India, chargeable to tax, has escaped assessment for any assessment year”

7. The Section mandates that the case can only be reopened after expiry of four years only if there was a failure on the part of the assessee to fully and truly disclose all material facts necessary. The assessee has disclosed the fact of receipt of Rs.60,00,000/- towards the share capital in the regular return filed which has been scrutinized u/s 143(3). In the reasons recorded for reopening, the Assessing Officer has not mentioned anything with regard to failure on the part of the assessee to disclose all the material facts. This matter has been examined by the Hon’ble Apex Court in the case of NDTV Ltd. Vs DCIT, by the Hon’ble Jurisdiction High Court in the case of BPTP Ltd. Vs PCIT, Haryana Acrylic Manufacturing Company Vs CIT. The Co-ordinate bench of Tribunal in the case of RMP Holdings Pvt. Ltd. relied on judgments of the Hon’ble Courts and held that the Assessing Officer has to specifically record reasons with regard to failure of the assessee to disclose fully and truly all material facts.

8. The relevant portion of the said orders are as under:

*“IN THE INCOME TAXAPPELLA TE TRIBUNAL DELHI
BENCH: F: NEW DELHI (Through Virtual Court
Hearing)*

RMP Holdings (P) Ltd.,

ITA No. 7243/Del/2019 Assessment Year: 2011-12

Date of Pronouncement: 31.07.2020

38. A perusal of the above vis-à-vis the reasons recorded and form of approval shows that although

the original assessment was completed u/s 143(3) on 10th March, 2014, the AO, in the form for obtaining approval at clause 8 has categorically mentioned that the assessment is proposed to be made for the first time and in the background of reasons also has mentioned that the case was processed u/s 143(1) of the Act and no scrutiny assessment was made. A perusal of the reasons recorded nowhere shows any allegation by the AO that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for completion of the assessment. Since, in the instant case, the original assessment was completed u/s 143(3) on 10th March, 2014 for the A. F. 2611-12 and the notice u/s 148 was issued on 26th March, 2018, therefore, the first proviso of section 147 is applicable to the facts of the present case. The Hon 'Me Supreme Court in the case of NDTV Ltd. Vs. DCIT vide Civil Appeal Mo. 1008 of 2020 dated 3rd April, 2020, has quashed the reassessment proceedings for not mentioning the first proviso neither in the reason recorded nor in the notice issued u/s 148. The Hon 'Me Delhi High Court in the case of BPTP Ltd. vs. PCIT, vide Writ Petition No. 13803/2018, order dated 28.11.2019 has held that if the AO has failed to perform his statutory duty, he cannot review his decision and reopen on a change of opinion. It has been held that reopening is not an empty formality. There has to be relevant tangible material for the AO to come to the conclusion that there is escapement of income and there must be a live link with such material for the formation of the belief. Merely using the expression failure on the part of the assessee to disclose fully and truly all material facts is not enough. The reason must specify as to what is the nature of default or failure on the part of the assessee. The Hon'ble Bombay High Court in the case of Anand Developers, vide Writ Petition No. 17/2020, order dated 18th February, 2020, has held that a mere bald observation by the AO that the

assessee has not disclosed fully and truly all the material facts is not sufficient. The AO has to give details as to which fact or the material was not disclosed by the assessee leading to its income escaping assessment Otherwise reopening is not valid.

The Hon'ble Delhi High Court in the ease of Haryana Acrylic Manufacturing Company vs. CIT, 308 1TR 38, order dated 1st July, 2020, has held as under:

"19. Examining the proviso [set out above], we find that no action can be taken under section 147 after the expiry of four years from the end of the relevant assessment year if the following conditions are satisfied; (a) an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year; and (b) unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee: (i) to make a return under section 139 or in response to a notice Issued under sub-section (1) of section 142 or section 148; or (ii) to disclose fully and truly all material facts necessary for Ms assessment for that assessment year. Condition (a) is admittedly satisfied inasmuch as the original assessment was completed under section 143(3) of the said Act, Condition (b) deals with a special kind of escapement of income chargeable to tax. The escapement must arise out of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148. This is clearly not the case here because the petitioner did file the return. Since there was no failure to make the return, the escapement of income cannot be attributed to such failure. This leaves us with the escapement of income chargeable to tax which arises out of the failure on the part of the assessee to disclose fully and truly all

material facts necessary for his assessment for that assessment year. If it is also found that the petitioner had disclosed fully and truly all material facts necessary for its assessment, then no action under section 147 could have been taken after, the four year period indicated above. So, the key question is whether or not the petitioner had made a full and true disclosure of all material facts. 20, In the reasons supplied to the petitioner, there is no whisper, what to speak of any allegation, that the petitioner had failed to disclose fully and truly all material facts necessary for assessment and that because of this failure there has been an escapement of income chargeable to tax. Merely having a reason to believe that income had escaped assessment, is not sufficient to reopen assessments beyond the four year period indicated above. The escapement of income from assessment must also be occasioned by the failure on the part of the assessee to disclose material facts, fully and truly. This is a necessary condition for overcoming the bar set up by the proviso to section 147. If this condition is not satisfied, the bar would operate and no action under section 147 could be taken. We have already mentioned above that the reasons supplied to the petitioner does not contain any such allegation. Consequently, one of the conditions precedent for removing the bar against taking action after the said four year period remains unfulfilled. In our recent decision in WellIntertrade (P.) Ltd.'s we had agreed with the view taken by the Punjab and Haryana High Court in the case of Dull Chand Singhania that, in the absence of an allegation in the reasons recorded that the escapement of income had occurred by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment, any action taken by the Assessing Officer under section 147 beyond the four year period would be wholly without jurisdiction, Reiterating our

viewpoint we hold that the notice dated 29-3-2004 under section 148 based on the recorded reasons as supplied to the petitioner as well as the consequent order dated 2-3-2005 are without jurisdiction as no action under section 147 could be taken beyond the four year period in the circumstances narrated above."

39. The various other decisions relied on by the Id. Counsel also support his case to the proposition that where there is no allegation in the reasons recorded that there is failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment u/s 147 of the Act, the notice issued u/s 148 after a period of four years from the end of the relevant assessment year in a case where original assessment has been framed u/s 143(3) of the Act is illegal and invalid since proceedings are without jurisdiction.

40. Since, in the instant case, the original assessment was framed u/s 143(3) on 10th March, 2014 determining the income at Rs. 20,06,714/- as against the returned loss of Rs. 20,53,019/- and wherein the issue of unsecured loan creditors was duly considered and accepted on the basis of various supporting documents filed at the time of original assessment and since there is no allegation in the reasons recorded that there is failure on the part of the assessee to disclose fully and truly all material facts necessary for completion of the assessment, therefore, the notice issued u/s 148 after a period of four years from the end of the relevant assessment year in the instant case is illegal and invalid being without jurisdiction. Further, as mentioned earlier, the AO has proceeded to reopen the assessment on the basis of wrong appreciation of facts by mentioning that the assessment is proposed to be made for the First time whereas the facts stood

otherwise, i.e., the assessment was, in fact, completed u/s 143(3) of the Act, therefore, there is complete non-application of mind by the AO as well as by both the superior authorities. Therefore, on this score also, the reassessment proceedings have to be quashed and the decision relied on by the Id. DR in the case of Sonia Gandhi (supra) is not at all applicable to the facts of the present case in view of the glaring mistake and omission that has been committed by the AO which was not looked into by the superior authorities. In view of the above, we quash the reassessment proceedings initiated u/s 147/148. The various other legal grounds raised by the Id. Counsel challenging the validity of the reassessment proceedings become academic in nature in view of the above discussion. Since the assessee succeeds on this legal ground, the grounds challenging the addition on merit also become academic in nature and, therefore, are not being adjudicated."

9. Since, the facts of the case pertaining to recording of the reasons are similar to the cases mentioned above, we hereby quash the reassessment proceedings initiated u/s 147.

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

Order Pronounced in the Open Court on 26/03/2021.

Sd/-

(Bhavnes Saini)
Judicial Member

Dated: 26/03/2021

Subodh

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR