

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, AMRITSAR
(VIRTUAL COURT)**

**BEFORE: SHRI. N.K.SAINI, VICE PRESIDENT AND
SHRI R.L. NEGI, JUDICIAL MEMBER**

ITA No. 306/ASR/2019
Assessment Year: 2012-13

Shri Tralochan Singh C/o G.S. Chahal & Associates, Backside Gaushala, Mansa	बनाम	The ITO Ward-1 (4) Mansa
स्थायी लेखा सं./PAN NO. DNDPS2922G		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

ITA No. 307/ASR/2019
Assessment Year: 2012-13

Shri Narotam Singh C/o G.S. Chahal & Associates, Backside Gaushala, Mansa	बनाम	The ITO Ward-1 (4), Mansa
स्थायी लेखा सं./PAN NO. CLEPS7008F		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Tejmohan Singh, Advocate

राजस्व की ओर से/ Revenue by : K.S. Bains, CIT DR

सुनवाई की तारीख/Date of Hearing : 24/06/2021

उदघोषणा की तारीख/Date of Pronouncement : 30/06/2021

आदेश/Order

PER N.K. SAINI, VICE PRESIDENT

These two appeals by the assesseees are directed against the separate orders each dated 26/02/2019 of the Ld. CIT(A), Bathinda.

2. Since the issues involved are common and the appeals were heard together so these are being disposed off by this consolidated order for the sake of convenience and brevity.

3. At the first instance we will deal with the appeal in ITA No. 306/ASR/2019 in case of Shri Tralochan Singh Vs. ITO, Ward1 (4), Mansa.

4. Following grounds have been raised in this appeal:

1. The Ld. CIT(A) erred on facts & law in confirming the action of the AO of assessing the income at Rs.3,87,73,310/- + Agriculture income at Rs. 11,56,169/- vide order u/s 143(3)1147 dated 20.12.2017.

2. The Ld. CIT(A) erred on facts & law in confirming the validity of the proceedings u/s 147/148 because the Joint Commissioner of Income Tax did not record the satisfaction on the reasons recorded by the AO, as prescribed u/s 151, that the case of the assessee was fit for issue of notice u/s 148.

3. The Ld. CIT(A) erred on facts & law in confirming the validity of the proceedings u/s 147/148 because the ownership of land introduced as capital in the firm was ancestral belonging to the HUF while the reasons have been recorded u/s 147 & notice u/s 148 has been issued in the status of individual.

4. The Ld. CIT(A) erred on facts & law in confirming the validity of the proceedings u/s 147/148 because the reasons recorded by the AO to initiate the proceedings are reasons to suspect & not reasons to believe and further, there is no reason to believe that income of the assessee has escaped assessment.

5. The Ld. CIT(A) erred on facts & law in assessing the Long Term Capital Gains by invoking the provision of section 45(3) of the Income Tax Act, 1961 because no real income arose/received or accrued to the assessee on account of transfer of land as capital contribution to the partnership firm.

6. The Ld. CIT(A) erred on facts & law in confirming the action of the AO in assessing the Long Term Capital gains by invoking the provision of section 45(3) of the Income Tax Act, 1961 because it is a deeming provision which creates fiction only to fix the year of transfer and consideration on transfer but there is no fiction regarding accrual of profits and gains on transfer of capital asset.

7. The Ld. CIT(A) erred on facts & law in assessing the Long Term Capital Gains by invoking the provision of section 45(3) of the Income Tax Act, 1961 because no registered sale deed was executed to transfer the land to the partnership as capital contribution Et It is settled principle of law that no immovable property can be transferred without execution Et registration of a registered sale deed.

8. That the adoption by the Ld. CIT(A) of the value of the land as on 01.04.1981 is against the facts & circumstances of the case & is very much on the lower side.

9. Notwithstanding the aforesaid grounds of appeal, the Ld. CIT(A) should have adopted the 'Fair Market value' of the land then the 'registered value' as the Fair Market Value cannot be a registered value.

10. That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.

Vide Ground No. 2 the assessee has challenged the validity of the proceedings under section 147 r.w.s 148 of the Income Tax Act, 1961 (hereinafter referred to as 'Act') and the satisfaction recorded by the Ld. JCIT under section 151 of the Act.

5. Facts of the case in brief are that the A.O. initiated the proceedings under section 147 r.w.s 148 of the Act on the basis that the assessee had introduced capital in the firm M/s G.S. Chahal & Associates by way of transfer of his ancestral land measuring 46 Kanals 15 marla for Rs. 4,09,06,250/- and that the entire land transferred to the firm was situated in the municipal limit of Mansa. Hence the entire land was capital asset. The A.O. mentioned in the assessment order dt. 20/12/2017 that the proceedings were initiated after taking prior approval of the JCIT, Range-I, Bathinda.

5.1 The assessee raised the objections before the A.O. for issuance of notice under section 148 of the Act as under:

"I have to very humbly submit that the notice u/s 148 has been issued and the copy of live reasons to issue notice u/s 148 has been provided. The objections against the same for which the assessee is entitled as per the binding precedent of the Apex Court in the case of GKN Driveshafts (India) Ltd. V. ITO(2002) 125 Taxman 963 (SC) are as under because the return of income in respect to notice u/s 148 has already been filed:-

(i) The notice u/s 148 has not been served in accordance with the provisions of Section 282 of the Income Tax Act, 1961.

(ii) The satisfaction of the Joint Commissioner of Income Tax on the reasons recorded which is mandatory in accordance with the provisions of Section 151(2), has not been recorded in accordance with the procedure laid down under the Act.

(iii) The provisions of Section 45(3) are also not applicable because it is only a deeming provision which creates fiction only to fix the, year of transfer and consideration on transfer but there is no fiction regarding accrual of profits and gains on transfer of capital gain,

(iv) It has been categorically stated in the reasons for initiating the reassessment proceedings that the capital was introduced by way of transfer of ancestral land but the status has been mentioned as individual.

In view of the above stated facts, the proceedings initiated u/s 147 are void-ab-initio and the notice u/s 147 may kindly be vacated. It is also prayed that the assessment proceedings may kindly be kept pending till the objections are dealt."

5.2 However, the A.O. had not accepted the submissions of the assessee for the following reasons:

(i) The plea regarding non-service of notice u/s 148 in accordance with the provisions of Section 282 of I. T. Act, 1961 is not acceptable. As per provisions of Section 282 of I. T. Act, 1961, the service of notice or summon or requisition or order or any other communication under this Act may be made by delivering or transmitting a copy thereof, to the persons therein named

(a) By post or by such courier services as may be approved by the Board; or

*(b) In such manner as provided under the Code of **Civil** Procedure, 1908 (5 of 1908) for title purposes of service of summons; or*

(c) In the form of any electronic record as provided in Chapter VI of the Information Technology Act, 2000 (21 of 2000); or

(d) By any other means of transmission of documents as provided by rules made by the Board in this behalf.

The above said notice was served through the Notice Server of the Department which is one of the mean of transmission of documents as provided by the rules made by the Board.

ii. The necessary satisfaction has also been recorded by the Joint Commissioner of Income-tax, Range-I, Bathinda in accordance with the provisions of Section 151(2) of I. T. Act, 1961. This plea is also not helpful to the assessee.

iii. The plea that provisions u/s 45(3) is not applicable to the case of the assessee is also not acceptable. The assessee has become a partner in the firm dealing with real estate and introduced capital by way of transfer of his land. It is not only a fiction to the fix the year of transfer as the land was actually transferred to the firm as his capital. It is stated as if the land was not transferred then becoming a partner, the assessee should have money. In this case, the assessee has transfer of his land instead of introduction of capital by cash or otherwise. Therefore, there was no fiction but the land was actually transferred to the firm. As per provisions of Section 48, the amount recorded in the books of account of the firm, as the value of the capital asset shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset.

iv. The plea regarding ancestral land taken in individual status is not acceptable although the land was ancestral yet the assessee has become a partner in the firm in the capacity of individual and not in HUF capacity. Thus, this plea is also not acceptable.

5.3 The A.O. framed the assessment by making the addition of Rs. 3,87,03,600/- on account of Long Term Capital Gain.

6. Being aggrieved the assessee carried the matter to the Ld. CIT(A) and challenged the validity of the reassessment proceedings. The assessee furnished the written submission which had been incorporated by the Ld. CIT(A) in para 4.1 of the impugned order and read as under:

In the above stated Grounds of Appeal the assessee has challenged the validity of proceedings u/s 147/148 & the submissions of the assessee are as under;-

(i) The notice u/s 148 was not served in accordance with the provisions of section 282.

(ii) The reasons to believe recorded by the AO are in fact reasons to suspect

(iii) The proceedings u/s 147/148 have been challenged because the JCIT failed to record satisfaction in accordance with the procedure laid down u/s 151(2) that the case of the assessee was fit for issue of notice u/s 148.

The AO has himself accepted the fact in the assessment order that "Therefore, to assess the interest income, proceedings u/s 147 of IT. Act, 1961 were initiated by issue of notice u/s 148 of IT. Act, 1961 dated 20.03.2017 after taking prior approval of the worthy Joint Commissioner of Income-tax, Range-I, Bathinda."

From the above stated statement of facts by the AO the contention of the assessee that the mandatory satisfaction as required u/s 151(2) was not recorded but the JCIT only approved the action of the AO to issue notice u/s 148. The reliance for the contention is placed on following Judgments:-

Smt. Nirmal Kaur vs. DICTITA No. 575/ASR/2016

CIT vs. M/s S. Goyanka Lime and Chemicals Ltd.

ITO Vs. M/s Observer Investment & Finance Pvt. Ltd. ITA No. 1185 & 1186/Del/2009

(iv) The proceedings u/s 147/148 are void ab initio because the reasons to believe for issuing the notice u/s 148 has been recorded & the notice u/s 148 has been issued in individual status but the AO has himself accepted the fact while recording reasons that the ancestral land was contributed as capital by the assessee in the partnership firm M/s G.S. Chahal & Associates. This objection of the assessee has been rebutted by the AO while passing the order on the objections of the assessee & the relevant part reads as under:-

"The plea regarding ancestral land taken in individual status is not acceptable although the land was ancestral yet the assessee has become a partner in the firm in the capacity of individual and not in HUF capacity. Thus, this plea is also not acceptable"

The above stated findings of the AO are wrong because once the AO has stated himself that the land which was contributed as capital by the assessee is ancestral in nature, the notice u/s 148 issued in the status of individual is a illegal & proceedings u/s 147/148 becomes void ab initio.

6.1 The Ld. CIT(A) after considering the aforesaid submissions of the assessee upheld the action of the A.O. in reopening the assessment by observing in para 4.2 of the impugned order as under:

4.2 I have given careful consideration to the contentions above and find that exactly identical objections were filed before the Assessing Officer in the assessment proceedings as has been mentioned in paragraph 2.1 of the assessment order. The objections of the appellant were met by the Assessing Officer vide order dated 15/11/2017 which has been extracted in paragraph 3 of assessment order. The service of notice in this case has been made on 27/03/2017 through notice server, therefore the contention is not acceptable. The appellant is making bald averment that the approving authority did not apply mind without mentioning the basis of such assumption. Similarly, the appellant is becoming judge in its own case by taking an argument that the provisions of section 45(3) of Income Tax Act could not have been applied in his case.

In A.L.A. Firm v. CIT [1991] 189 ITR 285 (SC), a similar issue of capital gains was before the Assessing Officer and it was held that the jurisdiction of the Income-tax Officer to reassess income arises if he has, in consequence of specific and relevant information coming into his possession subsequent to the previous concluded assessment, reason to believe that income chargeable to tax had escaped assessment. It was held that even if the information be such that it could have been obtained by the Income-tax Officer during the previous assessment proceedings by conducting an investigation or an enquiry but was not in fact so obtained, it would not affect the jurisdiction of the Income-tax Officer to initiate reassessment proceedings, if the twin conditions prescribed under section 147 of the Act are satisfied. The grounds of appeal are dismissed.

7. Now the assessee is in appeal.

8. Ld. Counsel for the assessee reiterated the submissions made before the authorities below and also moved an application for admission of additional evidences stating therein as under:

*Sub: Assessment Year 2012-13
Appeal ITA No. 306& 307(ASR)/2019 against Order u/s 250(6) / 143(3) of the IT Act, 1961,
Request for Admission of Additional Evidence*

In this case, the appeal is pending before the Learned Bench and the brief facts of this case are as under:-

1. The assessee contributed ancestral agriculture land along-with his brother as their share in the capital in the books of M/s G.S. Chahal & Associates at the time of constituting the partnership firm.

2. The A.O. invoked the provisions of section 45(3) of the IT Act, 1961 and assessed the long term capital gain amounting to Rs. 3,20,80,520/- in the hands of the assessee vide assessment order passed u/s 143(3) dated 20/12/2017.

3. The A.O. relied solely upon the sale deed dated 15.07.1981 for computing the FMV of the land as on 01.04.1981 for the purpose of computation of capital gain. The copy of the subject sale deed dated 15.07.1981 was neither provided nor confronted to the assessee during the course of assessment proceedings by the A.O.

4. The Ld. CIT(A) also while deciding the appeal vide appellate order dated 26.02.2019 did not appreciate the fact that the sale deed dated 15/07/1981 relied upon by the A.O. for the purpose of computing the FMV of the subject land was never confronted to the assessee for the purpose of rebuttal. The subject sale deed was not confronted to the assessee by the CIT(A) also.

5. Thereafter the assessee made the application to the A.O. on 07/08/2019 thereby requesting him to provide the copy of the said sale deed on which the A.O. has relied while computing the capital gain [Refer Page No. 10 of the paper –book] and thereafter the department provided the copy of sale deed to the assessee. [Refer Page No. 4 to 7 of the paper book]

6. That during the course of assessment proceedings the assessee filed certificate from Tehsildar & Valuation Report of the registered Valuer with regard to FMV of the subject land as on 01.04.1981 but these were rejected arbitrarily. [Refer Para 5(ii) on Page No. 5 & 6 of the assessment order]

7. That the Ld. CIT(A) also rejected the certificate of Tehsildar & Valuation Report by the registered Valuer regarding the FMV of the subject land as on 01.04.1981. [Refer para 5.2.20 on Page No. 10 & 11 of the appellate order]

8. But neither the A.O. nor the Ld. CIT(A) allowed any further opportunity to the assessee to submit the documentary evidence regarding the FMV of the property as on 01.04.1981.

9. The assessee on the advice of his counsel, engaged for filing the appeal before this Hon'ble Bench of ITAT, obtained the comparable sale instances from the local revenue authorities regarding the FMV of the subject land as on 01.04.1981.

10. Now there are now two comparable sale instances according to which the fair market value of the land as on 01/04/1981 is more as compared to the fair market value adopted by the A.O. Now, it is requested before the Hon'ble Bench to kindly admit this additional evidence in the interest of natural justice in order to arrive at the correct capital gain after taking into consideration these two comparable sales transactions which are available on Page No. 8 to 12 and 13 to 17 of the paper book.

11. From the above said submissions it may be submitted that there was reasonable and sufficient cause for not submitting these documents during the course of assessment proceedings before the A.O. as well as appellate proceedings before the CIT(A). It is prayed that these additional evidences may kindly be admitted in the interest of natural justice in order to arrive at the correct FMV of the capital asset as on 01/04/1981. This view finds support from the following judgments.

(i) Decision of Supreme Court of India in the case of Tek Ram (Dead) Through LRS Vs. CIT, reported in 257 ITR 133 in which it was held as under:-

“ Appeal (High Court)- Additional documents placed before Supreme Court – Admissibility Appeal against judgment of High Court- Held, documents, which assessee had filed before Supreme Court were of some relevance- Those documents should be looked into by High Court before it comes to a conclusion whether appeal requires to be allowed or

to be rejected- Order passed by High Court set aside-Matter remanded back to High Court – Appeal disposed of."

(ii) Decision of Punjab & Haryana High Court in the case of CIT Vs. Mukta Metal Works reported in 336 ITR 555 wherein it was held that where the additional evidence is must for just decision of the case, the same deserves to be admitted.

(iii) Decision of Delhi High Court in the case of CIT Vs. Text Hundred India (P.) Ltd. [2011] 197 Taxman 128 (Delhi) in which it has been held that ".....It is well-settled that the procedure is handmade of justice and justice should not be allowed to be choked only because of some inadvertent error or omission on the part of one of the parties to lead evidence at the appropriate stage. Once it is found that the party intending to lead evidence before the Tribunal for the first time was prevented by sufficient cause to lead such an evidence and that this evidence would have material bearing on the issue which needs to be decided by the Tribunal and ends of justice demand admission of such an evidence, the Tribunal can pass an order to that effect. "The Hon'ble Delhi High Court relied upon the following case while deciding the above said case:-

- Analkar Trades and Estates (P.) Ltd. (No. 2) Vs. CIT [1990] 186 ITR 313 (Mad.)
- R. Dalmia Vs. Cit [1978] 113 ITR 522 (Delhi)
- R.S.S.. Shanmugam Pillai and Sons V. CIT [1974] 95 ITR 109 (Mad.)
- ITO V. B.N. Bhattachayra [1978] 112 ITR 423 (Cal.)

(iv) Decision of ITAT, Delhi 'I' Bench in the case of UOP LIC Vs. Additional Director of Income reported in 108 ITD 186 in which it was held that the additional evidence should be admitted. If it to may pronounce the judgment but all for any other substantiate cause and in this case, the department was not in appeal, but still the department evidence was admitted since it has bearing in the judgment of the above said case.

(v) Decision of Madhya Pradesh High Court in the case of CIT Vs. Gani Bhai Wahab Bhai reported in 232 ITR 900.

(vi) Decision of ITAT, Delhi Bench, in the case of Electra (Jaipur)(P) Ltd. Vs. Inspecting Assistant Commissioner reported in 26 ITR 236 in which it was held as under:

" Appeal CIT(A)- Additional evidence – Admissibility – if the evidence is genuine, reliable and proves the assessee's case, assessee should not be denied the opportunity to adduce it."

(vii) Decision of Gawahati High Court in the case of CIT Vs. Parimal Kanti Chanda reported in 291 ITR 77 in which was held as under:-

" Accordingly, additional evidence was admitted to do substantial justice in the matter – Thus, admission of additional evidence was in accordance with law and did not prejudice the revenue."

(viii) Decision of ITAT. "B" Bench, Ahmedabad, in the case of Hingora Industries Ltd. Vs. ITO in ITA No. 2109/Ahd/2008 dated 12/09/2012 relating to A.Y. 2004-05.

In view of these circumstances. It is prayed that the additional evidence may kindly be admitted in the interest of natural justice in order to arrive the correct Fair Market Value as on 01/04/1981 for working of capital gain.

Sd/-
[Counsel]

8.1 It was further submitted that the additional evidence relating to the sale instance of the comparable cases go to the root of the matter and the assessee was prevented by the reasonable cause to furnish those documents during the course of assessment proceedings as well as the first appellate proceedings as the assessee could not procure the said documents at that time. It was submitted that these documents are very crucial to resolve the present controversy therefore the same may be admitted.

8.2 Ld. DR strongly objected for admission of the additional evidences and submitted that the assessee neither before the A.O. nor before the Ld. CIT(A) furnished those documents, therefore those may not be admitted at this stage.

9. As regards to the validity of the proceedings initiated under section 147 r.w.s 148 of the Act the Ld. Counsel for the assessee submitted that the satisfaction of the JCIT on the reasons recorded by the A.O. is mandatory in accordance with the provisions of Section 151(2) of the Act and the said satisfaction of the JCIT ought to have been positive satisfaction with the reasons to arrive at the satisfaction and the approval given in a mechanical manner may not be considered to be proper satisfaction in the eyes of the law.

9.1 Ld. Counsel for the assessee drew our attention towards page no. 3 of the assessee's paper book wherein JCIT, Range-1, Bathinda gave the approval to issue the notice under section 148 of the Act. It was submitted that in the said approval the Ld. JCIT, Range-1, Bathinda simply mentioned that this is a "fit case to issue notice under section 148 of the Act" and no satisfaction has been recorded therefore the satisfaction so recorded was not valid in the eyes of law for issuing the notice under section 148 of the Act. The reliance was placed on the decision of the ITAT Chandigarh Bench "B" in the case of Shri Tek Chand, Karnal Vs. ITO Ward-2, Kaithal in ITA No. 255/Chd/2020 for the A.Y. 2009-10 (copy of the said order was furnished which is placed on record). The reliance was also placed on the following case laws :

- CIT Vs. S. Goyanka Lime & Chemical Ltd. [2015] 64 taxmann.com 313 (SC)
- Arjun Singh Vs. ADIT [2000] 246 ITR 363 (M.P.)

10. In his rival submissions the Ld. CIT DR strongly supported the orders of the authorities below and further submitted that the A.O. as well as the approving authority recorded their satisfaction before issuing the notice under section 148 of the Act and that the JCIT being competent authority gave the approval after applying his mind, therefore, the reopening of the assessment was valid. It was further stated that earlier the assessee applied for Vivad Se Vishwas Scheme which could have happened only when the assessee was not having any case in his favour.

10.1 In his rejoinder the Ld. Counsel for the assessee submitted that due to wrong advice and under pressure the assessee thought to avail the immunity under Vivad Se Vishwas Scheme but withdrew the same and never deposited any tax, since the case of the assessee on merit as well as legal issue was on strong footings.

11. We have considered the submissions of both the parties and perused the material available on the record. In the present case the assessee furnished the additional evidences first time before the ITAT in the form of sale instance of comparable cases which are relevant to resolve the present controversy. Therefore keeping in view the principles of natural justice the additional evidence furnished by the assessee are admitted.

12. As regards to the validity of the reassessment proceedings under section 147 r.w.s 148 of the Act, it is not in dispute that the A.O. is required to get the approval of the competent authority i.e; JCIT in the present case. Copy of the form for recording the reasons for initiating the proceedings under section 148 of the Act and for obtaining the approval of the JCIT is placed at page no. 2 & 3 of the assessee's paper book wherein at S.No. 12 relating to satisfaction of the JCIT on the reasons recorded by the ITO for issuing of the notice under section 148 of the Act. The JCIT, Range-1, Bathinda mentioned as under:

“ Yes, it is a fit case to issue notice under section 148 of the Income Tax Act

Sd/-
P.K. Sharma
JCIT, Range-1, Bathinda “

12.1 From the aforesaid approval given by the JCIT, Range-1, Bathinda, it is clear that the satisfaction has been recorded in a mechanical manner, without applying the mind, for issuing the notice under section 148 of the Act.

13. An identical issue having similar facts has been adjudicated by this Bench of the ITAT in case of Shri Satnam Singh, Jalandhar Vs. ITO, Ward-1(4), Jalandhar in ITA No. 579/ASR/2019 for the A.Y. 2013-14 vide order dt. 29/06/2021 wherein by following the order dated 15/03/2021 in ITA No. 215/Chd/2020 for the A.Y. 2009-10 in the case of Shri Tek Chand, Karnal Vs. ITO, Ward-2, Kaithal, the issue has been decided in favour of the assessee and the relevant findings have been given in para 14 to 14.4 which read as under:

14. *We have considered the submissions of both the parties and perused the material available on the record. In the present case it is noticed that the A.O. obtained the approval of the JCIT before issuing the notice under section 148 of the Act, performa copy of which is placed at page no. 1 of the assessee's paper book, in the said Performa for recording the reasons for initiating the proceedings under section 147 / 148 of the Act and for obtaining the approval of the Ld. JCIT, it has been mentioned in column no. 11 as under:*

" Yes it is approved for 148 action "

*SD/-
(Umesh Takyar)
Joint Commissioner of Income Tax
Range-1, Jalandhar*

From the aforesaid approval it is clear that the JCIT, Range-1, Jalandhar recorded the satisfaction in a mechanical manner without application of mind. He accorded the sanction for issuing notice under section 148 of the Act in a mechanical manner.

14.1 *On a similar issue the Hon'ble Guwahati High Court in the case of Ladhuram Laxmi narayan Vs. ITO, Additional 102 ITR 595 (supra) held as under:*

22. *Sub-section (2) of Section 151 requires that before issuing a notice under Section 148, the Commissioner must be satisfied on the reasons recorded by the Income-tax Officer that it is a fit case for the issue of such notice. The submission of the learned counsel is that in the instant case there was no real satisfaction of the Commissioner or in other words there could not be satisfaction of the Commissioner as contemplated under Subsection (2) in the facts and circumstances of the case. In the column of the report whether the Commissioner was satisfied, the Additional Commissioner said " Yes ".*

23. *We have already found that the first ground given by the Income-tax Officer in his report praying for sanction for acting under Section 148 is admittedly*

a mistaken ground and, therefore, non-existent. That being so, the satisfaction of the Additional Commissioner in the instant case, so far as the first ground is concerned, is wholly mechanical without applying his mind.

It has further been held

24. Regarding the second ground, we find that the satisfaction could in law be only with respect to Clause (b) of Section 147 and that being so the notice issued on March 10, 1971, would be clearly barred under Section 149 of the Act.

25. In the result, in any view of the matter, we find that the impugned notice under Section 148 in the instant case is bad in law and without jurisdiction. Accordingly, we quash the impugned notice dated March 10, 1971, under Section 148 of the Act.

14.2 A similar view has been taken by the Hon'ble Andhra Pradesh High Court in the case of P. Munirathnam Chetty And P. Vs. ITO, C-Ward 101 ITR 385 (supra) wherein it has been held as under:

The form like the one which is being used containing an endorsement merely saying "Yes" would justifiably cause apprehension that the act of the Commissioner is a mechanical act. In order to obviate this impression and to infuse more confidence in the assessee, it would be proper if the Commissioner also briefly states why he has given his sanction to the proceedings under Section 147, thus avoiding all arguments in courts of law whether he applied his mind or he would have been satisfied in the circumstances of the case or not.

14.3 On an identical issue the ITAT Chandigarh Bench "B" Chandigarh vide order dt. 15/03/2021 in ITA No. 215/Chd/2020 for the A.Y. 2009-10 in the case of Shri Tek Chand Vs ITO, Ward-2, Kaithal held as under:

14.1 The A.O. obtained the approval of the PR. CIT before issuing the notice under section 148 of the Act. The proposal dt. 11/03/2016 seeking the approval for issuance of notice under section 148 of the Act, by the A.O. is placed at page no. 2 & 3 of the assessee's paper book. While giving the approval the Ld. PR. CIT, Karnal recorded as under:

" Yes, satisfied, it is a fit case for issue of notice under section 148 "
Sd/-
Pr. CIT, Karnal

14.2 From the aforesaid approval, it is clear that the Ld. Pr. CIT recorded satisfaction in the mechanical manner, without application of mind to accord sanction for issuing notice under section 148 of the Act. On an identical issue the Hon'ble M.P. High Court in the case of CIT Jabalpur Vs. S. Goyanka Lime & Chemical Ltd. reported at (2015) 56 Taxmann.com 390 by following its own decision in the case of Arjun Singh Vs. ADIT (2000) 246 ITR 363 (M.P) held as under:

7. We have considered the rival contentions and we find that while according sanction, the Joint Commissioner, Income Tax has only recorded so "Yes, I am satisfied". In the case of Arjun Singh (supra), the same question has been

considered by a Coordinate Bench of this Court and the following principles are laid down:—

The Commissioner acted, of course, mechanically in order to discharge his statutory obligation properly in the matter of recording sanction as he merely wrote on the format "Yes, I am satisfied" which indicates as if he was to sign only on the dotted line. Even otherwise also, the exercise is shown to have been performed in less than 24 hours of time which also goes to indicate that the Commissioner did not apply his mind at all while granting sanction. The satisfaction has to be with objectivity on objective material.'

8. If the case in hand is analysed on the basis of the aforesaid principle, the mechanical way of recording satisfaction by the Joint Commissioner, which accords sanction for issuing notice under section 148, is clearly unsustainable and we find that on such consideration both the appellate authorities have interfered into the matter. In doing so, no error has been committed warranting reconsideration.

9. As far as explanation to Section 151, brought into force by Finance Act, 2008 is concerned, the same only pertains to issuance of notice and not with regard to the manner of recording satisfaction. That being so, the said amended provision does not help the revenue.

10. In view of the concurrent findings recorded by the learned appellate authorities and the law laid down in the case of Arjun Singh (supra), we see no question of law involved in the matter, warranting reconsideration.

14.3 Against the said order, the Hon'ble Apex Court dismissed the SLP filed by the Department and affirmed the order of the Hon'ble M.P. High Court in the case of CIT Vs. S. Goyanka Lime & Chemicals Ltd. (supra) held as under:

" 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."

15. We therefore by following the ratio laid down by the Hon'ble Apex Court in the aforesaid referred to case, are of the view that the reopening under section 148 of the Act on the basis of mechanical approval without applying the mind by the Ld. Pr.CIT was not valid. Therefore, in the present case, the reopening of the assessment on the basis of notice under section 148 of the Act is quashed.

14.4 In the present case also since the A.O. reopened the assessment under section 147 of the Act by issuing the notice under section 148 of the Act, on the basis of mechanical approval, without applying his mind, therefore the said approval was not valid and consequently the reopening of the assessment on the basis of said approval was not valid. We therefore quash the same. Since, we have decided the legal issue in favour of the assessee therefore no finding is given on the other grounds raised by the assessee on merit.

13.1 Since the facts of the present case are identical to the facts involved in the aforesaid referred to case of Shri Satnam Singh, Jalandhar Vs. ITO, Ward-1(4), Jalandhar in ITA No. 579/ASR/2019 for the A.Y. 2013-14, so respectfully following the aforesaid referred to order dt. 29/06/2021 the reopening of the assessment under section 147 of the Act by issuing the notice under section 148 of the Act is quashed. Since we have decided the legal issue in favour of the assessee therefore no finding is given on the other grounds raised by the assessee on merit.

14. In ITA No. 307/ASR/2019 for the A.Y. 2012-13 in the case of Shri Narotam Singh, Mansa Vs. ITO, Ward-1(4), Mansa, the facts are identical as were involved in ITA No. 306/ASR/2019 for the A.Y. 2012-13 in the case of Shri Tralochan Singh, Mansa Vs. ITO, Ward-1(4), Mansa (supra), therefore our findings given in the former part of this order shall apply mutatis mutandis to this appeal also.

15. In the result, both the appeals of the assesseees are allowed.

(Order pronounced on 30.06.2021)

Sd/-

(R.L. NEGI)

JUDICIAL MEMBER

Dated: 30.06.2021

AG

Sd/-

(N.K. SAINI)

VICE PRESIDENT

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. The CIT(A)
5. DR, ITAT, Amritsar
6. Guard File