IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G" NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND SHRI VIJAY PAL RAO, JUDICIAL MEMBER

आ.अ.सं/.I.T.A No.9734/Del/2019

निर्धारणवर्ष/Assessment Year:2010-11

Treta E Technologies Company Pvt. Ltd. **CA M.R. Sahu, M Sahu & Associates, CA** **H.No. 651, FF, Sector-10A,** **Near Meenakshi Public School,** **Gurgaon, Haryana.**	बनाम **Vs.**	**ACIT** **Circle 25(2)** **Room No. 196A,** **C.R. Building,** **New Delhi.**
PAN No. AADCT1733B		
अपीलार्थी **Appellant**		प्रत्यर्थी/**Respondent**

Assessee by	**Shri M.R. Sahu, CA**
Revenue by	**Shri Prakash Dubey, Sr. DR**

सुनवाईकीतारीख/ Date of hearing:	23.09.2021
उद्घोषणाकीतारीख/Pronouncement on	24.09.2021

आदेश /O R D E R

PER VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 24th September, 2019 of Ld. CIT(Appeals) for the AY 2010-11. There is a delay of 10 days in filing the present appeal. The assessee has filed an application for condonation of delay which is supported by an Affidavit.

2. We have heard the Ld. AR as well as the Ld. DR on condonation of delay and carefully perused the contents of the application and Affidavit filed by the assessee explaining the cause of delay.

3. After perusal of the reasons explained by the assessee, we are satisfied that the assessee was having a reasonable cause for not presenting the appeal within the limitation period. Accordingly, in the facts and circumstances of the case and in the interest of justice, we condone the delay of 10 days in filing the present appeal. The assessee has raised the following grounds: -

1.Legal Grounds regarding validity of initiation of reassessment proceeding under section 147.

1.1.That on the facts and circumstances of the case and in law the initiation of the reassessment proceeding is bad in law and deserves to be set aside because notice under section 148 was not served upon the assessee-appellant.

1.2.That on the facts and circumstances of the case and in law the initiation of the reassessment proceeding is bad in law and not valid because approval from the Pr.CIT under section 151 was obtained in a mechanical manner and without application of mind.

2.Grounds regarding validity of addition of Rs.65,02,177/- solely on the basis of amount reflected in the Form 26AS.

2.1.That on the facts and circumstances of the case and in law Ld.CIT(A) erred in confirming the order of AO ignoring the remand report of the Asstt.CIT , Circle 5(1)(1), Bangalore , dated 03/09/2019 which clearly stated that actual payment to the assessee-appellant is not known to the director of the deductor company and the director could not produce the proof for the actual payment of Rs.65,02,177/- thus addition on the basis of form 26AS is not sustainable in the eye's of law.

2.2.That on the facts and circumstances of the case and in law Ld.CIT(A) erred in confirming the order of AO even though AO vide letter dated 05/09/2019 admitted the fact that no concrete details including evidences were gathered regarding receipt of Rs.65,02,177/- from M/s E –Xceed Technologies and Devices Pvt Ltd by the assessee-appellant accordingly addition of Rs.65,02,177/- solely on the basis of Form 26AS deserves to be deleted.

2.3.That on the facts and circumstances of the case and in law Ld. CIT (A) erred in ignoring the facts that once assessee had produced reasonable evidences establishing receipt of a particular quantum of income in his hands and such evidences were not proved as false , he could not be taxed in some other figure merely because a tax deductor stated that other figure in Form 26AS as assessee-appellant has no control over such inputs of the deductor which were clearly incorrect thus addition of Rs.65,02,177/- in the hands of the assessee-appellant deserves to be deleted in full.

2.4.That on the facts and circumstances of the case and in law the Ld. CIT (A) has grossly erred in holding that amount of Rs. 65,02,177/- incorrectly reflected in Form 26AS ought to be included in income even though it has not been received by the assessee-appellant.

2.5. That on the facts and circumstances of the case and in law the Ld. CIT (A) has further grossly erred in relying on the judgments totally inapplicable to the facts of the case of the assessee-appellant accordingly assessee – appellant prays for deletion of Rs.65,02,177/-.

3.That the assessee-appellant craves leave to add, alter or withdraw any ground or grounds of appeal before or at the hearing of the appeal.

4. Apart from the grounds raised in Form No. 36 above, the assessee has also raised additional grounds vide application dated 14th September, 2021 which are as under: -

1.That the CIT(A) erred on facts and in law in upholding the validity of the reassessment order dated 08/12/2017 passed by the assessing officer under section 143(3) read with section 147 of the Income-tax Act,1961, without appreciating the fact that under section 151(1) approving authority towards income escaped assessment shall be Pr. CIT accordingly approval towards income escaped assessment was not obtained strictly as prescribed under section 151(1) hence whole reassessment proceedings are bad in law having regard to the ratio of the decision of the jurisdictional Delhi High Court in the case of **' CIT Vs. SPL's Siddhartha Ltd (2012) 345 ITR 223 (Del.HC)'**.

2.That the CIT(A) erred on facts and in law in upholding the validity of the reassessment order dated 08/12/2017 passed by the assessing officer under section 143(3) read with section 147 of the Income-tax Act,1961, without appreciating the fact that , Pr.CIT had given approval under section 151(1) towards initiation of income escaped assessment proceedings in a mechanical manner and without application of mind , hence, whole reassessment proceedings are bad in law having regard to the ratio of the decision of the Hon'ble Supreme Court in the case of **' CIT, Jabalpur Vs. S. Goyanka Lime & Chemicals Ltd (2015) 64 taxmann.com 313 (SC)'.**

3.That the CIT(A) erred on facts and in law in upholding the validity of the reassessment order dated 08/12/2017 passed by the assessing officer under section 143(3) read with section 147 of the Income-tax Act,1961, without appreciating the fact that , the assessing officer had issued the jurisdictional notice under section 143(2) without verification of return of income filed by the assessee , thus , jurisdictional notice issued under section 143(2) , dated 16/11/22017 is invalid which makes the whole reassessment proceedings as bad in law having regard to the ratio of the decision of the Jurisdictional Delhi High Court in the case of **' Director of Income-tax Vs. Society For Worldwide Inter Bank Financial, Telecommunication (2010) 323 ITR 249 (Del.HC)'.**

4.That the notice under section 143(2) dated 16/11/2017 issued by the ACIT, Circle 25(2),New Delhi , without assume the jurisdiction as per C.B.D.T Instruction No.1/11,dated 31/01/2011. As per CBDT Instruction No.1/11,dated 31/01/2011 the 'CORPORATE RETURNS ' up to Rs.30 lacs income for ITOs in Metro areas from 01/04/2011.The notice under section 143(2) should/must be issued by the jurisdictional ITO and assessment order under section 143(3) read with section 147 should/must be passed by the jurisdictional ITO. The action of the ACIT,Circle 25(2), New Delhi for issuing notice under section 143(2) and passing assessment order under section 143(3) read with section 147 was illegal, bad-in-law, void ab initio and liable to be quashed.

AR of the assessee is humbly praying before your good self to accept the additional grounds of appeal raised before the date of hearing of appeal having regard to the ratio of the decision of the Hon'ble Supreme Court in the case of **National Thermal Power Corporation vs. CIT (1998) 229 ITR 383 (SC), CIT-III,Pune Vs. Sinhgad Technical Education Society (2017) 397 ITR 344 (SC),VMT Spinning Co. Ltd Vs. CIT (2016) 389 ITR 326 (P&H.HC).**

5. The additional ground nos. 1 & 2 are in the nature of elaboration of ground no. 1 originally raised by the assessee challenging the validity

of reopening of the assessment. We note that the additional grounds raised by the assessee are purely legal in nature and does not require any verification of new facts or material. After hearing both the parties on the admissibility of the additional grounds, we find that the assessee has made out the case for admission of the additional ground in view of the decision of the Hon'ble Supreme Court in the case of NTPC Vs. CIT 229 ITR 383. Accordingly, the additional grounds raised by the assessee are admitted for deciding on merits.

6. Ground No. 1 of the original grounds and ground nos. 1 & 2 of the additional grounds are relating to the validity of the initiation of proceedings u/s 147/148 of the Income Tax Act.

7. The Ld. AR of the assessee has submitted that the approval granted by the Pr. CIT as well as ACIT is not valid as only the Competent Authority can grant an approval after recording the satisfaction on the reasons recorded by the AO before issuing the notice u/s 148 of the Income Tax Act. In support of his contention he has relied upon the decision of the Hon'ble Jurisdictional High Court in the case of CIT vs. SPL Siddhartha Ltd. 345 ITR 223. The Ld. AR has referred to the approval granted by the Addl. CIT as well as Pr. CIT and submitted that the Addl. CIT has no authority to grant approval and, therefore, in the absence of the satisfaction and approval of the Competent Authority which is only one Authority which cannot be substituted by the satisfaction of other

Authority. The approval u/s 151 of the Income Tax Act is not valid in the case of the assessee and consequently the reopening of the assessment based on invalid approval is liable to be quashed. He has also relied upon the decision of Hon'ble Supreme Court in the case of CIT Vs. S Goenka Lime & Chemicals Ltd. 62 taxmann.com 313. The second limb of his argument is mechanical approval granted by the CIT(A) without application of mind. In support of his contention he has relied upon the judgment of Hon'ble Madhya Pradesh High Court in the case of CIT Vs. S Goenka Lime & Chemicals Ltd. (supra) which was upheld by the Hon'ble Supreme Court. Thus, the Ld. AR has submitted that Pr. CIT has acted mechanically in order to discharge his statutory obligation without application of mind and consequently the notice u/s 148 of the Act is unsustainable and liable to be quashed.

8. On the other hand, the Ld. DR has submitted that the sanction was granted u/s 151 of the Income Tax Act by the Competent Authority being Pr. CIT though the file had to be moved through the official higher are key and, therefore, the ITO has to send the file to the Office of the Commissioner rooted through Addl. CIT. He has further submitted that the Pr. CIT has recorded his independent satisfaction based on the reasons recorded by the Assessing Officer and, therefore, even if the satisfaction recorded by the ACIT is not valid due to the reasons that the Addl. CIT was not competent to grant the sanction. It would not affect the validity of the approval granted by the Pr. CIT. Thus, the Ld. DR has

submitted that this is not the case of grant the sanction by unauthorized Income Tax Authority but the file was moved through the office of the ACIT and in this process the Addl. CIT has also recorded his satisfaction. As regards the objection of mechanical approval granted by the Pr. CIT the Ld. DR has submitted that the Pr. CIT has duly recorded his satisfaction in clear terms and, therefore, it cannot be regarded as grant of approval/sanction mechanically. He has further contended that the satisfaction of Pr. CIT is not require to be in elaborate words in support of his contention he has relied upon the decision of the Hon'ble Delhi High Court in the case of E-X Seed Technologies & Device Pvt. Ltd. Vs. ACIT 422 ITR 355. Thus, the Ld. DR has submitted that while granting sanction u/s 151 the Pr. CIT was not required to provide elaborate reasoning to arrive at the finding of approval when he was satisfied with the reasons of reopening recorded by the Assessing Officer. He has pointed out that the assessee is a non filer of Income Tax Return and only on the basis of the information received by the Assessing Officer as contained in Form No. 26AS. The Assessing Officer has formed the belief that income assessable to tax has escaped assessment. The reasons recorded by the AO has clearly makes out the receipt by the assessee on account of contract payments which were subjected to TDS u/s 194C as reflected in Form 26AS. The amount as shown in Form No. 26 is huge of more than Rs. 65 lakhs. Therefore, *prima facie* the reasons recorded by

the Assessing Officer based on tangible material on which the Pr. CIT was satisfied while granting satisfaction.

9. In the rejoinder the Ld. AR has relied upon the decision of Mumbai Benches of the Tribunal in the case of ACIT Vs. Bharti Axa Life Insurance Co. Ltd. 128 taxmann.com 23 (Mum. Trib.).

10. We have considered the rival submissions as well as the relevant material on record. Though the assessee has raised the ground no. 1.1 disputing the service of notice issued u/s 148, however, at the time of hearing, the Ld. AR of the assessee has not addressed any argument on this point. Further, we note that the Assessing Officer has issued the notice u/s 148 on 31.03.2017 and after a gap of more than six months the assessee filed its return of income as well as reply dated 14.11.2017. In the return of income the assessee has declared loss of Rs. 14,798/-. The assessee demanded the copy of the reasons recorded and the same were provided by the Assessing Officer. The assessee did not raise any objection before the Assessing Officer and particularly before the assessment order was passed regarding non receipt of notice or disputing the service of notice issued u/s 148 of the Income Tax Act. Once the assessee has not raised any objection against the service of notice issued u/s 148 and participated in the proceedings then after the completion of the assessment order the assessee is not allowed to dispute the service when the issuance of notice u/s 148 is not in dispute. Accordingly, in the

absence of any argument on this issue as well as the facts as discussed above, we do not find any substance or merits in ground no. 1.1 on the assessee's appeal. The same is dismissed.

11. Ground No. 1.2 and the additional ground 1 & 2 are regarding the validity of notice issued u/s 148 due to invalid approval granted u/s 151 of the Income Tax Act. It is pertinent to note that the assessee has not disputed the facts as recorded in the reasons recorded for reopening of the assessment except the explanation on the merit of the issue that the amount shown in Form No. 26AS was not entirely received by the assessee as one of the cheques got dishonored. The assessee has basically disputed the validity of the sanction of Pr. CIT for issuing the notice u/s 148. For ready reference, we reproduce para 12 and 13 of the proposal sent by the Assessing Officer for approval as under:

12.	*Whether the Addl. Commissioner is satisfied on the reasons recorded by the ITO that it is a fit case for the issue of a notice under section 148.*	*In view of the reasons recorded by the AO, I am satisfied that it is fit case for issue of notice u/s 148.* *Sd/-* *(Saroj Kumar Dubey)* *Addl. CIT, Range-25, New Delhi.*
13.	*Whether the Addl. Commissioner is satisfied on the reasons recorded by the ITO that it is a fit case for the issue of a notice under section 148.*	*As per reasons recorded, I am satisfied that it is a fit case for issue of notice u/s 148.* *Sd/-* *(Archana Choughdary)* *Pr. Commissioner of Income Tax,* *Delhi-9, New Delhi.*

12. Though prior to the approval of Pr. CIT there is also a satisfaction recorded by the Addl. CIT, however, it is clear from the satisfaction recorded by the Pr. CIT that she was satisfied with the reasons recorded and found it a fit case for issuing notice u/s 148. As per the satisfaction recorded by the Pr. CIT it does not reflect any influence or consideration of the satisfaction recorded by the Addl. CIT. Therefore, the satisfaction recorded by the Pr. CIT is separate and independent not having any influence. Hence, even if there is a satisfaction recorded by the Addl. CIT who is not a Competent Authority for granting sanction for issuing notice u/s 148 in this case the said satisfaction of Addl. CIT would not vitiate the satisfaction recorded by the Pr. CIT. Therefore, the satisfaction as recorded by the Pr. CIT at the time of granting the approval/sanction u/s 151 of the Income Tax Act manifests that it was an independent satisfaction based on the reasons recorded by the Assessing Officer. Even otherwise, the reasons recorded by the Assessing Officer *prima facie* makes out the case to form a belief that income assessable to tax as reflected in Form 26AS has escaped assessment because the assessee did not file any return of income u/s 139 of the Income Tax Act. From the Paper Book of the assessee, we further note that the sanction accorded by the Pr. CIT was communicated to the Assessing Officer through Addl. CIT vide letter dated 31.03.2017. Thus, it appears that the movement of the file from the ITO to Pr. CIT is rooted through Addl. CIT.

Hence, we do not find any error or illegality in the sanction granted u/s 151 by the Pr. CIT.

13. Additional ground no. 3 & 4 are regarding validity of the reassessment order for want of valid notice u/s 143(2) of the Income Tax Act. The Ld. AR of the assessee has submitted that the Assessing Officer has issued notice u/s 143(2) without verification and examination of the return of income filed by the assessee and, therefore, the jurisdictional notice issued u/s 143(2) is invalid and makes the whole reassessment proceedings as bad in law. He has relied upon the judgment of Hon'ble Jurisdictional High Court in the case of DIT Vs. Society for Worldwide Inter Bank Financial, Telecommunications 323 ITR 249. The Ld. AR has pointed out that the assessee filed the return of income on 14.11.2017 and Assessing Officer has issued notice u/s 143(2) on 16.11.2017 which shows that the notice u/s 143(2) was issued by the Assessing Officer without verification of the return of income filed by the assessee. He has also referred to the order sheet entries of the assessment record which shows that the AO has issued the notice u/s 143(2) on 16.11.2017. Thus, the Ld. AR has submitted that the notice issued u/s 143(2) is invalid and consequently, the entire reassessment proceedings are vitiated and liable to be quashed.

14. On the other hand, the Ld. DR has submitted that the assessee has not filed any return of income u/s 139 of the Income Tax Act and only

return of income was filed by the assessee was after more than six months of the notice issued u/s 148 of the Income Tax Act. The assessee has filed the return of income electronically (online) and, therefore, there is not time gap between the filing of return by the assessee and access of the same to the Assessing Officer. When there is no dispute that the notice u/s 143(2) was issued after the return of income filed by the assessee then it cannot be said that the same is issued by the Assessing Officer without verification of the return of income. He has distinguished the facts from the decision relied upon by the assessee in case DIT Vs. Society for Worldwide Inter Bank Financial, Telecommunications (supra) and submitted that in the said case the notice was issued prior to the filing of return of income by the assessee.

15. We have considered the rival submissions as well as the relevant material on record. There is no dispute that the return of income was filed by the assessee on 14.11.2017 and a copy of which is available in the Paper Book at page no. 8. This is also undisputed fact that the assessee has filed the return of income online and, therefore, the same is accessable to the Tax Authorities at moment it is filed. The Assessing officer had issued the notice u/s 143(2) on 16.11.2017 which is certainly after the return of income filed by the assessee. Therefore, in the facts and circumstances of the case, where the assessment was reopened due to the reasons that the assessee has not filed any returned income u/s 139 and Form No. 26AS shows the receipt of Rs. 65,02,171/- as contract

receipt subjected to TDS u/s 194C of the Act from M/s E-X Seed Technologies & Device P. Ltd. which is a party to a contract dated 6th August, 2009 entered into for having business/contract transactions then the details available in Form 26AS would constitute an incriminating material disclosing an income escaped assessment. Therefore, the notice issued by the Assessing Officer u/s 143(2) cannot be said to be without verification of the return of income filed by the assessee because the AO had to examine the issue which is subject matter of the reasons recorded for reopening of the assessment. Hence, we do not find any merit or substance in the additional ground no. 3 & 4 raised by the assessee. The same are dismissed.

16. Ground no. 2 is regarding the merits of the addition made by the Assessing Officer of Rs. 65,02,171/-. The Ld. AR of the assessee has submitted that the Assessing Officer has made the addition without verification of the correct details. He has referred to the bank account statement of the assessee and submitted that a cheque of Rs. 10 lakhs issued by the M/s E-X Seed Technologies & Device P. Ltd. on 07.11.2009 and, therefore, the assessee has not received any amount towards contract received as shown in the Form No. 26AS. So far as the dishonor of cheque is concerned he has also referred to a police complaint filed by the assessee against the said company for giving false information in Form No. 26AS. Therefore, the Ld. AR has submitted that the AO has made the addition of the amount which is not an income of the assessee.

He has further contended that in the remand proceedings the details required for examination of this fact were also not collected and, therefore, the CIT(A) has confirmed the addition without considering the correct facts that the assessee has not received the alleged amount as part of contract receipts. Nothing conclusive has come out in the remand proceedings and the Assessing Officer has accepted the fact that the statement of one Shri Shailesh Dheeraj was recorded by ACIT, Circle 5(1), Bangalore but he had stated that he had no knowledge of the current status of the company. The assessee has pleaded that in the absence of any material brought on record by the AO to show that the assessee has actually received the alleged amount the addition made by the AO and confirmed by the CIT(A) is not sustainable and the same is liable to be deleted.

17. On the other hand, Ld. DR has submitted that as per the agreement dated 6th August, 2009 there is a payment schedule and accordingly, the assessee received two cheques from the other party of the agreement. Even if the cheque issued by the contracting party got dishonored the amount becomes due and will be income of the assessee on mercantile system of accounting followed by the assessee. He has relied upon the orders of the authorities below.

18. We have considered the rival submissions as well as the relevant material on record. The Assessing Officer has made the addition based

on the details of payment reflected in the Form 26AS. The assessee has contended before the Assessing Officer as well as CIT(A) that the payment shown in Form 26AS was not received by the assessee from M/s E-X Seed Technologies & Device P. .Ltd. as the cheque issued by the said company of Rs. 10 lakhs got dishonored and assessee has filed a police complaint. So far as the dishonor of the cheque is concerned the same is reflected in the bank account statement of the assessee and, therefore, we find that in the absence of any other amount received by the assessee or any settlement between the parties the dishonor of cheques would certainly lead to termination of the agreement between the parties which is one of the conditions as provided in the clause of the agreement. Even as per the agreement in which Rs. 20 lakhs was to be paid by E-X Seed Technologies & Device P. Ltd. to the assessee and, therefore, the amount of Rs. 65,02,171/- is not supported by the terms and conditions of the agreement. There may be some oral understanding and agreement between the parties but as per the agreement dated 6th August, 2009 the total amount which was to be paid by the said company to the assessee was Rs. 20 lakhs. It is also a term of the agreement that in case of default in payment by E-X Seed Technologies & Device P. Ltd. the contract shall be terminated. However, the complete facts reflecting the true state-of-affairs between the parties have not come on record. The Assessing Officer has not conducted a proper enquiry during the assessment proceedings to ascertain the correct facts regarding the

amount reflected in Form 26AS even, during the remand proceedings as directed by the CIT(A) nothing has come out conclusively. Therefore, it is apparent that the addition made by the AO is solely based on the details of Form 26AS and not on the basis of any facts detected as a result of an enquiry conducted by the Assessing Officer. Hence, in the facts and circumstances of the case and in the interest of justice, we are of the considered view that this matter requires a proper verification and enquiry to ascertain the correct facts regarding the actual amount received by the assessee from the other contracting party namely E-X Seed Technologies & Device P. Ltd. Accordingly, in the interest of justice, we set aside this issue to the record of the Assessing Officer for deciding the same afresh after conducting a proper enquiry on this point. Needless to say the assessee be granted and appropriate opportunity of hearing before passing the fresh order.

19. In the result, the appeal is partly allowed for statistical purposes.

Order pronounced in the open court on 24.09.2021

Sd/-	**Sd/-**
(R.K. PANDA)	**(VIJAY PAL RAO)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Delhi.
Dated: 24.09.2021
**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order
Assistant Registrar, ITAT: Delhi Benches-Delhi