

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH: BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.602/Bang/2015
Assessment Year : 2005-06

M/s. Global Associates No.14, Geneva House Cunningham Road Bangalore 560 052 PAN NO :AAGFG0074L	Vs.	Deputy Commissioner of Income-tax Central Circle-1(4) Bengaluru
APPELLANT		RESPONDENT

Appellant by	:	Shri Narendra Sharma, A.R.
Respondent by	:	Shri Sankar Ganesh, D.R.

Date of Hearing	:	08.09.2021
Date of Pronouncement	:	30.09.2021

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

The assessee has filed this appeal challenging the order dated 29.12.2014 passed by Ld. CIT(A)-11, Bengaluru and it relates to assessment year 2005-06. The assessee has raised as many as 18 grounds. At the time of hearing, we heard the parties on ground No.6 which reads as under:

- 6. The learned Commissioner of Income-tax (Appeals) ought to have appreciated that the notice issued by obtaining prior approval from the learned Commissioner of Income-tax is bad in law and contrary to the provisions of section 151(2) of the Act on the facts and circumstances of the case.*

Page 2 of 6

2. The Ld. A.R. submitted that the assessee is an AOP constituted as per agreement of venture executed on 19.3.2004. The assessee is carrying on the business in real estate transactions. Consequent to some search proceedings conducted in the hands of M/s. H.M. Constructions and other group cases on 30.6.2011, the case of the assessee was reopened by issuing a notice dated 27.3.2012 u/s 148 of the Act. In the assessment order, the A.O. has stated that the notice u/s 148 of the Income-tax Act, 1961 [the Act' for short] was issued after obtaining prior approval of the Commissioner of Income Tax, Karnataka (Central), Bengaluru.

3. The Ld. A.R. submitted that the assessee was not earlier assessed to tax and hence the A.O. should have obtained permission from Joint Commissioner of Income Tax as per provisions of section 151(2) of the Act and not from Ld. Commissioner of Income Tax. Accordingly he submitted that the AO should not have obtained approval from Ld Commissioner of Income tax, since he is not the appropriate authority. Hence the impugned assessment is invalid and liable to be quashed. In support of these contentions, the Ld. A.R. placed his reliance on the following decisions:

1. *Ghanshyam K. Khabrani Vs. ACIT (2012) 20 taxmann.com 716 (Bom.)*
2. *CIT Vs. Soyuz Industrial Resources Ltd. (2015) 58 taxmann.com 336 (Delhi)*
3. *CIT Vs. SPL's Siddhartha Ltd. (2012) 17 taxmann.com 138 (Delhi.)*
4. *Gajinder Singh Chhabra Vs. ITO (2014) 50 taxmann.com 312 (Delhi-Trib)*
5. *Sardar Balbir Singh Vs. ITO (2015) 61 taxmann.com 320 (Lucknow-Trib)*

4. The Ld. D.R. on the contrary submitted that the provisions of section 151 of the Act prescribe for getting approval from higher authorities, in order to protect the interests of the assessee.

Page 3 of 6

Considering the object of provisions of section 151 of the Act, approval given by Ld. CIT, who is superior to Joint Commissioner should not be found fault with. Accordingly, he submitted that the approval by Ld. CIT will not vitiate assessment proceedings. He also submitted that the proposal for approval before Ld. CIT is usually sent through Joint Commissioner and hence Joint Commissioner is also aware of the proceedings.

5. We heard the rival contentions and perused the record. The provisions of section 151 of the Act, then existing reads as under:

“151. Sanction for issue of notice –

(1) In a case where an assessment under sub-section (3) of section 143 or section 147 has been made for the relevant assessment year, no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of Assistant Commissioner or Deputy Commissioner unless the Joint Commissioner is satisfied on the reasons recorded by such Assessing Officer that it is a fit case for the issue of such notice:

Provided that, after the expiry of four years from the end of the relevant assessment year, no such notice shall be issued unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer aforesaid, that it is a fit case for the issue of such notice.

(2) In a case other than a case falling under sub-section (1), no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of Joint Commissioner, after the expiry of four years from the end of the relevant assessment year, unless the Joint Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice”

6. In the instant case, undisputed fact is that the assessee was not earlier assessed to tax for assessment year 2005-06 and hence no assessment order u/s 143(3) of the Act is available. In that situation, the provisions of section 151(2) of the Act is applicable to the facts of the present case, as per which the A.O. is required to obtain approval from Joint Commissioner of Income tax. On the

Page 4 of 6

contrary, the A.O. has obtained approval from Ld. Commissioner of Income Tax. The question is whether approval from a superior authority is fatal to the assessment proceedings or not? An identical issue has been examined by Hon'ble High Court of Bombay in the case of Ghanshyam K. Khabrani (supra) and it was held that when 151(2) of the Act mandates that sanction to be taken for issuance of notice u/s 148 of the Act in certain cases has to be of Joint Commissioner, then reopening of assessment with the approval of Commissioner is unsustainable. The relevant observations made by Hon'ble High Court of Bombay in this regard are extracted below:

"6. The second ground upon which the reopening is sought to be challenged is that the mandatory requirement of election 151(2) has not been fulfilled. Section 151 requires a sanction to be taken for the issuance of a notice under Section 148 in certain cases. In the present case, an assessment had not been made under Section 143(3) or Section 147 for A.Y. 2004-05. Hence, under sub-section 2 of Section 151, no notice can be issued under Section 148 by an Assessing officer who is below the rank of Joint Commissioner after the expiry of 4 years from the end of the relevant Assessment Year unless the Joint Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice. The expression "Joint Commissioner" is defined in Section 2(28C) to mean a person appointed to be a Joint Commissioner of Income Tax or an Additional Commissioner of Income Tax under section 117(1). In the present case, the record before the Court indicate that the Assessing Officer submitted proposal on 28 March 2011 to the CIT(1) Thane through the Additional Commissioner of Income-Tax Range (1) Thane. On 28 March 2011, the Additional CIT forwarded the proposal to the CIT and after recording a gist of the communication of the Assessing Officer stated that :

"As requested by the A.O. Necessary approval for issue of notice u/s. 148 may kindly be granted in case, if approved."

On this a communication was issued on 29 March 2011 from the office of the CIT(1) conveying approval to the proposal submitted by the Assessing officer. There is merit in the contention raised on behalf of the Assessee that the requirement of Section 151(2) could have only been fulfilled by the satisfaction of the Joint Commissioner that this is a fit case for the issuance of a notice under Section 148. Section 151(2) mandates that the satisfaction has to be of the Joint Commissioner. That

Page 5 of 6

expression has a distinct meaning by virtue of the definition infection 2(28C). The Commissioner-of Income Tax is not a Joint Commissioner within the meaning of Section 2(28C). In the present case, the Additional Commissioner of Income Tax forwarded the proposal submitted by the Assessing Officer to the Commissioner of Income Tax approval which has been granted is not by the Additional Commissioner of Income Tax but by the Commissioner of Income Tax. 'There is no statutory provision hereunder which a power to be exercised by an officer can be Exercised by a superior officer. When the statute mandates the satisfaction of a particular functionary for the exercise of a power, the satisfaction must be of that authority. Where a statute requires something to be done in a particular manner. it has to be done in that manner. In a similar situation the Delhi High Court in (.37 v. SPL'S Siddhartha Lid. [2012] 204 Taxman 115 / 17 taxmann.com 138 (Delhi) held that powers which are conferred upon a particular authority have to be exercised by that authority and the satisfaction which the statute mandates of a distinct authority cannot be substituted by the satisfaction of another. We are in respectful agreement with the judgement of the Delhi High Court."

7. Identical view has been expressed by Hon'ble High Court of Delhi in the case of Soyuz Industrial Resources Ltd. (supra). Accordingly, following above said decisions rendered by Hon'ble High Court of Bombay and Delhi, we hold that notice issued u/s 148 of the Act with the prior approval of Ld. CIT is not in accordance with the provisions of section 151(2) of the Act and hence the same is not sustainable. In that view of the matter the impugned assessment order would get vitiated. Accordingly, the assessee wins on this issue.

8. In view of the above, we quash the orders passed by the tax authorities for the year under consideration. Since we have quashed the assessment order on legal grounds, there is no necessity to address other grounds urged by the assessee.

9. In the result, the appeal filed by the assessee is treated as allowed.

Order pronounced in the open court on 30th Sept, 2021.

Sd/-
(N.V. Vasudevan)
Vice President

Sd/-
(B.R. Baskaran)
Accountant Member

Bangalore,
Dated 30th Sept, 2021.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.