

आयकर अपीलीय अधिकरण "E" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एम बालगणेश, लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, VP AND SRI M BALAGANESH, AM

आयकर अपील सं./ ITA No. 7276/Mum/2018

(निर्धारण वर्ष / Assessment Year 2009-10)

Exult IT Services Pvt. Ltd. (formerly known as Willis India Insurance Brokers Pvt. Ltd.) 2 nd Floor Commercial Union House, 9, Wallace Street, Fort: 400 001	बनाम / Vs.	The Income Tax Officer Ward 14(3)(4) AB 540, 5 th Floor, Aayakar Bhavan, Mumbai-400 020
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./ PAN No. AAACW3235A		

अपीलार्थी की ओर से / Appellant by	:	Shri Ketan Ved, AR
प्रत्यर्थी की ओर से / Respondent by	:	Shri Sumit Kumar, DR

सुनवाई की तारीख / Date of hearing:	24.08.2021
घोषणा की तारीख / Date of pronouncement:	30.09.2021

आदेश / ORDER

महावीर सिंह, उपाध्यक्ष के द्वारा /
PER MAHAVIR SINGH, VP:

This appeal of the assessee is arising out of order of the Commissioner of Income Tax (Appeals)-3, Mumbai [in short CIT(A)], in Appeal No. CIT(A)-3/10280/2017-18 vide dated 20.07.2018. The Assessment was framed by the Dy. Commissioner of Income Tax, Ward-1(3)(2), Mumbai (in short 1(3)(2) for the A.Y. 2009-10 vide order dated 22.12.2016 under

section 143(3) read with section 147 of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The first issue in this appeal of assessee is against the order of CIT(A) confirming the action of the Assessing Officer in the reopening of assessment and assumption of jurisdiction under section 147 of the Act. For this, assessee has raised the following three grounds:-

"1. On the facts and circumstances of the case the Ld. Commr. of Income Tax (Appeals) has erred in concluding that the reassessment proceedings were validly initiated by the Ld. Assessing Officer and consequently the re-assessment order passed by the Ld. Assessing Officer is valid. The conclusion reached by the Ld. Commr. of Income Tax (Appeals) is erroneous. The appellant prays that reassessment order may be treated as invalid and be cancelled.

2. On the facts & circumstances of the case, the Ld. Assessing Officer has rejected the objection raised by the appellant in the reassessment proceedings without dealing with the issues raised therein. The conclusion reached by the Ld. Assessing Officer and confirmed by the Ld. Commr. of Income Tax (Appeals) is erroneous. The appellant prays that the reassessment order passed by the Ld. Assessing Officer and confirmed by the Ld. Commr. of Income Tax (Appeals) may be set aside and cancelled as it is bad in law.

3. On the facts & circumstances of the case the appellant prays that the order passed by the Ld. Assessing officer u/s

143(3) r.w.s. 147 and confirmed by the Ld. Commr. of Income Tax (Appeals) is bad in law and the said order may be set aside and the addition made by the Ld. Assessing Officer and confirmed by the Ld. Commr. of Income Tax (Appeals) amounting to Rs.38,55,456/- may be deleted.”

3. At the outset, the learned counsel for the assessee took up to the first proposition against reopening of assessment that the satisfaction recorded and approval granted under section 151(1) of the Act for reopening of assessment under section 147 is not according to the law laid down and there is no objective satisfaction recorded by the PCIT.

4. The learned Counsel for the assessee stated that in the present appeal, the relevant Assessment Year is 2009-10 and original assessment was framed by the DCIT-1 (3), Mumbai under section 143(3) of the Act vide order dated 19.12.2011 and subsequently, a notice under section 148 of the Act dated 29.03.2016 was issued i.e. beyond four years despite the fact that the assessee has filed all the relevant material for completion of assessment and there is no failure on the part of the assessee to disclose the material facts truly in his return of income. The assessment under section 143(3) read with section 148 was framed by DCIT 1(3)(2), Mumbai vide order dated 22.12.2016 i.e. reassessment. The learned Counsel for the assessee took us through the assessee's paper book and relevant page 39, wherein the proposal for obtaining approval on the reasons recorded and initiation of proceedings under section 147 of the Act from Pr. Commissioner of Income Tax is

enclosed. The learned Counsel for the assessee drew our attention to Paras 11 and 12 of the proposed approval and the relevant approval reads as under: -

1.	Whether the Addl. CIT satisfied on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of notice under section 147	Yes it is satisfied a fit case for reopening Sd/- (ANU KRISHNA AGGARWAL) Addl. CIT, Range 1(3), Mumbai,
12	Whether the CIT is satisfied on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of notice u/s 147	Yes I am satisfied that it is a fit case for issue of notice u/s 148 of the Act. Sd/- (Vidhu Shekhar Singh) Pr. CIT-1, Mumbai

This approval is dated 28.03.2016.

5. In view of the above, the learned Counsel for stated that the CIT(A) has recorded his satisfaction for reopening of assessment in a mechanical manner rather he has to record a subjective satisfaction for issuance of notice under section 148 of the Act on the reasons recorded. For this, the learned Counsel for the assessee relied on the decisions of Hon'ble Madhya Pradesh High Court in the case of CIT vs. S. Goyanka Lime & Chemicals Ltd. (2015) 56 taxman.com 390 (Madhya Pradesh) and Arjun Singh Vs. Asst. Director of Income-tax (2000) 246 ITR 363 (MP)

6. On the other hand, learned Sr. Departmental Representative, Shri Sumit Kumar supported the order of CIT(A).



7. After considering the rival submissions and perusing the relevant material on record, we noted from the perusal for reopening of assessment under section 147 of the Act mooted by the Assessing Officer vide dated 21.03.2016 and satisfaction recorded by PCIT-12, Mumbai vide dated 28.03.2016. The recorded satisfaction reads as " *Yes I am satisfied that it is a fit case for issue of notice u/s 148 of the Act*". From his satisfaction it is clear that he is satisfied but from the recorded satisfaction it is clear that the satisfaction recorded which is not in terms of section 151 of the Act and the relevant provisions of section 151 reads as under:-

"151. (1) No notice shall be issued under section 148 by an Assessing Officer, after the expiry of a period of four years from the end of the relevant assessment year, unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice.

(2).....

(3)....."

8. We noted that this PCIT has only put his signature on the proposal sent by the Assessing Officer for reopening of assessment and noting is stated about the reasons recorded that he has satisfied and that this is a fit case for the issuance of notice under section 148 of the Act. The PCIT has nowhere discuss how he has satisfied that this is a fit case for reopening

of assessment as mandated by the Hon'ble Madhya Pradesh High court in the case of S. Goyanka Lime & Chemicals Ltd. (supra). Now, we are referring the proposition laid down by Hon'ble Madhya Pradesh High Court in the case of S. Goyanka Lime & Chemicals Ltd. (supra), wherein it is 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.”

9. Further, the Hon'ble Madhya Pradesh High court followed the decision of co-ordinate Bench of Madhya Pradesh High court in the case of Arjun Singh (supra), wherein following the principle 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 formal “Yes, I am satisfied” which indicates as if he was to sign only on the dotted line.”

10. As against the above judgment, the Revenue file SLP before the Hon'ble Supreme court but SLP was also dismissed by Hon'ble Supreme Court.

11. In view of the entire discussion carried out above, we are of the view that in the instant appeal, the PCIT has recorded the satisfaction for reopening of assessment in a mechanical manner and this is not a proper satisfaction recorded for reopening of assessment for issuance of notice under section 148 of the Act. Respectfully, following the judgment of Hon'ble Madras High court in S. Goyanka Lime & Chemical Ltd. (supra) and Arjun Singh (Supra), we hold that the reopening done by issuing the notice under section 148 of the Act and recording of



satisfaction by the PCIT is bad in law in the manner known law. Hence, we quash the reassessment and allow the appeal of the assessee on this sole issue.

12. The learned Counsel for the assessee also raised another proposition that the original assessment was completed under section 143(3) of the Act for the relevant Assessment Year 2009-10 and notice under section 148 of the Act was issued vide dated 29.03.2016 but from the reasons recorded and the details submitted during the course of assessment proceedings, the learned Counsel stated that there is no failure on the part of the assessee in term of the proviso to disclose fully and truly all material facts necessary for assessee's assessment for the relevant Assessment Year 2009-10. Since, we have already quashed the assessment on the first proposition, this we need not to go into. Further, we have quashed the assessment on jurisdictional issue, we need not to go into the merits also.

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

Order pronounced in the open court on 30.09.2021.

Sd/-

(एम बालगणेश / M BALAGANESH)

(लेखा सदस्य / ACCOUNTANT MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 30.09.2021.

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

Sd/-

(महावीर सिंह / MAHAVIR SINGH)

(उपाध्यक्ष / VICE PRESIDENT)



आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai