

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "C": NEW DELHI  
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
(Through Video Conferencing)

ITA No. 608/Del/2018  
(Assessment Year: 2009-10)

Gajendra Kumar, C/o. M/s. Sanjeev Anand & Associates, 77, Navyug Market, Ghaziabad PAN:BWGPG2614B	Vs.	ITO, Ward-1(2), Ghaziabad
(Appellant)		(Respondent)

Assessee by :	Shri Somil Agarwal, Adv Mr. Rakesh Gupta, Adv
Revenue by:	Shri Umesh Yakyar, Sr. DR
Date of Hearing	20/10/2021
Date of pronouncement	18/11/2021

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order passed by the Id CIT(A)-2, Noida dated 03.01.2018 for the Assessment Year 2009-10.
2. The assessee has raised the following grounds of appeal:-
  - “1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in framing the impugned reassessment order u/s 144/147 and that too without assuming jurisdiction as per law and without complying with the mandatory conditions u/s 147 to 151 as envisaged under the Income Tax Act, 1961.
  2. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in framing the impugned reassessment order u/s 144/147, is bad in law and against the facts and circumstances of the case.
  3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the addition of Rs.33,60,000/- allegedly on the ground that the cash deposits are unexplained and that too by recording incorrect facts and findings and without observing the principles of natural justice.
  4. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the addition of Rs.33,60,000/- allegedly on the ground that assessee has failed to explain the cash deposit, received from his father out of sale of land, is bad in law and against the facts and circumstances of the case.
3. Brief facts of the case shows that the assessee is an individual. There was an AIR information that the assessee has deposited cash of Rs. 40,10,000/ in his Saving Bank Account with

Oriental bank of Commerce, Sikrod, Ghaziabad during the year. Before issuing the notice for reopening of the assessment, the learned assessing officer issued to verification letters to the assessee however, The assessee did not appear on both the occasions. The learned assessing officer obtained the bank account from the bank. Thereafter recorded the reasons for reopening of the assessment. Notice u/s 148 was issued on 10.03.2016. Therefore, the ld AO noted that there is a sum of Rs. 7039650/ being the credit entry in Saving bank Account of the assessee. None appeared before the learned AO and therefore, He assessed the total income of the assessee at the above sum and passed an order u/s 144 read with section 147 of the Act on 13.10.2016.

4. The assessee challenged the same before the ld CIT(A). The assessee submitted additional evidences before the learned CIT appeal. Such additional evidence were admitted vide para No. 4.7 of the order of the ld CIT(A). The assessee also challenged the reopening of the assessment. The ld CIT(A) obtained the remand report on 24.10.2010. On examination of the details the learned CIT – A found that a credit entry of Rs. 30 lakhs credited on 05.09.2008 which was reversed on 06.09.2008 and therefore there is no sum credited in the bank account of the assessee to that extent and therefore, he deleted the addition to that extent. With respect to the balance sum of Rs. 40,39,650/- he granted a relief of Rs. 6,79,650/-. He held that cash deposit of Rs. 33 lakhs on 01.09.2008 and 30.01.2009 remains unexplained. Accordingly, out of the total addition of Rs. 70,39,650/ he accordingly relief of Rs. 36,79,650/- and confirmed an addition of Rs. 33,60,000/-. Therefore, the assessee is in appeal before us.
5. We have heard the rival contentions of the ld AR and ld Sr. DR, perused the orders of the lower authorities and considered the several judicial precedents relied upon. We have also considered the paper books filed by the ld AR.
6. As per the ground No. 1 and 2 the assessee has challenged the reopening of the assessment stating that there was no material and even otherwise there is no live nexus with the belief as to the escapement of income. It was also stated that in notice issued prior to the issue of notice u/s 148 as no legal sanctity. It also challenged the approval granted u/s 151 of the Act stating that there is non application of mind.
7. On careful consideration of the fact we find that the ld AO has recorded his reasons on 09.02.2016 holding that the assessee has deposited a cash of Rs. 40,10,000/- in his bank account. Before forming all the belief the ld AO issued a verification letter on 17.12.2012 and also on 11.01.2016 asking explanation of the above sum deposited. It is not case of the assessee that he did not receive the above verification letters. Despite this he did not reply. The ld AO obtained the bank statement from Oriental Bank of Commerce and found that

cash deposit of Rs. 40,10,000/- has been made. It is not the case that the assessee has filed any voluntary return of income. Even the PAN of the assessee was not available. In view of the above facts we find that there is tangible material with Id AO which has live nexus with the escapement of income. There is no infirmity in the reasons recorded by the Id AO.

8. Coming to the satisfaction recorded, concerned authority has clearly stated on the basis of detailed performa wherein, the name of the assessee, address of the assessee, Assessment Year, quantum of the income escaped, the factum none filing of the return by the assessee and the reasons recorded by the Id AO were perused. There is no infirmity or error in any of the above facts stated in reasons recorded by the Id AO approving authority has mentioned that it is satisfied that it is a fit case for the issue of notice u/s 148 of the Act. If all the details of the performa as well as the reasons recorded are in order, we do not find any reason that the satisfaction recorded by the Id approving authority is not proper. Reopening of the assessment, where the assessee has not filed any voluntary return of income, there is information available about the escapement of income in the form of cash desposit in the bank account, the Id AO has made adequate enquiry before forming prima face belief of escapement of income, and based on that the authority is satisfied that it is fit case for issuance of notice u/s 148 of the Act, we find that satisfaction / approval of the authority is proper. Our this finding is also supported by the decision of honourable Delhi High court in case of Experion Developers P Ltd [2020] 115 taxmann.com 338 (Delhi)/[2020] 422 ITR 355 (Delhi) where in it has been held as under :-

*d) Whether proper sanction as required under section 151 of the act was obtained or not*

**40.** It is a requirement for issuance of notice for reopening of assessment proceedings under section 151 of the Act that 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 issuance of such notice.

**41.** In the recorded reasons also, it has been noted that "necessary sanction to issue notice under section 148 of the Act is being obtained separately from Pr. Commissioner of Income Tax, Delhi-03, New Delhi as per the provisions of section 151 of the Act". In its reply on this issue, in the order dated 25-9-2019 dismissing objections of the petitioners to the notice under section 148, it has been pointed out that the approval of the competent authority was obtained *vide* note sheet entries dated 31-3-2019 and the same was enclosed along with the order. However, the same has not been annexed to the present petitions. It has been argued that obtaining approval of the Additional Commissioner of Income-tax is not provided for under section 151 and therefore, the same is not justified. However, in the present case, approval/sanction has been obtained from both, the Addl. Commissioner of Income-tax as well as Principal Commissioner of Income-tax, which is the appropriate authority for issuance of such sanction, as noted

in *CIT (Erstwhile CIT-III) v. Soyuz Industrial Resources Ltd.* [2015] 58 [taxmann.com](http://taxmann.com) 336/232 *Taxman* 414 (Delhi).

42. Further, it is the case of the petitioner that there was no independent application of mind by the sanctioning authorities for according approval. Whilst it is the settled position in law that the sanctioning authority is required to apply his mind and the grant of approval must not be made in a mechanical manner, however, as noted by the Division Bench of the Calcutta High Court in *Prem Chand Shaw (Jaiswal) v. Asstt. CIT* [2016] 67 [taxmann.com](http://taxmann.com) 339/238 *Taxman* 423/383 *ITR* 597, the mere fact that the sanctioning authority did not record his satisfaction in so many words would not render invalid the sanction granted under section 151(2) when the reasons on the basis on the basis of which sanction was sought could not be assailed and even an appellate authority is not required to give reasons when it agrees with the finding unless statute or rules so requires. The decision in *United Electrical Co. Pvt. Ltd. (supra)*, as relied upon by the petitioner is distinguishable from the present case, as in the said case, there was no material on record to provide foundation for Assessing Officer's reasons to believe. Therefore, it was held that the recording of the satisfaction by the AO was unjustified and without independent application of mind. However, there is no requirement to provide elaborate reasoning to arrive at a finding of approval when the Principal Commissioner is satisfied with the reasons recorded by the AO. Similarly, in *Virbhadra Singh v. Deputy Commissioner Circle Shimla* [2017] 88 [taxmann.com](http://taxmann.com) 888 (HP) where the competent authority was in agreement with the reasons assigned by the Assessing Officer, so placed before him, which came to be considered and sanction accorded with proper application of mind, by recording "I am satisfied that it is a fit case for issuance of notice u/s 148", the issuance of notice under section 147/148 was held to be valid.

43. Therefore, it is clear that necessary sanction for issuance of notice under section 148, as required under section 151 had been obtained.

9. Further Hon delhi Highc court in case of Sonia Gandhi V ACIT [2018] 97 [taxmann.com](http://taxmann.com) 150 (Delhi) has also dealt with the issue of approval as under :-

“49. As far as the question of satisfaction recorded by the Principal Commissioner, under Section 151 (1) is concerned, the legal requirements were spelt out by the Division bench ruling in *Meenakshi Overseas (P.) Ltd. (supra)*, in the following terms:

*"For the purpose of Section 151(1) of the Act, what the Court should be satisfied about is that the Additional CIT has recorded his satisfaction "on the reasons recorded by the Assessing Officer that it is a fit case for the issue of such notice". In the present case, the Court is satisfied that by recording in his own writing the words: "Yes, I am satisfied", the mandate of Section 151(1) of the Act as far as the approval of the Additional CIT was concerned, stood fulfilled."*

In the present case, the PCIT recorded, on reassessment proposal on the file of each assessee, that *inter alia*, the "lifting of veil" over the tripartite "arrangement" between AICC (i.e. INC), AJL and YI to tax the assessee under Section 56(2)(vii) (c)(ii) of the Act, the sum of Rs. 48,93, 64,896/-. The PCIT, after stating this also recorded that "I am satisfied that the AO i.e. ACIT...has sufficient information in her possession which leads to reasons to believe that the assessee would have income which had escaped assessment which exceeds Rs. 1

*lakh". In view of the ruling in Meenakshi Overseas (supra), therefore, the satisfaction recorded by the PCIT was adequate and in accordance with legal requirements."*

10. After considering all the decisions stated before us, which are not on the similar said of facts, and following the decision of Honourable Jurisdictional High court, We uphold the action of reassessment proceedings with respect to section 147 to 151 of the Act. Accordingly, we dismiss Ground No. 1 and 2 of the appeal.
11. Coming to ground No. 3 and 4 of the appeal which challenges the addition of Rs. 33,60,000/- . It is shown before us that during the year the father of the assessee has sold a land at Village Voapur, Ghaziabad vide sale deed dated 19.07.2008 for Rs. 3.05 crores out of which he has withdrawn cash of Rs. 22 lakhs on 15.07.2008, Rs. 6,58,800/- on 21.07.2008 and Rs. 22,18,000/- on 22.07.2008 aggregating in all to Rs. 51,38,800/-. Out of which sum he has given gift of Rs. 33 lakhs to the assessee which was credited in the bank account of the assessee on 13.09.2008 of Rs. 3 lakhs and further a sum of Rs. 30 lakhs on 08.09.2008. The assessee has also submitted the copy of the sale deed dated 19.07.2008 at page No. 9 to 212 of the paper book and also copy of the bank statement of Shri Lal Singh at page No. 5 to 8 of the paper book.
12. We have carefully perused the bank account of the Mr. Lal Singh with Oriental Bank of Commerce. We find that on 21 and 22 July Shri Lal Singh withdraw Rs. 658800/- and Rs. 22,80,000/- and further on 15<sup>th</sup> July cash was withdrawn of Rs. 22 lakhs. As the assessee has stated that above sum has been deposited in the bank account of the assessee on 01.09.2008 and 08.09.2008 the assessee has stated that above sum received as gift from his father. In view of this we find that there is adequate source available which was stated before the lower authorities made in the remand report the ld AO did not dispute the above sum but stated that on the date of on which cash is deposited in the bank account of the assessee there were corresponding withdrawal on the same date in the account of the father of the assessee. We find that any valid reason for negating the argument of the assessee in absence of any other fact that the amount deposited in the bank account of the assessee has not given out of the bank account of the father of the assessee or any other evidence that the father of the assessee has not given this sum to the assessee. In view of this, we direct the ld AO to delete the addition of Rs. 33,00,000/- on cash deposit in the bank account. This so for the reason that the appellant has explained the cash deposit of Rs. 33 lakhs.
13. With respect to the balance sum of Rs. 60,000/- we do not find any explanation by the assessee except stating that the sum is deposited out of opening balance of any available with the assessee of Rs. 58700/-. On other occasions the assessee tried to explain the deposit by

the small amount withdrawn from his bank account. The Id AO has stated in para No. 4.13 has clearly doubted the existence of the above opening balance. Even before us there is no evidence submitted the existence of opening available in cash. In view of this, the addition to the extent of Rs. 60,000/- is confirmed.

14. The appellant gets a relief of Rs. 33 lakhs out of addition of Rs. 3360,000/- sustained by the Id CIT(A). Accordingly, ground No. 3 and 4 of appeal is partly allowed.
15. In the result appeal of the assessee is partly allowed.

Order pronounced in the open court on : 18/11/2021.

Sd/-  
(AMIT SHUKLA)  
JUDICIAL MEMBER

Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated : 18/11/2021  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi

Date of dictation	18.11.2021
Date on which the typed draft is placed before the dictating member	18.11.2021
Date on which the typed draft is placed before the other member	18.11.2021
Date on which the approved draft comes to the Sr. PS/ PS	18.11.2021
Date on which the fair order is placed before the dictating member for pronouncement	18.11.2021
Date on which the fair order comes back to the Sr. PS/ PS	18.11.2021
Date on which the final order is uploaded on the website of ITAT	18.11.2021
date on which the file goes to the Bench Clerk	18.11.2021
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	