

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "A", JAIPUR
श्री संदीप गोसाईं, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 50/JP/2019
Assessment Year: 2007-08

Smt. Manju Devi Kalal, C/o-Pankaj Prince & Associates, S-2, Shreeji Chambers, 6B, Purohit Ji Ka Bagh, Gopinath Marg, Near SBI, M.I. Road, Jaipur.	बनाम Vs.	I.T.O. Ward- 4(3), Jaipur.
PAN No.: AKDPK 6807 E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Pankaj Kumar Garg (CA)
राजस्व की ओर से / Revenue by :Smt.Monisha Choudhary (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 13/10/2021
उदघोषणा की तारीख / Date of Pronouncement : 23 /11/2021

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

The present appeal has been filed by the assessee against the order of the Id. CIT(A)-2, Jaipur dated 23/03/2018 for the A.Y. 2007-08.

Following grounds have been taken by the assessee:

- "1. That the Id. AO had erred in initiating proceedings U/s 147 without application of mind, the said proceedings are illegal and void.
2. That the A.O. and CIT(A) is not justified in adding Rs. 7,00,000/- as Income from other sources on the ground that the loan was taken for business purpose from bank.

3. *That no valid approval was accorded u/s 151 for reopening of assessment.*
4. *That the appellant craves the right to add, amend or delete any of the grounds of appeal either before or at the time of hearing of appeal."*

2. The hearing of the appeal was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.

3. The brief facts of the case are that the proceedings U/s 147 of the Income Tax Act, 1961 (in short, the Act) were initiated for the year under consideration. Accordingly, after issuing statutory notices U/s 148 of the Act and after seeking reply of the assessee, addition U/s 68 of the Act of Rs. 7.00 lacs were made on account of the fact that the amount of Rs. 7.00 lacs as claimed by the assessee to have invested for the construction of the house was not proved.

4. Being aggrieved by the order of the A.O., the assessee carried the matter before the Id. CIT(A) and the Id. CIT(A) after appreciating the entire facts and circumstances and considering the case of both the parties, dismissed the appeal.

5. Aggrieved by the order of the Id. CIT(A), the assessee has preferred the present appeal before the ITAT on the grounds mentioned above.

6. The Id. AR appearing on behalf of the assessee has stated at bar that the assessee does not want to press ground No.1 of the appeal. The Id. DR has raised no objection if ground No.1 of the appeal is dismissed being not pressed. Therefore, we dismiss ground No. 1 of the appeal being not pressed.

7. Since, the assessee has raised legal ground in ground No. 3 of the appeal to the effect that no valid approval was accorded U/s 151 of the Act for reopening of the assessment and according to us, this ground raised by the assessee goes to the root of the case. Thus, we have decided to dispose off this ground firstly.

8. Regarding ground No. 3 of the appeal, the Id. AR appearing on behalf of the assessee has reiterated the same arguments as were raised before the Id. CIT(A) and also relied on the written submissions filed before the Bench and the same is reproduced below:

"As per the provisions of sec. 151, 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.

Section 151 clearly states that provisions of sec. 147 may not be used unless a superior office is satisfied that the AO has good and adequate reasons to invoke the provisions of sec. 147. The superior authority has to examine the reasons, material or grounds and to judge whether they are sufficient and adequate to the formation of the necessary belief on the part of the assessing officer. If, after applying his mind, performing due diligence and also recording his reasons, howsoever briefly, the Commissioner/ Joint Commissioner is of the opinion that the AO's belief is well reasoned and bona fide, he is to accord his sanction to the issue of notice u/s 148 of the Act.

In the instant case, the Joint commissioner has noted 'Fit for 148, approved' and signed the report thereby giving sanction to the AO [PB 5-6]. Nowhere the authority has recorded a satisfaction note even in brief. Further, the authority has not gone through the reasons, material and grounds to judge whether they are sufficient and adequate to the formation of necessary belief on the part of the assessing officer. If the Joint commissioner had gone through reasons, materials and grounds, he would have come to know that assessee had invested the loan amount in construction of her house as the assessee had closed its business as is evident from the information on the basis of which assessing officer had proceeded for reassessment. Further, assessee had not invested the amount anywhere else as the same is neither evident from the financial records of the assessee nor department has proved. Therefore, joint commissioner acted mechanically in order to discharge his statutory obligation in the matter of recording sanction. If he had read the report carefully, he could never have come to the conclusion on the material before him that this is a fit case to issue notice u/s 148. The important safeguards provided in sections 147 and 151 were lightly treated by joint Commissioner. It has been held in various judicial

pronouncements that such type of sanction by joint commissioner u/s 151 without application of mind is not valid. Some of the judgments are as follows:

1. *CIT vs. S. Goyanka Lime & Chemical Ltd.- (2015) 64 taxmann.com 313 (SC) [PB 7-8]*
2. *CIT vs. S Goyanka Lime & Chemical Ltd.- (2015) 56 taxman.com 390 MP (HC) [PB 9-11]*
3. *Chhugamal Rajpal vs. SP Chalitha and others 79 ITR 603 (SC)*
4. *CIT vs. N.C. Cables Ltd. ITA 335/2015 (Delhi High Court)*
5. *Gorika Investment and Exports(P) Ltd vs. ITO (ITA 3396/Del/2018) [PB 12-24]*
6. *ITO vs. Virat Credit & Holdings Pvt. Ltd. (ITA No. 89/DeI/2012)*
7. *Hirachand Kanuga vs. DOT (ITA 4261 & 4262/Mum/2012)*
8. *Amarlal Bajaj vs. ACIT (ITA 611/Mum/2004)*
9. *ITO vs. Direct Sales (P) Ltd. (ITA 3545/Del/2010)*
10. *Tara Alloys Ltd. Vs. ITO (ITA 2421/DeI/2017)*
11. *Sh. Ghanshyam Vs. ITO (ITA 238/Agra/2018)*
12. *Sunil Agrawal vs. ITO (ITA 988/Del/2018)*
13. *Hari Ram Gupta vs. ITO (ITA 5111/Del/2013)*
14. *Metro Decorative (P) Ltd. vs. ITO (ITA 450/Del/2014)*
15. *Avnindra Mishra vs. ITO (ITA 441/Agra/2017)*

Since, the provisions of section 151 are not complied with; reassessment proceedings u/s 147/148 deserves to be quashed."

9. Whereas on the contrary, the Id. DR has vehemently supported the orders of the lower authorities.

10. We have considered the rival contentions and carefully perused the material placed on record. In order to adjudicate this ground, it is necessary and imperative to scrutinize the documents placed on record by the assessee. The assessee has annexed form for initiating sanction of Commissioner of Income Tax for issuance of notice U/s 148 of the Act and the said form is at page No. 5-6 of the paper book and in column No. 12, the Id. Addl. Commissioner while according the approval has only mentioned for issuance of notice U/s 148 of the Act the word "Approved" and apart from that, no independent reasoning or satisfaction has been recorded by the Id. Addl. Commissioner. In this regard, the Id. AR of the assessee has relied various decisions as mentioned in his written submissions and the same is as under:

1. CIT vs. S. Goyanka Lime & Chemical Ltd.- (2015) 64 taxmann.com 313 (SC) [PB 7-8]
2. CIT vs. S Goyanka Lime & Chemical Ltd.- (2015) 56 taxman.com 390 MP (HC) [PB 9-11]
3. Chhugamal Rajpal vs. SP Chalitha and others 79 ITR 603 (SC)
4. CIT vs. N.C. Cables Ltd. ITA 335/2015 (Delhi High Court)
5. Gorika Investment and Exports (P) Ltd vs. ITO (ITA 3396/Del/2018) [PB 12-24]

6. ITO vs. Virat Credit & Holdings Pvt. Ltd. (ITA No. 89/Del/2012)
7. Hirachand Kanuga vs. DOT (ITA 4261 & 4262/Mum/2012)
8. Amarlal Bajaj vs. ACIT (ITA 611/Mum/2004)
9. ITO vs. Direct Sales (P) Ltd. (ITA 3545/Del/2010)
10. Tara Alloys Ltd. Vs. ITO (ITA 2421/Del/2017)
11. Sh. Ghanshyam Vs. ITO (ITA 238/Agra/2018)
12. Sunil Agrawal vs. ITO (ITA 988/Del/2018)
13. Hari Ram Gupta vs. ITO (ITA 5111/Del/2013)
14. Metro Decorative (P) Ltd. vs. ITO (ITA 450/Del/2014)
15. Avnindra Mishra vs. ITO (ITA 441/Agra/2017)

The Commissioner has recorded his satisfaction in mechanical manner and without application of mind to accord sanction of issuance of notice U/s 148 of the Act. Thus, in our view, considering the totality of facts and circumstances as well as judgments mentioned by the assessee (supra), we are of the view that reopening of assessment in the present case is invalid and we quash the proceedings initiated U/s 147 of the Act.

11. Since, we have quashed the issuance of proceedings U/s 147 of the Act, therefore, there is no need to adjudicate the other grounds of appeal.

12. In the result, this appeal of the assessee is allowed.

Order pronounced in the open court on 23/11/2021.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member

Sd/-
(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 23 /11/2021

*Ranjan

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

1. अपीलार्थी / The Appellant- Smt. Manju Devi Kalal, Jaipur.
2. प्रत्यर्थी / The Respondent- The I.T.O., Ward- 4(3), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 50/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar