

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'बी' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD

BEFORE SHRI P.M. JAGTAP, VICE-PRESIDENT
AND MS. MADHUMITA ROY, JUDICIAL MEMBER

ITA No. 531/Ahd/2019
Assessment Year : 2010-11

M/s. Kedar Cotton Industries, Survey No.50/1, At. Post Budasan, Tal. Kadi, Mehsana PAN : AADFK 2494 F	Vs	Deputy Commissioner of Income-tax, Mehsana Circle, Mehsana
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri Hem Chhajed, CA
Revenue by :		Shri Abhimanyu Singh Yadav, Sr. DR

सुनवाई की तारीख/**Date of Hearing** : 07/06/2022
घोषणा की तारीख /**Date of Pronouncement**: 17/06/2022

आदेश/O R D E R

PER P.M. JAGTAP, VICE-PRESIDENT :

This appeal filed by the assessee is directed against the order of the learned Commissioner of Income-tax (Appeals), Gandhinagar, Ahmedabad ("CIT(A)" in short) dated 20.02.2019.

2. The relevant facts of the case giving rise to this appeal are that the assessee is a partnership firm which is engaged in the business of ginning and pressing of cotton. The return of income for the year under consideration was filed by it on 23.09.2010 declaring a total income of Rs.5,14,300/-. The said return was selected for scrutiny and in the assessment originally completed under Section 143(3) of the Income-tax Act, 1961 ("the Act" in short) vide order dated 26.03.2013, total income of the assessee was determined by the Assessing Officer at Rs.3,84,53,522/- after making an addition of Rs.3,79,39,222/-. Against the said order passed by the Assessing Officer under Section 143(3) of the Act, an appeal was preferred by the assessee before the learned CIT(A) who allowed the said

appeal and deleted the entire addition made by the Assessing Officer. Thereafter, information was received by the Assessing Officer from DDIT (Inv.), Unit-1(2), Kolkata that the assessee has taken an accommodation entry of Rs.50 lakhs during the year under consideration. Based on the said information as well as the cash deposits found to be made by the assessee during the year under consideration amounting to Rs.57,45,000/- in its bank account, the Assessing Officer reopened the assessment and issued a notice under Section 148 of the Act to the assessee on 30.03.2017 after recording the reasons and obtaining a prior approval of the Pr. Commissioner of Income-tax, Gandhinagar. In response to the said notice, a letter was filed by the assessee stating that the return originally filed on 23.09.2010 may be treated as the return filed in response to the notice under Section 148 of the Act. During the course of assessment proceedings before the Assessing Officer, various objections were raised by the assessee challenging the validity of reopening of the assessment. The Assessing Officer, however, did not find the said objections to be sustainable and overruling the same, he proceeded to complete the assessment under Section 143(3) r.w.s. 147 of the Act vide an order dated 21.12.2017 wherein he made an addition of Rs.50 lakhs to the total income of the assessee by treating the accommodation entry allegedly taken by the assessee as unexplained cash credit under Section 68 of the Act.

3. Against the order passed by the Assessing Officer under Section 143(3) r.w.s 147 of the Act, an appeal was preferred by the assessee before the learned CIT(A) challenging the validity of the said assessment as well as disputing the addition of Rs.50 lakhs made therein under Section 68 of the Act. During the course of appellate proceedings before the learned CIT(A), a detailed submission was filed by the assessee in writing in support of his case. The learned CIT(A), however, did not find merit in the said submission and rejecting the same vide its appellate order dated 20.02.2019

passed in details, he upheld the validity of the assessment made by the Assessing Officer under Section 143(3) r.w.s. 147 of the Act and also confirmed the addition of Rs.50 lakhs made therein by the Assessing Officer under Section 68 of the Act.

4. Aggrieved by the order of the learned CIT(A), the assessee has preferred this appeal before the Tribunal.

5. In Ground Nos. 2 & 3 as originally raised in this appeal as well as in the additional ground raised during the course of appellate proceedings before the Tribunal, the assessee has challenged the validity of the reopening of the assessment by the Assessing Officer on various grounds. One of the grounds raised by the assessee is that the approval to reopen the assessment and issue notice under Section 148 of the Act was given to the Assessing Officer by the Principal Commissioner of Income-tax in a mechanical manner and without application of mind. In this regard, the learned Counsel for the assessee has invited our attention to the copy of the approval given by the learned Principal Commissioner of Income-tax placed at page No. 42 to point out that the proposal submitted by the Assessing Officer to reopen the assessment and issue notice under Section 148 of the Act to the assessee was approved by the learned Principal Commissioner of Income-tax by recording only one word "yes". He contended that similar approval was accorded by the learned Joint Commissioner of Income-tax in the case of CIT vs. S. Goyanka Lime & Chemicals Ltd, reported in [2015] 56 taxmann.com 390 (MP), by recording "Yes, I am satisfied" and the same was held to be unsustainable by the Hon'ble Madhya Pradesh High Court holding that the requisite satisfaction was recorded by the Joint Commissioner of Income-tax in mechanical manner and without application of mind. He contended that the assumption of jurisdiction to reopen the

assessment thus was held to be invalid and the assessment completed in pursuance of the same was quashed. He submitted that the decision of Hon'ble Madhya Pradesh High Court in the case of S. Goyanka Lime & Chemicals Ltd (supra) was challenged by the Revenue in an SLP before the Hon'ble Supreme Court which was dismissed by the Hon'ble Apex Court vide order dated 08.07.2015 in SLP No.11916 of 2015, [2015] 64 taxmann.com 313 (SC). The learned Counsel for the assessee has also relied upon the decision of Hon'ble Delhi High Court in the case of United Electrical Co. Pvt. Ltd Vs. CIT, reported in 258 ITR 317 (Delhi HC) in support of assessee's claim on this issue.

6. The learned DR, on the other hand, submitted that the Assessing Officer, along with the proposal submitted to the learned Principal Commissioner of Income-tax for approval, had enclosed the reasons recorded by him for reopening the assessment on the basis of which notice under Section 148 was to be issued. He contended that the approval thus was accorded by the learned Principal Commissioner of Income-tax after going through the reasons recorded by the Assessing Officer and after having satisfied that it was a fit case to reopen the assessment and issue notice under Section 148 of the Act. He contended that the approval accorded by the learned Principal Commissioner of Income-tax by recording "Yes" cannot be read in isolation and the same has to be read along with reasons recorded by the Assessing Officer which were seen and considered by the learned Principal Commissioner of Income-tax for arriving at his satisfaction. He contended that the approval for reopening the assessment and issuing notice under Section 148 of the Act thus was accorded by the learned Principal Commissioner of Income-tax to the Assessing Officer by applying his mind and it cannot be said that it was done in a mechanical manner.

7. We have heard the rival submissions on this preliminary legal issue raised by the assessee and also perused the relevant material available on record including the judicial pronouncements cited by the learned Counsel for the assessee. It is observed from the copy of the relevant document placed at page no.42 of the paper-book that the approval to reopen the assessment in the present case and issue notice under Section 148 of the Act to the assessee was accorded by the learned Principal Commissioner of Income-tax by recording his satisfaction in one word "Yes" and even the learned DR has not disputed this position. He, however, has contended that the approval accorded by the learned Principal Commissioner of Income-tax cannot be read in isolation and the same has to be read with reasons recorded by the Assessing Officer for reopening the assessment which were available before the learned Principal Commissioner of Income-tax and which were duly taken into consideration while according the approval. We are unable to accept this contention of the learned DR keeping in view the legal position emanating from the judicial pronouncements cited by the learned Counsel for the assessee. While seeking approval to reopen the assessment and issue notice under Section 148 of the Act, the Assessing Officer is required to submit the reasons recorded by him to the competent authority and merely because such reasons recorded by the Assessing Officer are available before the competent authority while according the approval, it cannot be said that the application of mind by the competent authority is presumed and there is no requirement for him to record the proper satisfaction and it is sufficient for him to say only "Yes". In the case of S. Goyanka Lime & Chemicals Ltd (supra) cited by the learned Counsel for the assessee, the satisfaction was recorded by the Joint Commissioner of Income-tax by saying "Yes, I am satisfied" and still the same was found to be recorded in a mechanical manner and without application of mind by the Hon'ble Madhya Pradesh High Court. While arriving at this conclusion, the

Hon'ble Madhya Pradesh High Court relied on its earlier decision in the case of Arjun Singh Vs. Asstt. DIT, [2000] 246 ITR 363 (MP), wherein it was held that *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.* As submitted by the learned Counsel for the assessee, the SLP filed by the Department against the decision of Hon'ble Madhya Pradesh High Court in the case of S. Goyanka Lime & Chemicals Ltd (supra) has already been dismissed by the Hon'ble Supreme Court.

8. In the case of United Electrical Co. Pvt. Ltd (supra) relied upon by the learned Counsel for the assessee, the Hon'ble Delhi High Court held that the requirement of approval by the higher authority to reopen the assessment and issue notice under Section 148 of the Act by the Assessing Officer is a safeguard to prevent arbitrary exercise of power by an Assessing Officer to fiddle with the completed assessment. It was held that the Commissioner is required to apply his mind to the proposal put up to him for approval in the light of the material relied upon by the Assessing Officer and the said power cannot be exercised casually and in a routine manner. In the said case, the Commissioner had simply mentioned "approved" while according sanction to the Assessing Officer to reopen the assessment and issue notice under Section 148 of the Act and the same was held to be without any application of mind by the Hon'ble Delhi High Court. Respectfully following the ratio laid down in the case of S. Goyanka Lime & Chemicals (supra) by the Hon'ble Madhya Pradesh High Court and in the case of United Electrical Co. Pvt. Ltd (supra) by the Hon'ble Delhi High Court, we hold that the assumption of jurisdiction to reopen the assessment was bad in law and the assessment completed by the Assessing Officer

under Section 143(3) r.w.s. 148 of the Act in pursuance thereof is *void ab initio* which is liable to be cancelled.

9. Keeping in view the decision rendered by us as above cancelling the assessment made by the Assessing Officer under Section 143(3) r.w.s. 148 of the Act, we do not consider it necessary or expedient to adjudicate upon other legal and factual issues raised by the assessee in this appeal as the same are rendered only academic in nature.

10. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 17th June, 2022 at Ahmedabad.

Sd/-

(MADHUMITA ROY)
JUDICIAL MEMBER

Ahmedabad, Dated 17/06/2022

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधिआयकर अपीलीय अधिकरण ,/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

TRUE COPY

Sd/-

(P.M. JAGTAP)
VICE-PRESIDENT

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण
ITAT, Ahmedabad