

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC : NEW DELHI

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER

ITA No.3179/Del/2018
Assessment Year: 2011-12

Shri Rajpal Alias Raju,
Village Post Office Bhandhwari,
Sohna Bhandhwari,
Gurugram – 122 001.

Vs. ITO,
Ward-3(4),
Gurugram.

PAN: AZOPR1730R

(Appellant)

(Respondent)

Assessee by : Shri Sandeep Kumar, CA
Revenue by : Shri Om Prakash, Sr. DR
Date of Hearing : 04.05.2022
Date of Pronouncement : 27.06.2022

ORDER

This appeal has been preferred by the assessee against the order of the Id.
CIT(A)-I, Gurgaon, dated 16.02.2018 for Assessment Year 2011-12.

Application of the assessee for admission of additional grounds:

2. The Id. Counsel of the assessee submitted that the proposed additional grounds are purely legal in nature which goes to the root of the assessment and requiring no new facts or documents for adjudication and the same can be adjudicated on the basis of the material available already on record. The Id. Counsel also placed reliance on various judgements and orders including the

judgement of the Hon'ble Supreme Court in the case of National Thermal Power Corporation Ltd., reported in 229 ITR 383 (SC) and the judgment of Hon'ble High Court of Delhi in the case of Gedore Tools Pvt. Ltd. reported in 238 ITR 268 (Del).

3. Replying to the above, the ld. Sr. DR strongly objected to the admission of additional grounds and submitted that the grounds which were not taken before the ld. First appellate authority cannot be agitated before the Tribunal at this belated stage as additional grounds, therefore, the application of the assessee may kindly be dismissed.

4. On careful consideration of the above submissions, I am of the considered opinion that the assessee has proposed admission and consideration of the following additional grounds of appeal:-

“(i) The Assessing officer has grossly erred in issuing notice u/s 148 without obtaining approval of Joint Commissioner/ Principal CIT as per Section 151 of Income Tax Act, 1961, therefore notice issued u/s 148 is without jurisdiction, illegal and bad in Law.

(ii) The Assessing officer has grossly erred in passing order u/s 144 on 29.12.2016 without having jurisdiction, on the basis of illegal notice u/s 148 therefore whole of Assessment Process and its order is illegal, bad in law and is against the provisions of Income Tax Act.”

5. On careful reading of the above additional grounds, I clearly observe that these are purely legal in nature which goes to the root of validity of assumption of jurisdiction for invoking the provisions of section 147/148 of the Act as well as

assumption of jurisdiction for passing reassessment order u/s 147 r.w.s. 143(3) of the Act. Therefore, in view of the proposition rendered by the Hon'ble Supreme Court in the case of NTPC (supra) and as per the judgment of the Hon'ble High Court of Delhi in the case of Gedore Tools Pvt. Ltd. (supra), the additional grounds of the assessee are admitted for consideration and adjudication.

6. Apropos grounds of appeal No.1 and 2, the ld. Counsel for the assessee submitted that the AO has grossly erred in passing assessment order u/s 144 r.w. section 147 of the Act on 29.12.2016 without having jurisdiction, on the basis of illegal notice u/s 148 of the Act, therefore, the whole of assessment process and impugned assessment order should be quashed being illegal, bad in law and against the provisions of the Income-tax Act, 1961 (for short, 'the Act'). The ld. AR also vehemently contended that the AO has grossly erred in issuing notice u/s 148 of the Act without obtaining prior mandatory approval of Jt. Commissioner/PCIT as per the requirement of mandatory provisions of section 151 of the Act, therefore, the notice u/s 148 of the Act and all consequent proceedings and assessment order being illegal and bad in law may kindly be quashed.

7. Replying to the above, the ld. Sr. DR submitted that in response to notice u/s 148 of the Act the assessee filed return of income only on 27.12.2016 and the assessment order was going to be time barred on 31st December, 2016. Therefore, the AO passed assessment order on 29.12.2016 and there was no

requirement of issuing any notice u/s 143(2) of the Act to the assessee due to paucity of time. However, the ld. Sr. DR, in all fairness, has submitted that after perusal of relevant re-assessment records, he could not find any order of approval u/s 151 of the Act.

8. In the rejoinder, the ld. Counsel drew our attention towards reply of an RTI application of the assessee available at pages 3-5 of assessee's paper book and submitted that in reply to column No.2, the Departmental Information Officer/ITO, Ward 3(1), Gurugram categorically denied having copy of the satisfaction/approval u/s 151 of the Act of the competent authority prior to issuing notice u/s 148 of the Act. The ld. Counsel also drew our attention to reply to RTI at column No.4 and submitted that there is no document in the assessment record showing any enquiry conducted by the AO in regard to the material, information or statement in his possession and relied by him to make believe of escapement of income chargeable to tax. All these documents are not available in the relevant re-assessment record placed before me by ld. Sr. DR during the hearing of the appeal. The ld. AR vehemently pointed out that before issuing notice u/s 148, there was no new material information or any other tangible material in the hands of the AO to make him believe of escapement of income chargeable to tax and no approval u/s 151 of the Act from the competent authority was obtained by the AO prior to issuing notice u/s 148 of the Act. Therefore, in absence of any approval u/s 151 of the Act, the AO did not assume

valid jurisdiction to issue notice u/s 148 of the Act, hence, all proceedings, notice and the impugned order may kindly be quashed.

9. On a careful consideration of the rival submissions, I am of the considered view that the Id. Sr. DR has placed relevant assessment records before the Bench for perusal and he could not show us any approval u/s 151 of the Act to prove that the AO had obtained approval of the competent authority/JCIT/PCIT prior to issuance of notice u/s 148 of the Act. The Id. Sr. DR did not controvert the RTI reply dated 11.04.2022 submitted by the assessee at pages 3-5 of the assessee's paper book and did not controvert that the assessment record does not reveal any fact to show that prior to initiation of reassessment proceedings u/s 147 of the Act and issuing notice u/s 148 of the Act the AO had conducted any kind of enquiry in any manner in regard to material, information or statement in his possession and relied upon by him to have reason to believe that some income had escaped assessment in the hands of the assessee pertaining to relevant AY 2011-12 and the AO obtained any approval from the competent authority before u/s 151 of the Act before issue of notice u/s 148 of the Act. Thus, I safely conclude that the AO did not assume valid jurisdiction to issue notice u/s 148 of the Act as he issued said notice without obtaining any approval u/s 151 of the Act from the competent authority.

10. In view of the foregoing discussion, since I have already concluded above that the AO did not obtain prior approval of competent authority/JCIT/PCIT u/s 151 of the Act before issuing notice u/s 148 of the Act and this fact has been categorically accepted by the Department in the RTI reply dated 11.04.2022 and as reveals on perusal of the relevant assessment records, which were placed before the Bench by the ld. Sr. DR admitting that there is no approval order u/s 151 of the Act in existence in the assessment record, the impugned initiation of reassessment proceedings u/s 147 of the Act, issuance of notice u/s 148 and the impugned reassessment order are not sustainable being passed without complying with the mandatory requirement of sections 148 and 151 of the Act. Therefore, the notice u/s 148 of the Act and the impugned assessment order dated 29.12.2016 for AY 2011-12 and all consequent proceedings and orders are hereby quashed. The additional grounds No.1 and 2 of the assessee are allowed. Since I have granted relief to the assessee by allowing legal grounds, therefore, the assessee's grounds on merit have become infructuous and, thus, the same are not being adjudicated.

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

Order pronounced in the open court on 27.06.2022.

Sd/-

(C.M. GARG)
JUDICIAL MEMBER

Dated: 27th June, 2022.
dk

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi