

**आयकर अपीलीय अधिकरण, रांची पीठ, रांची**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "RANCHI" BENCH: RANCHI**  
**VIRTUAL HEARING AT KOLKATA**

श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष  
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

**I.T.A. Nos. 160 & 161/RAN/2017**  
**Assessment Years : 2008-09 & 2009-10**

|                            |     |   |
|----------------------------|-----|---|
| ITO, Ward-2(1), Jamshedpur | Vs. | M/s Om Dayal Ingots & Steel Co.<br>Pvt. Ltd.<br>(PAN: AAACO 7034 M) |
| Appellant / (अपीलार्थी)    |     | Respondent / (प्रत्यर्थी)   |

|   |                                  |
|---|----------------------------------|
| Date of Hearing / सुनवाई<br>की तिथि             | 15.09.2022                       |
| Date of Pronouncement/<br>आदेश उद्घोषणा की तिथि | 29.09.2022                       |
| For the Appellant/<br>निर्धारिती की ओर से       | Shri Akshay Ringasia, CA         |
| For the Respondent/<br>राजस्व की ओर से          | Shri Pranob Kumar Koley, Sr. D.R |

**ORDER / आदेश**

**Per Shri Rajesh Kumar, AM:**

These are the appeals preferred by the revenue against the order of the Ld. Commissioner of Income Tax(Appeals)-Jamshedpur [hereinafter referred to as 'Ld.CIT(A)'] dated 25.04.2017 for the assessment years 2008-09 & 2009-10 respectively.

2. The Revenue has challenged the order of Ld. CIT(A) for the reasons that the Ld. CIT(A) has wrongly deleted the addition as made by the AO on account of share application money u/s 68 of the Act.
3. The assessee has also moved an application under Rule 27 of the Income Tax Appellate Tribunal Rules by raising the legal issue of assessment order passed by the AO being null and void on the ground that approval u/s 151 was taken from JCIT whereas it was required to be taken from PCIT thereby rendering the reopening u/s 147 of the Act as bad in law. The Ld. Counsel submitted that the ground goes to the root of the matter and all the facts pertaining to the said issue are available in the assessment order as well as appellate order and therefore prayed that the same may kindly be admitted for adjudication in the interest of justice and fair play whereas the Ld. D.R on the other hand prayed that the issue was never raised before the authorities below and therefore the same may kindly be dismissed.
4. After hearing the rival contention and perusing the material on record we note that the issue raised by the assessee is purely a legal issue that the approval u/s 151 was required to be taken from PCIT which was in fact taken from JCIT and thus the re-assessment proceedings were initiated. We find merit in the application filed under rule 27 of the Act and accordingly admit the issue for adjudication.
5. The Ld. A.R submitted before the Bench by referring to para 1 of the assessment order wherein it has been stated that the case was reopened by issuing notice u/s 148 of the Act on 25.03.2015 with the approval from JCIT, Range-2, Jamshedpur. The Ld. Counsel for the assessee has also referred to the appellate order particularly para 2 at page 1 wherein the Ld. CIT(A) has noted that the case was reopened by issuing notice u/s 148 of the Act on 25.03.2015 with the approval from JCIT, Range-2, Jamshedpur. The Ld. Counsel, therefore, prayed that the very basis of reopening is wrong as the approval has been taken from JCIT and not from PCIT and re-opening of assessment and consequent order passed may kindly be quashed.

6. The Ld. D.R. fairly agreed to the fact that the approval was in fact obtained from JCIT u/s 151 and not from PCIT and however submitted that this is just an internal hierarchical issue whereby sanction for reopening the assessment was accorded and therefore should not go to the root of the matter. The Ld. D.R. prayed that it is curable defects which can be taken care of by restoring the matter to the file of AO.

7. We observe that the instant assessment year is 2007-08 and notice u/s 148 was issued on 25.03.2015. Apparently the notice is issued after the expiry of a period of four years from the end of relevant assessment year and therefore the approval was required to be taken from the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner as the case may be. The relevant extract of the section 151 is reproduced for the sake of convenience:

*“151. Sanction for issue of notice,- 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 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) In a case other than a case falling under Sub-Section (1), no notice shall be issued under Section 148 by an Assessing Officer, who is below the rank of Joint Commissioner, 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.*

*(3) For the purposes of sub-section (1) and sub-section (2), the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner or the Joint Commissioner, as the case may be, being satisfied on the reasons recorded by the Assessing Officer about fitness of a case for the issue of notice under Section 148, need not issue such notice himself.”*

8. Having heard the rival contentions and perusing the material on record including the provisions of section 151 of the Act, we note that it is amply clear from the above that the approval has to be taken from PCIT where notice is to be issued beyond the period of four years from the end of assessment year. However we observe that as the year involved is 2008-09 and the notice u/s 148 of the Act was issued on 25.03.2015, there is violation of provisions of section 151 of the Act which in considered view is not a procedural matter but certainly goes to the root of the re-

opening of assessment. Accordingly we hold the proceedings as invalidly initiated and accordingly the re-assessment proceedings as well as consequent order are quashed. Ground raised by the assessee in Rule 27 is allowed.

9. In view of our decision on legal issue being decided in favour of the assessee, the appeal of the revenue is rendered infructuous and is accordingly dismissed.

10. Now we shall adjudicate revenue's appeal in **ITA No. 161/RAN/2017 for AY 2009-10.**

11. The revenue has challenged the order of Ld. CIT(A) on the following grounds:

*1. Under the facts and in the circumstances of the case, whether the Ld. CIT(A) is justified in vitiating the assessment proceedings completed under section 148 of the I.T. Act, 1961 on the ground that issue for the same assessment year is still pending before the Hon'ble ITAT, Ranchi.*

*2. Under the facts and in the circumstances of the case, whether the Ld. CIT(A) is justified in not considering the fixed assets sales figure mentioned in the depreciation chart as part of books of account of the assessee and deleted the addition made under Section 68 of the I.T. Act, 1961.*

*3. Any other grounds of appeal during the course of hearing.*

12. After hearing the rival contentions and perusing the material on record, we find that this appeal should not have been filed by the revenue. We note from the facts placed before us that the assessment was framed u/s 143(3) read with Section 147 of the Act vide order dated 31.03.2015 making addition of Rs. 2,63,15,086/- in respect of sale of assets as unexplained cash credit qua the short term capital gain earned by the assessee. The said issue was challenged by the assessee before the Ld. CIT(A) and Ld. CIT(A) vide order dated 25.04.2017 passed u/s 250 of the Act allowed the appeal of the assessee. Thereafter the revenue challenged the issue before the Tribunal and Tribunal restored the appeal to the file of Ld. CIT(A) to decide the same vide order dated 31.05.2018 in ITA No. 207/Ran/2016 for AY 2009-10. However the department filed this appeal again inadvertently before the tribunal which is not maintainable at all. In our view the revenue has wasted its precious time

and resources and also of this tribunal by filing such frivolous appeal. Accordingly we dismiss the appeal of the revenue as not maintainable.

13. In the result, application u/s 27 filed by the assessee is allowed and both the appeals of the revenue are dismissed.

Order is pronounced in the open court on 29<sup>th</sup> September, 2022

Sd/-

(Sonjoy Sarma /संजय शर्मा)  
Judicial Member/न्यायिक सदस्य

Sd/-

(Rajesh Kumar/राजेश कुमार)  
Accountant Member/लेखा सदस्य

Dated: 29<sup>th</sup> September, 2022

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- ITO, Ward-2(1), Jamshedpur
2. Respondent – M/s Om Dayal Ingots & Steel Co. Pvt. Ltd., Madhu Vatika, M.E. School Road, Jugsalai, Jamshedpur-831001
3. Ld. CIT(A)- Jamshedpur
4. Ld. PCIT- , Ranchi
5. DR, Ranchi Bench, Ranchi.

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata