

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C ": NEW DELHI
BEFORE Shri C.M. Garg, Judicial Member
AND
Dr. B. R. R. Kumar, Accountant Member**

ITA No. 1167/Del/2016
(Assessment Year: 2007-08)

ACIT,
Circle-45(1),
New Delhi

(Appellant)

PAN:AALPK7402K

Vs. Kamal Kapoor,

A-47, Vishal Enclave, New
Delhi

(Respondent)

Assessee by :

Sh. Amit Goel, CA

Sh. Nippun Mittal, CA

Revenue by:

Sh. Anuj Garg, Sr. DR

Date of Hearing

16/02/2023

Date of pronouncement

08/05/2023

ORDER

PER C. M. GARG, J. M.:

1. This is an appeal filed by the revenue against the order of the Id CITI(A)-15, Delhi dated 02.12.2015.
2. Apropos ground No. 1 , the Id Sr. DR submitted that the Id CIT(A) is not correct and justified in annulling the assessment order despite the fact that the Addl. CIT had given approval in the case after being satisfied and after being satisfied and after recording reason for initiation of reassessment proceedings in the case of the assessee.
3. The Id DR drew our attention towards copy of the reasons recorded by the AO available at page No. 1 to 2 of the Assessee's paper book and submitted that the AO recorded detailed reasons before initiation of reassessment proceedings and also obtained approval of the competent authority as per requirement of provision of the Act. Therefore, the Id CIT(A) granted relief to the assessee without any basis and merely on the basis of hyper technical approach therefore, the

impugned first appellate order may kindly be set aside by dismissing the legal ground of appeal.

4. Replying to the above the Id AR drew our attention towards relevant paras 4.2 to 4.6 of the first appellate order and submitted that the Id AO has merely relied upon the information received from ADIT, (Investigation) to reopen the assessment. He has not carried out any verification or examination and has not applied his mind before initiation of reassessment proceedings. The Id AR submitted that the sanction from JCIT u/s 151 of the Act to initiate reassessment proceedings is bad in law as he has not recorded his satisfaction and merely approved the proposal of the AO in a mechanical manner without application of mind. The Id AR also submitted that the AO has passed reassessment order without first disposing the objections of the assessee on issuance of notice u/s 148 of the Act therefore, on this counts the Id CIT(A) was right in annulling the order of reassessment proceedings and consequent reassessment order. The Id AR also took us at para 4.4 to 4.6 of the order of the first appellate order and submitted that the Id CIT(A) has rightly appreciated the facts of the case and granted relief to the assessee. Therefore, the first appellate authority may kindly upheld and dispose the ground No. 1 of revenue.

5. On careful consideration of the rival submission, first of all we note that the Id CIT(A) has granted relief to the assessee on two counts viz approval u/s 151 of the Act and AO has not followed mandatory provision laid down by Hon'ble Supreme Court in the case of GKN Driveshft (India) Ltd Vs. ITO reported as 259 ITR 19 (SC). The relevant paras from 4.4 to 4.6 of the order of the Id CIT(A) reads as follows:-

"4.4 The second ground taken by appellant challenging the reassessment proceedings is that since the notice u/s 148 has been issued after the expiry of four years from the end of relevant assessment year, the satisfaction of JCIT is mandatory before the issuance of notice. As per appellant, the JCIT/Addl. CIT has merely approved the proposal of AO for issue of notice u/s 148, did not record his satisfaction, therefore, issuance of notice is invalid. I have gone through the issue raised by appellant. The statutory provisions of section 151(1) of the Act provide that the AO, below the rank of

ACIT/DCIT, shall not issue notice u/s 148 unless the Joint Commissioner 'is satisfied' on the reasons recorded by such AO that it is a fit case for the issue of such notice. Thus, the unambiguous provisions of this section clearly mandate that Joint Commissioner has to get himself 'satisfied' with the reasons recorded by AO before issuing notice and such satisfaction has to be recorded in writing in clear terms in the light of material relied upon by the AO. However, in the case of appellant, Addl. CIT has "approved" the proposal of AO for issuing notice u/s 148 of the Act. He has not recorded his satisfaction towards the reasons recorded by AO. Thus, merely affixing "approved" in mechanical manner without verifying/examining the material relied upon by AO cannot be termed as sanction as required u/s 151 of the Act. This view is supported by Hon'ble jurisdictional High Court in the case United Electrical Co. (P) Ltd. vs CIT 258 ITR 317 wherein it is held that the power vested in the Commissioner (or Addl. CIT in the case of appellant) to grant or not to grant approval is coupled with a duty. The said power cannot be exercised casually and in a routine manner. He is required to apply his mind to the proposal put up to him for approval in the light of material relied upon by AO. Similarly, Hon'ble jurisdictional ITAT In the case ITO vs N.C. Cables Ltd. in the order dated 22.10.2015 has held the reopening bad in law on the ground that the Commissioner did not record his satisfaction as contemplated u/s 151 of the Act rather approved the proposal by stating "approved" and putting his signature. Similar view has been taken by Hon'ble ITAT in the case ITO vs M.B. Jewelers (P) Ltd. vide order dated 14.11.2014 wherein Addl. CIT has simply recorded that he has granted approval and has not recorded his satisfaction as required under the law. In view of this, I hold that in the case of appellant also, issuance of notice u/s 151 of the Act is invalid for the reason that the Addl. CIT has not recorded his satisfaction as required under the law in the light of material relied upon by AO. He has simply affixed the words "approved" below the proposal of AO for Issuance of the notice u/s 151 of the Act which is contrary to the provisions of Section 151 of the Act and the opinions of Hon'ble jurisdictional High Court/ITAT.

4.5 The third objection raised by appellant is that reassessment proceedings are bad in law and without jurisdiction as the objections raised by appellant were not disposed of by AO in terms of judgment of Apex Court in the case of GKN Driveshaft (India) Ltd. vs ITO 259 ITR 19. I have gone through the objections of appellant. The judgment of Hon'ble Supreme Court In the case GKN Driveshaft (India) Ltd. (supra) has settled the issue in this regard. As per the judgment, after the issue of notice u/s 148, assessee is required to file the return and if he seeks reasons for issuance of such notice, AO is bound to supply the same within reasonable time. On receipt of such reasons, the assessee is entitled to file preliminary objections to Issuance of notice and the AO is under a mandate to dispose of such objections by passing a speaking order before proceedings of assessment in respect of the assessment year for which such notice has been issued. Following the judgment of Hon'ble Supreme Court, the jurisdictional High Court in a recent case Pr. CIT vs Tupperware India Pvt. Ltd. has held that it was mandatorily

required on the part of AO to comply with the procedure laid down by Hon'ble Supreme Court in aforesaid case by disposing of the objections with a speaking order failing which the reopening and consequent assessment was liable to be quashed. Similarly, in other case Pr. CIT vs India Business Network Ltd. also, Hon'ble Court decided the issue against the Revenue on the ground that AO had not disposed of the objections raised by assessee as he was mandatorily required to do in terms of the decision in GKN Driveshaft (India) Ltd. Now in the light of these decisions, the facts in the case of appellant are to be examined. In its case, notice u/s 148 of the Act was issued on 18.07.2012, in response to which, assessee filed a reply dated 24.08.2012 wherein it was mentioned that return already filed on 31.03.2008 vide Acknowledgement No. 265 be treated as having been filed in response to the said notice. Thereafter, reasons recorded were supplied by AO to the appellant and she, vide letter dated 03.02.2014, filed objections to the reopening of the case. However, the assessment proceedings as well as remand proceedings do not reflect that objections filed by appellant were disposed of by the AO. It appears that the objections raised by appellant has been dealt with by AO in the assessment order itself. No separate order, disposing of the objections raised by appellant, has been passed. Thus, the AO has failed to follow the procedure laid down by Hon'ble Supreme Court in the case of GKN Driveshaft (India) Ltd. (supra) in the case of appellant which was mandatory on his part. Since the order of reassessment has been passed by AO without disposing of the objections raised by appellant against the issuance of notice u/s 148 by separate order, same is liable to be quashed.

4.6 In view of above discussion, it is held that since the Addl. CIT has not recorded his satisfaction on the reasons recorded by AO for reopening of reassessment and secondly, AO has not followed the mandatory procedure as laid down by Hon'ble Supreme Court in the case of GKN Driveshaft (India) Ltd. (supra), the issuance of notice u/s 148 of the Act and consequent reassessment proceedings in the case of appellant are invalid and liable to be quashed. I, therefore, hold the notice issued by AO u/s 148 of the Act as invalid and annul and reassessment proceedings. The grounds taken by appellant are allowed."

6. On careful consideration of the above rival submission and findings recorded by the Id CIT(A) we clearly observe that the Id CIT(A) noted that the additional CIT(A) has mentioned a word "approved" on the proposal of the AO for issuance notice u/s 151 of the Act. He has not recorded his satisfaction towards reasons recorded by the AO therefore, in view of the judgment of the Hon'ble Jurisdictional High Court in the case United Electrical Co. (P) Ltd Vs. CIT 258 ITR 317

wherein, it was held that the power vested to the Commissioner/ Additional CIT as in the case of the present assessee to grant or not to grant approval is couple with a duty. Their lordship further observed that such duty cannot be exercised casually and in a routine manner and he has required to apply his mind to the proposal put up to him for approval in the light of the material relied upon the AO. The Id CIT(A) also noted that similar view has been expressed by the coordinate bench of Delhi in case of ITO Vs. NC Cables Ltd (Delhi) dated 22.10.2015 wherein, it was held that the commissioner did not record his satisfaction as contemplated u/s 151 of the Act rather approved the proposal by stating "approved" and putting his signature then the approval is invalid for the reason that ACIT has not recorded his satisfaction as required under the law in the light of the material relied upon by the AO. We are unable to see any infirmity, perversity or any other reason to interfere with the findings recorded by the Id CIT(A) on this count.

7. Regarding a non compliance proposal rendered by the Hon'ble Hon'ble Supreme Court in the case GK Driveshaft India Ltd ITO (supra) the Id CIT(A) concluded that the assessment proceedings as well as the remand proceedings did not reflect objection filed by the assessee to the reopening of the assessment were disposed by the AO. The Id CIT(A) rightly noted that the objections raised by the appellant were dealt with and disposed off by the AO in the assessment order itself and no separate order of disposing the objection of the appellant has been passed. Therefore, we are in agreement with the conclusion drawn by the Id CIT(A) that the AO has failed to follow the mandatory procedure laid down by the Hon'ble Supreme Court in the case of GK Driveshaft (supra) in the case of present appellant which was mandatory to follow on his part. We are also in agreement with the conclusion drawn by the CIT(A) since the order of assessment was passed by the AO without disposing objections raised by the appellant against the issuance of notice u/s 148 by a separate order the same is liable to be quashed.

8. In view of the foregoing we are inclined to follow the order of the Id CIT(A) to allow in holding that notice issued u/s 148 of the Act as well as reassessment proceedings and consequent reassessment order dated 28.03.2014 is invalid and deserve to be annulled being bad in law and passed without following the mandatory provision of section 151 of the Act and proposition rendered by the Hon'ble Hon'ble Supreme Court in the case of GKN Driveshaft (supra). Accordingly, ground No. 1 of revenue is dismissed.

9. Since, we have approved the order of the Id CIT(A) annulling the reassessment proceedings consequent reassessment order therefore, ground of revenue on merits are not being adjudicated and left open.

10. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 08/05/2023.

-Sd/-
(B. R. R. Kumar)
ACCOUNTANT MEMBER

-Sd/-
(C. M. GARG)
JUDICIAL MEMBER

Dated: 08/05/2023
A K Keot

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi