

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

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No.1942/Del/2020  
Assessment Year: 2010-11

Strategic Manufactures India LLP, Shop No. 106, First Floor, 2/2659, Gurdwara Road, Beadon Pura, Karol Bagh, New Delhi 110005 <b>PAN ACTFS 8483 J</b>	vs.	ITO Ward 38 (2), Delhi 110002
(Appellant)		(Respondent)

For Assessee :	Ms. Rano Jain, Adv. & Ms. Mansi Jain, CA
For Revenue :	Shri Om Prakash, Sr. DR

Date of Hearing :	16.03.2023
Date of Pronouncement :	26.05.2023

**ORDER**

**PER CHANDRA MOHAN GARG, J.M.**

This appeal has been filed against the order of CIT(A) Delhi dated 24.02.2020 for AY 2010-11.

2. I have arguments of the sides on concise grounds no. 3, 4 & 5 which are as follows:-

*3. On the facts and circumstances of the case, the initiation of the proceedings under Section 147, read with Section 148, made by A.O. is bad and liable to be quashed as the condition and procedure prescribed under the statute have not been satisfied and complied with.*

*4. (i) On the fact and circumstances of the case, the order passed by the A.O. is bad in the eye of law and on facts, as the same is made on the basis of reasons recorded without there being any independent application of mind.*

*(ii) That the reassessment order passed by the A. O. is bad and liable to be quashed as the same has been reopened on the basis of the reasons which are vague and against the facts on record.*

*5. On the fact and circumstances of the case, Ld. AO has erred in reopening us 147 of the income tax Act, 1961 without obtaining valid approval from the prescribed authority as required u/s 151 of the Income Tax Act, 1961.*

3. The learned counsel of the assessee submitted that the initiation of reassessment proceedings is bad in law and liable to be quashed as the condition and procedure prescribed under statute have not been complied and satisfied. He also submitted that the Assessing Officer has proceeded on the basis of merely on the information of Investigation Wing Kolkata without there being any independent application of mind hence the reassessment order is bad and liable to be quashed as the same has been reopened on the basis of reasons which are vague and against the facts on record. He also submitted that even at the time of recording reason and issuing notice u/s. 148 of the Act, the Assessing Officer was not about the actual character of the transaction as to whether it was unsecured loans, advance or share application money which shows non-application of mind by the law. The learned counsel also submitted that the Assessing Officer has erred in issuing notice u/s. 148 of the Act, without obtaining valid approval from the competent authority as per requirement of section 151 of the Act. Drawing our attention towards page 7 of assessee paper book and placing reliance on the judgement of Hon'ble jurisdictional High Court of the Delhi in the case of PCIT vs. M/s NC Cables Ltd. in ITA no. 335/2015 the learned counsel submitted that the competent authority has mentioned only a word "approved" therefore in absence of meaning full and valid approval driven on due application of mind to the material the approval has to be held as invalid and not in confirmatory with the mandatory requirement of section 151 of the Act. Hence he prayed that the notice u/s. 148 of the Act and also consequent proceedings and order including reassessment order may kindly be quashed.

4. The learned counsel drawing our attention towards copy of the reasons recorded available at pages 6 & 7 of first appellate submitted that the Assessing Officer proceeded to initiate reassessment proceedings and issue notice u/s. 148 of the Act, on the pretext that the return of income for AY 2010-11 does not exist in the ward whereas the assessee at very first instance filing objection to the initiation of reassessment proceedings vide dated 28.04.2017 in the middle below para 6 categorically stated that the assessee has filed return u/s. 139 of the Act on 17.01.2010 vide acknowledgment no. xx70710 that shows actual approach of the Assessing Officer. The learned counsel also submitted that in page 1 of the reasons the Assessing Officer stated modus operandi use by the entry providers and in page 2 top para he noted the incorrect fact of non-filing of return and there after reproduced the report of investigation wing, from there it is clear that at the time of recording reasons and issuing notice u/s. 148 of the Act the Assessing Officer was not sure about the character or mode allege transaction which again shows non-application of mind by the Assessing Officer the learned AR also contended that thereafter the Assessing Officer, without assigning any findings or basis to the reason to believe, directly jumped to the

conclusion that the assessee has concealed particulars of mentioned financial transactions pertaining to AY 2010-11 this again shows non-application of mind and initiation of reassessment proceeding on the basis of borrowed satisfaction. Therefore the Id. AR submitted that the reasons are vague and have been recorded without application of mind and therefore it is clear that the Assessing Officer initiate reassessment proceedings and to issue notice u/s. 148 of the Act without assuming valid assumption of jurisdiction as per mandatory requirement of section 147 and 148 of the Act. He placed reliance on the judgment of Hon'ble jurisdictional High Court of Delhi in the case of CIT vs Independent Media P. Ltd. in ITA no. 108/2015 dated 19.11.2015 and order of ITAT Delhi in the case of Pioneer Town Planners P. Ltd. vs. CIT reported as 2018 (8) TMI 515- ITAT Delhi.

5. The learned DR supported the orders of the authorities below and action of the Assessing Officer initiating reassessment proceedings and issuing notice u/s. 148 of the Act submitted that there was a report of Investigation Wing before the Assessing Officer and Assessing Officer rightly proceeded to initiate reassessment proceedings on behalf thereof after assuming valid jurisdiction to initiate said proceedings. Further, replying to the second part of legal contention of Id. AR pertaining to approval u/s. 151 of the Act, the Id. Senior DR submitted that the blank place in the copy of the notice cannot be considered on standalone basis specially when the page 2 of assessee paper book clearly reveals that the Assessing Officer obtained approval of JCIT Range-38 New Delhi before issuing notice therefore legal ground of assessee may kindly be dismissed.

6. On the legal contention pressed into service by the assessee in his ground no. 3 & 4 first of all from the copy of the reasons recorded by the Assessing Officer on 30.03.2017 I note that in the entire first page the Assessing Officer has recorded modus operandi adopted by the entry providers. In the second page top para the Assessing Officer noted that the ITR for AY 2010-11 does not exist in the ward whereas the copy of objection of assessee vide dated 28.04.2017 (copy at pages 3 & 4) clearly reveals the assessee at the first instance inform the Assessing Officer about filing of return u/s. 139(1) of the Act on 17.07.2010 vide acknowledgement no. xx70710 this shows non application mind by the Assessing Officer.

7. Further, the AO in last para, without applying mind to the information received from the Investigation Wing states/writes that he has reason to believe that the income has escaped assessment. The text and words used by the A in the reasons recorded for reopening of assessment clearly show that the A proceeded to initiatory assessment proceedings and reopening of assessment without having any valid satisfaction and only on the basis of borrowed satisfaction as there was no independent application of mind by the AO to the tangible material received from Investigation Wing which could form

the valid basis and reason to believe that income has escaped assessment even in the reasons the has not mentioned the actual character or mode of transaction as to whether the entries were of unsecured loan, advanced or share application money which again fortifies the contention of the AR that the Assessing Officer proceeded to initiate reassessment proceedings merely on the basis of report of Investigation Wing which is driven by borrowed satisfaction and the operative para at page 2 of satisfaction clearly shows that there was gross non application of mind by the Assessing Officer to the material received from Investigation Wing.

8. In view of decisions of Hon'ble High Court of Delhi in the cases of PCIT vs. Meenakshi Overseas (supra), PCIT vs. G&G Pharma (1) Ltd. (supra) and decision in the case of PCIT vs. RMG Polyviny (1) Ltd. (supra), where information was received from investigation wing that assessee was beneficiary of accommodation entries but no further inquiry was undertaken by AO, said information could not be said to be tangible material per se and, thus, reassessment on said basis was not justified. In the case of Meenakshi Overseas (supra), their lordship speaking for the Hon'ble Jurisdictional High Court held that where the reasons recorded by the AO failed to demonstrate the link between the tangible material and the formation of the reasons to believe that income has escaped assessment then, indeed it is a borrowed satisfaction and the conclusion of the Assessing Officer has been based on reproduction of conclusion drawn in the investigation report cannot be held as valid reason to believe after application of mind. In this judgment their lordship also held that where nothing from the report of investigation wing is set out to enable the reader to appreciate how the conclusions flow there from then there is no independent application of mind by the AO to the tangible material which form the basis of the reasons to believe that income has escaped. In the present case also, it is pertinent to mention that even at the time of initiating the reassessment proceedings the Assessing Officer himself was not sure about the mode of accommodation entry/allege transactions therefore reason to believe had no legs to stand. Therefore ground no. 3 & 4 of assessee deserve to be allowed.

9. Regarding legal contention in ground no. 5 of assessee, on careful consideration of above rival contention first of all, from page no. 2 of assessee paper book it is clearly discernable that the Assessing Officer has taken approval of JCIT Range-38 New Delhi prior to issuing notice u/s. 148 of the Act. Hence contention of the Id. AR that the approval has not been obtained has no legs to stand. However from the said page 2 it is discernable that the approving authority JCIT Range-38 while granting approval merely wrote a single word i.e. "approved". In the case of PCIT vs. M/s NC Cables Ltd. (supra) in para 11 their Lordship speaking for Hon'ble jurisdictional High Court of Delhi, in para 11, held thus:-

*"11. Section 151 of the Act clearly stipulates that the CIT(a), who is the competent authority to authorize the reassessment notice, has to apply his mind and form an opinion. The mere appending of the expression 'approved' says nothing. It is not as if the CIT(A) has to record elaborate reasons for agreeing with the noting put up. At the same time, satisfaction has to be recorded of the given case which can be reflected in the briefest possible manner. In the present case, the exercise appears to have been ritualistic and formal rather than meaningful, which is the rationale for the safeguard of an approval by a higher-ranking officer, For these reasons, the Court is satisfied that the findings by the ITAT cannot be disturbed."*

10. Respectfully following the proposing rendered by Hon'ble Jurisdictional High Court in the case of M/s NC Cable Ltd. (supra) I have no hesitation to hold that in the present case also the exercise of approving powers u/s. 151 of the Act appears to have been only ritualistic and formal rather than based on application of mind to the material placed by the Assessing Officer before the approving authority which could lead to a valid and meaning full approval. Therefore for the reasons recorded hereinabove I am of the view that the notice u/s. 148 of the Act without obtaining valid approval u/s. 151 of the Act and all consequent reassessment and first appellate order are not validly sustainable and deserve to be quashed and I hold so. Accordingly, grounds no. 3 to 5 of assessee are allowed.

11. It is also pertinent to mention that the Id. Representative of both the sides have not placed any argument on the grounds of assessee on merits. Since I have granted relief to the assessee legal ground therefore grounds of assessee on merit are not being adjudicated upon and left open.

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

Order pronounced in the open court on 26.05.2023.

Sd/-  
(CHANDRA MOHAN GARG)  
JUDICIAL MEMBER

Dated: 26<sup>th</sup> May, 2023.

NV/-

Copy forwarded to:

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

// By Order //

Asstt. Registrar, ITAT, New Delhi