

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

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No.7741/Del/2019
Assessment Year: 2007-08

Surinder Kumar Goyal, Flat No. 121A, Pocket-F, Mayur Vihar, New Delhi 110096. PAN ADSPG 5867 A	vs.	The ACIT, Circle 60(1), New Delhi 110002
(Appellant)		(Respondent)

For Assessee :	Ms. Hasneeta Matta, 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)-37 New Delhi dated 27.06.2019 for AY 2007-08.

2. The grounds raised by the assessee are as under:-

1. *That on the facts & in the circumstances of the case and in law, the impugned order passed by the Ld. Commissioner of Income Tax (Appeals) [CIT(A)] is wrong and bad in law.*

2.1 *On the facts and in the circumstances of the case and in law, the Id. CIT (A) erred in not appreciating that the order passed by the Assessing Officer u/\$ 143(3) r.w.s. 147 of the Income tax Act,1961 is without jurisdiction and bad in law as the jurisdiction us 147 is vitiated.*

2.2 *On the facts and in the circumstances of the case as well as law on the subject, the learned CIT(Appeals) has erred in not treating notice issued us 148 as invalid and illegal as the approval granted by JCIT, R-36 to issue same is cryptic without application of mind and in a mechanical manner and against the established judicial precedents.*

2.3 *On the facts and in the circumstances of the case, the Ld.CIT(A) erred in confirming the action of the Ld. AO in reopening the duly completed assessment merely on the basis of the general information of the Investigation Wing by invoking the provisions of section 147 of Income Tax Act, 1961.*

2.4 On the facts and in the circumstances of the case, the Ld.CIT(A) erred in confirming the initiation of proceedings under Section 148 of the Income Tax Act, 1961 and therefore the assessment made thereon is bad in law and must be quashed.

3. That the Ld. CIT (A) erred on facts and in law in confirming the action of the Ld. Assessing Officer [“Id. AO”] of adding back Rs. 20,00,500 to the income of the appellant u/s 69 C of the Income Tax Act, 1961.

4. That Ld.CIT(A) and Id.AO has erred on facts and in law in not appreciating and without controverting the fact that the assessee has not paid any amount for the admissions of his daughter and the course fees of Rs. 13,99,500/- has been paid by the wife of the appellant who is an independent assessee through demand draft.

5. That Ld.CIT(A) and Ld.AO has erred on facts and in law in relying upon the unsigned and unauthenticated statement of third party and papers found in the custody of third party without affording the opportunity to cross examine the said third person despite the specific request by the appellant before the Ld. AO and Ld.CIT(A).

3. Apropos ground no. 2.1 to 2.4 the Id. AR submitted that the reasons were provided to the assessee on 27.05.2014 and notice u/s. 148 of the Act has been issued without obtaining approval u/s. 151 of the Act which is manifest from the copy of the notice u/s. 148 dated 27.03.2014 wherein column 3 the date obtaining approval of competent authority has been left blank. It has also been submitted that even if it is assumed that the Assessing Officer obtained approval of JCIT Range-36 before issuing notice then the approval page 2 of assessee paper book reveals that he simply mentioned “approved” without any application of mind to the material placed by the Assessing Officer before him for getting approval for initiation of reassessment proceedings. The learned counsel has also placed reliance on the judgement of Hon’ble Madhya Pradesh High Court in the case of CIT vs. M/s. S. Goyanka Lime and Chemicals Ltd. 231 taxman 73 (MP) and judgement of Hon’ble jurisdictional High Court of Delhi in the case of PCIT vs. M/s NC Cables Ltd. in ITA No. 335/2015.

4. Replying to the above 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-36 New Delhi before issuing notice therefore legal ground of assessee may kindly be dismissed.

5. On careful consideration of above from page no. 2 of assessee paper book it is clearly discernable that the Assessing Officer has taken approval of JCIT Range-36 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-36 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."

6. 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, ground no. 2.1 to 2.4 of assessee are allowed.

7. 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.

8. 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: 26th May, 2023.

NV/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT

4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi