

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC": NEW DELHI
BEFORE Shri C.M. Garg, Judicial Member**

ITA No. 1944/Del/2020
(Assessment Year: 2011-12)

Palm Tracom LLP, Shop 103, FF, Deepali Chowk, CSC-II, UP Samaj, Pitampura, New Delhi- 110034 (Appellant) PAN:AAQFP8495G	Vs.	ITO, Ward-38(1), New Delhi (Respondent)
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Assessee by :	Ms. Rano Jain, Adv
Revenue by:	Shri Sumes Swani, Sr. DR

Date of Hearing	05/04/2023
Date of pronouncement	27/06/2023

ORDER

1. This is an appeal filed by the assessee against the order of the Id CIT(A)-13, Delhi dated 05.02.2020 for AY 2011-12.

2. The assessee has raised the following grounds of appeal:-

"1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad, both in the eye of law and on the facts

2. On the fact and circumstances of the case, Id CIT(A) has erred both on facts and in law in passing the order without giving assessee a fair and adequate opportunity of being heard.

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 AO 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 u/s 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*

6. (1) *On the facts and circumstances of the case, Id. CIT(A) has erred both on facts and in law in confirming an addition of Rs 35,00,000/- under section 68 of the Act, on account of share capital received.*

6(ii) *That the above said addition has been confirmed rejecting arbitrarily the explanation and evidences produced by the assessee to prove the identity and credit worthiness of shareholder as well as the genuineness of the transaction.*

7. *On the facts and circumstances of the case, Id CIT(A) has erred both on facts and in law in confirming the addition despite the same having been made on the basis of material collected/ statement recorded at the back of the assessee without giving it an opportunity to rebut/ cross examine the same in gross violation of the principles of natural justice."*

3. Ground No. 1 and 2 of the assessee are general in nature and therefore, same are dismissed.

4. Apropos ground No. 3 and 4 of the assessee, the Id counsel of the assessee submitted that on the facts and circumstances of the case the initiation of proceedings u/s 147 read with section 148 of the Income Tax Act, 1961 (for short 'the Act') made by the Id AO is bad in law and liable to be quashed as the condition and procedure prescribed under the statute have not been satisfied and complied with by the AO. She further submitted that reassessment order passed by the AO is bad in law and on facts as the same has been made on the basis of reasons recorded without there being any independent application of mind by the AO. She vehemently pointed out that the reassessment order is bad in law and liable to be quashed as the case has been reopened on the basis of the reasons which are vague and against the facts of the case and the AO initiated proceedings without having valid reason to believe that income has escaped assessment for relevant assessment year. Further placing reliance on various orders and judgments including order of ITAT Delhi Benches in the case of Pioneer Town Planners Pvt. Ltd Vs. DCIT in ITA No. 132/Del/2018 reported in 2018 (8) TMI 515-ITA Delhi submitted that when the text and words used by the AO in the reasons recorded for reopening clearly shows that the AO proceeded to initiate reassessment proceedings and reopening of

assessment without having any valid satisfaction and only on the basis of borrowed satisfaction and in absence of independent application of mind to the material received by the AO from the Investigation Wing. The AO could not have valid reasons to believe that income has escaped assessment only on the basis of report of Investigation Wing. Therefore, initiation of reassessment proceedings and reassessment order may kindly be quashed.

5. Replying to the above, the Id Sr. DR drew my attention towards copy of the reasons recorded by the AO, available at page 21 and 22 of the assessee's paper book, and submitted that the AO properly followed and analyzed the material received from the Investigation Wing and thereafter have valid reasons to believe that income has escaped assessment for the relevant period therefore, the legal ground Nos. 3 and 4 of the assessee may kindly be dismissed.

6. The Id counsel further pressing into service ground No. 5 of assessee submitted that the AO has erred in initiating the reopening of assessment u/s 147 of the Act without obtaining valid approval from the competent authority as per mandatory requirement u/s 151 of the Act therefore, the reassessment proceedings and impugned reassessment order also deserved to be quashed only on this count.

7. Replying to the above the Id Sr. DR also took my attention through page No. 23 of the assessee's paper book and submitted that Id PCIT after perusal of the relevant material and reasons recorded by the AO applied his mind and thereafter in column 13 mentioned detailed reasons for granting approval, showing application of mind and thereafter having satisfaction on the reasons recorded by the AO that it was a fit case for issue notice u/s 148 of the Act. Therefore, legal ground No. 5 of the assessee may kindly be dismissed.

8. On careful consideration of the above submission apropos ground No. 5 of assessee I am of the considered view that the Id PCIT has given his approval u/s 151 of the Act in Column 13 of page 23 wherein, he has given a detailed basis based on the exercise undertaken by him, before granting approval u/s 151 of the Act. I am unable to see any discrepancy therein, which could show

non-application of mind by the PCIT at the time of granting approval u/s 151 of the Act. Therefore, I hold that the legal ground No. 5 of assessee have no legs to stand on the legal platform of tax jurisprudence thus, the grounds No. 5 is dismissed.

9. So far as, regarding ground Nos. 3 and 4 of the assessee, the legal contention of the Id counsel of the assessee alleging non application of mind by the AO, at the time of initiation of reassessment proceedings, is concerned, from vigilant careful perusal and reading two pages of reasons recorded (pages 21 and 22) I observe that in first three paras the AO has noted facts of the information received from Investigation Wing and modus operanti of entry providers. Thereafter, the AO in para 4 drawn a conclusion that the information noted in the preceding para remains unexplained and hence it is undisclosed income of the assessee for the year under consideration. Thereafter in para 5 the AO directly jump to conclusion that he has reason to believe that the assessee's undisclosed income for AY 2011-12 has escaped assessment within the meaning of section 147 of the Act therefore, it is fit case for initiation of notice u/s 148 of the Act. The text and words used by the AO in the reasons recorded for reopening of the assessment clearly shows that the AO proceeded to initiate assessment proceedings u/s 147 of the Act and to issue notice u/s 148 of the Act without having any valid satisfaction and assuming valid jurisdiction, only on the basis of borrowed satisfaction based on report of investigation wing only and there was no independent application of mind by the AO to the information and documents received from the Investigation Wing which could form a valid basis and reason to believe that income has escaped assessment.

10. Keeping in view, above noted factual position and legal analysis of the reasons recorded by the AO, respectfully following the decision of jurisdictional High Court of Delhi, as has been vehemently relied by the Id counsel of the assessee, in the cases of PCIT Vs. Meenashi Overseas 395 ITR 677 (Delhi), PCIT Vs. RMG Polyvinyl (India) Ltd 396 ITR 5 (Del) wherein, their lordship speaking for the Hon'ble Jurisdictional High Court held that where the reasons recorded by the AO failed to demonstrate link between the tangible material and the formation of reasons to believe that the income has escaped assessment, then, indeed it

amounts to borrowed satisfaction and the conclusion of the AO based on reproduction of conclusion drawn in the investigation report cannot be held as valid basis and reason to believe after application of mind. Therefore, in my considered opinion the AO did not assume valid jurisdiction for initiation of reassessment proceedings u/s 147 of the Act and issue notice u/s 148 of the Act and to frame reassessment order u/s 143(3)/ 147 of the Act dated 31.12.2018 and hence, I am compelled to hold that the said reassessment proceeding notice and reassessment orders are not valid and sustainable being bad in law and passed without assuming valid jurisdiction by the AO and I hold so.

11. On the basis of foregoing discussion ground No. 3 and 4 of assessee are allowed and impugned proceedings, u/s 147 of the Act notice u/s 148 of the Act and impugned reassessment order dated 31.12.2018 for AY 2011-12 are quashed.

12. Since Id representatives of both sides have not placed any argument on the other ground of assessee therefore, I do not deem it proper to adjudicate the same in absence of any argument thereon.

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

Order pronounced in the open court on 27/06/2023.

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

Dated: /06/2023
A K Keot

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi