

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANJUNATHA.G, ACCOUNTANT MEMBER**

आयकर अपीलसं./ITA No.: **3465/CHNY/2018**

निर्धारण वर्ष/Assessment Year: 2006 – 07

&

C.O No.20/CHNY/2020

[in I.T.A. No.3465/CHNY/2018]

The Income Tax Officer,
Corporate Ward -1(1),
Chennai – 34.

Shri R. Sundaravelu,
vs. 3-15-4, Arihant Majestic Towers,
Koyambedu,
Chennai – 600 107.

(अपीलार्थी/Appellant)

PAN: AANPS 1773K
(प्रत्यर्थी/Respondent)

राजस्व की ओर से /Revenue by
निर्धारितीकी ओर से/Assessee by

: Shri P. Sajit Kumar, JCIT
: Shri S. Sridhar, Advocate &
Shri N. Arjun Raj, CA

सुनवाई की तारीख/Date of Hearing : 11.09.2023

घोषणा की तारीख/Date of Pronouncement : 13.09.2023

आदेश /ORDER

PER MAHAVIR SINGH, VICE PRESIDENT:

These cross appeals by the Revenue and assessee are arising out of order of the Commissioner of Income Tax (Appeals)-1, Chennai in ITA No.282/CIT(A)-1/2013-14 dated 27.09.2018. The

assessment was framed by the Income Tax Officer, Company Ward 1(1), Chennai, for the assessment year 2006-07 u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 30.03.2013.

Revenue's appeal in ITA No.3465/CHNY/2018

2. At the outset, the Id.counsel for the assessee drew our attention to petition dated 24.07.2023 filed under Rule 27 of Income-tax (Appellate Tribunal) Rules, 1963, wherein it was stated that the CIT(A) has decided the issue of assumption of jurisdiction for reopening for assessment of long term capital gain on transfer of trademark and knowhow assessed by AO as not-taxable and held in favour of assessee but CIT(A) dismissed the ground raised by assessee observing in para 19 as under:-

From the above, it is evident that in the original proceedings, the appellant had not disclosed the transaction relating to transfer of Intellectual Property Rights in the form of R&D patent and trademark. No assessment u/s. 143(3) was completed in this case. As held by the The Hon'ble Apex Court in ACIT v. Rajesh Jhaveri Stock Brokers P Ltd [2007] 291 ITR 500 (SC) an assessment u/s. 143(1) cannot be regarded as expression of any opinion on the issue of taxability of the appellant in respect of transfer of the Intellectual Property Rights. Therefore, it is held that there was reason to believe that income had escaped assessment as the transaction of issue of shares against transfer of Intellectual Property Rights was not disclosed by the appellant. The appellant had relied upon the decision of Supreme Court in the case of Kelvinator of India Ltd 256 ITR 1 and Madras High Court

decision in the case of TANMAC [2017] 78 taxmann.com 155 (Madras)., However, both these decision do not have any application in the present case. As already explained this is not a case of change of opinion as there was no expression of opinion on the chargeability to tax on the transfer of Intellectual Property Rights in the order u/s. 143(1). Therefore, in the light of the observation of Supreme Court in the case of Rajesh Jhaveri Stock Brokers P Ltd, it is held that this is not a case of change of opinion. In the present case, though the appellant is ultimately found to be eligible for exemption u/s.47 (xiv) the fact remains that the appellant did not disclose this transaction in the return of income or in the proceedings Therefore, there was definitely reason to believe that income had escaped assessment as there is no material on record to assume that the appellant will be eligible for exemption u/s.47(xiv). In view of all these facts, this ground of appeal is dismissed.

3. The Id.counsel for the assessee stated that the first issue regarding assumption of jurisdiction / validity of jurisdiction assumed u/s.147 r.w.s. 148 of the Act. The Id.counsel for the assessee drew our attention to page 4 & 5 of assessee's paper-book whereby he has enclosed form for recording the reasons for initiating proceedings under section 147 r.w.s. 148 of the Act and for obtaining the approval of the Additional Commissioner of Income tax / Commissioner of Income Tax. The Id.counsel drew our attention to the approval granted by Additional CIT vide dated 23.03.2012 and relevant approval granted by Additional CIT in column No.12 reads as under:-

12	<i>Recommendation of the Addl.CIT, Company Range-I, Chennai is satisfied on the reasons recorded by the ITO that it is a fit case for the issue of a notice u/s.148 Dt. 23/3/2012</i>	<i>I am satisfied that this is a fit case for reopening u/s.147. Sanction accorded for issue of notice u/s.148. Sd/- S. Uma Venkatesan Addl.CIT, Co R I</i>
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4. The Id.counsel for the assessee Shri S. Sridhar narrated the facts that the assessee is a Director in M/s Alchemy Biotech Private Ltd and for the assessment year 2006-2007 the assessee filed return of income declaring taxable income of Rs.3,55,396/- and ROI was submitted to the assessment circle which was duly acknowledged by the Department on 31.07.2006. The assessing officer after having gone through the return of income filed made assessment U/s.143(1) and granted refund as claimed in the return of income. Subsequently the case was reopened under section 147 r.w.s. 148 of the Act notice dated 26.03.2012 was issued. In response to notice under section 148 of the Act the assessee filed copy of ROI on 09.05.2012 and thereafter letters were issued requiring the assessee to provide details based on which taxable income had been arrived at. In response to the letters, the assessee appeared and furnished the required documents and details. The AO without perusing the documents i.e. Certified copy of ROC in Form 2, and the MOU for future share allotment forming a part of the ROC

certified document for allotment of shares for consideration other than cash, filed with the ROC on 31.12.2005, and the HDFC bank statement of the assessee for the corresponding year passed order u/s. 143(3) r.w.s 147 of the Act. The assessee and his wife Shobarani are the only directors of M/s Alchemy Bio Tech Private Limited which was incorporated in the month of July 2005. There is no outside shareholder in the said Company. The Authorised share capital of the company was Rs.10 crores. The assessee was allotted Rs.7.95 crores worth of share by the Company, being allotment of shares for consideration other than cash as per Form-2 of ROC, dated 31.12.2005, in lieu of transfer of R & D Patent, Trade Mark, design and R & D charges, which was bound by a Memorandum Of Understanding dated 25.11.2005, filed with the ROC on 31.12.2005 as a part of FORM- 2 return of allotment. The Rs.10.00 crores share capital of the company was all notional values and without any real cash or capital infusion, like the trademarks, patents and other rights valued at Rs.7.95 crores which literally has not been paid to the assessee as the director. The assessee was asked to produce details of transactions in connection with allotment of shares. Accordingly the Certified copy of ROC in Form - 2, return of allotment, with its original annexure MOU for future share allotment

and Certified Bank statement of assessee was produced by him in the course of hearing, both which have not been perused while passing the order. The assessee's letter dated 12.12.2012 was received by the AO on 23.02.2013 attaching along with a copy of Form -2 with original annexure - memorandum of understanding for future share allotment, wherein he had stated that as per MOU, it was decided that out of total authorised capital of Rs.10.00 crores, Rs.79,50,000/- shares shall be allotted to assessee in a phased manner once the turnover of the company exceeds Rs.50.00 crores. Without satisfying the assessee's explanations and connected documents filed in the course of hearing, the AO wrongly concluded her view that the assets are transferred in the nature of capital asset as per section 2(14) of the Act and the said transactions squarely falls under definition of Section 2 (47) of the Act. Aggrieved assessee preferred appeal before CIT(A). On merits, the CIT(A) deleted the addition. However, the CIT(A) confirmed the action of AO on assumption of jurisdiction.

5. Now before us, the Id.counsel for the assessee stated that the Addl.CIT while according approval has simply written that "I am satisfied that this is a fit case for reopening u/s.147. Sanction

accorded for issue of notice u/s.148". The Id.counsel for the assessee drew our attention to the decision of Hon'ble Madhya Pradesh High Court in the case of CIT vs. S. Goyanka Lime & Chemicals Ltd., [2015] 231 Taxman 73 (MP), wherein exactly on identical facts, following another decision of Hon'ble Madhya Pradesh High Court in the case of Arjun Singh vs. Asst. DIT, [2000] 246 ITR 363 (MP) held the reopening as bad for not discharging his statutory obligation properly by observing in paras 7 to 9 as under:-

7. We have considered the rival contentions and we find that while according sanction, the Joint Commissioner, Income Tax has only recorded so "Yes, I am satisfied". In the case of Arjun Singh (supra), the same question has been considered by a Coordinate Bench of this Court and the following principles are laid down:-

"The Commissioner acted, of course, mechanically in order to discharge his statutory obligation properly in the matter of recording sanction as he merely wrote on the format "Yes, I am satisfied" which indicates as if he was to sign only on the dotted line. Even otherwise also, the exercise is shown to have been performed in less than 24 hours of time which also goes to indicate that the Commissioner did not apply his mind at all while granting sanction. The satisfaction has to be with objectivity on objective material."

8. If the case in hand is analysed on the basis of the aforesaid principle, the mechanical way of recording satisfaction by the Joint Commissioner, which accords sanction for issuing notice under section 148, is clearly unsustainable and we find that on such consideration both the appellate authorities have interfered into the matter. In doing so, no error has been committed warranting reconsideration.

9. As far as explanation to Section 151, brought into force by Finance Act, 2008 is concerned, the same only pertains to issuance of notice and not

with regard to the manner of recording satisfaction. That being so, the said amended provision does not help the revenue.

6. When this was confronted to Id.Senior DR, he could not controvert the above fact situation, argued that this is simply a statutory form and approval from Addl.CIT / CIT is just a technical approval and no judicial decision is to be given in this rather the Addl.CIT has applied his mind in the file and after going through the records, he has given this approval.

7. We have heard rival contentions and gone through the facts and circumstances of the case. Admittedly, the Addl.CIT has only recorded that "I am satisfied that this is a fit case for reopening u/s.147. Sanction accorded for issue of notice u/s.148" and in our view, as noted by Hon'ble Madhya Pradesh High Court, the approval/sanction for issuance of notice has been given in mechanical manner and without application of mind and hence, notice issued u/s.148 of the Act is bad in law and without jurisdiction. Hence, we quash the reassessment proceedings and allowed this plea raised under Rule 27 of the Income-tax (Appellate Tribunal) Rules, 1963. This issue of assessee's appeal is allowed.

8. Since we have adjudicated the issue of assumption of jurisdiction on the issue of according sanction/approval by Addl.CIT and held against Revenue and quashed the reopening by quashing notice u/s.148 of the Act, we need not go into other issues on jurisdiction or on merits of the case and hence, the appeal of Revenue and the cross objection of the assessee both are dismissed.

9. In the result, the appeal filed by the Revenue and the cross objection filed by the assessee, both are dismissed.

Order pronounced in the open court on 13th September, 2023 at Chennai.

Sd/-

(मंजुनाथ. जी)
(MANJUNATHA.G)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)
(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,
दिनांक/Dated, the 13th September, 2023

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त /CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.