

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 827/Ahd/2023
(निर्धारण वर्ष / Assessment Year : 2010-11)

M/s. Palan Real Estate Developers Pvt. Ltd. I-208, Parshwanath Township, B/h. Krishnanagar, Nava Naroda, Ahmedabad Gujarat, 382330	बनाम/ Vs.	The Income Tax Officer Ward-3(1)(1), Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AADCP3386N		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Mahesh Chhajed, A.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri V. K. Mangla, Sr. DR

Date of Hearing	12/02/2024
Date of Pronouncement	21/02/2024

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed at the instance of the assessee is directed against the order dated 20.09.2023 passed by the National Faceless Appeal Centre (NFAC), Delhi, arising out of the order dated 19.04.2018 passed by the ITO, Ward-3(1)(2), Ahmedabad, under Section 143(3) r.w.s. 147 of the Income Tax Act, 1961, (hereinafter referred to as ‘the Act’) for Assessment Year 2010-11.

2. The appellant before us has taken out an application for additional grounds under Rule 35A of the Income Tax Rules, 1963, to this effect that, as no proper sanction as required under Section 151 of the Act is obtained from the PCIT, reopening of assessment is bad and illegal, therefore, liable to be quashed.


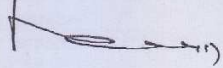
3. The brief facts leading to this case is this that the appellant's case was reopened on the basis of the information received from the ACIT, Central Circle-1(2), Ahmedabad on the basis of search proceeding initiated under Section 132 of the Act conducted in the Barter Group on 04.12.2014. The assessment proceeding under Section 143(3) r.w.s. 147 of the Act was finalized upon making addition of Rs.32,43,750/- under Section 68 of the Act on account of unexplained credit claimed as source for investment, which was, in turn, confirmed by the First Appellate Authority. Hence, the instant appeal before us.

4. At the time of hearing of the instant appeal, Ld. Counsel appearing for the appellant submitted before us that the appellant made an application under RTI on 25.10.2023 requesting for reasons recorded for reopening of assessment and the approval granted under Section 151 of the Act whereupon the RTI order dated 24.11.2023 has been provided copy whereof has also been annexed to the paper book appearing at Page Nos. 15 & 16 therein, wherefrom, it appears that PCIT has merely stated 'Yes I am satisfied' while granting sanction under Section 151 of the Act. The contention made by the Ld. AR has been verified by us.

Sanction given by the PCIT is annexed to the paper book is reproduced as under:

FORM FOR RECORDING THE REASONS FOR INITIATING PROCEEDINGS
UNDER SECTION 148 AND FOR OBTAINING APPROVAL OF THE PRINCIPAL
COMMISSIONER OF INCOME-TAX-3, AHMEDABAD.

1	Name and Address of the Assessee	M/s. Palan Real Estate Developers Private Ltd. 2 nd Floor, Bhagwati Chambers, Nr. Income-tax, Ashram Road, Ahmedabad-380009
2	P.A. No.	AADCP3386N
3	Status	Company
4	Dist/Cir/Ward/Range	I.T.O.Ward-3(1)(2) Ahmedabad
5	Asstt. Year in respect of which it is proposed to issue notice u/s. 148	2010-11
6	The quantum of income which has escaped assessment	Rs. 32,43,750/-
7	Whether provisions of sec 147(a) / 147(b) / 147 (c) applicable	Yes, 147(c) of the I.T. Act.
8	Whether the assessment is proposed to be made for first time, if the reply is in the affirmative please state.	Yes
8 (a)	Whether any voluntary return had already been filed	Yes
8 (b)	If so, the date of filing the said return	16.07.2011
9	If the answer to item 8 is in negative please state	NA
9 (a)	The income originally assessed	NA
9(b)	Whether it is a case of under assessment, asstt. at too low a rate, asstt. which had been made the subject of excessive relief or allowing of excessive loss or depreciation	NA
10	Whether the provisions of sec. 150(1) are applicable. If the reply is in the affirmative the relevant facts may be stated against item No.- 11 and it may also be brought out that the provisions of section 150(2) would not stand in the way of initiating proceedings u/s. 147.	Yes
11	Reasons for the belief that income has escaped assessment	As per annexure. <i>K.S.B.RAO</i> (K.S.B.RAO) Income tax Officer, Ward- 3(1)(2),Ahmedabad.

12.	Whether the Addl. Commissioner is satisfied on the reasons recorded by the ITO that it is a fit case for the issue of a notice u/s. 148. Date: 21/03/17	Yes. Satisfied  (Deepak Sutariya) Addl. Commissioner of Income-tax, Range-3(1), Ahmedabad.
13.	Whether the Pr. Commissioner of IncomeTax-3, Ahmedabad is satisfied on the reasons recorded by ITO that it is a fit case for the issue of a notice u/s. 148. Date: 21/03/17	Yes, I am satisfied  (M. S. RAY) Pr. Commissioner of Income tax, Ahmedabad-3, Ahmedabad.

5. The case of the appellant is, therefore, that the observation made by the PCIT is not sufficient enough to provide sanction which renders the reopening of assessment void. Such observation does not establish the fact of application of mind and due diligence before creating sanction to the reasons recorded by the Ld. AO by the PCIT. This is nothing but making approval in a mechanical manner and not valid in the eyes of law. In support of the same, he further relied upon the judgment passed by the Coordinate Bench in the case of M/s. Kedar Cotton Industries vs. DCIT in ITA No.531/Ahd/2019, a copy whereof, is also annexed with the paper book filed before us which has duly been

considered by us. On the contrary, the Ld. DR failed to controvert the above contentions made by the Ld. AR.

6. We find that while dealing with identical issue, the Co-ordinate Bench has been pleased to observe as follows:

“5. In Ground Nos. 2 & 3 as originally raised in this appeal as well as in the additional ground raised during the course of appellate proceedings before the Tribunal, the assessee has challenged the validity of the reopening of the assessment by the Assessing Officer on various grounds. One of the grounds raised by the assessee is that the approval to reopen the assessment and issue notice under Section 148 of the Act was given to the Assessing Officer by the Principal Commissioner of Income-tax in a mechanical manner and without application of mind. In this regard, the learned Counsel for the assessee has invited our attention to the copy of the approval given by the learned Principal Commissioner of Income-tax placed at page No. 42 to point out that the proposal submitted by the Assessing Officer to reopen the assessment and issue notice under Section 148 of the Act to the assessee was approved by the learned Principal Commissioner of Income-tax by recording only one word “yes”. He contended that similar approval was accorded by the learned Joint Commissioner of Income-tax in the case of CIT vs. S. Goyanka Lime & Chemicals Ltd, reported in [2015] 56 taxmann.com 390 (MP), by recording “Yes, I am satisfied” and the same was held to be unsustainable by the Hon’ble Madhya Pradesh High Court holding that the requisite satisfaction was recorded by the Joint Commissioner of Income-tax in mechanical manner and without application of mind. He contended that the assumption of jurisdiction to reopen the assessment thus was held to be invalid and the assessment completed in pursuance of the same was quashed. He submitted that the decision of Hon’ble Madhya Pradesh High Court in the case of S. Goyanka Lime & Chemicals Ltd (supra) was challenged by the Revenue in an SLP before the Hon’ble Supreme Court which was dismissed by the Hon’ble Apex Court vide order dated 08.07.2015 in SLP No.11916 of 2015, [2015] 64 taxmann.com 313 (SC). The learned Counsel for the assessee has also relied upon the decision of Hon’ble Delhi High Court in the case of United Electrical Co. Pvt. Ltd Vs. CIT, reported in 258 ITR 317 (Delhi HC) in support of assessee’s claim on this issue.

6. The learned DR, on the other hand, submitted that the Assessing Officer, along with the proposal submitted to the learned Principal Commissioner of Income-tax for approval, had enclosed the reasons recorded by him for reopening the assessment on the basis of which notice under Section 148 was to be issued. He contended that the approval thus was accorded by the learned Principal Commissioner of Income-tax after going through the reasons recorded by the Assessing Officer and after having satisfied that it was a fit case to reopen the assessment and issue notice under Section 148 of the Act. He contended that the approval accorded by the learned Principal Commissioner of Income-tax by recording “Yes” cannot be read in isolation and the same has to be read along with reasons recorded by the Assessing Officer which were seen and

considered by the learned Principal Commissioner of Income-tax for arriving at his satisfaction. He contended that the approval for reopening the assessment and issuing notice under Section 148 of the Act thus was accorded by the learned Principal Commissioner of Income-tax to the Assessing Officer by applying his mind and it cannot be said that it was done in a mechanical manner.

7. We have heard the rival submissions on this preliminary legal issue raised by the assessee and also perused the relevant material available on record including the judicial pronouncements cited by the learned Counsel for the assessee. It is observed from the copy of the relevant document placed at page no.42 of the paper-book that the approval to reopen the assessment in the present case and issue notice under Section 148 of the Act to the assessee was accorded by the learned Principal Commissioner of Income-tax by recording his satisfaction in one word “Yes” and even the learned DR has not disputed this position. He, however, has contended that the approval accorded by the learned Principal Commissioner of Income-tax cannot be read in isolation and the same has to be read with reasons recorded by the Assessing Officer for reopening the assessment which were available before the learned Principal Commissioner of Income-tax and which were duly taken into consideration while according the approval. We are unable to accept this contention of the learned DR keeping in view the legal position emanating from the judicial pronouncements cited by the learned Counsel for the assessee. While seeking approval to reopen the assessment and issue notice under Section 148 of the Act, the Assessing Officer is required to submit the reasons recorded by him to the competent authority and merely because such reasons recorded by the Assessing Officer are available before the competent authority while according the approval, it cannot be said that the application of mind by the competent authority is presumed and there is no requirement for him to record the proper satisfaction and it is sufficient for him to say only “Yes”. In the case of S. Goyanka Lime & Chemicals Ltd (supra) cited by the learned Counsel for the assessee, the satisfaction was recorded by the Joint Commissioner of Income-tax by saying “Yes, I am satisfied” and still the same was found to be recorded in a mechanical manner and without application of mind by the Hon’ble Madhya Pradesh High Court. While arriving at this conclusion, the Hon’ble Madhya Pradesh High Court relied on its earlier decision in the case of Arjun Singh Vs. Asstt. DIT, [2000] 246 ITR 363 (MP), wherein it was held that 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. As submitted by the learned Counsel for the assessee, the SLP filed by the Department against the decision of Hon’ble Madhya Pradesh High Court in the case of S. Goyanka Lime & Chemicals Ltd (supra) has already been dismissed by the Hon’ble Supreme Court.

8. In the case of United Electrical Co. Pvt. Ltd (supra) relied upon by the learned Counsel for the assessee, the Hon’ble Delhi High Court held that the requirement of approval by the higher authority to reopen the assessment and issue notice under Section 148 of the Act by the Assessing Officer is a safeguard to prevent arbitrary exercise of power by an Assessing Officer to fiddle with the completed assessment. It was held that the Commissioner is required to apply his mind to the proposal put up to him for approval in the light of the material relied upon by the Assessing Officer and the said power cannot be exercised casually and in a routine manner. In the said case,

the Commissioner had simply mentioned “approved” while according sanction to the Assessing Officer to reopen the assessment and issue notice under Section 148 of the Act and the same was held to be without any application of mind by the Hon’ble Delhi High Court. Respectfully following the ratio laid down in the case of S. Goyanka Lime & Chemicals (supra) by the Hon’ble Madhya Pradesh High Court and in the case of United Electrical Co. Pvt. Ltd (supra) by the Hon’ble Delhi High Court, we hold that the assumption of jurisdiction to reopen the assessment was bad in law and the assessment completed by the Assessing Officer under Section 143(3) r.w.s. 148 of the Act in pursuance thereof is void ab initio which is liable to be cancelled.

9. *Keeping in view the decision rendered by us as above cancelling the assessment made by the Assessing Officer under Section 143(3) r.w.s. 148 of the Act, we do not consider it necessary or expedient to adjudicate upon other legal and factual issues raised by the assessee in this appeal as the same are rendered only academic in nature.”*

7. It is evident that the judgment passed by the Co-ordinate Bench considered Hon’ble Madhya Pradesh High Court in the case of Arjun Singh vs. Asstt. DIT, reported in [2000] 246 ITR 363 (MP), the Hon’ble Madhya Pradesh High Court observed that while recording satisfaction as the Commissioner merely wrote on the format ‘yes I am satisfied’ indicates as if, he was to sign only on the dotted line, no application of mind to the proposal put up before him for approval in the light of the material relied upon by the Ld. AO is found to have been made. The fact in the case of United Electrical Co. Pvt. Ltd. (supra) as also relied upon by the Co-ordinate Bench is also identical to that of the fact present in the appeal before us.

8. The power conferred upon the PCIT is not expected to be exercised casually and in a routine manner is also evident in the instant case before us; the same is also found to be without any application of mind. Thus, respectfully relying upon the judgment passed by the Co-ordinate Bench, we do not hesitate to quash the

proceeding as the approval is found to have no merit, without any legs to stand upon and product of non-application of mind. Hence, the entire proceeding is quashed.

9. In the result, the appeal preferred by the assessee is allowed.

This Order pronounced on 21/02/2024

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad; Dated 21/02/2024
S. K. SINHA

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

True Copy

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad