आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"A" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं डा0 मीठा लाल मीना, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & DR MITHA LAL MEENA, AM

आयकर अपील सं./ITA No. 733 & 739/JP/2023
निर्धारण वर्ष/Assessment Year : 2010-11

Shri Anshuman Singh E-172A, Uttam Tower, Ramesh Marg C-Scheme, Jaipur	बनाम Vs.	The ACIT Circle-1 Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AOUPS 4969 J		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri S.L. Jain ,Adv
Shri Ashok Kumar Gupta, Adv
Shri Shrawan Kumar Gupta, Adv

राजस्व की ओर से/Revenue by: Shri A.S. Nehra, Addl. CIT-DR

सुनवाई की तारीख/Date of Hearing : 14/02/2024
उदघोषणा की तारीख/Date of Pronouncement: 10 /04/2024

आदेश/ORDER

PER: SANDEEP GOSAIN, JM

Both these appeals have been filed by the assessee against two different orders of the ld. CIT(A) dated 05-10-2023, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2010-11 in the matter of Section of 147/144 (**revised grounds**) and in the matter of Section 271(1)(c) of the Act raising therein following grounds of appeal.

ITA NO. 733/JP/2023 A.Y.2010-11

1. The impugned Ex-parte Assessment Order U/s 147/144 dated 30/11/2017 which confirmed by Ld. CIT(A) (NFAC) through Ex-party Appellate order as well as initiation of re-assessment proceedings and further issued Notices in respect thereto are illegal, bad in law and on the facts of the case for want of jurisdiction, barred by limitation and various other reasons (grounds), against the provisions and procedure as per law and further contrary to the real facts of the case hence all the consequent notices as well as the subsequent proceedings invalid, illegal and bad in law hence liable to be quashed.

2. No Satisfaction of competent authority

The impugned order u/s 147/144 dated 30/11/2017, as well as the action taken u/s 147/148 are bad in law, illegal, invalid, void ab initio on facts of the case, for want of jurisdiction, without proper approval and satisfaction of higher authorities u/s 151 of the Act and also barred by limitation and various other reasons and hence the same may kindly be quashed."

3. The Ld. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the addition of Rs. 50,15,829/- made by the Ld. AO on account of alleged Un-explained Expenditure on purchase of immovable property by taking the view that assessee purchased an immovable property and did not file his Income Tax Return for that year therefore source of Purchase of said immovable property remains unverified hence entire amount is being treated as unexplained expenditure, and also erred without bringing any cogent material in support of his contention and without bringing corroborative evidence and without considering the materials and explanations available on records in their true perspective and sense. Hence the addition so made by Ld. AO and confirmed by the Ld. CIT (A) is being contrary to the provisions of the law and facts of the case therefore the same may kingly be deleted in toto,

4. The Id. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the addition of Rs. 13,36,329/- made by the Ld. AO on account of alleged Un explained receipts by taking the view that assesse has received salary as per AIR/ITS and did not file his Income Tax Return for that year therefore such receipts is being treated as unexplained receitps,

and also erred without bringing any cogent material in support of his contention and without bringing corroborative evidence and without considering the materials and explanations available on records in their true perspective and sense. Hence the addition so made by Ld. AO and confirmed by the Ld. CIT (A) is being contrary to the provisions of the law and facts of the case therefore the same may kingly be deleted in toto,

5. Appeal dismissed for non-attendance :-

Under the facts and circumstances of the case the Ld. NFAC has grossly erred in deciding the appeal ex- parte, without providing sufficient opportunity to appellant, here the Ld. NFAC ought to have decided the appeal on merits instead of dismissing the appeal for non-attendance.

6. The Id. AO has grossly erred in law as well as on the facts of the case in charging the interest u/s 234A, B and C. The interest so charged is being totally contrary to the provision of law and on facts of the case and hence same may kindly be deleted in full.''

ITA NO. 739/JP/2023 A.Y.2010-11

1. The impugned Ex-party Penalty Order U/s 271(1)(c)/174 dated 24/05/2018 which confirmed by Ld. CIT(A) (NFAC) through Ex-party Appellate order as well as initiation of Penalty proceedings and further issued Notices in respect thereto are illegal, bad in law and on the facts of the case for want of jurisdiction, barred by limitation and various other reasons (grounds), against the provisions and procedure as per law and further contrary to the real facts of the case hence all the consequent notices as well as the subsequent proceedings invalid, illegal and bad in law hence liable to be quashed.

2. The Ld. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the Penalty of Rs. 10,15,784/- made by the Ld. AO on account of alleged Un explained Expenditure on purchase of immovable property and on account of alleged Un explained receipts as credited in his bank account only on the basis of AIR/ITS without providing him opportunity of being heard and also erred without bringing any cogent material in support of his contention and without bringing corroborative

evidence and without considering the materials and explanations available on records in their true perspective and sense. Hence the Penalty so imposed by Ld. AO and confirmed by the Ld. CIT (A) is being contrary to the provisions of the law and facts of the case therefore the same may kingly be deleted in toto,

3. Appeal dismissed for non-attendance :-

Under the facts and circumstances of the case the Ld. NFAC has grossly erred in deciding the appeal ex- parte, without providing sufficient opportunity to appellant, here the Ld. NFAC ought to have decided the appeal on merits instead of dismissing the appeal for non-attendance

2.1 At the outset of the hearing, the Bench noted that ld. CIT(A) has dismissed the appeals of the assessee while observing at para 4.5 of his respective orders.

> ''4.5 However, in the interest of natural justice, the case of appellant was examined on merit in the light of grounds of appeal and Statement of Facts filed. It is found that the issues raised by the appellant through various grounds of appeal have been considered by the A.O during the assessment proceedings, and assessee did not avail opportunities during assessment proceedings and order was passed on merits without any submission from assessee as discussed in para 3 and 4 of assessment order. When penalty proceedings were taken up for hearing there was no submission by assesssee. Now during the appeal proceedings also the same could not be contested or rebutted in view of the fact that the appellant has failed to avail of the opportunities provided. In the absence of any substantiation or any documentary evidence filed in support of grounds of appeal, it can only be concluded that the appellant has no evidence or explanation to offer in respect of the additions made in the assessment order that is the subject matter of appeal. Accordingly, being thus found to be without substance, all the grounds of appeal are dismissed.
>
> 5. In the result, the appeal is dismissed.''

Hence, the ld. CIT(A) has passed the ex parte orders in relation to above appeals of the assessee being non attendance of the appeals nor filing of documents/

evidences to counter the orders of the AO for which the ld. DR relied upon the orders of the ld. CIT(A).

2.2 However, during the course of hearing, the ld.AR of the argued the case by challenging the assessment order on the point of impugned order u/s 147/144 dated 30-11-2017 as well as the action taken u/s 147 & 148 of the Act are bad in law, illegal, invalid, void ab inito on facts of the case for want of jurisdiction, without proper approval and satisfaction of higher authorities u/s 151 of the Act and also barred by limitation and various other reasons and hence the same may kindly be quashed. The ld. AR also submitted that his arguments are relating to legal issue and not on the addition made by the AO.

2.3 We have heard both the parties and perused the materials available on record. It is noted from the assessment order that the AO on the basis of information available in ITS of the assessee made two additions i.e. Rs.50,15,829/- and Rs.13,36,329/- by observing at para 3 & 4 of his assessment order dated 30-11-2017 u/s 147 r.w.s. 144 of the Act. However, in first appeal, the ld. CIT(A) has dismissed the appeal of the assessee on the ground of non-appearance and not controvering the order of the AO. The moot question raised by the ld AR of the assessee is that order passed by the AO is illegal and bad in law and it lacks jurisdictional error on the point of no satisfaction of competent authority. The Bench has meticulously gone through the orders of the lower authorities and taken

in the consideration the oral arguments advanced by the ld. AR of the assessee encountering the assessment order as invalid and beyond jurisdiction. It is noted on perusal of the reasons recorded and approval u/s 151 by the competent authority indicates that Pr. CIT has not applied his mind on the reasons recorded by lower authorities and he has only expressed or mentioned 'Yes' on the reason forwarded (PBP-5). It is worthwhile to mention that as per decision of Hon'ble Delhi High Court in the case of **Pr. CIT vs. N. C. Cables Ltd.(2017) 98 CCH 0010 where in** it has been held that Section 151 of the Act clearly stipulates that the CIT, 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' or 'Yes' says nothing. It is not as if the CIT has to record elaborate reasons for agreeing with the noting put up before him. 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. It is also noted that the ld. AR of the assessee has advanced his paper book at Pages 3 to 5 as to reasons recorded for no satisfaction by the ld. Pr. CIT, the satisfaction if any was of the AO, who is not competent in

the present case. In the case of N.C. Cables (supra) following case laws were relied therein.

i. Maruti Clean Coal And Power Ltd. vs. ACIT (2018) 400 ITR 0397 (Chhattisgarh)
ii. CIT vs. S. Goyanka Lime & Chemicals Ltd. (2015) 231 TAXMAN 0073 (MP)
iii. PAC AIR SYSTEMS P. LTD. vs. ITO (2020) 58 CCH 0001 Del Trib
iv. GORIKA INVESTMENT AND EXPORT (P) LTD. vs. ITO (2018) 53 CCH 0168 Del Trib.
v. TARA ALLOYS LTD. vs. ITO (2018) 63 ITR (Trib) 0484 (Delhi) And the ld. CIT(A) kept mum on this very legal plea, which shows his contradictory approach.

Therefore the notice, reasons recorded assessment all are the illegal bad void ab-initio and barred by limitation and liable to be quashed.

It is also noted that the Joint CIT has forwarded a letter of consolidated approval of 26 assessee's vide his order 23.03.2017 (PB5A-5C) and this shows as to how the Ld. Pr. CIT has acted in formal way. On inspection of the assessment record, it has also been noticed that there was no approval in original letter or documents and there is no tick on the name of the assessee (vide Sr. No. 13 at

PB-5B). It is surprising as to how an approval can be given of all the 26 different assessee's in one documents whereas all are the independent or separate assessee and their reasons are different. Hence in view of the above facts and circumstances of the case the action taken u/s 148 of the Act and consequent proceedings needs to be quashed for which we rely on the following judgements.

(1) Shri Satyanarayan Bairwa vs. ITO Ward 2(4), Jaipur ITA No. 867 & 869 JP/2018, dated 15/09/2021 (Jaipur ITAT), relevant part of judgement is as follows;

"19. We have considered the rival contentions of both the parties and perused the material available on record. From perusal of the record, we observed that the A.O. has reopened the case of the assessee for escaping the income of Rs.1,15,00,500/- on account of cash deposit in his bank account and assessee has not filed his return of income and issued notice u/s. 148 of the Act on 29.03.2016 after recording reasons that income of assessee had escaped assessment in the meaning u/s 147 of the Act. Thereafter the AO framed assessment u/s. 144 r.w.s. 147 of the Act by making addition of Rs.1,15,00,000/- and the ld. CIT(A) upheld the order of AO. Before us the ld. A/R has drawn our attention to the reasons recorded and satisfaction of the Pr. CIT and Addl. CIT placed at page No. 10-11 of the assessee's paper book where the Addl. CIT has mentioned only "Recommended" and Pr. CIT has mentioned only "Yes", which shows no application of mind and proper satisfaction by them on the reasons recorded by the AO. In this regard, we draw strength from the decison in the case of Pr. CIT vs. N. C. Cables Ltd.(2017) 98 CCH 0010 Del HC

wherein it has been held that Section 151 of the Act clearly stipulates that the CIT, 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 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."

We also draw strength from the decision in the case of CIT vs. S. Goyanka Lime & Chemicals Ltd. (2015) 231 TAXMAN 0073 (MP) wherein it has been held that While according sanction, the Joint Commissioner, Income Tax has only recorded so "Yes, I am satisfied" 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 147, 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.

20. The ld. A/R has also drawn our attention on the approval of the Pr. CIT placed at page Nos. 7-8 of the paper book and also from the assessment record placed before us, we found that he has given one consolidated approval of 56 different assessee's in one shot through one letter dated 29.03.2016 which is even not signed by him but signed by ITO (T&J), who is not a competent authority to give and signed the approval letter, which shows how the PR. CIT has acted in very formal way. When we examined of the assessment record, it is gathered that the approval was in photocopy and not in original or there was no original letter or documents of approval. Further the name of the assessee was at Sr. 46 out

of 56 assessee's and even there was no tick on the name of the assessee in the approval list, which creates a doubt that the approval has been received before the issue of notice u/s 148 of the Act as the approval letter lying on the file after issuance of the notice u/s 148 or not before or attached with the notice u/s 148 and may reach in the office of the AO after 31.03.2016. Thus, in our view, approval u/s 151 cannot be given of all the 56 assessee's in a single documents, as all assessee's are the independent and separate also the reason recorded are different in each case and it is not possible that there shall be same reasons. Looking to these facts and record it is also held that the procedures and way of approval and satisfaction is not proper. Here AO initiated proceedings u/s. 147 r.w.s. 148 on basis of information furnished and CIT gave approval without applying his mind in slipshod manner. As approval/sanction given by CIT was without recording his own independent satisfaction as noted above, therefore the reopening was not sustainable as per above judicial pronouncements and irregularities noted. There were clear irregularities and violation of the provision of Sec. 151 of the Act and very foundation of the issuance of the notice u/s 148 was not as per law. Then in that eventuality, we are of the view that the issuance notice 148 of the Act and all the consequent proceedings and assessment order passed was not in accordance with law. The case laws relied upon by the ld. DR are not tenable in the facts and circumstances of present case, therefore, considering the totality of facts and circumstances of the case as well as the judicial pronouncements qua the issue under consideration, we find merit in the contention of the ld AR, therefore, we quash the proceedings U/s 147 of the Act.

21. Once, we quash the proceeding U/s 147 of the Act, therefore, there is no need to adjudicate the other grounds raised in this appeal.”

Hence, in view of the above facts, circumstances of the case and case laws cited hereinabove, the Bench feels that there is jurisdictional error and the order passed by AO does not survive. Thus the appeal of the assessee is allowed.

3.1 As regards the penalty appeal of the assessee, it is not required to deal with for the reason that when the quantum appeal has been allowed then consequently penalty order of the ld. CIT(A) is infructuous

4.0 In the result, both appeals of the assesee are allowed

Order pronounced in the open court on 10 /04/2024.

Sd/-	Sd/-
(डा० मीठा लाल मीना)	(संदीप गोसाई)
(Dr. Mitha Lal Meena)	(Sandeep Gosain)
लेखा सदस्य / Accountant Member	न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 10 /04/2024

*Mishra

आदेश की प्रतिलिपि अग्रेशित / Copy of the order forwarded to:

1. The Appellant- Shri Anshuman Sinha, Jaipur
2. प्रत्यर्थी / The Respondent- The ACIT, Circle-1, Jaipur
3. आयकर आयुक्त / The ld CIT
4. आयकर आयुक्त(अपील) / The ld CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No.733/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar