

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

HEARING THROUGH: HYBRID MODE

श्री विक्रम सिंह यादव, लेखा सदस्य एवं श्री परेश म. जोशी, न्यायिक सदस्य
BEFORE: SHRI. VIKRAM SINGH YADAV, AM & SHRI. PARESH M. JOSHI, JM

आयकर अपील सं. / ITA NO. 334/Chd/2024
निर्धारण वर्ष / Assessment Year : 2015-16

Master Trust Limited SCO 19, Master Chambers, Feroze Gandhi Market, Ludhiana	बनाम	The Asst. CIT Ludhiana
स्थायी लेखा सं. / PAN NO: AABCM5833B		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारित की ओर से/ Assessee by : Shri Ashwani Kumar, C.A and
Shri Aditya Kumar, C.A
राजस्व की ओर से/ Revenue by : Smt. Kusum Bansal, CIT DR

सुनवाई की तारीख/ Date of Hearing : 01/10/2024
उदघोषणा की तारीख/ Date of Pronouncement : 29/11/2024

आदेश/Order

PER VIKRAM SINGH YADAV, A.M. :

This is an appeal filed by the Assessee against the order of the Ld. CIT(A)/NFAC Delhi dt. 13/03/2024 pertaining to Assessment Year 2015-16.

2. In the present appeal, the assessee has raised the following grounds of appeal:

"1. That order passed u/s 250 of the Income Tax Act, 1961 by the Learned Commissioner of Income Tax (Appeals), NFAC, Delhi is against law and facts on the file in as much as he was not justified to uphold the action of the Learned Assessing Officer in initiating proceedings u/s 147.

2. That the Learned CIT (Appeals), NFAC, was not justified to arbitrarily uphold the action of the Learned Assessing Officer in disallowing loss of Rs, 3,78,93,875/- incurred by the appellant in trading of currency derivative by holding the same to be allegedly fictitious.

3. That the order passed is bad in law in as much as it has been passed by violating the principles of natural justice as despite specific request for granting more time, the same was negated and the appeal was decided ex-parte."

3. Briefly the facts of the case are that the assessee originally filed its return of income on 30/11/2015 declaring total income of Rs. 54,81,240/-. The case of the assessee was taken up for scrutiny and thereafter, assessment proceedings were completed under section 143(3) vide order dt. 27/03/2017 accepting the returned income. Thereafter, basis information received from the Investigation Wing, the AO observed that the assessee has done transactions in equity / derivative trading and generated BSE Currency Derivative fictitious losses in equity / derivative trading via broker, M/s Master Capital services Ltd. As per AO, the assessee has claimed to generate losses of speculative trades amounting to Rs. 3,78,93,875/- which are actually fictitious profits and the objective of the assessee was to bring the unaccounted income into books without payment of tax. The AO accordingly stated that the income to the extent of Rs. 3,78,93,875/- has escaped assessment within the meaning of Section 147 of the Income Tax Act and the assessee has not truly and fully disclosed material facts necessary for the assessment thereby necessitating reopening under section 147 of the Act.

4. The reassessment proceedings u/s 147 were thereafter initiated and notice under section 148 was issued on 30/03/2021 after seeking approval from JCIT Range-1, Ludhiana in terms of Section 151 of the Act. In response to the notice under section 148 dt. 30/03/2021, the assessee filed return of income on 28/04/2021 declaring total income of Rs. 54,81,240/- thereafter notice under section 143(2) was issued alongwith copy of the reasons recorded which was supplied to the assessee. Thereafter, notice under section 142(1) was issued calling for the necessary information/ documentation from the assessee to which the assessee filed its submissions but not finding the same acceptable, the reassessment proceeding were completed vide order under section 147 r.w.s. 144B dt. 03/12/2021 wherein the loss of Rs. 3,78,93,875/- was disallowed holding

the same as bogus and artificial loss so claimed by the assessee and the assessed income was determined at Rs. 4,33,75,115/-.

5. Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A) who has since sustained the said disallowance and against the said findings and direction of the Ld. CIT(A), the assessee is in appeal before us.

6. During the course of hearing, the Ld. AR submitted that the very initiation of proceedings under Section 147 is vitiated on account of lack of approval from the competent authority under Section 151 of the Act. In this regard, our reference was drawn to the reasons so recorded by the AO before issuance of notice under section 148 of the Act and it was submitted that in the reasons so recorded, the AO has stated that "Since the case is within four years from the end of assessment year under consideration. Hence necessary sanction to issue notice u/s 148 has been obtained separately from the Joint Commissioner of Income Tax, Range-1, Ludhiana as per the provisions of section 151 of the Income-Tax Act, 1961." In this regard, it was submitted that the assessment year under consideration is A.Y. 2015-16 and four years from the end of the said assessment year ends on 31/03/2000 whereas the notice under Section 148 has been issued on 30/03/2021. It was submitted that since the notice so issued on 30/03/2021 has been issued after the expiry of four years from the end of the assessment year under consideration, in terms of provision of Section 151 of the Act, the competent authority to grant the sanction for issue of notice under Section 148 is Principal Commissioner or Chief Commissioner or Principal Chief Commissioner or Commissioner. However in the instant case, admittedly the approval has been obtained by the AO from and sanctioned by JCIT Range-1, Ludhiana. It was accordingly submitted that in view of the lack of approval from the competent authority, the very initiation of proceedings under section 147

are vitiated and are bad in law and therefore the subsequent proceedings also deserves to be quashed.

7. In this regard, our reference was drawn to the submissions dt. 28/02/2022 filed before the AO wherein the assessee has submitted that while issuing notice under section 148 dt. 30/03/2021 for A.Y. 2015-16, four years had already lapsed from the end of the relevant assessment year and as such the approval under section 151 was required from CIT/CCIT instead of from Joint/ Additional CIT and therefore the notice so issued under section 148 dt. 30/03/2021 is void ab-initio and liable to be dropped. It was submitted that the AO has failed to take cognisance of the same and proceeded with the reassessment proceedings.

8. It was further submitted that the assessee also placed reliance and drawn reference of the AO to the decision of the Hon'ble Orissa High Court in the case of Ambika Iron and Steel Pvt. Ltd. Vs. PCIT (2022) 326 CTR 871 (Ori) wherein it was held that since the reopening of the assessment was beyond four years, it had to have the prior approval of the CIT and since there was no such approval in the said case, the notice under section 148 was quashed. It was accordingly submitted before the AO that the impugned notice under section 148 dt. 30/03/2021 should also be dropped as the notice has been issued after obtaining approval from the JCIT whereas the Officer authorized to record the necessary satisfaction has to be the Chief Commissioner of Income Tax / Commissioner of Income Tax. It was submitted that the AO has failed to take cognizance of the said submission and proceeded with the reassessment proceeding.

9. It was submitted that the assessee thereafter took a specific ground before the Ld CIT(A) wherein the assessee has challenged very initiation of proceedings under section 147 as bad in law and in that regard, it was

submitted that the reasons provided to the appellant mentioned that the approval from the Ld. JCIT has been obtained separately which should have been obtained from the Ld. Pr. CIT as the time for four years had elapsed and therefore the very initiation of the proceedings under section 148 were bad in law. It was submitted that the Ld. CIT(A) has also not given any findings in this regard and has gone ahead and sustained the disallowance so made by the AO.

10. It was submitted that it is now a settled law that lack of proper sanction from the competent authority will make the initiation of reassessment proceedings as bad in law and in this regard, reliance was placed on the decision of Hon'ble Allahabad High Court in case of Dr. Shashi Kant Garg Vs CIT (2006) 285 ITR 158, decision of Hon'ble Bombay High Court in case of CIT Vs. Smt. Suman Waman Chaudhary (2010) 321 ITR 495, decision of Hon'ble Orissa High Court in case of Ambika Iron and Steel Pvt. Ltd. Vs. PCIT & Ors (2022) 326 CTR 871 and Hon'ble Chattisgarh High Court in case of Maruti Clean Coal and Power Ltd. Vs. Asst. CIT (2018) 400 ITR 397.

11. The Ld. CIT/DR is heard who has relied on the reasons so recorded and the order so passed by the AO. Regarding sanction of the competent authority under section 151, the Ld. CIT DR submitted that it is not in dispute that the notice u/s 148 has been issued after the expiry of four years from the end of the impugned assessment year and as far as the authority which has granted the necessary sanction u/s 151, it was submitted that the assessment record needs to be examined to verify the particulars of the authority who has actually granted the necessary sanction.

12. In his rejoinder, the Ld. AR submitted that there is no dispute in this regard as the AO in the reasons so recorded has talked about getting the sanction from

JCIT, Range -1 Ludhiana. Further, he furnished and placed on record, a copy of the said approval under section 151 granted by the JCIT, Range-1, Ludhiana dt. 30/03/2021 and it was submitted that in view of the same, there doesn't remain any dispute that the approval under section 151 has been granted by the JCIT Range-1, Ludhiana and in view of the same, the very initiation of proceedings under Section 147 is vitiated on account of lack of approval from the competent authority under Section 151 of the Act.

13. We have heard the rival contentions and perused the material available on the record. The relevant provisions which are under consideration are contained in Section 151 of the Act. The said provisions have since been substituted by Finance Act, 2021 w.e.f. 01/04/2021. In the instant case, the notice under section 148 was issued on 30/03/2021 and therefore, the relevant provision, prior to its substitution by the Finance Act, 2021, as applicable, reads as under:

"151. Sanction for issue of notice. (1) No notice shall be issued under section 148 by an Assessing Officer, after the expiry of a period of four years from the end of the relevant assessment year, unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice.

(2) In a case other than a case falling under sub-section (1), no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of Joint Commissioner, unless the Joint Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.

(3) For the purposes of sub-section (1) and sub-section (2), the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner or the Joint Commissioner, as the case may be, being satisfied on the reasons recorded by the Assessing Officer about fitness of a case for the issue of notice under section 148, need not issue such notice himself."

14. On perusal of sub-section (1) of Section 151, it provides that no notice shall be issued under section 148 by the AO after the expiry of a period of four years from the end of the relevant assessment year unless the PCCIT or CCIT or Pr. CIT or Commissioner is satisfied with the reasons recorded by the AO that it is a fit case for issue of notice under section 148 of the Act. Sub -section (2) of Section 151 proves that in a case other than the case falling under Sub-Section (1), no

notice shall be issued under section 148 by the AO, who is below the rank of JCIT unless the JCIT is satisfied with the reasons recorded by such AO that it is a fit case for issue of such notice.

15. In the instant case, provision of sub-section (1) of Section 151 are applicable as the notice has been issued on 30/03/2021 after the expiry of period of four years from end of the relevant assessment year 2015-16 which expires on 31/03/2020, therefore, in such a case, the competent authority to grant the sanction u/s 151 is PCCIT, CCIT, Pr.CIT or Commissioner.

16. In the instant case, it is an admitted and undisputed fact that the AO has sought sanction for issue of notice from the JCIT vide proposal dt. 30/03/2021 enclosing copy of the reasons so recorded and the approval has been granted by the JCIT Range-1, Ludhiana stating that she was satisfied with the reasons recorded by the AO that it is a fit case for issuance of notice u/s 148 of the Act on the same date vide DIN & Doc No. ITBA/AST/S/118/2020-21/1031915722(1) dt. 30/03/2021. We therefore find that the approval from the competent authority as so prescribed before the issue of notice under section 148 has not been obtained in the instant case and therefore, the very initiation of proceeding under section 147 stands vitiated.

17. In this regard, we refer to the decision of the Hon'ble Allahabad High Court in case of **Dr. Shashi Kant Garg** (*supra*) wherein it was held that where under the provisions of the Act, an authority is required to exercise powers or to do an act in a particular manner, then that power has to be exercised and the act has to be performed in that manner alone and not in any other manner. It was further held that where the assessment has been made under section 143(3) or under 147 and the proceedings for reassessment are to be initiated after period of four years, then the notice can be issued only after the Chief Commissioner or

Commissioner, as the case may be, has recorded his satisfaction for issuance of notice as provided under the proviso to sub section (1) of Section 151. It was held that it is a well settled position that a notice issued without obtaining prior sanction of the authority mentioned in the provision of Section 151, whether it is the proviso to sub section (1) or sub section (2) would be invalid and the entire proceeding taken in pursuance thereof is liable to be quashed as the same would be without jurisdiction. It was accordingly held in the said case that there is no dispute between the parties that the impugned notices dt. 12/09/2000 has been issued without obtaining the prior sanction of the Chief Commissioner or the Commissioner of Income Tax which was obligatory on the part of the AO as in all these cases the assessment / reassessment have been completed under section 143(3) or 147 and the notice has been issued much after the expiry of period of four years from the end of the relevant assessment year and therefore the notice were held to be invalid and were set aside. In the instant case as well, we find that the notice has been issued on 30/03/2021 after the expiry of the period of four years from the end of the relevant assessment year 2015-16 without obtaining the prior sanction of the PCCIT or CCIT or Pr. CIT or CIT, therefore the legal proposition so laid down in this case squarely applies in the facts of the present case and the notice so issued without sanction of the competent authority is clearly invalid and deserve to be set-aside.

18. Similarly, in case of **East India Hotels Ltd.** (*Supra*), the Hon'ble Calcutta High Court has held that the law is quite clear that where the notice to be issued after expiry of four years then the Chief Commissioner or the Commissioner of Income Tax must be satisfied with the reasons recorded by the AO that it is a fit case for reopening. Therefore, the satisfaction of the Chief Commissioner or the Commissioner is a *sine- qua- non* before issuance of a notice under section 148 by the AO. It was held that the AO may be of the rank of an Income Tax Officer or the Assistant Commissioner or the Deputy Commissioner, but when such

notice is to be issued after the expiry of four years after the end of the relevant assessment year, the sanction of the Chief Commissioner or the Commissioner is a pre- condition and it was accordingly held in the said case that the notice issued under section 148 beyond four years after the end of the relevant assessment year is bad in law in as much as the sanction of the Chief Commissioner or the Commissioner was not obtained before issuance of the notice.

19. Similar legal proposition has been laid down by the Hon'ble Orissa High Court in case of **Ambika Iron and Steel Pvt. Ltd.** (*supra*). Similarly, in case of **Maruti Clean Coal and Power Ltd.** (*supra*), the Hon'ble Chhattisgarh High Court referring to the provisions of Section 151 states that the said provision specifically deals with the Chief Commissioner or the Commissioner to be satisfied on the reasons recorded by the AO for issuance of a notice after the expiry of four years from the end of the relevant assessment year and there can be no dispute as regards the requirement of the Act to be strictly complied with and in the absence of the non-compliance of the statutory requirement as so required for issuance of a notice under section 148, particularly when it is being issued beyond the period of four years, then the notice and the proceedings initiated stands vitiated for want of specific sanction as is required under the proviso of Section 151(1) of the Act.

20. In light of aforesaid discussion and in the entirety of the facts and circumstances of the case, in the instant case, given that the notice under section 148 has been issued after expiry of four years from the end of the relevant assessment year, the very initiation of the proceeding stands vitiated for want of specific sanction from the competent authority as so required under sub section (1) of Section 151 of the Act. In view of the same, we hereby set aside

the notice under section 148 of the Act. In the result, ground no. 1 of the assessee's appeal is allowed.

21. In view of the aforesaid, where we have set aside the notice under section 148, the other ground raised by the assessee on the merits of the case has become academic in nature and the same is dismissed as infructuous.

22. Ground no. 3 was not pressed during the course of hearing and the same is hereby dismissed as not pressed.

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

Order pronounced in the open Court on 29/11/2024

Sd/-
परेश म. जोशी
(PARESH M. JOSHI)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

AG

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar