

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH-C : NEW DELHI

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER

ITA No.3720/Del/2024
Assessment Year : 2013-14

Ms. Kavita Sharma,
15/103, Vasundhara,
Ghaziabad – 201 012.
PAN : AVJPS8783J.
(Appellant)

Vs. Income Tax Officer,
Ward-2(1)(3),
Ghaziabad.

(Respondent)

Appellant by : Shri Salil Kapoor, Ms. Ananya Kapoor,
Shri Tarun Chanana and Shri Utkarsh
Gupta, Advocates.
Respondent by : Shri Om Parkash, Senior DR.

Date of hearing : 03.12.2024
Date of pronouncement : 10.12.2024

ORDER

Per Bench :

This appeal by the assessee is arising out of the order of learned CIT(A), NFAC in appeal No. NFAC/2012-13/10151684, order dated 20th June, 2024. The assessment was completed by the Assessing Officer, NFAC for the assessment year 2013-14 vide his order dated 28th March, 2022.

2. The only issue in this appeal of the assessee is as regards the order of learned CIT(A) in confirming the action of the Assessing Officer in holding the notice issued under Section 148 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') as legal and consequently framing assessment under Section 147 read with Section 144B of the Act.

3. We have heard both the sides and perused the facts and circumstances of the case. The brief facts are that the assessee filed its original return of income for the relevant assessment year 2013-14 on 14th February, 2014. Subsequently, information was received from Directorate of Income Tax (System) being a potential case for escapement of income and

accordingly, the assessment was reopened after recording reasons and notice under Section 148 of the Act was issued dated 31st March, 2021. The Assessing Officer noted this fact that the notice under Section 148 of the Act dated 31st March, 2021 was obtained after approval of jurisdictional authority under Section 151 of the Act. The relevant finding of the Assessing Officer in paragraph 2 reads as under:-

“2. In this case information has been received from the Directorate of Income Tax (System), pushed on the Insight Portal as “potential case” for escapement of income. Accordingly, reasons for reopening was recorded and notice u/s 148 of the Act dated 31.03.2021 was issued after obtaining the approval of the Jurisdictional authorities as per section 151 of the Act and the same was served upon the assessee.....”

4. Now, before us, learned counsel for the assessee contended that the authorities prescribed for giving approval for issuance of notice under Section 148 of the Act are mentioned in CBDT Instruction F.No.225/40/2021/ITA-II dated 12th March, 2021. Learned Counsel pointed out paragraph 1 clause (c) of the Instruction and the same reads as under :-

“1. With reference to CBDT’s Instruction dated 04.03.2021 on the above-mentioned subject, it has been decided to clarify as under:

(a)
(b)

(c) With respect to the condition at Point no.1(v), that cases are to be considered as potential cases for issue of notice u/s 148 of the Act ‘with the approval of CCIT concerned’, it is clarified that the CCIT shall call for the list of the potential cases along with details and evidences from the Subordinate Authorities and shall, after careful examination, suggest to the A.O., the potential cases are to be taken for consideration for action u/s 148 of the Act.”

5. Learned Counsel then pointed out from Instruction F.No.225/40/2021/ITA-II dated 4th March, 2021 that the assessee’s case falls under Clause 1(v) of the Instruction, which reads as under :-

“1. The Central Board of Direct Taxes (Board), in exercise of its powers u/s 119 of the Income-tax Act, 1961 (Act), with an

objective of streamlining the process of selection of cases for issue of notices u/s 148 of the Act, hereby directs that the following categories of cases be considered as 'potential cases' for taking action u/s 148 of the Act by 31.03.2021 for the A.Y. 2013-14 to A.Y. 2017-18 by the Jurisdictional Assessing Officer (JAO):

- i.*
- ii.*
- iii.*
- iv.*
- v. Cases of information received from any Income-tax authority requiring action u/s 148 of the Act with the approval of Chief Commissioner of Income Tax concerned."*

6. Learned Counsel then took us through the relevant notice under Section 148 dated 31st March, 2021, which is enclosed in assessee's paper book at page 1 wherein in the notice itself, the Assessing Officer recorded that necessary satisfaction of PCIT, Ghaziabad is obtained. He also took us through the relevant approval under Section 151 of the Act and the approving authority is mentioned as PCIT/CIT and finally one Officer named Amitav, PCIT, Ghaziabad has given approval on 30th March, 2021. The entire controversy now is whether the PCIT or CCIT has to give approval for issuance of notice under Section 148. The issuance of notice under Section 148 could have been issued as per the authorities under Section 151 of the Act. The CBDT, vide instruction F.No.225/40/2021/ITA-II dated 4th March, 2021 has categorically stated that the cases fall under clause 1(v) i.e., cases of information received from any income tax authority requiring action under Section 148 of the Act with the approval of Chief Commissioner of Income Tax concerned can be issued. Further clarification was made on 12th March, 2021 wherein it was clarified vide instruction F.No.225/40/2021/ITA-II that the notices under Section 148 of the Act can be issued with the approval of CCIT concerned only. This clarification clearly proves that the approving authority under Section 151 of the Act for the purpose of approval of notice under Section 148 of the Act is CCIT and not PCIT. Here, in the present case, we notice that the PCIT has issued the notice. When these facts were confronted to the learned Senior DR, he could not controvert the above facts. Since the approval is bad in law, the consequent action i.e., issuance of notice itself is bad in law. Once the notice under Section 148 is bad in law, the consequent assessment cannot stand. Hence, we quash the reopening under Section 148

and consequently, the assessment order. We reverse the order of learned CIT(A) and that of the Assessing Officer and the appeal of the assessee is allowed.

7. In the result, the appeal of the assessee is allowed.

Above decision was pronounced in the open Court on 10-12-2024.

Sd/-

**(NAVEEN CHANDRA)
ACCOUNTANT MEMBER**

Sd/-

**(MAHAVIR SINGH)
VICE PRESIDENT**

VK. 10-12-2024

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar