

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

**BEFORE SHRI S. RIFAUH RAHMAN, ACCOUNTANT MEMBER
and
SHRI SUDHIR PAREEK, JUDICIALMEMBER**

**ITA No.2800/DEL/2019
(Assessment Year : 2006-07)**

**ITA No.3366/DEL/2019
(Assessment Year : 2006-07)**

Behl Promoters & Realtors Pvt. Ltd.,
B-29, Pamposh Enclave,
New Delhi – 110 048.

vs.

DCIT,
Central Circle 15,
New Delhi.

(PAN: AACCB4739J)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Lalit Mohan, CA

REVENUE BY : Shri Javed Akhtar, CIT DR

Date of Hearing : 26.09.2024

Date of Order : 18.12.2024

ORDER

PER S. RIFAUH RAHMAN, AM :

1. The assessee has filed quantum appeal being ITA No.2800/Del/2019 against the order of ld. Commissioner of Income-tax (Appeals)-XXVI, New Delhi (hereinafter referred to 'Ld. CIT (A)') dated 29.01.2019 and penalty appeal under section 271(1)(c) of the Income-tax Act, 1961 (for short 'the Act) being ITA No.3366/Del/2019 against the order of ld. CIT (A)-XXVI, New

Delhi dated 19.03.2018 for Assessment Year 2006-07.

2. The assessee has filed concise grounds of appeal and additional grounds of appeal.
3. At the time of hearing, ld. AR for the assessee submitted that assessee has filed additional ground of appeal under Rule 11 of the Income Tax (Appellate Tribunal) Rules and it is the jurisdictional issue and the same is reproduced below :-

“On the facts and circumstances of the case the initiation of proceedings by the AO u/s 147 instead of 153C is bad in law in view of the receipt judgment of Hon’ble Apex Court in the case of ITO vs. Vikram Sujeet Kumar, Civil appeal number 911 of 2022.”

Accordingly, he prayed that the same may be admitted for adjudication by relying on the decision of NTPC Limited vs. CIT 229 ITR 383 (SC).

4. On the other hand, ld. DR for the Revenue has no objection of admitting the additional ground of appeal being a jurisdictional issue.
5. Accordingly we proceeded to admit the additional grounds of appeal being a jurisdictional issue.
6. At the time of hearing, ld. AR for the assessee brought to our notice page 3 of the paper book I, which is the approval granted by the office of CIT(A), Central II, New Delhi dated 21.03.2013. It was submitted that the above said approval was communicated to the AO by the ITO, Hqs. Technical.

Further he brought to our notice page 6 of the paper book-I, which is the proforma for obtaining approval of CIT and he brought to our notice page 2 of the above said form and as per the reasons recorded therein the operation was mentioned as “*on the basis of examining the seized material seized in the case of Shri S.K. Jain*” and it was gathered by the Investigation Wing that M/s. Behl Promoters & Realtors Pvt. Ltd. had obtained an accommodation entry of Rs.50 lakhs during the period relevant to AY 2006-07 from S.K. Jain who is an accommodating entry provider. He submitted that the copy given to the assessee does not carry the sign of Ld.CIT(A). Further he brought to our notice page 196 of the paper book-4 as per which jurisdiction of the assessee was changed by passing of order u/s 127 of the Act dated 22.03.2013 and the above said information was collected by the assessee through RTI and further submitted that the charge was transferred from CC-21 to CC-15. Further by reference to page 6 of the paper book, based on the reasons recorded by the AO, the case of the assessee is reopened on the basis of search conducted in the case of S.K. Jain. Therefore, the AO should have initiated the revision proceedings u/s 153C instead of section 147 of the Act. In this regard, he relied on the decision of Warm Forgings Pvt. Ltd. vs. DCIT in ITA No.1148/Del/2019 dated 03.04.2024 and Sambhavnath Infrabuild and Farms Pvt. Ltd. vs. ACIT in

ITA No.1897/Mum/2020 dated 06.01.2022.

7. On the other hand, Id. DR for the Revenue objected to the submissions of the Id. AR for the assessee and submitted that there is no incriminating material found in the case of S.K. Jain, therefore, the revision proceedings cannot be initiated in the case of the assessee and therefore, the initiation of reopening of assessment is proper. He submitted that grounds no.8 & 9 raised by the assessee before the Id. CIT (A) and Id. CIT (A) has dealt with this issue. With regard to approval granted u/s 151 of the Act, he submitted that there is no material available on record of the AO to substantiate anything further. He once again reiterated that the proceedings were initiated properly and with proper authority.
8. Considered the rival submissions and material placed on record. With regard to additional ground raised by the assessee, after careful consideration of the material available on record, we observed that the material found in the search proceedings are not directly linked to the assessee, therefore, the relevant materials are not forwarded to the AO of the assessee however, certain materials found which has reference to the assessee a possibility of involvement in taking accommodation entries from the searched person. Therefore, the issues were referred to the AO and he has taken approval to initiate to reopen the assessment after recording the satisfaction and due approvals. Therefore, we do not agree with the submissions of the assessee accordingly, the additional ground raised by the assessee are dismissed.
- 8.1 Assessee also raised grounds of appeal in ITA No.3366/Del/2019 which is relating to penalty levied u/s 271(1)(c) of the Act, as we have adjudicated the issue of approval granted in ground no.2 of the quantum appeal elsewhere, as per which assessment order

passed u/s 147 of the Act is bad in law considering the fact that the approval granted u/s 151 is bad in law as discussed and adjudicated at para no.10 below. Accordingly, the quantum appeal is itself bad in law and consequently, penalty imposed by the AO deserves to be quashed. In the result, the appeal being ITA No.3366/Del/2019 filed by the assessee is allowed,

9. Coming to the ground no 2 raised by the assessee that the AO has not followed the due process to reopen the assessment as per the law and laid down law. It was submitted and brought to our notice that the AO has submitted the proforma for obtaining approval of the CIT under section 151 of the Act for initiating proceedings u/s 147 of the Act, as per the above approval form, there is no approval granted by CIT, Central – II, New Delhi, for the sake of brevity, it is reproduced below:

“PROFORMA FOR OBTAINING APPROVAL OF THE COMMISSIONER OF INCOME TAX/ADDL. C.I.T.U/SEC. 151(2) FOR INITIATING PROCEEDINGS U/S 147/148

<i>01</i>	<i>Name & Address of the Assessee</i>	<i>M/s Behl Promoters & Realtors Pvt Ltd B-29, Pampush Enclave, New Delhi</i>
<i>02</i>	<i>PAN/GIR No.</i>	<i>AACCB4739J</i>
<i>03</i>	<i>Status</i>	<i>Company</i>
<i>04</i>	<i>District/Ward/Range</i>	<i>Central circle-21</i>
<i>05</i>	<i>Assessment year in respect of which it is proposed to issue notice u/s 148</i>	<i>2006-07</i>

06	<i>The quantum of income which has escaped assessment</i>	<i>Rs. 50,00,000/-</i>
07	<i>Whether the provisions of section 147(b) are applicable or both the sections are applicable/</i>	<i>Yes provisions of Section 147 are applicable.</i>
08	<i>Whether the assessment is proposed to be made for first time. If the reply is in the affirmation please state:</i>	<i>No</i>
a)	<i>Whether any voluntary returns had already been filed:</i>	<i>-</i>
b)	<i>If so, the date of filing the said return</i>	<i>-</i>
09	<i>If the answer to item 8 is in the negative please state:</i>	
a)	<i>The income originally assessed</i>	<i>Rs. 1,58,630/- u/s 143(3) on 31.12.2007.</i>
b)	<i>Whether it is a case of under assessment assessment at too low rate assessment which has been made the subject of excessive relief of allowing of excessive loss or depreciation.</i>	<i>Under assessment.</i>
10	<i>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.</i>	<i>Yes</i>

11	<i>Reasons for the belief that income has escaped assessment</i>	
12	<i>Authority competent to reopen the case</i>	<i>CIT/CCIT</i>

Original assessment in this case was completed u/s 143(3) of the IT Act on 31.12.2007 Rs. 1,58,630/-. Subsequently the Addl. Director of Income Tax (Inv.), Unit - VI, New Delhi, vide his letter F. No. Addl. DIT (Inv.)/Unit-VI/2012-13/262 dated 14.03.2013 has informed this office that in the case of Shri SK Jain a search and seizure operation was carried out. On the basis of examining the seized material seized in the case of Shri S K Jain it was gathered by the investigation wing that M/s Behl Promoters & Realtors Pvt Ltd had obtained an accommodation entry of Rs. 50,00,000/- during the period relevant to A.Y. 2006-07 from Shri SK Jain who is an accommodating entry provider. Since M/s Behl Promoters & Realtors Pvt Ltd had invested his own money in the guise of accommodating entry from Shri S K Jain Rs. 50,00,000/- is the unexplained investment in the hands of M/s Behl Promoters & Realtors Pvt Ltd. in these circumstances I have reason to believe that the income of Rs. 50,00,000/- has escaped assessment for the A.Y. 2006-07 by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment of the said company for A.Y. 2006-07.

3. It is a case where assessment was completed u/s 143(3) and four year, but not more than 6 years have elapsed from the end of the relevant assessment year i.e. 2006-07. The income chargeable to tax which has escaped assessment is Rs.50,00,000/- which is more than Rs. 1 lakh. The A.O. in this case is DCIT and so CIT/CCIT is empowered to accord necessary approval u/s 147 to re-open the assessment and also u/s 151(1) r.w. section 149(1)(b) to issue notice u/s 148 of the I.T. Act.

3. Keeping in view the above facts, it is requested that necessary approval u/s 147 of the I.T. Act to reopen the assessment u/s 151(1) of the I.T. Act and also to issue notice u/s 148 of the I.T. Act may kindly be accorded in order to tax the income which has escaped assessment for A.Y. 2006-07.

(B.L. Meena)

*Dy. Commissioner of Income Tax
Central Circle-21, New Delhi.*

13. Whether the Commissioner is satisfied on the reasons recorded by the ITO/AC/that it is a fit case for the issue of a notice u/s 148.

*(A D Mehrotra)
Commissioner of Income Tax
Central-II, New Delhi*

10. From the above it is clear that the approval was not granted by the Ld CIT but it was communicated to the AO by the ITO Head quarters by a letter dated 21.03.2013. about the approval granted by the approving authority. We gave several opportunities to the Ld DR to bring on record the approved copy of the approval form, but it was communicated to us that the relevant assessment records were not traceable and the AO has communicated that the approval form also cannot be traced at the head quarters. It clearly shows that the Ld CIT has granted the approval orally without following the due process of law and it is not demonstrated before us that the approval was not granted mechanically. Merely communicating thru the head quarters as approved does not prove that the approving authority was properly approved the proceedings by applying the mind on the issue under consideration. Therefore, we are inclined to treat the above approval process as mechanical approval and hence the initiation of the reopening is bad in law and against

the procedure laid down. Hence the same is treated as bad in law and accordingly the reassessment also found to be bad in law. Accordingly the ground raised by the assessee is allowed in this regard.

11. The other grounds raised by the assessee on the other issues and on merit are not adjudicated at this stage as we already adjudicated the ground no 2 in favor of the assessee.
12. In the result, the appeal filed by the assessee are partly allowed.

Order pronounced in the open court on this 18th day of December, 2024.

**Sd/-
(SUDHIR PAREEK)
JUDICIAL MEMBER**

**sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

**Dated : 18.12.2024
TS**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)-26, New Delhi.
5. DR: ITAT

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**