

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “F” BENCH: NEW DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER &
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.642/Del/2023

[Assessment Year : 2012-13]

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| Prem Pal Bhayana L-20, Udyog Vihar, Rohtak Road, New Delhi-110087. PAN-AEQPB1829Q | vs | ITO, Ward-44(7), New Delhi. |
| APPELLANT | | RESPONDENT |
| Appellant by | Shri Ved Jain, Adv. & Shri Aman Garg, CA | |
| Respondent by | Ms. Jyoti Verma, Sr. DR | |
| Date of Hearing | 25.09.2024 | |
| Date of Pronouncement | 20.12.2024 | |

ORDER

PER PRADIP KUMAR KEDIA, AM :

The instant appeal has been filed at the instance of the assessee seeking to assail the First Appellate order dated 11.01.2023 passed by Ld. Commissioner of Income Tax (A), National Faceless Appeal Centre (“NFAC”), Delhi [“Ld.CIT(A)”] u/s 250(6) of the Income Tax Act, 1961 [“the Act”] arising from the assessment order dated 21.12.2019 passed u/s 143(3) r.w.s 147 of the Act pertaining to assessment year 2012-13.

2. As per the grounds of appeal, the assessee had raised legal contentions towards jurisdictional defect in assumption of jurisdiction under s. 147 of the Act as well as additions on merits.

3. When the matter was called for hearing, the Ld. Counsel for the assessee straightway adverted to the reasons recorded and approval granted under s. 151 thereon which is the edifice for issuance of notice under s. 148 of the Act and assumption of jurisdiction under s. 147 of the Act.

4. The reasons recorded and approval granted thereon are reproduced as under:-

“Information in this case received from the Investigation Wing of the Department that Search and seizure action carried out in the case of ASL and other group on 17.12.2013. During the post search investigation and on the base of document seized during search, it was found that the cash amounting to Rs. 10 lakhs was received by the assessee during F.Y. 2011-12 from Sh. S.K. Saluja.

Vide this office letter dated 12.09.2018 & 12.03.2018, assessee was requested to file details and in response assessee filed part details. Again, opportunity of being heard is given to the assessee vide letter dated 08.02.2019 as per the principles of natural justice to justify the stand of the assessee. However, no response have been filed by the assessee.

In view of the information received and the fact that assessee has not filed response to the letter dated 08.02.2019, I have reasons to believe that the assessee has not disclosed his income amounting to more than Rs. 1 Lakh earned during the F.Y.2013-14 relevant to A.Y.2014-15 and this amount chargeable to tax has escaped assessment. Therefore, this case is fit for issuing notice u/s 148 of the Income Tax Act, 1961.

Keeping in view the above facts, it is requested that necessary approval u/s 151(1) of Income Tax Act, 1961, may kindly be accorded for initiating proceedings u/s 147 of Act in order to assess the income which had escaped assessment.”

Sd/-
(S.M.Chuadhary)
Ward-41(2), New Delhi.

5. The approval of the Addl. Commissioner/Pr. Commissioner of Income Tax is extracted hereunder:-

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| 1. | Name and address of the assessee | Sh.Prem Pal Bhayana 47, Ambika Vihar, New Delhi-110087. |
| 2. | PAN/ GIR No. | AEQPB1829Q |
| 3. | Status | Individual |
| 4. | District/ Circle | Ward-41(2), New Delhi |
| 5. | Assessment year in respect of which is it proposed to issue notice u/s 148 | A.Y.2012-13 |
| 6. | The quantum of income which has escaped assessment | Rs.10,00,000/-[Subjected to variation in assessment proceedings] |
| 7. | Whether the provisions of section 147 applicable | Yes |
| 8. | Whether the assessment is proposed to be made for the first time. If the reply is in affirmative, please state: 1.Whether any voluntary return has already been filed; and 2.If so, the date of filing of return | Yes Yes 30.08.2012 |

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| 9. | <i>If the answer to item no.8 is in the negative, please state a)The income originally assessed b)Whether it is a case of under assessment, assessment at too low rate, assessment which has been made the subject of excessive loss or depreciation</i> | N.A. |
| 10. | <i>Whether the provisions of section 150(1) are applicable. If the reply is in affirmative, the relevant facts may be stated against item no 11 and it may also be brought out that provisions of section 150(2) would not stand in the way of initiating proceedings u/s 147</i> | N.A. |
| 11. | <i>Reasons for the belief that the income has escaped assessment</i> | As per Annexure "A" |
| 12. | <i>Whether the Pr.CIT is satisfied on the reasons recorded by the AO that it is a fit case for the issue of notice u/s 148</i> <i>Date-30.03.2019</i> | <i>I have gone through the reasons recorded by the A.O. duly forwarded by the JCIT. On perusal of the facts and reasons, I am satisfied that this is a fit case for issue of notice u/s 148 of the Income Tax Act, 1961.</i> <i>Sd/- (Govind Lal) Pr. Commissioner of Income Tax, Delhi-14, New Delhi.</i> |

6. With reference to the reasons recorded, the Ld. Counsel for the assessee stated that the reasons recorded under s. 148((2) of the Act which was approved under s. 151 of the Act by the Ld.Pr.CIT suffers from multiple defects. It was pointed out that from the reasons recorded, it can be glaringly seen that the AO has formed reasons to believe qua FY 2013-14 relevant to AY 2014-15 towards escapement of chargeable income. Thus, the reasons recorded cannot be used for AY 2012-13 in question. The whole action based on such belief thus is a damp squib.

7. The Ld. Counsel for the assessee next submitted that the Ld.Pr.CIT has recorded his satisfaction that it is a fit case for issuance of notice without application of mind. As can be seen, the reasons recorded do not reveal nature of information which may provide the basis for re-opening the assessment in

an objective manner. Despite such inherently vague and non-descript reasons, the Ld.Pr. CIT has merely recorded his satisfaction. Such satisfaction has no standing in the eyes of law. *Secondly*, apart from vague and non-descript reasons showing belief for a different AY which was accorded approval without application of mind, correct jurisdiction available in the instant case is 153C of the Act. The assessee has wrongly taken recourse to section 147 of the Act. *Thirdly*, the Officer recorded reasons under s. 148 of the Act is different from Officer issuing notice under s. 148 of the Act which is contrary to the ratio of judgement in the case of *HYNOUP Food and Oil Industries Ltd. vs ACIT 2008 (7) TMI 192-Gujarat High Court dated 17.07.2008*.

8. On merits, the Ld. Counsel for the assessee submitted that the assessee has repeatedly wrote the letter to the AO to contend that no sale transactions of any property had taken place during the FY 2011-12 and therefore, allegation of cash received on sale of property from Shri S.K.Saluja is evidently without any foundation. The AO has not confronted Shri S.K.Saluja to the assessee for obtaining the correct facts. Ld. Counsel for the assessee thus sought relief as appealed against.

9. The Ld.Sr.DR for the Revenue relied upon the action of the lower authorities.

10. We have carefully considered the rival submissions and perused the assessment order and first appellate order.

10.1. The jurisdiction assumed under s. 147 of the Act is in controversy. As pointed out on behalf of the assessee, the 'reasons to believe' contemplated under s. 147 has been held with reference to FY 2013-14 relevant to AY 2014-15 whereas the AY in consideration is AY 2012-13. Thus the entire foundation of holding the reason to believe has crumbled at the threshold. Besides, it is also noticed that the AO has made reference to certain information received from Investigation Wing based on search and seizure action carried out in ASL Group. However, the reference made to such information is non-descript and cryptic. The reasons recorded are shorn of any particulars of information whatsoever. The vague reasons cannot be the basis for assumption of jurisdiction under s. 147 of the Act as held in long line of precedents including;

- * *PCIT vs Meenakshi Overseas Pvt.Ltd. 2017 (5) TMI 1428-Delhi High Court dated 26.05.2017;*
- * *Hindustan Lever Ltd. vs RB Wadkar, ACIT & Others (No.1), 2004 (2) TMI 41-Bombay high Court dated 25.02.2004;*
- * *M/s. Ingram Micro (India) Exports Pte. Ltd. vs DCIT (International taxation)-2(2)(1) & Others, 2017 (1) TMI 854-Bombay High Court dated 04.01.2017; and*
- * *M/s. Paltech Cooling Towers & Equip. Ltd vs DCIT, Circle-14(1), New Delhi, 2017 (4) TMI 820-ITAT, Delhi dated 17.04.2017.*

11. Furthermore, the approval granted based on such reasons is *devoid* of any objectivity and formation of reasons to believe by AO is in relation to a different AY. The Ld.Pr.CIT has granted approval under 151 of the Act based on such reasons apparently without application of mind. The approval under s. 151 of the Act so granted thus cannot be countenanced in law. The notice issued under s. 148 of the Act based on reasons and approval suffering from the vice of substantive defect is clearly *nonest*. Thus, the jurisdiction assumed is without meeting the pre-requisites stipulated under s. 147 of the Act. Hence the re-assessment order thus is bad in law. Consequently, the re-assessment order in question is quashed.

12. We thus do not consider it expedient to address ourselves on the merits of the additions as made in a *nonest* order.

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

Order pronounced in the open Court on 20th December, 2024.

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

** Amit Kumar **

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI