

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH - 'SMC' NEW DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA No. 3249/Del/2015  
ASSESSMENT YEAR : 2005-06

Shri Krishan Gopal Prop. M/s. Kay Pee Lock Industries C/o M/s. RRA TAXINDIA, D-28, South Extension Part-1, New Delhi – 110 049 PAN ADIPG062IN	Vs.	ITO Ward-39(1) New Delhi.
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by :	Dr. Rakesh Gupta & Shri Somil Aggarwal, Advocate
Department by:	Ms. Bedobani, Sr. DR
Date of Hearing	03/05/2017
Date of pronouncement	16 /05/2017

**Per BHAVNESH SAINI, Judicial Member**

**ORDER**

This appeal by assessee has been directed against the order of Ld. CIT(A) XX New Delhi dated 30<sup>th</sup> March, 2015 for asstt. year 2005-06. In the present appeal the assessee challenged the reopening of the assessment u/s 147 of the I.T. Act and addition made to capital gains by taking the sale consideration of the land at Rs. 40 lacs instead of actual sale consideration of Rs. 6 lacs.

2. Briefly the facts of the case are that assessee filed return of income declaring income of Rs. 61,288/-. The AO reopened the assessment u/s 148 of the I.T. Act. During the year, the assessee has claimed to have sold a plot situated at 65/69 New Rohtak road, New Delhi for a total consideration of Rs. 6 lacs. The said plot was purchased in the year 1991 and after indexation NIL capital gain was declared on the said transaction. The AO received information that the said plot was actually sold for Rs. 40 lacs whereas assessee has declared sale consideration of Rs. 6 lacs only. The AO noted that there is no denying the fact that department is having only photocopy of the bayana receipt. However the explanation of assessee is not acceptable because signatures of the assessee are similar on the bayana receipt and sale deed. The transaction is of the same date and signature of one of the witness is same on the bayana receipt and the sale deed. The local inquiries made by the inspector also revealed that the consideration in the transaction is around Rs. 40 lacs. The AO therefore taken the sale consideration of the property on Rs. 40 lacs for the purpose of capital gain and accordingly made the addition of Rs. 35,44,121/-.

3. The assessee challenged the reopening of the assessment before Ld. CIT(A) as well as addition on merit. The assessee contended that AO has not provided photo copy document of bayana receipt at the assessment stage. Same was also not confronted to the assessee. The local inquiry by the inspector was also not confronted to the assessee. It

was stated that reopening is wholly unjustified as well as addition on merit cannot be sustained. Ld. CIT(A) however dismissed the appeal of assessee.

4. I have considered rival submissions. It is well settled law that validity of the reassessment u/s 147/148 to be considered with reference to the reasons recorded by the AO. The assessee has filed copy of the reasons recorded u/s 147 of the I.T. Act at page 116 of the paper book. The same is reproduced as under :-

"Reasons for Action under section 147 of the I.T. Act, 1961 for the A.Y. 2005-06 in the case of Shri Krishan Gopal Prop. M/s. Kay Pee Lock Ind. 221 Teliwari, Delhi – 110 006.

**Date : 21.3.2012**

*The assessee filed a return of income on 2005 declaring total income of Rs. 61,288/-.*

*As per information received the assessee has entered into an agreement to sell a property bearing No. 65/59, New Rohtak Road for a consideration of Rs. 40,00,000/- whereas the sale deed for the said property was executed for Rs. 6,00,000/- therefore there is an escapement of capital gain of Rs. 34,00,000/- for the assessment year 2005-06.*

*This capital gain has been calculated with reference to Rs. 6,00,000/- as sale price instead of agreement value of Rs. 40,00,000/- is taken in the return of the assessee for the A.Y. 2005-06. Therefore, I have reason to belief that the assessee has escapement of capital gain amounting to Rs. 34,00,000/- which has not been disclosed in the turn of income and the provisions of section 147 of the Act are attracted in this case.*

*In the light of the above facts, proposal is sent to the JCIT, Range 39, New Delhi for according approval for issue of notice under section 148 of the I.T. Act, 1961 in this case.*

*Sd/-  
(Sobhana Rajan)  
Income-tax Officer,  
Ward 39 (1), New Delhi."*

5. The AO in the reasons merely mentioned that information has been received that assessee entered into an agreement to sale of property in question for a consideration of Rs. 40 lacs whereas in the sale deed Rs. 6 lacs have been mentioned . The approval of the AdCIT is obtained which is in proforma in which column No. 12, it is mentioned " I am satisfied". The AO has not mentioned any source of information in the reasons recorded. However in the assessment order, AO has mentioned that department is having only photocopy of the " bayana receipt" as is mentioned above. Ld. Counsel for assessee relied upon decision of the Punjab & Haryana High Court in the case of Surjit Rai vs. Prem Kr. Khera & amp; Other Punjab Law Reporter – Vol. Ex-1995(2) PLR P.40 (P&H) in which it was held that signature cannot be compared from the photocopy of the agreement. He has also relied upon decision of Delhi High Court in the case of Ms. Arati Bhargava vs. Kavi Kumar Bhargava 1991 (3) Civil Court Cases – P. 377 (Delhi High Court) in which it was held that "further documents sought to be produced was photo copy of original document and same cannot be admitted in evidence ". Ld. Counsel for assessee also relied upon the decision of the Supreme Court in the case of Moosa S Madha & Azam S. Madha vs. CIT (1973) 89 ITR 0065 (Supreme Court) in which it was held that photo copies have very little evidentiary value. He has also relied upon decision of Kerela High Court in the case of CIT vs. Smt. K.C. Agnes (2003) 262 ITR 354 in which it was held that "unless it is proved that the agreement was acted upon and unless the amount stated in the agreement was

paid for the sale, one can not come to the conclusion that the price mentioned in the sale deed is not correct. On the other hand Ld. DR submitted that on the basis of the photo copy of the receipt, prima facie case was made out for reopening of the assessment. Assessee did not raise objection to reassessment proceedings and that the photocopy of documents which is admissible as secondary evidence.

6. After considering rival submissions, it is clear that the revenue department was having only one photo copy of the bayana receipt and on that basis the reassessment of the assessee have been made. However in the reasons recorded, the AO has not explained the source of the information received for entering into an agreement to sell for a sum of Rs. 40 lacs and the AO has not verified the photo copy of the receipt before recording reasons and it is not clarified as to where is the original receipt and no persons mentioned in the photocopy receipt have been examined. Thus before recording the reasons for the reassessment, the AO did not verify the information so received for the purpose of reopening of the assessment. In absence of existence of any primary evidence, there is no question of considering the photo copy as secondary evidence. Thus the AO has not applied his mind to the photo copy of the receipt which has little evidentiary value. The AO therefore acted in haste and in mechanical manner to reopen the assessment. The reasons should have live link between the material placed on record and conclusion drawn by the AO before issuing the notice u/s 148 of the

Act. The AO is not competent person to compare the signature from the photocopy copy with the original signature on the sale deed. Thus it was a mere suspicion on the part of the AO that assessee received higher sale consideration. Therefore there cannot be a reason to believe with the AO to reopen assessment in the matter on vague information considering inadmissible document for forming the belief to reopen the assessment.

7. Ld. Counsel for assessee further submitted that since no specific material was available with the AO for reopening of the assessment therefore the AdCIT also granted approval for reopening of the assessment in a mechanical manner. He has not satisfied himself about the reopening of the assessment in accordance with law. He has also not applied his mind to the fact of the case that there were no material on record to justify reopening of the assessment. He has relied upon judgment of MP High Court in the case of CIT vs. S. Goyanka Lime and Chemicals Ltd. 231 taxman 73 in which it was held as under :

*" 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."*

8. The aforesaid judgment is confirmed by the Hon'ble Supreme Court by dismissing the SLP of the department in the matter of CIT vs.

S. Goyanka Lime & Chemical Ltd. 64 taxmann.com 313. Ld. Counsel for assessee also relied upon decision of the Delhi High Court in the case of Pr. CIT vs. M/s. N.C. Cables Ltd. in ITA No. 335/15 dated 11<sup>th</sup> January, 2017 in which in para 11 it was held as under :-

*"Section 151 of the Act clearly stipulates that the CIT(A), 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(A) has to record elaborate reasons for agreeing with the nothing 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."*

9. On the other hand Ld. DR submitted that Additional Commissioner has applied his mind to the fact of the case before granting approval to the reopening of the assessment.

10. Considering the facts of the case, it is clear that there was only a photo copy receipt which was made basis for reopening of the assessment which has no evidentiary value. Therefore AdCIT should have verify the facts and applied his mind before granting approval to the reopening of the assessment. He has merely quoted in Column 12 " I am satisfied" . It would be therefore clear from the fact of the case and on the basis of the aforesaid decisions relied upon by Ld. Counsel for assessee that the AdCIT has accorded his satisfaction in a mechanical way and as such the reopening of the assessment is wholly unjustified.

In view of the above discussion it is clear that reopening of the assessment in the matter is wholly unjustified.

11. In view of the above discussions I set aside the orders of authorities below and quash the reopening of assessment in the matter. Resultantly additions made in the reassessment order stand deleted. There is no need to decide the other contentions raised by Ld. Counsel for assessee on merits.

12. In the result appeal of assessee is allowed.

Pronounced in the Open Court.

Sd/-  
**( BHAVNESH SAINI )**  
**JUDICIAL MEMBER**

Dated: 16 /5/2017

**\*Veena\***

Copy forwarded to: -

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

TRUE COPY

By Order,

ASSISTANT REGISTRAR