

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH "D" NEW DELHI)
BEFORE SHRI I.C. SUDHIR AND SHRI L.P. SAHU

ITA No. 2430/Del/2015
Assessment Year: 2007-08

Rajat Shubra Chatterji,
C-502, NPSC Housing Society,
Sector-5, Dwarka,
New Delhi.
(PAN: AARPC5101F)
(Appellant)

vs.

ACIT,
Circle 37(1),
New Delhi.

(Respondent)

Assessee by: Shri PC Yadav, Adv.
Department by: Shri Rajesh Kumar Kedia, Sr. DR

Date of hearing : 02 .03.2016
Date of pronouncement: 20 :05.2016

ORDER

PER I.C. SUDHIR: JUDICIAL MEMBER

The assessee has questioned first appellate order on the following grounds:

1. That Learned CIT(Appeals) has erred on facts and in circumstances of the case and in law, in confirming the action of the A.O. of reopening of assessment under sec. 148 of the Income-tax Act, 1961.
2. That Learned CIT(Appeals) has erred on the facts and in the circumstances of the case and in law, in confirming the addition of Rs.2,00,000 (representing 1000 sweat equity shares of Rs.10 each issued at premium of Rs.190 each);

3. That the Learned CIT(Appeals) has erred on the facts and in the circumstances of the case and in law, in confirming that shares issued as “sweat equity shares” is income of assessee under section 28(iv).
 4. That the Learned CIT(Appeals) has erred on the facts and in the circumstances of the case and in law in confirming the value of shares issued as “sweat equity shares” at Rs.200 per share.
 5. That the Learned CIT(Appeals) has erred on the facts and in the circumstances of the case and in law in confirming that the conditional issue of shares is a perquisite.
2. Heard and considered the arguments advanced by the parties in view of orders of the authorities below, material available on record and the decisions relied upon.
3. The facts in brief are that the assessee is a doctor derived income from business and profession from salary and other sources. During the year return of income filed by him on 25.10.2007 was processed under section 143(1) of the Act. The Assessing Officer on the basis of information received from the Investigation Wing of the Department initiated reopening proceedings under sec. 147 of the Act after recording reasons to belief that there was escapement of assessment of taxable income. The Assessing Officer had received information that a search & seizure operation under

sec. 132 of the Act was carried out by the Director of Income-tax (Inv.) on 06.09.2011 on the Rockland Group of Cases. After going through the information received as well as the documents available in the office of the Assessing Officer, the Assessing Officer found that Rockland Hospital Ltd. (in short 'RHL') had issued sweat equity shares without any amount being paid as consideration to the directors/employees/professionals. In this chain, the assessee had also received sweat equity shares without any consideration. The Assessing Officer initiated the reassessment proceedings on 8.7.2013 and in response to the notice issued under sec. 148, the assessee filed his reply on 11.3.2013. Thereafter, the assessment was framed under sec. 147/143(3) of the Act and addition of Rs.2 lacs was made under sec. 28(iv) of the Act on the basis that 1000 shares of face value of Rs.10 and premium of Rs. 190 were issued to the assessee. The Learned CIT(Appeals) has upheld the same against which the assessee is in appeal on the above ground.

4. Ground No.1: In this ground, the assessee has questioned validity of reopening of the assessment. In support of this ground, the Learned AR submitted that the Assessing Officer has assumed jurisdiction under sec. 147 of the Act on the basis of facts which are not in existence on the date when

the reasons for assuming jurisdiction were recorded. He submitted that sweat equity shares is defined under sec. 79A of the Companies Act, as per which “sweat equity shares” means shares issued by a company to its employees or directors at a discount or for a consideration other than cash for providing knowhow or making available rights in the nature of intellectual property rights. He submitted that Rock Land Hospital without following due process of issuance of sweat equity shares on its own issued certain sweat equity shares and passed entries in its books. RLH credited in the liability side of the balance sheet by face value and premium of the shares issued and debited the assets side by creating a fictitious assets, namely, intellectual property rights. The Learned AR submitted that when the mistake committed by RLH was pointed out by the auditors, RLH moved before the Hon’ble High Court of Delhi and Hon’ble High Court after considering the entire facts and law reversed the entry of premium vide its order dated 26.2.2010. As a result of the order of the Hon’ble High Court, RLH reversed the entries of premium and subsequently took back all the sweat equity shares from the professional and transferred those shares to some trust. Meaning thereby, that at the time of assumption of jurisdiction by the Assessing Officer under sec. 147, everything was diminished. He pointed out that the Assessing Officer had issued notice under sec. 148 of the Act on 8.3.2013 and in

compliance of the order dated 26.2.2010 of the Hon'ble High Court, the RLH had taken surrender of sweat equity shares on 20.5.2011 and search under sec. 132 of the Act was conducted at the premises of the RLH on 6.9.2011. Thus, it is clear that by the time search took place on RLH the so called shares were never in existence and the value as mentioned in the reasons recorded was already vanished in view of the order of the Hon'ble High Court. Therefore, the material which came into the possession of the Assessing Officer was vague and was having no direct nexus with the belief entertained by the Assessing Officer. It is settled position of law that for invocation of reopening proceedings under sec. 147 of the Act, material should be specific and has bearing on the belief entertained by the Assessing Officer while recording his reasons. The Learned AR referred page Nos. 26 of the paper book where copy of the reasons to belief recorded by the Assessing Officer has been made available. The Learned AR placed reliance on the following decisions:

- i) Signature Hotel – 338 ITR 51 (Del.);
- ii) Sarthak Security -329 ITR 110 (Del.);
- iii) Ranee Singh – 330 ITR 417 (Del.);

5. The Learned AR submitted further that the reasons recorded are neither signed nor is there any date on which these were recorded. He

contended that the action taken by the Assessing Officer under sec. 147 is also not tenable for the simple reason that provisions of sec. 153C of the Act are applicable in this case and not the provisions laid down under sec. 147 of the Act. He submitted that it is an admitted position of the fact as it is also evident from the assessment order that the Assessing Officer has initiated reassessment proceedings in the present case on the basis of information received based on the material found during the course of search from the premises of RLH. The Learned AR contended that provisions of sec. 153C provides that persons relating to whom some material is found in search of some other person should be assessed under sec. 153C of the Act. The provisions of section 153C are non-obstantive provisions and specially excludes the operation of sec. 147 of the Act, therefore, the Assessing Officer in the present case has erred in invoking the provisions of sec. 147, instead of 153C of the Act. If action under sec. 147 is permitted on the basis of material found in the course of search, then the provisions of sec. 153 would be redundant. In this regard, he placed reliance on the following decisions to support his above contentions that no action under sec. 147 is permissible on the basis of material found in search:

- i) ACIT vs. Arun Kapur – 140 TTJ 249 (Amritsar);
- ii) Cargo Clearing Agency vs. JCIT – 307 ITR 1(Guj.);

6. The Learned Senior DR on the other hand tried to justify the action of the Assessing Officer in initiating reopening proceedings. He submitted that the Assessing Officer was in possession of specific information that sweat equity shares in the hands of the assessee was taxable under section 28(iv) of the Act. The Assessing Officer had recorded his reasons to belief on perusal of letter of DDIT and records of the assessee that income to the extent of Rs.2 lacs has escaped assessment.

7. On having gone through the decisions cited above especially the decision of Amritsar Bench in the case of ITO vs. Arun Kumar Kapoor (supra), we find that in that case as in the present case before us, reassessment was initiated on the basis of incriminating material found in search of third party and the validity of the same was challenged by the assessee before the Learned CIT(Appeals) and the Learned CIT(Appeals) vitiated the proceedings. The same was questioned by the Revenue before the ITAT and the ITAT after discussing the cases of the parties and the relevant provisions in details has come to the conclusion that in the above situation, provisions of sec. 153C were applicable which excludes the application of sections 147 and 148 of the Act. The ITAT held the notice issued under sec. 148 and proceedings under sec. 147 as illegal and void ab

initio. It was held that Assessing Officer having not followed procedure under sec. 153C, reassessment order was rightly quashed by the Learned CIT(Appeals). In the present case before us, it is an admitted fact, as also evident from the reasons recorded and the assessment order that the initiation of reopening proceedings was made by the Assessing Officer on the basis of information received from the Directorate of Income-tax (Inv.) on the basis of search & seizure operation conducted at the premises of Rock Land Group of Cases and the documents related to the assessee found during the course of search were made available to the Assessing Officer of the present assessee. We thus respectfully following the decision of Co-ordinate Bench of the ITAT in the case of ACIT vs. Arun Kapur – 140 TTJ 249 (Amritsar) hold that provisions of sec. 153C of the Act were applicable in the present case for framing the assessment, if any, which excludes the application of sec. 147 of the Act, hence, notice issued under sec. 148 of the Act and assessment framed in furtherance thereto under sec. 147 read with section 143(3) of the Act are void ab initio. The reassessment in question is accordingly quashed. The ground No.1 is accordingly allowed.

8. Ground No.2 to 5: In these grounds, the validity of addition of Rs.2 lacs sustained by the Learned CIT(Appeals) made under the provisions of

section 28(iv) has been questioned. These grounds do not need any adjudication as the same have become infructuous and academic in view of the above finding that reassessment was void ab initio. These grounds are accordingly disposed off.

9. In result, the appeal is allowed.

Order pronounced in the open court on 20 .05.2016

Sd/-
(L.P. SAHU)
ACCOUNTANT MEMBER

Sd/-
(I.C. SUDHIR)
JUDICIAL MEMBER

Dated: 20 /05/2016
Mohan Lal

Copy forwarded to:

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

ASSISTANT REGISTRAR

| | Date |
|--------------------------------------------------|------------|
| Draft dictated directly on computer | 19.05.2016 |
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| Date on which file goes to the Head Clerk. | |
| Date of dispatch of Order. | |