

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC : NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

I.T.A. No. 1061/Del/2019

Assessment Year: 2009-10

BLUE CHIP DEVELOPERS (P) LTD., vs. ITO, WARD-5(1),
C/O RAJ KUMAR & ASSOCIATES, CAs NEW DELHI
L-7A (LGF), SOUTH EXTENSION,
PART-2,
NEW DELHI - 49
(PAN: AABC4432B)

(ASSESSEE)

(RESPONDENT)

Assessee by : Shri Raj Kumar, CA & Sh. Sumit Goel, CA
Revenue by : Shri Pradeep Singh Gautam, Sr. DR.

ORDER

The Assessee has filed this appeal against the impugned order dated 15.01.2019 passed by the Ld. CIT(A)-2, New Delhi on the following grounds:-

1. That under the facts and circumstances, the initiation of proceedings u/s. 147/148 is illegal, without jurisdiction, mechanical, without application of mind and unsustainable in law as well as on merits.
2. That under the facts and circumstances, approval u/s. 151 of the superior authorities is not accordance with law and otherwise also mechanical and without application of mind, making the reassessment proceedings unsustainable in law.
3. That the whole addition of Rs. 35 lacs under section 68 being made without confronting with all the adverse material used and also without allowing the cross examination in the cases where statements have been taken on the back of the assessee which have been used adversely, cannot be sustained in law as well as on merits.

4. That under the facts and circumstances, addition of Rs. 15 lacs under section 68 for the share capital / share premium received from Shalini Holdings Ltd. by holding the same as received from alleged entry operator is illegal and unsustainable in law as well as on merits.
5. That under the facts and circumstances, addition of Rs. 10 lacs under section 68 for the share capital / share premium received from Virgin Capital Services (P) Ltd. by holding the same as received from alleged entry operator is illegal and unsustainable in law as well as on merits.
6. That under the facts and circumstances, addition of Rs. 10 lacs under section 68 for the share capital/ share premium received from Mani Mala Delhi Pro. (P) Ltd. by holding the same as received from alleged entry operator is illegal and unsustainable in law as well as on merits.
7. That under the facts and circumstances, addition of Rs. 63,000/- under section 69 of the rate of 1.8 percent of Rs.,. 35 lacs is illegal and unsustainable in law as well as on merits.

2. At the time of hearing, Ld. Counsel for the assessee only argued the ground no. 2 and stated that this ground raised is pure legal issue which goes to the root of the matter and all facts and material required for the this ground already available on record and therefore, the same may be decided first. He further drew my attention towards Page No. 100-103 of Assessee's Paper Book No. 2 which is a copy of reasons recorded by the AO and approval granted by the Pr. CIT. Delhi – 2, New Delhi in Column No. 12 wherein, the AO has erred in assumption of jurisdiction u/s. 147/148 of the Act on the basis of invalid and mechanical approval granted by the Pr. CIT, Delhi-2, New Delhi wherein it was mentioned as "Yes", which shows that Ld. Pr. CIT, Delhi-2, New Delhi has not recorded proper satisfaction and without application of mind gave the approval in a mechanical manner. He further stated that this legal/jurisdictional ground is squarely covered by the decision of the ITAT, SMC,

Bench, New Delhi 16.10.2019 in the case of Dharmender Kumar vs. ITO decided in ITA No. 2728/Del/2018 (AY 2008-09) and therefore, he requested that the same ratio may be followed in the present case and appeal of the assessee may be allowed accordingly by quashing the reassessment proceedings.

3. On the contrary, Ld. Sr. DR relied upon the orders of the authorities below and stated that the reasons recorded and satisfaction / approval accorded is within the meaning of section 151 of the Act and need not to be quashed. She stated that apart from relying on the order of the Ld. CIT(A), the following cases laws may kindly be considered with regard to reopening of cases u/s. 147 of the I.T. Act:-

1. *Raymond Woollen Mills Ltd. v. ITO And Others [236 ITR 341 (Copy Enclosed) where Hon'ble Supreme Court held that in determining whether commencement of reassessment proceedings was valid it has only to be seen whether there was prima facie some material on the basis of which the department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage.*
2. *Yuvraj v. Union of India Bombay High Court [2009] 315 ITR 84 (Bombay)/[2009] 225 CTR 283 (Bombay) Points not decided while passing assessment order under section 143(3) not a case of change of opinion. Assessment reopened validly.*
3. *Devi Electronics Pvt Ltd Vs ITO Bombay High Court 2017-TIQL-92-HC-MUM- IT
The likelihood of a different view when materials exist of forming a reasonable belief of escaped income, will not debar the AO from exercising his jurisdiction to assess the assessee on reopening notice..*
4. *Acorus Unitech Wireless (P.) Ltd. Vs ACIT Delhi High Court T20141 43 taxmann.com 62 (Delhi)/[2014] 223 Taxman 181 (Delhi)(MAG)/[2014] 362 ITR 417 (Delhi)
In terms of section 148, law only requires that information or material on which Assessing Officer records his or her satisfaction has to be communicated to assessee, without mandating disclosure of any specific document.*

5. *PCIT, Vs Paramount Communication (P.) Ltd. Delhi High Court [2017] 79 taxmann.com 409 (Delhi)/[2017] 392 ITR 444 (Delhi)*
Information regarding bogus purchase by assessee received by DRI from CCE which was passed on to revenue authorities was 'tangible material outside record' to initiate valid reassessment proceedings.
6. *Paramount Communication (P.) Ltd. Vs PCIT Supreme Court 2017-TIQL-253- SC-IT*
SLP of assessee dismissed. Information regarding bogus purchase by assessee received by DRI from CCE which was passed on to revenue authorities was 'tangible material outside record' to initiate valid reassessment proceedings.
7. *Amit Polyprints (P.) Ltd. Vs PCIT Gujarat High Court [2018] 94 taxmann.com 393 (Gujarat)*
Where reassessment proceedings were initiated on basis of information received from Investigation wing that assessee had received certain amount from shell companies working as an accommodation entry provider, reassessment could not be held unjustified.
8. *Aaspas Multimedia Ltd. Vs PCIT Gujarat High Court [2017] 83 taxmann.com 82 (Gujarat)*
Where reassessment was made on basis of information received from Principal DIT (Investigation) that assessee was beneficiary of accommodation entries by way of share application provided by a third party, same was justified.
9. *Murlibhai Fatandas Sawlani Vs ITO Gujarat High Court 2016-TIQL-370-HC- AHM-IT*
It is not open to the assessee to object to the reopening by asking the AO to produce the source from where the AO has gathered the information for forming a belief that income chargeable to tax has escaped assessment.
10. *Ankit Aqrochem (P.) Ltd. Vs JCIT Rajasthan High Court [2018] 89 taxmann.com 45 (Rajasthan)*
Where DIT informed that assessee-company had received share application money from several entities which were only engaged in business of providing bogus accommodation entries to beneficiary concerns, reassessment on basis of said information was justified.

11. *Rakesh Gupta Vs CIT P&H High Court f20181 93 taxmann.com 271 (Punjab & Haryana)*

Where Assessing Officer received information from Principle Director of Income Tax (Investigation) that assessee had received bogus loss from his broker by client code modification, reassessment on basis of said information was justified.

12. *Home Finders Housing Ltd. Vs. ITO (2018) 94 taxmann.com 84 (SC).*

SLP dismissed against High Court's order that non-compliance of direction of Supreme Court in GKN Driveshafts (India) Ltd. Vs. ITO (2002) 125 Taxman 963 that on receipt of objection given by assessee to notice under section 148, Assessing Officer is bound to dispose objections by passing a speaking order, would not make reassessment order void ab initio.

13. *Baldevbahi Bhikhabhai Patel vs. DCIT (Gujarat High Court) (2018) 94 Taxmann.co, 428(Gujarat)*

Where revenue produced bunch of documents to suggest that entire proposal of reopening of assessment alongwith reasons recorded by the Assessing Officer for same were placed before Additional Commissioner who, upon perusal of same, recorded his satisfaction that it was a fit case for issuance of notice for reopening assessment, reassessment notice issued against assessee was justified."

4. I have heard both the parties and perused the relevant records especially the orders of the revenue authorities and the case laws cited by both the parties. After perusing the page no. 103 placed in Paper Book No. 2 which is a copy of RECORDING THE REASONS FOR INITIATING PROCEEDINGS U/S. 147 AND FOR OBTAINING THE APPROVAL OF THE Pr. Commissioner of Income Tax, Delhi-2, New Delhi wherein, the Ld. Pr. Commissioner of Income Tax, Delhi-2, New Delhi while granting approval for issue of notice u/s. 148 of the Act in Column no. 12 has only mentioned that "YES", which establish that the approving authority has given approval to the reopening of assessment in a mechanical manner without due application of mind and therefore, on this account the reassessment is not sustainable in the eyes of law and needs to be

quashed. The judicial decisions relied upon by the Ld. Sr. DR, have been duly considered. In my considered view, I do not find any parity in the facts of the decisions relied upon with the peculiar facts of the case in hand.

4.1 I have also perused the decision referred by the Ld. Counsel for the assessee of the ITAT, SMC, Bench, New Delhi order dated 16.10.2019 in the case of Dharmender Kumar vs. ITO decided in ITA No. 2728/Del/2018 (AY 2008-09) wherein, the similar and identical legal/ jurisdictional issue has been adjudicated and decided in favour of the assessee. For the sake of convenience, the relevant portion of the findings of the Tribunal in the aforesaid case are reproduced as under:-

"5. I have heard both the parties and carefully considered the case laws and the relevant documents available on record especially the assessment order, impugned order, reasons/satisfaction/approval recorded for issue of notice u/s. 148 of the Act as well as the Paper Book filed by the Assessee containing pages 1-41 of the Paper Book in which he has attached the copy of AIR information; copy of reasons recorded; copy of approval performa u/s. 151; letter dated 26.2.2015 issued by AO; letter dated 12.3.2015 issued by AO; cash flow statement; confirmation from Rama Devi; bank statement of Ram Devi; copy of PAN card of Rama Devi; confirmation from Shyam Sunder; bank statement of Shyam Sunder; copy of PAN card of Shyam Sunder; confirmation from Virender Kumar; confirmation from Eshwar Dutt; Confirmation from Dayanand Sharma; jewellery sale bill to assessee; jewellery sale bill to Rohtash (2 in no's); jewellery sale bill to Kumud; sub. To CIT dated 18.8.17; RR dated 27.10.17; Sub. To CIT(A) dated 7.12.17 (Rejoinder to RR) and Sub. To CIT(A) dated 15.2.2018 and especially the page no. 2-3 of the Paper Book which is a copy of performa for

recording the reasons for initiating proceedings u/s. 148 and for obtaining approval of Addl. CIT, Range-65, New Delhi in which Addl. CIT, Range-65, New Delhi has granted the approval in a mechanical manner for issuing notice u/s. 148 of the Income Tax Act, 1961. It is noted that approval u/s. 151 of the Act was granted by the Addl. CIT, Range-65, New Delhi vide Column No. 11 by mentioning as under:-

"Yes, I am satisfied on the reasons recorded by AO that it is a fit case for issue of notice u/s. 148 of the I.T. Act, 1961."

5.1 After perusing the aforesaid remarks of the Addl. CIT, Range-65, New Delhi, I find that the approval granted by the Addl. CIT, Range-65, New Delhi is a mechanical and without application of mind, which is not valid for initiating the reassessment proceedings, because from the aforesaid remarks, it is not coming out as to which material; information; documents and which other aspects have been gone through and examined by the Addl. CIT, Range-65, New Delhi for reaching to the satisfaction for granting approval. Thereafter, the AO has mechanically issued notice u/s. 148 of the Act. Keeping in view of the facts and circumstances of the present case and the case laws applicable in the case of the assessee, I am of the considered view that the reopening in the case of the assessee for the asstt. Year in dispute is bad in law and deserves to be quashed. My aforesaid view is fortified by the following decisions:-

A) *United Electrical Company (P) Ltd. Vs. CIT & Ors.* 258 ITR 317 (Del.) In this case, approval by the Addl. CIT u/s. 151 was given in the following terms:-

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"Yes, I am satisfied that it is a fit case for issue of notice u/s. 148 of the Income Tax Act."

Analyzing, the above satisfaction/approval, it has been held that the CIT is required to apply his mind to the proposal put up to him for approval in the light to eh material relied upon by the AO. The said power cannot be exercised casually and in a routine manner. We are constrained to observe that in the present case, there has been no application of mind by the Addl. CIT before granting the approval. (Para 19).

(B) Hon'ble Supreme Court of India in the case of CIT vs. S. Goyanka Lime & Chemical Ltd. reported in (2015) 64 taxmann.com 313 (SC) arising out of order of Hon'ble High Court of Madhya Pradesh in CIT vs. S. Goyanka Lime & Chemicals Ltd. (2015) 56 taxmann.com 390 (MP).

"Section 151, read with section 148 of Income Tax Act, 1961 – Income escaping assessment – Sanction for issue of notice (Recording of satisfaction) – High Court by impugned order held that where Joint Commissioner recorded satisfaction in mechanical manner and without application of mind to accord sanction for issuing notice under section 148, reopening of assessment was invalid – Whether Special Leave Petition filed against impugned order was to be dismissed – Held, Yes (in favour of the Assessee)."

4.2 Since in the present case the approving authority has given approval to the reopening of assessment in a mechanical manner without due application of mind by only mentioning in Column No. 12 "YES", in the Reasons for Initiating Proceedings u/s. 147 and For obtaining the Approval of the Addl. Commissioner of Income Tax, Delhi-2, New Delhi, a copy of which is placed at page no. 103 of the Paper Book No. 2, and therefore, the legal issue in dispute is squarely covered by the aforesaid finding of the Tribunal, hence, respectfully following the aforesaid precedent i.e. ITAT, SMC, Bench, New Delhi order dated 16.10.2019 in the case of Dharmender Kumar vs. ITO decided in ITA No. 2728/Del/2018 (AY 2008-09), as relied by the Ld. Counsel for the assessee, the reassessment is hereby quashed and accordingly the ground no. 2 is allowed. Since the assessee succeeds on this legal ground challenging the validity of reassessment proceedings, the addition on merit is not being adjudicated being academic in nature. The appeal filed by the assessee is accordingly allowed.

5. In the result, the appeal filed by the assessee stands allowed.

Order pronounced on 02/12/2019.

Sd/-
[H.S. SIDHU]
JUDICIAL MEMBER

Date 02/12/2019

"SRB"

Copy forwarded to: -

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

By Order,

Assistant Registrar, ITAT, Delhi Benches