

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'B ', NEW DELHI)**

BEFORE SHRI G. C. GUPTA, HON'BLE VICE PRESIDENT
AND SHRI T.S. KAPOOR, ACCOUNTANT MEMBER

I.T.A. No. 3545/Del/2010

Assessment year : 2002-03

ITO ,Ward 10(3),
New Delhi

Vs.

M/s. Direct Sales (P) Ltd.,
7, Tigipur Village,
Post Office Flat,
Bakhtawarpur, Delhi

GIR / PAN:AABCD3197K

C.O. No.138/Del/2010

(Assessment Year 2002-03)

M/s. Direct Sales Pvt. Ltd.,
7, TSigripur Village, Post Office Flat,
Bakhtawarpur, Delhi

Vs.

ITO, Ward 10(3),
New Delhi.

(Appellant)

(Respondent)

Appellant by : Smt. Parwinder Kaur, Sr. DR

Respondent by : Shri Ashwani Taneja, Adv.

Shri Tarun Kumar, Adv.

Date of hearing : 19.02.2015

Date of Pronouncement:25.02.2015

ORDER

PER T.S. KAPOOR, AM:

This is Revenue's appeal against the order of Ld. CIT(A) dated 26.05.2010. The Revenue is aggrieved with the action of Ld. CIT(A) by which he has deleted the addition of Rs.10.50 lacs which was made by A.O. u/s 68 of the Act. The assessee has also filed cross objection wherein it has challenged the reassessment order by challenging that necessary and

mandatory conditions of Section 147 to 151 of I. T. Act, 1961 were not complied with.

2. The brief facts of the case are that the case of the assessee was reopened on the basis of a specific information from Investigation Wing of the Department that certain persons including assessee company were beneficiaries of taking accommodation entries from entry operators. The A.O. on the basis of a letter forwarded from Addl. CIT, Range 10, noted the alleged accommodation entries obtained by assessee on page 2 of assessment order and, therefore, assessee was asked to file proper confirmation of share applicants along with bank statements and income tax particulars and assessee was also required to produce individual share applicants in person. In response, the assessee filed copies of acknowledgements of I T Returns, confirmation copies and bank statements but did not produce the concerned persons from whom entries were obtained. The A.O. held that in the absence of examination of persons who had given share application money the creditworthiness of share applicants and genuineness of transaction could not be established. He held on the basis of certain statements of Shri Mukesh Gupta, Shri Rajan Jassal, and Shri Surender Pal Singh that alleged shares holders were used for providing accommodation entries, therefore, in the absence of examination of those share holders, the A.O. made addition of Rs.10.50 lacs u/s 68 of the Act. Aggrieved the assessee filed appeal before Ld. CIT(A). Ld. CIT(A), relying upon the case law of Lovely Exports Ltd. and also on the basis of various decisions as mentioned in these orders, allowed relief to the assessee. Aggrieved, the Revenue is in appeal before us.

3. At the outset, Ld. D.R. submitted that despite various directions from A.O., the assessee did not produce the share applicants and moreover, it was held by Investigation Wing of the Department that the assessee had received accommodation entries and, therefore in the absence of verification of creditworthiness and genuineness of transactions, the A.O. had rightly made the addition. She further submitted that mere filing of copies of I T Returns and copies of bank account and PAN cannot absolve the assessee from the provisions of Section 68. It was submitted that assessee had miserably failed to complete its part of onus by not producing the persons for examination; therefore, the order of A.O. should be upheld. Ld. D.R. has placed reliance on a number of case laws as noted below:

342 ITR 169 Delhi HC: CIT v Nova Promoters and Finlease P Ltd

32 Taxman.com 306 Delhi: CIT V Titan Securities Ltd

18 Taxman.com 92012 Delhi: Beautex India P Ltd v CIT

174 Taxman 516 Delhi Indus valley Promoters Ltd v CIT

44 Taxmann.com 364 Delhi: CIT v Youth Construction P Ltd -letters and copies of returns inadequate

367 ITR 3061 226 Taxman 190 Delhi HC -CIT v Navodaya Castles P Ltd- cheque and bank statement inadequate, evidence of positive nature required.

228 Taxman 88 Delhi MAG: CIT-IV V Focus Exports (P) Ltd

264 CTR 258 Delhi: CIT V NR Portfolio P Ltd

366 ITR 110 : CIT V Empire Builtech P Ltd

361 ITR 258 Del, CIT-II v MAF Academy

222 Taxman 59 madras K Sivakumar V ACIT

264 CTR 472 Delhi 1 227 Taxman 373 (SC): N.Tarika Property Invest v CIT- PAN Numbers inadequate53 Taxman 275 MP: Aalok Khanna V CIT Bhopal

227 Taxman 250 Delhi (MAG): CIT v TS Krishnan and Co Ltd

224 Taxman 178 P&H (MAG): Sudhir Kumar v CIT III Ludhiana

224 Taxman 176 Gujarat (MAG): Ariel Sarees P Ltd v ITa

364 ITR 53 Delhi: Onassis Axles p Ltd v CIT

226 Taxman 43 P&H: CIT v Rippen Ahuja

221 Taxman 143 AP: Gayathri Associates V ITa Hyderabad

134 ITD 283 (AHD): Prakashchandra Singhvi (HUF) v ITO Range 9 Surat

13 ITR (T) 531 Indore Agrawal Coal corporation v Addl CIT Range V -No justification to apply Lovely till identity has not been established.

4. Ld. A.R. on the other hand submitted that the assessee had filed all the necessary documents to support the contention that I had received share application money and A.O. without making comments on those documents insisted upon producing of shareholders. It was submitted that it was not fair on the part of A.O. to insist for producing the shareholders as the assessment was being framed u/s 148 and at the time of reassessment, the said shareholders were no more shareholders of the assessee company and they were not under the control of the assessee who would agree with the request of assessee to appear before A.O. Moreover, it was submitted that shareholders at their own had directly communicated with the A.O. and had confirmed about their investment in assessee company and in this respect our attention was invited to paper book pages 52, 67, 87 and 93 where

copies of such confirmations were placed. It was further submitted that assessee had also requested to issue summons to shareholders for examination but A.O. did not choose to do that and merely continued to ask the assessee for producing the shareholders. Ld. A.R. submitted that Hon'ble Delhi High Court in similar circumstances has decided a similar issue in favour of the assessee in the case of CIT Vs Goel Sons Pvt. Ltd. and in this respect, para 3 of the judgement was read out in the court. Ld. A.R. submitted that the facts of the present case and that of the case law of Goel Sons Pvt. Ltd. are similar. Ld. A.R. further placed his reliance on the case law of CIT Vs Pradeep Gupta 303 ITR 95 for the proposition that in reopening proceedings the A.O. has to establish that the income has escaped assessment.

5. Arguing upon C.O., the Ld. A.R. submitted that the case of the assessee was duly covered in its favour by various orders of Hon'ble Court. It was submitted that necessary satisfaction required u/s 151 was not obtained. Ld. A.R. invited our attention to paper book page 330 and submitted that the Addl. CIT has nowhere recorded his satisfaction by application of his independent mind. He just affixed his signatures and approved it. Ld. A.R. submitted that such a satisfaction is not the satisfaction as required by law. Ld. A.R. further submitted that the reasons recorded were also insufficient and in the absence of insufficiency of reasons recorded, the assessment itself was bad in law. Reliance in this respect was placed on the following case law.

- i) Central India Electric Supply Company Ltd. Vs ITO in I.T.A. No. 17/Del/1999 dated 28.01.2011 (Del.H.C.)
- ii) CIT Vs Atul Jain 212 CTR 42

- iii) Amarlal Bajaj Vs CIT I.T.A.No. 611/Mum/2004
- iv) Chhugamal Rajpal Vs S.P.Chaliha & Ors 79 ITR 603 (S.C.)
- v) United Electrical Co. (P) Ltd. Vs CIT & Ors. 258 ITR 317 (Del.)
- vi) CITVs Smt. Paramjit Kaur 311 ITR 38 (P&H)
- vii) CIT Vs Shree Rajasthan Syntax Ltd. 313 ITR 231.

6. Ld. A.R. also invited our attentions to the Tribunal order in I.T.A. No. 4122 and C.O. No.388 which was pronounced vide Tribunal order dated 22 OCT 2014 and submitted that satisfaction recorded in the present case u/s 151 was similar as in the above quoted case and the tribunal in the C.O. filed by assessee had decided the issue in favour of the assessee and invited our attention to para 10 of the said order.

7. Ld. D.R. replying to the argument of C.O. submitted that the A.O. had reopened the assessment on the basis of specific information from Investigation Wing and necessary approval was taken from the competent authority and therefore, the assessment was reopened legally therefore, C.O. needs to be dismissed.

8. We have heard rival parties and have gone through the material placed on record. We find that since the assessee has taken legal grounds against reopening of assessment, therefore it is appropriate for us to first decide the C.O. We find that the Tribunal vide order dated 22nd Oct. 2014 in C.O. 388 in I.T.A. No. 4122 under similar facts and circumstances wherein similar reasons were record and similar satisfaction was recorded u/s 151, it had decided in favour of the assessee by holding as under:

“ 10. We first take up the arguments on reopening of assessment. On the issue of reopening, we find that the reasons recorded for reopening are as under.

"Reasons for issuing notice u/ s 148 of the Act in the case of M/ s N. C. Cables Limited, for the A. Y. 2001-02-reg .

Information has been received from the Investigation Wing of the Income Tax Department that the above named assessee is a beneficiary of accommodation entries received from certain established entry operators identified by the Wing during the period laundering for the beneficiaries and on the basis of investigation carried out and evidences collected, a report has been forwarded. I have perused the information contained in the report and the evidences gathered. The report provides details of the modus operandi of the 'money laundering seam' and explain how the unaccounted money of the beneficiaries are ploughed back in its books of account in the form of bogus share capital! capital gains etc. after routing the same through the bank account (s) of the entry operators. Entry operators were identified after thorough investigation on the basis of definitive analysis of their identity,

creditworthiness and the source of the money ultimately received by the beneficiaries. These entry operators are found to be mostly absconding after the unearthing of the 'Money Laundering Scam' leaving the said money at the disposal of the beneficiaries without any associated cost or liability. In the instant case, the assessee is found to be the beneficiary of accommodation entry from such entry operators as per the following specific details of transactions-

<i>Entry Oper.</i>	<i>Beneficiary's Bank</i>	<i>Amount Rs.</i>	<i>Instrument No. by which entry taken and date</i>	<i>Entry giving bank</i>	<i>Account NO. from which entry was given</i>
<i>Mahesh Garg</i>	-	<i>800480</i>	<i>30.11.2000</i>	<i>SBP-DG</i>	<i>4507</i>
<i>Performance trading & Inv.</i>	-	<i>700420</i>	<i>13.11.2000</i>	<i>SBP-DG</i>	<i>4281</i>
<i>Chintpurni Credits</i>	-	<i>900540</i>	<i>22.11.2000</i>	<i>SBP-DG</i>	<i>50058</i>
<i>Subhash Chander Singhal</i>	-	<i>500300</i>	<i>23.11.2000</i>	<i>SBP-DG</i>	<i>4544</i>
<i>Kuldeep Textiles P. Ltd.</i>	-	<i>500500</i>	<i>21546 24.3.2001</i>	<i>Innovative Wazipur</i>	<i>239</i>
<i>Sweta Stone P. Ltd.</i>	-	<i>500500</i>	<i>23510 24.3.2001</i>	<i>-do-</i>	<i>1200259-C.A.</i>
<i>Division Trading P. Ltd.</i>	-	<i>500500</i>	<i>33612 24.3.2001</i>	<i>-do-</i>	<i>225</i>

During the course of the proceedings u/ s 148 for the same assessment year, which was dropped on the technical ground that proper sanction was not obtained, it was noticed that there are other receipts also from the identified

entry operators. Information about those entries was not available in the data received from the Investigation Wing.

Nevertheless they also fall within the ambit of section 68 of the Act. The assessee has received unexplained sums from the entry operators as per the above details as per information available with the undersigned. As explained above the identity, creditworthiness and genuineness of transactions with the persons found to be entry operators cannot be established. I therefore have reasons to believe that on account of failure on the part of the assessee to disclose truly and fully all material facts necessary for assessment for above A Y, the income chargeable to tax to the extent of accommodation entry mentioned above, has escaped assessment within the meaning of S. 147 of the Act.

Since four years has been expired from the end of the relevant year, and assessment u/ s 143(3) of the Act was made in the case of the assessee for the said A Y, the reasons recorded above for the purpose of reopening of assessment is put up for kind satisfaction of the CfT, Delhi V, New Delhi in terms of the Proviso to Section 151 of the Act.

Sd/- (ITO) Ward 13(1).

The ACIT, Range 13, New Delhi

For kind approval of CIT- V, New Delhi

CIT- V, Delhi:

"Approved"

Sd/-"

10.1. A perusal of the above demonstrates that the Ld.CIT(A)-V, Delhi has written "approved" on 25.3.2008. The issue is whether such approval would meet the requirements prescribed u] s 151 of the Act.

10.2. The Mumbai 'E' Bench of the Tribunal in ITA 611/Mum/2004 Amarlal Bajaj (supra) order dt. 24.7.2013 has considered the legal position and held as follows.

"5. We have considered the rival submissions and carefully perused the orders of the lower authorities and also the material evidences brought on record from both sides. We have also the benefit of perusing the order sheet entries by which the Ld. CIT has granted sanction. Let us first consider the relevant part of the provisions of Sec. 151 of the Act.

151. (1) In a case where an assessment under sub-section (3) of section 143 or section 147 has been made for the relevant assessment year, no notice shall be issued under section 148 [by an Assessing Officer, who is below the rank of Assistant Commissioner [or Deputy Commissioner), unless the

[Joint) Commissioner is satisfied on the reasons recorded by such Assessing Officer that it is a fit case for the issue of such notice) :

Provided that, after the expiry of four years from the end of the relevant assessment year, no such notice shall be issued unless the Chief Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer aforesaid, that it is a fit case for the issue of such notice.

(2) In a case other than a case falling under sub-section (1), no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of [Joint) Commissioner, after the expiry of four years from the end of the relevant assessment year, unless the [Joint) Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.)

[Explanation. -For the removal of doubts, it is hereby declared that the Joint Commissioner, the Commissioner or the Chief Commissioner, as the case may be, being satisfied on the reasons recorded by the Assessing Officer about fitness of a case for the issue of notice under section 148, need not issue such notice himself) "

6. A simple reading of the provisions of Sec. 151 (1) with the proviso clearly show that no such notice shall be issued unless the Commissioner is satisfied on the reasons recorded by the AO that it is a fit case for the issue of notice which means that the satisfaction of the Commissioner is paramount for which the least that is expected from the Commissioner is application of mind and due diligence before according sanction to the reasons recorded by the AO. In the present case, the order sheet which is placed on record show that the Commissioner has simply affixed "approved" at the bottom of the note sheet prepared by the ITO. Nowhere the CIT has recorded his satisfaction. In the case before the Hon'ble Supreme Court (supra) that on AO's report the Commissioner against the question "whether the Commissioner is satisfied that it is a fit case for the issue of notice under section 148 merely noted " Yes" and affixed his signature there under. On these facts, the Hon'ble Supreme Court observed that the important safeguards provided in sections 147 and 151 were lightly treated by the officer and the Commissioner. The Hon'ble Supreme Court further observed that the ITO could not have had reason to believe that income had escaped assessment by reasons of the appellant-firm's failure to disclose material facts and if the Commissioner had read the report carefully he could not have come to the conclusion that this was a fit case for issuing a notice under section 148. The notice issued under section 148 was therefore, invalid. It would be pertinent here to note the reasons recorded by the AO.

"Intimation has been received from DCIT-24(2), Mumbai vide his letters dt. 22nd February, 2002 that one Shri Nitiri 1. Rugmani assessed in his charge had arranged Hawala entries in arranging loans, expenses, gifts. During the year Shri Amar G. Bajaj, Prop. Of Mohan Brothers, 712, Linking Road, Khar (W), Mumbai-52 was the beneficiary of such loans, expenses and gifts. The modus-operandi was to collect cash from the parties to whom loans were given and cash was deposited into account of Shri Niiiri 1. Rugani and cheques were issued to the beneficiary of the loan transaction. In order to ensure that the money reached by cheques to the beneficiary Shri Nitiri 1. Rugani kept blank cheques of the third parties. The assessee Shri Amar G. Bajaj had taken benefit of such entries of loans, commission ad bill discounting of Rs. 8,00,000/-, 11,21,243/- and 9,64,739/- respectively. The assessment was completed u/ s. 143(3) of the 1. T. Act on 3Ft March, 1998 by DCIT-Spl. Rg. 40, Mumbai. It is seen from records that the aforesaid points have not been verified in the assessment. I have therefore reason to believe that by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment, income has escaped assessment within the meaning of proviso to Sec. 147 and explanation 2 (c)(i) of the income-tax Act, 1961."

7. . In the light of the above mentioned reasons, in our considerate view, Section 147 and 148 are charter to the Revenue to reopen earlier assessments and are, therefore protected by safeguards against unnecessary harassment of the assessee. They are sword for the Revenue and shield for the assessee. Section 151 guards that the sword of Sec. 147 may not be used unless a superior officer is satisfied that the AO has good and adequate reasons to invoke the provisions of Sec. 147. The superior authority has to examine the reasons, material or grounds and to judge whether they are sufficient and adequate to the formation of the necessary belief on the part of the assessing officer. If, after applying his mind and also recording his reasons, howsoever briefly, the Commissioner is of the opinion that the AO's belief is well reasoned and bonafide, he is to accord his sanction to the issue of notice u/ s. 148 of the Act. In the instant case, we find from the perusal of the order sheet " which is on record, the Commissioner has simply put "approved" and signed the report thereby giving sanction to the AO. Nowhere the Commissioner has recorded a satisfaction note not even in brief Therefore, it cannot be said that the Commissioner has accorded sanction after applying his mind and after recording his satisfaction.

8. Hon'ble Delhi High Court in the case of United Electrical Co. Pvt. Ltd. Vs CIT 257 has held that "the proviso to sub-section (l) of section 151 of the

Act provides that after the expiry of four years from the end of the relevant assessment year, notice under section 148 shall not be issued unless the Chief Commissioner or the Commissioner, as the case may be, is satisfied, on the reasons recorded by the Assessing Officer concerned, that it is a fit case for the issue of such notice. These are some in-built safeguards to prevent arbitrary exercise of power by an Assessing Officer to fiddle with the completed assessment". The Hon'ble High Court further observed that "what disturbs us more is that even the Additional Commissioner has accorded his approval for action under section 147 mechanically. We feel that if the Additional Commissioner had cared to go through the statement of the said parties, perhaps he would not have granted his approval, which was mandatory in terms of the proviso to sub-section (1) of section 151 of the Act as the action under section 147 was being initiated after the expiry of four years from the end of the relevant assessment year. The power vested in the Commissioner to grant or not to grant approval is coupled with a duty. The Commissioner is required to apply his mind to the proposal put up to him for approval in the light of the material relied upon by the Assessing Officer. 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 Additional Commissioner before granting the approval".

9. The observations of the Hon'ble High Court are very much relevant in the instant case as in the present case also the Commissioner has simply mentioned "approved" to the report submitted by the concerned AO. In the light of the ratios/observations of the Hon'ble High Court mentioned hereinabove, we have no hesitation to hold that the reopening proceedings vis- a-vis provisions of Sec. 151 are bad in law and the assessment has to be declared as void ab initio. Ground No. 1 of assessee's appeal is allowed.

10. As we have held that the reassessment is bad in law, we do not find it necessary to decide other issues which are on merits of the case."

10.3. No contrary judgement or order is brought to our notice. This being a Co-ordinate Bench order, we are required to follow the same.

10.4. The decision cited by the Ld.D.R. does not pertain to the issue of contravention of provisions of S.151 of the Act. These judgements are on other aspects relating to reopening. Thus respectfully following the decision of the Coordinate Bench in the matter, we hold that the reopening is bad in law for the reason that the Ld.CIT -V, Delhi has not recorded his satisfaction as contemplated u/s 151 of the Act."

9. We find that similar approval was recorded in the case of assessee also which is apparent from paper book pages 329-330, a copy of which has been made part of this order as Annexure "A". We find that the manner of recording satisfaction remains the same therefore, respectfully following the Coordinate Bench order, we decide that reassessment was not valid and in view of above C.O. filed by assessee is allowed. Since we have already held the reassessment as illegal, the appeal filed by revenue has become academic and therefore, it is dismissed as infructuous.

10. In view of the above, appeal filed by Revenue is dismissed and C.O. filed by assessee is allowed in terms of above.

11. Order pronounced in the open court on 25th Feb., 2015.

Sd./-

(G. C. GUPTA)
VICE PRESIDENT
Date: 25th Feb., 2015
Encl: Annexure "A"

Sd./-

(T.S. KAPOOR)
ACCOUNTANT MEMBER

Sp

Copy forwarded to:-

1. The appellant
2. The respondent
3. The CIT
4. The CIT (A)-, New Delhi.
5. The DR, ITAT, Loknayak Bhawan, Khan Market, New Delhi.

True copy.

By Order

(ITAT, New Delhi).

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	20/2		Sr. PS/PS
2	Draft placed before author	23,24,		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS	25/2		Sr. PS/PS
6	Kept for pronouncement	25/2		Sr. PS/PS
7	File sent to Bench Clerk	25/2		Sr. PS/PS
8	Date on which the file goes to Head Clerk			
9	Date on which file goes to A.R.			
10	Date of Dispatch of order			