

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

Vs. ITO,
Ward-1(3),
Meerut.

ORDER

2. Facts of the case, in brief, are that the Assessing Officer, on the basis of the information received that the assessee was engaged in cash purchases amounting to Rs.11,37,031/- in the concerned year and the income above Rs.1 lakh has escaped assessment and the assessee had not disclosed this cash purchase in the return of income, reopened the assessment after recording reasons and with the prior approval of the PCIT, Meerut and notice u/s 148 was issued on 3rd August, 2015. The assessee,

in response to the same, filed a reply on 3rd September, 2015 that the return filed on 9th February, 2010 may be treated as return filed in compliance to the notice u/s 148. It may be pertinent to mention that the original return was filed on 9th February, 2010 declaring a total loss of Rs.630/-.

3. The Assessing Officer, during the course of assessment proceedings, observed that the main issue involved in this case was cash purchase made from Uflex Ltd., Noida, amounting to Rs.11,37,031/-. To verify this purchase, notice u/s 133(6) was sent to the said company to furnish the copy of account of the assessee in its books of account. From the reply so received, the Assessing Officer noted that the assessee has made cash payment of Rs.2,63,500/- to the said company on various dates where the amount was in excess of Rs.20,000/-. The Assessing Officer, therefore, invoking the provisions of section 40A(3), made addition of Rs.2,38,000/- to the total income of the assessee. The submission of the assessee that he gave payments to Uflex Ltd. in the shape of Rs.20,000/- on each day on different dates, but, never gave more than Rs.20,000/- at a time on any particular day and is not aware as to how and why Uflex Ltd., Noida had recorded in their books of account higher amount, was rejected by the Assessing Officer. Before the CIT(A), the assessee, apart from challenging the addition on merit, challenged the validity of the reassessment proceedings. However, the Id.CIT(A) was not satisfied with the arguments advanced by the assessee. So far as the validity of reassessment proceedings are concerned, the Id.CIT(A) upheld the same by observing as under:-

“3.2.1 I have carefully considered the issue. I have also gone through the reasons recorded. As per the reasons, the A.O. received information that the appellant had financial transaction exceeding Rs. 1,00,000/- with M/s Uflex Ltd. and M/s Montage Enterprises which were not verifiable as filing of ITR was not confirmed. On going through the assessment order, I find that in this case the A.O. was having the information that the appellant had made purchases from M/s Uflex Ltd. of Rs.11,37,031/-, which could not be verified since the aspect of filing of ITR could not be confirmed.

Under these facts, I am of the opinion that A.O. was justified in having a belief for prima facie escaped income exceeding Rs. 1,00,000/- in respect of purchases made from M/s Uflex Ltd. The law nowhere provides that at the stage of initiating the reassessment proceedings, the A.O. should have conclusive evidence for the formation of his belief for existence of some escaped income. If the material before him, prima facie, shows that some income appears to have escaped assessment then he is justified in law in initiating proceedings u/s.147 of the IT Act. The law also does not mandate that before initiating reassessment proceedings the A.O. should make enquiries from the appellant in respect of the issue under consideration. The case laws referred to by the appellant are distinguishable on facts. Thus, I hold that in this case reassessment proceedings have been validly initiated by the A.O. by validly assuming the jurisdiction in the matter. In result this ground of appeal fails.”

4. So far as the addition on merit is concerned, he also upheld the addition made by the Assessing Officer by observing as under:-

“3.3.1 I have considered the whole issue. As per the copy of a/c of the Appellant in the books of Uflex Ltd., 03 payments totaling to Rs.2,38,000/- have been shown as made in cash on 03 dates as detailed above, wherein each payment is exceeding Rs.20 000/- thus undisputedly there is violation of provisions of section 40A(3) of the Act. However, as per the books of appellant, these payments have been shown as at Rs.20,000/- each day on different dates. However, the appellant did not produce any such evidence which may show that the payment on each day was Rs 20,000/- as recorded by the appellant in his books of a/c.

In the case of the cash payments, the payer, takes acknowledgement from the payee for the receipt of cash from the payer, which is an evidence showing the said payment being made in cash, on the date and for the amount has mentioned in the receipt/acknowledgement. In any case, the payer, here the appellant was required to produce some cogent evidence to show that he made payment of

Rs.20,000/-in cash on each day and not as shown in his copy of ledger a/c provided by M/s Uflex Ltd. In the absence of any such evidence or material being produced by the appellant either during the course of assessment proceedings or before me in appeal proceedings, the claim of the appellant remains unsubstantiated.

Hence the same cannot be accepted in the absence of evidence. In view of above, I am of the considered opinion that the appellant has failed to substantiate his contention that cash payments were only Rs.20,000/- each day and not as is apparent from the books of Uflex Ltd. Hence, I hold that under the facts and circumstances, the A.O. was justified in making addition u/s 40A (3) of the Income Tax Act 1961 amounting to Rs.2,38,000/-. In result these grounds appeal also fail.”

5. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:-

“1. That the assumption of jurisdiction to initiate proceedings u/s 147 by the Id. A.O. is illegal and thus the proceedings initiated u/s 147 as well as the assessment order dt.30.11.2016 passed u/s 144/147 in pursuance to the proceedings illegally initiated u/s 147, are liable to be quashed.

2. That the reason recorded by the Id A.O. for initiating proceedings u/s 147, do not justify the initiation of proceedings u/s 147.

3. That on the facts of the case and under the law, the proceedings initiated u/s 147 are liable to be quashed, because it was not the case of escapement of income but was a case of alleged contravention of the provision of sec. 40A (3).

4. That on the facts of the case and under the law, the assessment order passed u/s 144/147 is liable to be quashed, because the Id A.O. had not made out a case of non compliance of the notice issued by him u/s 148 and/or the notices of hearing issued by him u/s 143(2)/142(1).

5. That on the facts of the case and under the law, the addition / disallowance made u/s 40A(3) at Rs. 2,38,000/- is arbitrary, unjust, illegal and without prejudice highly excessive.

6. That on the facts of the case and under the law, the charging of interest u/s 234B is arbitrary, unjust, illegal and without prejudice highly excessive.”

6. The ld. counsel for the assessee strongly challenged the order of the CIT(A) confirming the validity of the reassessment proceedings. Referring to the copy of reasons recorded by the Assessing Officer for issue of notice u/s 148, he submitted that the reopening was made on the ground that the assessee has not disclosed the cash purchases in the return of income. This according to him is not a valid ground for reopening of the assessment. Referring to the approval given by the Joint Commissioner while reopening of the assessment, he submitted that the Joint Commissioner, without applying his mind has simply mentioned that “Yes, it is a fit case for issue of notice u/s 148 of the Act, 1961.” Relying on various decisions including the decision of the *Hon'ble Delhi High Court in the case of CIT vs. N.C. Cables Ltd., 391 ITR 11*, he submitted that granting sanction to issue notice u/s 148 by merely writing: “Yes, it is a fit case for issue of notice u/s 148 of the Act, 1961” is illegal. He further submitted that the Assessing Officer, in the instant case, has not applied his mind independently and has reopened the assessment purely in a mechanical manner on the basis of some allegation. He submitted that when the Assessing Officer was not having any tangible material while reopening the assessment and the same was reopened merely to verify the financial transactions, therefore, such reopening is illegal. For the above proposition, he relied on the following decisions:-

- (i) Signature Hotels Pvt. Ltd. vs. ITO, 338 ITR 51 (Del);
- (ii) Pr.CIT vs. G & G Pharma India Ltd., 384 ITR 147 (Del);

- (iii) Pr. CIT vs. RMG Polyvinyl (P) Ltd., 396 ITR 5 (Del);
- (iv) Pr. CIT vs. Meenakshi Overseas Pvt. Ltd., 395 ITR 677 (Del); and
- (v) Oriental Industrial Co. Ltd. vs. CIT, 378 ITR 421 (Del)

7. So far as the merit of the case is concerned, the ld. counsel for the assessee submitted that the assessee in its books of account has not shown any amount in excess of Rs.20,000/-. The Assessing Officer, invoking the provisions of section 40A(3) by blindly relying upon the date-wise details of payments recorded by M/s Uflex Ltd. in its books of account which was provided by Uflex Ltd. directly to the Assessing Officer in response to the notice u/s 133(6) of the Act has made the addition. Therefore, such addition is not justified. The ld. counsel in his another plank of argument, submitted that as per the provisions of section 147, the Assessing Officer may assess or reassess such income and also other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings. However, in the instant case, the addition proposed to be made was Rs.11,37,031/- on account of alleged undisclosed purchase made by it from M/s Uflex Ltd. and M/s Montage Enterprises. However, the Assessing Officer has not made any such addition of Rs.11,37,031/- because such entire purchases were found recorded in the books of account which were maintained and produced by the assessee before the Assessing Officer. Therefore, the Assessing Officer could not have made disallowance u/s 40A(3) which was certainly not the basis for initiating the

proceedings u/s 147 of the Act. Therefore, such addition cannot be sustained in law.

For the above proposition, he relied on the following decisions:-

- (i) CIT vs. Ram Singh, 306 ITR 343 (Raj);
- (ii) CIT vs. Jet Airways (P) Ltd., 331 ITR 236 (Bom);
- (iii) Ranbaxy Laboratories Ltd. vs. CIT, 336 ITR 136 (Del); and
- (iv) CIT vs. Adhunik Niryat Ispat Ltd., 63 DTR 212 (Del).

8. He accordingly submitted that both legally and factually the addition made by the Assessing Officer is not sustainable.

9. The ld. DR, on the other hand, heavily relied on the orders of the Assessing Officer and CIT(A).

10. I have considered the rival arguments made by both the sides and perused the orders of the authorities below. I have also considered the various decisions cited before me. I find the Assessing Officer reopened the assessment by recording the following reasons:-

“ Information is received as disseminated in the cases of M/s Uflex Ltd and M/s Montage Enterprises for F.Y. 2007-08 to 2011-12, wherein the above mentioned assessee is reportedly engaged in financial cash purchases amounting to above Rs 11,37,031/- and the transaction is not verifiable and hence, income above Rs 1,00,000/- has escaped assessment. The assessee has not furnished disclosed these cash purchases in return of income.

2. I have, therefore, reason to believe that the income of more than Rs 1 lacs chargeable to tax for the A.Y.2009-10 has escaped assessment within the meaning of Section 147 of the Income tax Act 1961.

Issue notice u/s 148 for the A.Y. 2009-10.”

11. I find the Joint Commissioner who has given approval for such reopening has simply mentioned: “Yes, it is a fit case for issue of notice u/s 148 of the Act, 1961.” A perusal of the approval given by the Joint CIT shows that he has not applied his mind properly and has in a mechanical manner written: “Yes, it is a fit case for issue of notice u/s 148 of the Act, 1961.” I find the Hon'ble Delhi High Court in the case of N.C. Cables Ltd. (supra) has held as under:-

" Reassessment-Issuance of Notice-Sanction for issue of Notice-Assessee had in its return for A Y 2001-02 claimed that sum of Rs. 1 Crore was received towards share application amounts and a further sum of Thirty Five Lakhs was credited to it as an advance towards loan-Original assessment was completed u/s 143(3)-However, pursuant to reassessment notice, which was dropped due to technical reasons, and later notice was issued and assessments were taken up afresh-After considering submissions of assessee and documents produced in reassessment proceedings, AO added back a sum of Rs.1,35,00,000-CIT(A) held against assessee on legality of reassessment notice but allowed assessee's appeal on merits holding that AO did not conduct appropriate enquiry to conclude that share inclusion and advances received were from bogus entities-Tribunal allowed assessee's appeal on merits-Revenue appealed against appellate order on merits-Assessee's cross appeal was on correctness of reopening of assessment- Tribunal upheld assessee's cross-objections and dismissed Revenue's appeal holding that there was no proper application of mind by concerned sanctioning authority u/s Section 151 as a pre- condition for issuing notice u/s 147/148- Held, Section 151 stipulates that CIT (A), who was competent authority to authorize reassessment notice, had to apply his mind and form opinion- Mere appending of expression 'approved' says nothing- It was not as if CIT (A) had to record elaborate reasons for agreeing with noting put up-At same time, satisfaction had to be recorded of given case which could be reflected in briefest possible manner- In present case, exercise appears to have been ritualistic and formal rather than meaningful, which was rationale for safeguard of approval by higher ranking officer-Revenue's appeal dismissed."

12. Respectfully following the above decision, I hold that the reassessment proceedings initiated by the Assessing Officer are not as per law and has to be quashed.

13. Even otherwise, also I find the reopening was made on the ground that the transaction of the assessee with M/s Uflex Ltd. and M/s Montage Enterprises are not verifiable and, hence, income above Rs.1 lakh has escaped assessment. A perusal of the assessment order shows that no such addition has been made, but, the addition has been made u/s 40A(3) of the IT Act on account of cash payments and no addition on the very basis on which the assessment was reopened has been made. It has been held in various decisions that when the assessment is reopened on a particular issue and no such addition has been made on that very issue, then, the Assessing Officer cannot make other additions which might have come to his notice during the course of completion of such reassessment. He has to issue separate notice. Since, in the instant case, the Assessing Officer has not made any addition for which the case was reopened, therefore, he lacks the jurisdiction to assess such other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of such proceedings. Therefore, on this ground also, the addition made by the Assessing Officer and sustained by the CIT(A) is not justified. I, therefore, set aside the order of the CIT(A) and the grounds raised by the assessee are allowed.

14. In the result, the appeal filed by the assessee is allowed.

The decision was pronounced in the open court on 26.09.2019.

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 26th September, 2019

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Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi