

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

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 2728/Del/2018  
Assessment Year : 2008-09

DHARMENDER KUMAR  
C/O RAJ KUMAR & ASSOCIATES,,  
L-7A(LGF), SOUTH EXTENSION  
PART-II, NEW DELHI  
(PAN: ASGPK3927N)

Vs. ITO, WARD 65(5),  
NEW DELHI

(Appellant)

(Respondent)

Assessee by : Sh. Raj Kumar, CA & Sh. Sumit Goel, CA  
Department by : Ms. Ekta Vishnoi, Sr. DR.

**ORDER**

This appeal filed by the assessee is directed against the order passed by the Ld. CIT(A)-21, New Delhi on 28.03.2018 in relation to the assessment year 2008-09 on the following grounds:-

1. That under the facts and circumstances of the case the initiation of proceedings u/s. 147/148 is without jurisdiction, mechanical, without application of mind, illegal and unsustainable in law as well as on merits.

2. That in the absence of approval u/s. 151 as per law and also, since, without application of mind and mechanical, the whole proceedings are illegal, without jurisdiction and unsustainable.

3. That under the facts and circumstances, the addition of Rs. 13,26,000/- u/s. 69A as alleged unexplained cash deposit in savings bank account is unwarranted, unjustified and unsustainable in law as well as on merits.

2. The facts in brief are that AIR information was received about the assessee that he has deposited a cash amounting to Rs. 13,26,000/- during the FY 2007-08 in his savings account. The assessee did not file his return of income. Verification letters dated 26.2.2015 and 12.3.2015 were sent to the assessee but the assessee did not submit any reply. Also the assessee has not filed his Income Tax Return for the relevant assessment year. Subsequently, after recording the reasons under section 147 of the Income Tax Act, 1961 (in short "Act") due approval of the Addl. CIT, Range-65, New Delhi was obtained. The notice u/s. 148 of the Act dated 30.3.2015 and subsequent notices u/s. 142(1) of the Act were served upon the assessee. In response to the notices the assessee himself attended the assessment proceedings time to time as per order sheet entries. During the course of proceedings it was found that the assessee has been an employee of Delhi Police during the FY 2007-08 and has been drawing the salary

therefrom. During the assessment proceedings, the assessee filed his return of income in response to notice u/s. 148 of the Act on 19.2.2016 declaring his total taxable income of Rs. 1,01,510/-. The notice u/s. 143(2) of the Act dated 19.2.2016 and notice u/s. 142(1) of the Act were served upon the assessee. During the assessment proceedings, it was found that the assessee has deposited a cash of Rs,. 13,26,000/- in his saving bank account. The assessee was enquired about the source of these cash deposits and the assessee filed his submissions in this regard. The assessee through his submission dated 28.10.2015 claimed that his father has got the money from the Land Acquisition Collector, Kanjhawala, New Delhi. The money was deposited in the joint account of the assessee and his father. The assessee submitted the copy of cheque of Rs. 38,36,480/- dated 24.4.2004 issued by the Land Acquisition Collector, Kanjhawala, Delhi and claimed that the cash deposited in his account was deposited out of withdrawals from his joint account. The assessee also submitted the copy of bank pass book of the joint account containing entries upto 07.11.2005. The submission of the assessee were examined by the AO. Thereafter, the Assessee was asked to furnish the statement of joint account for the FY 2007-08 to prove his claim that cash deposited in his savings account was withdrawn from this joint account. After perusing the same, the AO observed that there is no cash withdrawal from this account. The Assessee in his submissions dated 28.12.2015 claimed that he was gifted various amounts of money at various

times during the relevant F.Y. by his mother in laws and his cousin. The assessee also claimed the he got interest free loans from friends during the FY and has also arranged some money from the sale of gold jewellery by his family members. The assessee filed the confirmation on plain paper from the concerns persons and furnished the bank statement of his mother in law and cousin. Assessee furnished the raw slips from Bhagwati Jewellers, Kharkhoda, Sonipat issued in name of different family members of the family of the assessee. But on asking, he could not furnish the original bills for the jewellery. Therefore, the AO has held that assessee could not explain the entire amount of cash deposits of Rs. 13,26,000/- and hence, added the same to the income of the assessee and assessed the income of the assessee at Rs.14,27,510/- u/s. 143(3) of the Act vide order dated 23.03.2016. Against the assessment order dated 23.03.2016, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 28.03.2019 has dismissed the appeal of the assessee. Aggrieved with the appellate order, assessee is in appeal before the Tribunal.

3. Ld. Counsel for the assessee only argued the ground no. 2 which is legal in nature and has filed the Paper Book containing pages 1 to 41 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 of notice u/s. 148 of the Income Tax Act, 1961, hence, he stated that the approval for issue of notice us. 148 of the Act is not within the meaning of section 151 of the I.T. Act, 1961 and therefore, the reassessment needs to be quashed. In view of above, he requested to quash the reassessment. To support his contention, Ld. Counsel of the assessee has relied upon the decision of the Hon'ble Delhi High Court in the case of United Electrical Company (P) Ltd. Vs. CIT & Ors. 258 ITR 317 (Del.) and the judgment of the Hon'ble Supreme Court of India in the case of CIT vs. S. Goyanka Lime & Chemical Ltd. (2015) 64 taxmann.com 313 (SC) by which the ground no. 2 raised by the assessee in the present appeal is squarely covered.

4. On the contrary, Ld. 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 decision of the Ld. CIT(A), the following case laws may kindly be considered with regard to reopening of cases u/s 147 of I.T. Act :

1. *Yogendra kumar Gupta Vs ITO (51 taxmann.com 383) (SC)/f20141 227 Taxman 374 (SC) (Copy enclosed) where Hon'ble Supreme Court held that where subsequent to completion of original assessment, Assessing Officer, on basis of search carried out in case of another person, came to know that loan transactions of assessee with a finance company were bogus as said company was engaged in providing accommodation entries, it being a fresh information, he was justified in initiating reassessment proceeding in case of assessee.*

2. *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.*

3. *Yuvraj v. Union of India Bombay High Court [2009] 315 ITR 84 (Bombay)/r20091 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.*

4. *ACIT Vs Rajesh Jhaveri Stock Brokers (P.) Ltd (2007) 161 Taxman 316 (SC)/r20071 291 ITR 500 (SC)/[2007] 210 CTR 30 (SC)*

*So long as the conditions of section 147 are fulfilled, the Assessing Officer is free to initiate proceedings under section 147 and failure to take steps under section 143(3) will not*

*render the Assessing Officer powerless to initiate reassessment proceedings, even when intimation under section 143(1) has been issued ADANI EXPORTS v. DCIT[1999] 240 ITR 224 (Guj) distinguished.*

5. *Devi Electronics Pvt Ltd Vs ITO Bombay High Court 2017-TIQL-92-HC-MUM- II*

*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.*

6. *Pranawa Leafin (P.) Ltd. Vs DCIT Bombay High Court T20131 33 taxmann.com 454 (Bombay)/r20131 215 Taxman 109 (Bombay)(MAG.)*

*Where there was failure on part of assessee to make true and complete disclosure in respect of share transactions entered into by it, in view of proviso to section 147, Assessing Officer was justified in initiating reassessment proceedings even after expiry of four years from end of relevant assessment year.*

7. *Acorus Unitech Wireless (P.) Ltd. Vs ACIT Delhi High Court T20141 43 taxmann.com 62 (Delhi)/r20141 223 Taxman 181 (Delhi)(MAG)/r20141 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.*

8. *PCIT, Vs Paramount Communication (P.) Ltd. Delhi High Court [2017] 79 taxmann.com 409 (Delhi)/r20171 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.*

9. *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.*

10. *Amit Polyprints (P.) Ltd. Vs PCIT Gujarat High Court T2018I 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.*

11. *Aaspas Multimedia Ltd. Vs PCIT Gujarat High Court T2017I 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.*

12. *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.*

13. *Ankit Agrochem (P.) Ltd. Vs JCIT Rajasthan High Court T2018I 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.*

14. *Rakesh Gupta Vs CIT P&H High Court f2018I 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.*

15. *Abhishek Jain Vs ITO Delhi High Court (2018) 94 taxmann.com 355 (Delhi), 2018-TIQL-1059-HC-DEL-IT Date of Order 01.06.2018*

*In terms of section 124(3)(b) jurisdiction of an Assessing Officer cannot be called in question by an assessee after expiry of one month from date on which he was served with a notice for reopening assessment under section 148."*

16. *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.*

17. *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.*

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:-*

*"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)."*

5.2 In the background of the aforesaid discussions and respectfully following the precedents, as aforesaid, I am of the considered view that 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 issue of notice u/s. 148 of the I.T. Act, 1961 and is not in accordance with section 151 of the I.T. Act, 1961, thus, the notice issued u/s. 148 of the Act is invalid and accordingly the reopening in this is bad in law and therefore, the same is hereby quashed. Accordingly, the ground no. 2 raised by the assessee is allowed. Since the other grounds were not raised by the Assessee, the same are dismissed as such. Accordingly, the assessee's appeal is partly allowed.

6. In the result, the Appeal filed by the Assessee stands partly allowed

Order pronounced on 16-10-2019.

Sd/-

**[H.S. SIDHU]  
JUDICIAL MEMBER**

Dated: 16-10-2019

*SRB*

**Copy forwarded to:**

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

AR, ITAT, NEW DELHI.

