

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

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 4715/Del/2018  
Assessment Year : 2008-09

APC AIR SYSTEMS P. LTD.,  
1/7236, EAST GORAKH PARK,  
BEHIND HANUMAN MANDIR,  
SHAHDARA,  
NEW DELHI – 110 032  
(PAN: AAECA7472P)  
(Appellant)

Vs. ITO, WARD-3(1),  
NEW DELHI

(Respondent)

Assessee by : Mrs. Sonia Rani, CA  
Department by : Sh. Pradeep Singh Gautam, Sr. DR.

**ORDER**

This appeal filed by the assessee is directed against the order passed by the Ld. CIT(A)-I, New Delhi on 08.05.2018 in relation to the assessment year 2008-09 on the following grounds:-

1. That the Ld. CIT(A) erred in law and facts of the case while not considering that the Ld. AO has erred in concluding the assessment u/s. 144 of the Act without providing sufficient opportunity of being heard to the assessee before resorting the case to the best judgement assessment. As such the assessment order passed by the Ld. AO is arbitrary in nature and against the principle of natural justice. Therefore, order may please be quashed.
2. That the Ld. CIT(A) has failed to consider that the statutory requirements of law u/s. 151 of the Income Tax Act, 1961 have

not been fulfilled as the approval granted by the Ld. Addl. CIT, Range-3, New Delhi was accorded without independent application of mind and in a mechanical manner. Hence, the reopening of this case is not valid and untenable as per law. As such, assessment is void-ab-initio and may please be quashed.

3. That the Ld. CIT(A) has erred in law and on facts while upholding the decision of the AO of making additions of Rs. 15,37,500/- on account of share capital received as camouflaged transaction without appreciating the submissions filed by the assessee. As such, the addition of Rs. 15,37,500.00 may please be deleted.
4. That the Ld. CIT(A) erred in law and facts of the case while not appreciating that the addition made by the AO is merely on the basis of conjecture and surmises without bringing on record any specific cogent material against the assessee. As such, the addition of Rs. 15,00,000/- may please be deleted.
5. That the Ld. CIT(A) has failed to appreciate while upholding the addition of Rs. 37,500/- on account of commission, being estimated @2.5% by the AO merely on the basis of presumption without even providing any opportunity to the assessee to provide explanation for the same. As such, the addition of Rs. 37,500/- may please be deleted.
6. That the Ld. CIT(A) has erred in law and on facts while confirming the decision of the Ld. AO without appreciating that the alleged evidenced wherein name of the assessee has been mentioned, were never confronted to assessee during the assessment proceedings, on the basis of which the AO has alleged that the share capital received by the assessee is non-genuine. As such, reassessment proceedings are void as per law. Therefore, order may please be quashed.

7. That the AO has failed to make cognizance of our appearance before him on every dates as and when fix and moreover, Rs. 15.00 lacs which was received by account payee cheque, is alleged as accommodation entry only on the baiss of statement of Mr. Tarun Goel without providing any opportunity of being heard to assessee for cross examination. Thus, the assessment was made by AO without given any information and opportunity and therefore, may please be quashed.
8. That the assessee crave to add, alter, delete and modify any of the ground of appeal at the time of hearing.

2. At the time of hearing, Ld. Counsel for the assessee argued only ground no. 2 which is legal in nature and drew my attention towards page no. 48-53 of the Paper Book which is a copy of reasons recorded u/s. 148 of the Act alongwith copy of approval granted by the Addl. CIT, Range-3, New Delhi for issuance of notice u/s. 148 of the Act and stated that 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 Addl. CIT, Range-3, New Delhi wherein it was mentioned *"Yes, I am satisfied on the reasons recorded by the AO that it is a fit case for issue of notice u/s. 148 of the I.T. Act."*, which shows that Addl. CIT, Range-3, New Delhi has not recorded proper satisfaction and without application of mind gave the approval in a mechanical manner. She further stated that this legal/jurisdictional ground no. 2 is squarely covered by the decision of the ITAT, SMC, Bench, New Delhi dated 01.03.2018 in the case of Tara Alloys Ltd. vs. ITO Ward 25(1), New Delhi decided in ITA No. 2421/Del/2017 relevant to assessment year 2005-06 and therefore, she 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. He 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. *Sonia Gandhi vs. ACIT (Delhi High Court) 29018) 97 taxmann.com 150 (Delhi).*

i) *Where Congress Party gave loan to AJL and assigned said loan to non-profit YI which subsequently issued shares to assesses at a price less than FMV, non-disclosure by assesses of allotment of shares in YI would be a reason to initiate reassessment proceedings.*

ii) *Relying on PCIT vs. Meenakshi Overseas Pvt. Ltd. ITA No. 651/Del/2016 dated 11.1.2016 (Hon'ble Delhi High Court) approval u/s. 151 upheld.*

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.*

2.1 *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 Agrochem (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 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 placed at page no. 48-53 of the Paper Book, which is a copy of performa for recording the reasons for initiating proceedings u/s. 148 for obtaining approval of Addl. CIT, Range-3, New Delhi who has granted the approval in a mechanical manner for issuing notice u/s. 148 of the Income Tax Act, 1961 by mentioning as under:-

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

4.1 After perusing the aforesaid remarks of the Addl. CIT, Range-3, New Delhi, I find that the approval granted by the Addl. CIT, Range-3, 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-3, New Delhi for reaching to the satisfaction for granting approval. Thereafter, the AO has mechanically issued notice u/s. 148 of the Act. 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. 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. I find considerable cogency in the contention of the Ld. Counsel for the assessee that the issue no. 2 raised in this appeal is squarely covered by the decision of the ITAT, SMC, Bench, New Delhi dated 01.03.2018 in the case of Tara Alloys Ltd. vs. ITO Ward 25(1), New Delhi decided in ITA No. 2421/Del/2017 relevant to assessment year 2005-06 wherein the Tribunal has quashed the assessment. My aforesaid view is also 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 the 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 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-3, 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 legal 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.

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

Order pronounced on 01-01-2020.

Sd/-

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

Dated: 01-01-2020.

*SRB*

**Copy forwarded to:**

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

AR, ITAT, NEW DELHI.

