

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'SMC-2': NEW DELHI
(Through Video Conferencing)**

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

**ITA No.4540/Del/2019
Assessment Year : 2008-09**

**Digvijay Advisor Pvt. Ltd.
C/o-Akhilesh Kumar, Adv.
206-207, Ansal Satyam,
RDC, Ghaziabad-201002
PAN-AAACK5245Q**

**Vs. ITO,
Ward-7(3),
New Delhi**

(Appellant)

(Respondent)

Appellant by : Sh. Akhilesh Kumar, Advocate
Respondent by : Sh. Farat Khan, Sr. DR

Date of hearing : 04.02.2021
Date of pronouncement : 16.04.2021

ORDER

PER R.K. PANDA, AM :

This appeal filed by the assessee is directed against the order dated 11.03.2019 of the learned CIT(A)-34, New Delhi, relating to Assessment year 2008-09.

2. Fact of the case, in brief, are that the assessee is a private limited company and filed its return of income on 27.09.2008, declaring income of Rs.42,396/-. In this case, information was received from the Investigation Wing that the assessee has obtained accommodation entries of Rs.30 lakhs on account of share capital. The Assessing Officer, thereafter initiated reassessment proceedings u/s 147 of the Act after recording the reasons and with the approval of the competent authority. The reasons so recorded were

provided to the assessee and the objections to the reopening filed by the assessee were disposed of by the Assessing Officer. Subsequently, during the course of assessment proceedings, the Assessing Officer asked the assessee to explain the identity and creditworthiness of the loan creditor and genuineness of the transaction. Rejecting the various explanation given by the assessee and rejecting the objections of the assessee to such reopening of assessment for non-issue of notice u/s 148, the Assessing Officer completed the assessment u/s 147/143(3) of the Act, determining the total income of the assessee at Rs.31,02,400/-, wherein, he made addition of Rs.30 lakhs u/s 68 of the Act and further an amount of Rs.60,000/- being unexplained expenditure incurred for obtaining the accommodation entries u/s 69C of the Act.

3. Before the learned CIT(A), the assessee apart from challenging the addition on merit, challenged the validity of reopening of assessment. However, the learned CIT(A) was also not satisfied with the arguments advanced by the assessee and upheld the validity of reopening of assessment proceedings as well as on the merit.

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

1. *Because, the order of learned lower authority is bad in law & against the facts and circumstance of the case.*
2. *Because, Id. CIT(A) grossly erred in rejecting the ground that notice u/s 148 is issued beyond limitation, without any evidence and in violation of principle that onus is on AO who issued the notice to prove validity of issuance in terms of date etc., hence alleged notice is barred by limitation provided u/s 149 of Act and is illegal.*

3. *Because, Id. CIT(A) grossly erred in upholding the service by affixture valid by wrongly holding that, since the 31st March was the last day of service hence service by affixture without any service by post etc. is valid, which is contrary to S.282 of Act read with provisions of CPC as held in scores of cases, besides even alleged service is not as per law, hence all the proceedings are beyond S.148/149 and are void ab initio.*
4. *Because, without prejudice to above, in alternative, Id. CIT(A) erred in justifying the validity of notice u/s 143(2), by wrongly invoking provisions of S.292BB, being issued without filing of return of income, as such assumption of jurisdiction and consequent order u/s 143(3) is illegal.*
5. *Because, without prejudice to above, in alternative, Id. CIT(A) erred in sustaining the validity of notice u/s 148 which is issued with vague/wrong reasons without any application of mind and satisfaction of Id. AO and/or of approving authority sheerly to conduct roving enquiries only, hence notice is beyond jurisdiction.*
6. *Because, without prejudice to above, in alternative, on merits, Id. CIT(A) erred in sustaining the addition of Rs.30.6 lakhs u/s 68/69C being the share application in whole disregard of the material on record merely on the basis of a general third party unilateral statement that too without providing opportunity to cross examine in terms of M/s Andaman Timber Ind. (SC) and without conducting any enquiry.*

5. The learned counsel for the assessee strongly challenged the order of the learned CIT(A) in confirming the addition on merit as well as upholding the validity of reassessment. The learned counsel for the assessee submitted that the notice u/s 148 has not been issued within the limitation period ended on 31.03.2015 and in any eventuality notice u/s 148 was never served on the assessee before completion of assessment. Despite the objection of the assessee repeatedly that no service of notice was made and the said notice was served through affixture without resorting to service by post etc., the lower authorities have upheld the validity of service of notice. The learned counsel for the assessee referring to section 282 read with service rules from 9 to 17/20 of order 'V' under CPC, 1908, submitted that

when the affixture is admittedly after working hours and without identification of place/witness, the proceedings u/s 147/148 are *void ab initio*. The learned counsel for the assessee referring to various pages of paper book submitted that on 31st March, the Assessing Officer recorded the reasons, send the reasons for approval, obtained approval of the Addl. CIT on the very same date and thereafter issued notice, ordered the notice server and ITI to affix the notice etc, are not practically possible. Referring to the order of the Assessing Officer holding that service by affixture is sufficient and no need to serve by post etc. and the order of the learned CIT(A) holding that since the notice is issued on the last day and therefore, could not be sent through post and therefore, service by affixture on 31.03.2015 is valid, he submitted that in view of the following decisions, such action of the Assessing Officer is illegal and vitiates the entire reassessment proceedings.

- i. CIT V. RAMENDRA NATH GHOSH 82 ITR 888 (SC)
- ii. CIT V MASCOMPTEL INDIA LTD [2012] 345 ITR 58 (DELHI)
- iii. AVI -OIL INDIA P. LTD. V ADDL. CIT (2007) 18 SOT 219 (DEL-D)
- iv. SURENDER KUMAR PANDEY V ITO -ITA 179 & 2072/2017 ORDER DT. 29.03.19 (DEL - SMC)
- v. ARDENT STEEL LTD. V ACIT [2018] 94 TAXMANN.COM 95 (CHHATTISGARH)
- vi. CIT V ATLANTA CAPITAL (P) LTD. (DELHI) -- ITA NO. 665/2015 (DEL. HC)

6. The learned counsel for the assessee in his next plank of argument submitted that assessee filed return of income on 27.09.08 and

neither received notice u/s 148 of the Act dated 31.03.2015 nor filed any return in compliance to same. Therefore, notice u/s 143(2) dated 15.05.2015 is beyond limitation which expired on 30.09.2009. Therefore, assumption of jurisdiction on such invalid notice, more so when objection about the same is raised and consequently order passed u/s 143(3) is *void ab initio*. Referring to the order of the Assessing Officer, the learned counsel for the assessee submitted that the Assessing Officer has never addressed the above objection made before him. The learned CIT(A) has stated that since the assessee has not raised this objection before the Assessing Officer and complied with notice u/s 143(2), hence, in terms of section 292BB of the Act, the assessee cannot raise this issue in appellate proceedings. Referring to the following decisions, the learned counsel for the assessee submitted that non-issue of notice or invalid issue of notice u/s 143(2) is not curable defect and the assessment so made has to be quashed.

- i. ASSTT. CIT V. HOTEL BLUE MOON [2010] 321 ITR 362/188 TAXMAN 113 (SC)
- ii. CIT V. RAJEEV SHARMA [2011] 336 ITR 678 (ALL)
- iii. PR. CIT SHRI JAI SHIV SHANKAR TRADERS (P.) LTD. [2015] 64 TAXMANN.COM 220 (DELHI)
- iv. GULAB BADGUJAR (HUF)V ITO [2019] 111 TAXMANN.COM 90 (PUNE - TRIB.)
- v. JYOTI PAT RAM VS ITO (2005) 92 ITD 423 ((LKO)

7. The learned counsel for the assessee in his next plank of argument submitted that the reasons were stated to be recorded on 31.03.2015 on the basis of letter dated 31.03.2009 of ADIT about an accommodation entry of Rs. 30 lakhs of M/s Karol Bagh Trading Ltd. as per

statement of one Mr. Tarun Goyal. But the Assessing Officer has not taken any action on this information though time to issue notice on the income tax return filed on 27.09.2008 was available till 30.09.2009. This shows that the Assessing Officer was not convinced about the creditability of said information and chose not to take any action. He submitted that this information is not new and is available at the time of original assessment. There is no material linking the assessee with Mr. Tarun Goyal who admittedly never invoked the name of the assessee about any accommodation amount. He submitted that the letter dated 09.03.2015/23.03.2015 is without any approval u/s 133(6) of the Act and was seeking details about an accommodation entry of Rs. 35/30 lakhs for which adjournment was allowed on 06.04.2015, but reasons dated 31.03.2015 is recorded for non-compliance of the said letter. He submitted that there is neither any 'reason to believe' nor there is credible material/live link with Assessing Officer and at the most he acted on borrowed satisfaction. Further, the lower authorities have given the approval in a mechanical manner. Referring to the following decisions, he submitted that when the approval has been given in a mechanical manner, such reassessment proceedings are invalid.

- i. ESHA STRIPS PVT. LTD. V. ITO (ITA NO. 4689/D/18) (01/01/2019)
- ii. PCIT V MEENAKSHI OVERSEAS (P) LTD. [2017] 82 TAXMANN.COM 300 (DELHI)
- iii. CIT V SFIL STOCK BROAKING LTD. (2010) 233 CTR (DEL)
- iv. CIT V N.C. CABLES (2017) 391 ITR 11
- v. YUM REST. ASIA PTE LTD. V DCIT [2018] 99 TAXMANN.COM 423 (DELHI)

- vi. CIT V S. GOYANKA LIME & CHEMICALS LTD.[2015] 56 TAXMANN.COM 390 (MADHYA PRADESH)--SLP DISMISSED IN 64 TAXMANN.COM 313(SC)
- vii. M/S SIGNATURE HOTELS PVT. LTD. VS. ITO [2011] 338 ITR 51(DEL)

8. So far as the merits of the case is concerned, the learned counsel for the assessee submitted that the assessee is engaged in the business of advisors to Mutual Fund Investment and has received an amount of Rs.30 Lakhs from M/s Karol Bagh Trading Ltd for allotment of 60,000/- equity shares at premium of Rs.40/- each. The shares were allotted on 31.03.2008. Further, the assessee during the year had also allotted 12,000 shares of Rs.10/- with premium of Rs.40/- to Shri Om Furniture, for which amount was received in previous year. The assessee had filed share application form, confirmation, bank statement and balance sheet of both the parties in support of such transactions. It was also submitted before the Assessing Officer that none of the directors of M/s Karol Bagh Trading Ltd. is present. Hence, it is not possible to produce them for personal deposition. However, the Assessing Officer never conducted any enquiry from the said party nor rejected evidences placed before him. Relying on the following decisions, the learned counsel for the assessee submitted that the addition made by the Assessing Officer and sustained by the learned CIT(A) is not in accordance with law and should be deleted.

- i. CIT V GANGESHWARI METALS P. LTD [2014] 361 ITR 10 (DEL)
- ii. PSYCHOTROPICS LEASING & FINANCE (P) LTD. V. ITO (ITA NO. 1122/D/14) (DATED 11.10.2018)
- iii. RATHI CERAMICS PVT. LTD. V. ITO (ITA NO. 4540/DEL/2014) (04.02.2019)
- iv. GREEN INFRA LTD. V ITO 145 ITD 240(MUMBAI)--AFFIRMED IN [2017] 78 TAXMANN.COM 340 (BOMBAY)/[2017] 392 ITR 7 (BOMBAY)

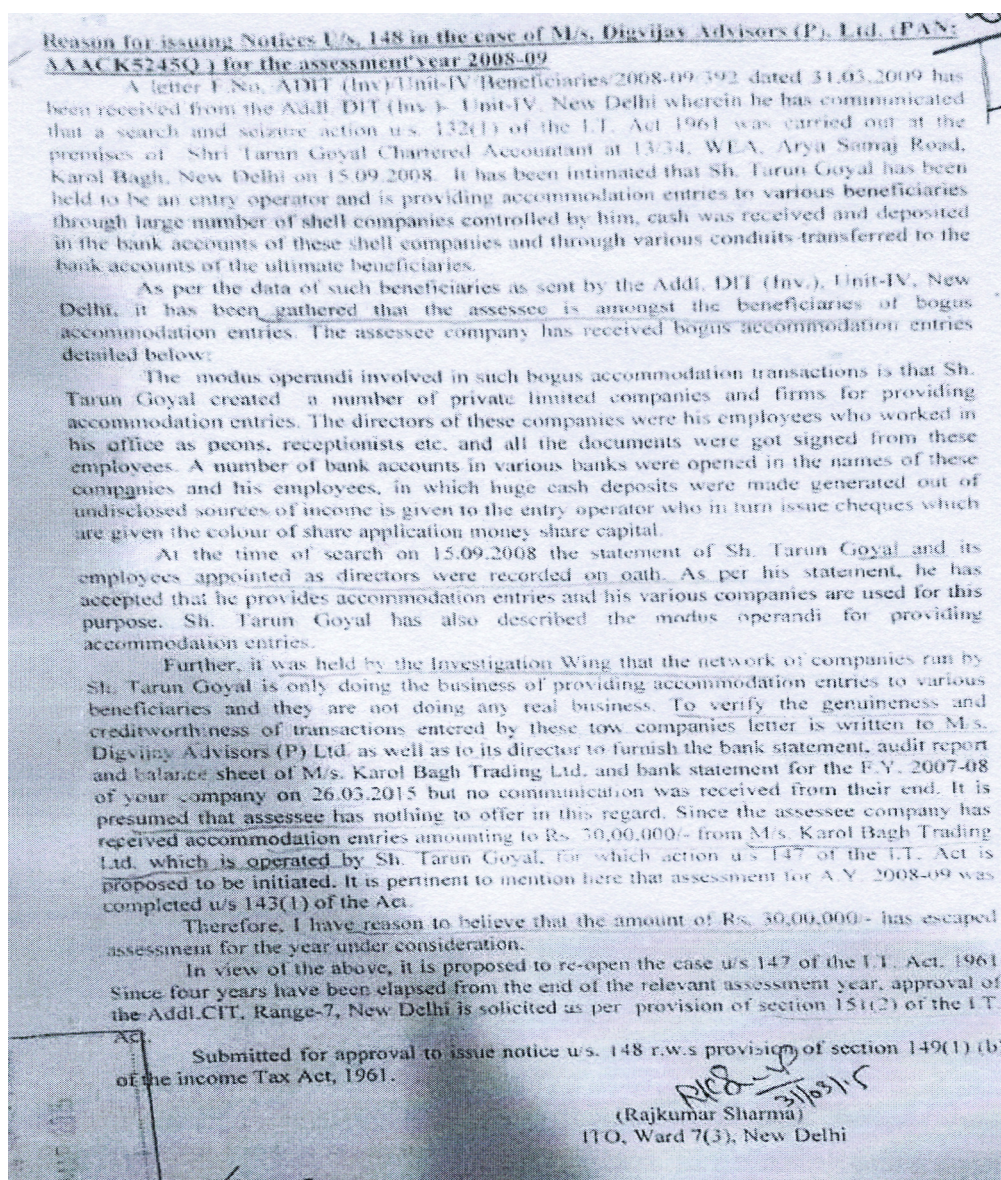
9. He accordingly submitted that both legally and factually, the addition made by the Assessing Officer and upheld by the learned CIT(A) is not justified.

10. The learned DR on the other hand, heavily relied on the order of the learned CIT(A). He submitted that the learned CIT(A) has given valid reason while upholding the validity of reassessment proceedings. Referring to the decision of Hon'ble Supreme Court in the case of Raymond Woollen Mills Ltd. vs ITO & Ors [236 ITR 34](SC), he submitted that the Hon'ble Supreme Court has 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. Relying on various decision as mentioned by learned CIT(A), he submitted that the reopening of the assessment was validly made and therefore, the order of the learned CIT(A) on this issue should be upheld.

11. So far as the arguments of the learned counsel for the assessee that notice was not served on the assessee is concerned, he submitted that the said notice was served through affixture which is a valid mode of service and assessee should not raise any objection on this issue. So far as the merit of the addition is concerned, the learned DR submitted that the assessee has failed to prove the identity and creditworthiness of the share applicant and the genuineness of the transactions in terms of section 68 of the Act. The assessee has failed to produce the directors of the investor company before the Assessing Officer for his examination. Therefore, the

order of the learned CIT(A) sustaining the addition is in accordance with law and therefore, should be upheld.

12. I have considered the rival arguments made by both the sides, perused the orders of Assessing Officer and the learned CIT(A) and paper book filed on behalf of the assessee. I have also considered the various decisions cited before me. I find the Assessing Officer in the instant case reopened the assessment after recording the reasons, which reads as under:-



13. I find the Addl. CIT while giving approval has mentioned as under:-

"I am satisfied that this is a fit case for issuing notice u/s 147/148".

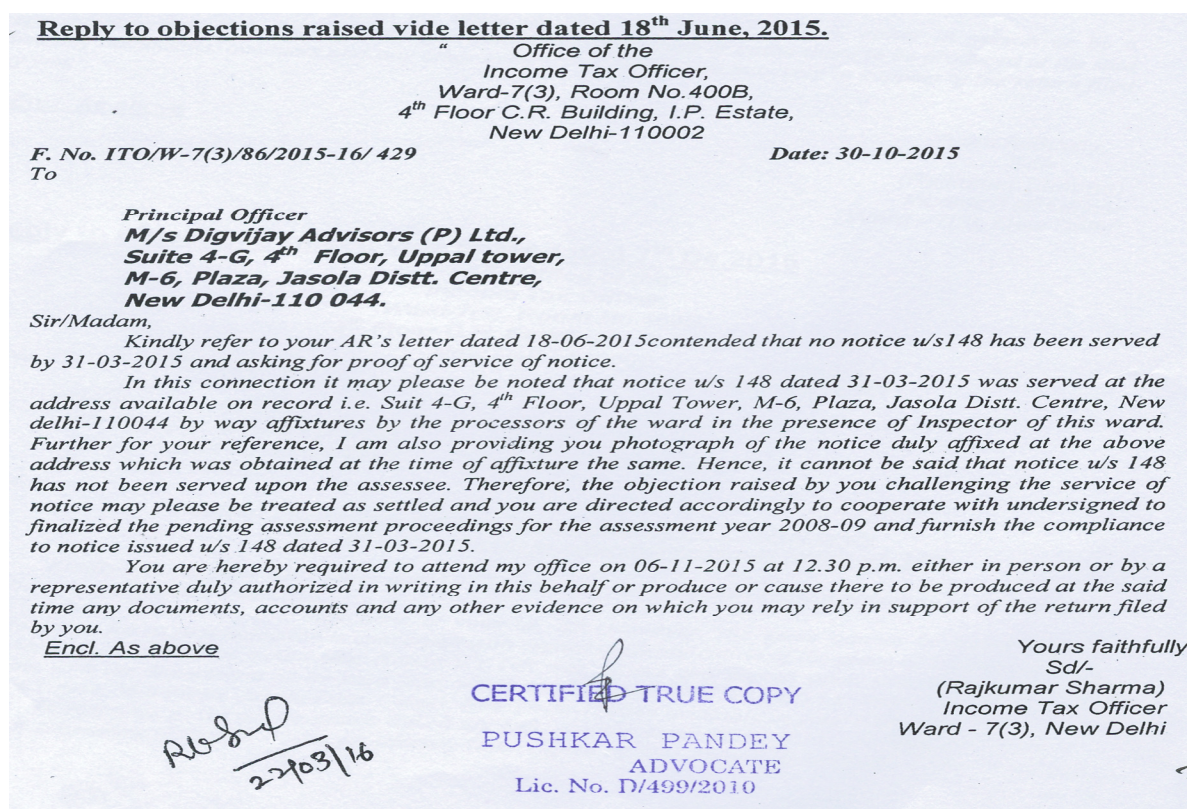
14. A perusal of the approval given by the Addl. CIT shows that he has not applied his mind properly and has in a mechanical manner given his approval. I find the Hon'ble Delhi High Court in the case of CIT vs N.C. Cables Ltd. reported 391 ITR 11 has held as under:- (short notes)

"Reassessment-Issuance of Notice-Sanction for issue of Notice-Assessee had in its return for AY 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."

14.1. I find the Hon'ble Madhya Pradesh High Court in the case of CIT vs. S. Goyanka Lime & Chemicals Ltd. reported in 231 taxmann 73 (MP) has held that where the Joint Commissioner recorded satisfaction in a mechanical manner and without application of mind to accord sanction for

issuing notice under section 148 of the Act, reopening of assessment was invalid. Similar view has been taken by the Hon'ble Delhi High Court in the case of Yum Restaurant Asia Pte Ltd. vs DCIT reported in 99 Taxmann.com 423 (Del). Since, the Addl. CIT in the instant case has given approval in a mechanical manner without independent application of mind, therefore, such approval given u/s 151(1) of the Act being not in accordance with law, the reassessment proceedings has to be quashed.

14.2. Even otherwise, I find in the instant case, a perusal of the assessment order shows that the Assessing Officer while disposing the objections made by the assessee challenging the service of notice u/s 148 has observed as under:-



15. A perusal of the above reply of the Assessing Officer shows that notice u/s 148 dated 31.03.2015 was served on the assessee through

affixture in presence of Inspector of the Ward. From the details filed by the assessee in the paper book, it is seen that the reasons were recorded on 31.03.2015. The reasons so recorded were sent for approval to the Addl. CIT on 31.03.2015, the Addl. CIT gave his approval on 31.03.2015, the file was received back by the Assessing Officer on 31.03.2015. The notice u/s 148 of the Act was handed over to the notice server and the area inspector on the very same date and the notice was served through affixture on the same date instead of first attempting to serve the same in person or through post. I, therefore, find merit in the arguments of the learned counsel for the assessee that no notice u/s 148 of the Act was ever served to the assessee and even if it is accepted that such a notice is served through affixture even then also the same is not valid service being served after office hours and the notice so affixed does not bear the name of any witness of the localities other than the Ward Inspector who accompanied the notice server. The chronology of events that has taken place clearly shows that no notice u/s 148 was ever served upon the assessee before 31.03.2015 and therefore, I find force in the arguments of the learned counsel for the assessee that since no notice u/s 148 of the Act was served on the assessee before 31.03.2015, therefore, such reassessment proceedings are not in accordance with law and has to be quashed. In this view of the matter, I quash the reassessment proceedings. Since, the assessee succeeds on the above two legal grounds i.e. giving approval by the Addl. CIT in a mechanical manner and non-service of notice u/s 148 of the Act before the specified date, the other plank of arguments made by the assessee challenging the validity of reassessment proceedings as

well as the addition on merit become academic in nature and therefore, the same are not being adjudicated.

16. In the result, the appeal of the assessee is allowed.

The decision was pronounced in the open court on 16.04.2021.

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Delhi/Dated- 16.04.2021

Shekhar

Copy forwarded to: -

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

By Order

Assistant Registrar,
ITAT, Delhi