

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

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No.5403/Del/2017
Assessment Year: 2009-10

Ashok Kumar Agarwal, S/o. Kashi Ram, Umes Vihar, 78-D, Naveen Mandi, Transport Nagar, Meerut PAN ANKPA8702E	vs.	ITO Ward-1, Meerut, Distt. Meerut (UP)
(Appellant)		(Respondent)

For Assessee :	Shri Kapil Goel, Advocate
For Revenue :	Shri Om Prakash, Sr DR

Date of Hearing :	19.12.2022
Date of Pronouncement :	06.03.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal filed by the assessee is directed against the order dated 30.05.2017 of the Ld. CIT(A), Meerut, relating to Assessment Year 2009-10.

Application of assessee for admission of additional grounds

2. By way of application the assessee has requested to admit and considered following additional grounds:-

Additional Jurisdictional /legal Ground (s) sought to be raised before Hon'ble ITAT

4. That impugned reopening action u/s 148 made on basis of incorrect /erroneous /non existing basis that assessee do not have PAN and is non return filer, whereas assessee has admittedly filed return on 30.09.2009 much before impugned reopening action made u/s 148 on 23.03.2016 , so impugned reopening is invalid and unlawfully made, so it is requested to be quashed and nullified; accordingly impugned assessment order and first appeal order may please be quashed as nullity being founded on invalid reasons;

5. That impugned reopening action u/s 148 made to assess alleged capital gains (difference of sale consideration and circle rate and admittedly no adverse inference is drawn on alleged aspect of difference of sale consideration and circle rate and admittedly sole disallowance made in impugned asst u/s 54B, are at complete variance and is impermissible in law, so once foundation of reasons itself become non-existent, then no further addition on any other issue /aspect can be made, accordingly impugned assessment order and first appeal order may please be quashed as nullity being founded on non-existent reasons;

6. That impugned reopening action u/s 148 is based on invalid and mechanical approval u/s 151 of PCIT Meerut which is given in ritualistic manner and without application of mind on part of approving authority, accordingly impugned assessment order and first appeal order may please be quashed as nullity being founded on invalid approval u/s 151 of 1961 Act.

7. That impugned reopening action u/s 148 is jurisdictionally flawed and is made without authority of law and is ultra vires to provisions of 1961 Act.

3. The learned counsel of the assessee submitted placing reliance on the various judgments including judgment of Hon'ble Supreme

Court in the case of **National Thermal Power Corporation 229 ITR 383 (SC)** submitted that the additional grounds are pure legal in nature which can be adjudicated on the basis of material available on record without calling any extraneous material or exercise.

4. Replying to the above the Ld. Senior DR strongly opposed to the admission of additional grounds.

5. On a careful consideration of above submissions I am of the view that the assessee is seeking admission and consideration of additional grounds which are legal in nature and can be adjudicated on the basis of material available on record and these legal grounds goes to the route of the matter. Therefore respectfully following the judgment of Hon'ble Supreme Court in the case of NTPC (supra) and recent judgments of **Hon'ble Punjab & Haryana High Court in the case VMT Spinning Co. 389 ITR 326 & Hon'ble Bombay High Court in the case of Venture Textiles 426 ITR 478**. The additional grounds raised by the assessee are admitted for consideration and adjudication. The assessee application of additional ground is allowed.

6. The learned counsel of the assessee submitted that as per copy of the reasons recorded by the Assessing Officer, the AO noted that in absence of PAN, information regarding filing of return for A.Y. 2009-10, which is not available it reflects that no capital gain has been declared by the assessee on the sale of immovable property during A.Y. 2009-10. The learned counsel submitted that the copy of return of income available at page 8 and 9 clearly reveals that the assessee filed return of income for A.Y. 2009-10 on 30.09.2009 with ITO Ward-1(1), Meerut wherein the assessee declared capital gain income of Rs. 14,90,145/- accrued to him on account of sale of property. Therefore, the learned counsel submitted that the AO has proceeded to initiate reassessment proceedings u/s. 147 of the Act on basis of incorrect and wrong facts therefore only on this ground initiation of reassessment proceedings and all consequent orders deserves to be quashed.

7. The learned counsel also submitted that the initiation of reassessment proceedings under 147 of the Act and issuance of notice u/s. 148 of the Act has been based on invalid and mechanical approval u/s. 151 of the Act, wherein the Ld. PCIT

Meerut has given approval in a mechanical manner without application of mind by putting a seal in relevant para of approval u/s. 151 of the Act.

8. Replying to the above the Ld. Senior DR strongly supported the action of the AO in initiating reassessment proceedings u/s. 147 of the Act and issuing notice u/s. 148 of the Act. However he could not controvert two factual position viz. first that the assessee did file return of income for A.Y. 2009-10 on 30.09.2009 much before the impugned reopening action u/s. 147 of the Act on 23.03.2016 and secondly the Ld. PCIT Meerut in the relevant column has put a seal on the approval order u/s. 151 of the Act issued on 17.03.2016.

9. On careful consideration of rival submissions first of all I note that the AO on 11.03.2016 recorded reasons for initiation of reassessment proceedings which are as follows:-

Reasons for initiating proceedings u/s. 148 of the I.T.Act, 1961 in the case of Sh. Ashok Kumar, S/o Sh. Kashi Ram, 78-D, Naveen Mandi Sthal Meerut for A.Y. 2009-10

As per AIR/CIB information received in this office, assessee had sold an immovable property in FY 2008-09, relevant to the A.Y. 2009-10, as detailed below:-

Sl No.	Nature of transaction	Value (Rs.)	Transaction date	Assessment Year
1	Sold Immovable Property Valued at Rs. 3000000 or more	1,02,00,000	24.06.2008	2009-10

In absence of PAN, information regarding filing of return for A.Y. 2009-10 is not available. This reflects that no capital gain has been declared by the assessee on above mentioned sale of property. In view of above, I have reasons to believe that capital gain arising on sale of above mentioned property has escaped assessment within the meaning of sec. 147 of the IT Act for A.Y. 2009-10 and such capital gain is obviously more than Rs. 1 lac, as difference between sale consideration and circle rate value is more than Rs. 1 lac.

Issue notice u/s. 148

Sd/-
(Gambir Singh)
Income Tax Officer
Ward-1(1), Meerut

Dated :11.03.2016

10. From the above reasons I clearly note that the Assessing Officer proceeded to initiate action u/s. 147/148 of the Act. On the sole premise that the PAN, information regarding filing of return for

A.Y. 2009-10 is not available and therefore he has reason to believe that capital gain accrued to the assessee on account of sale of immovable property has escaped assessment within the meaning of u/s. 147 of the Act. Per contra from the copy of return of income filed by the assessee on 30.09.2009 for A.Y. 2009-10 and computation of income clearly reveals that the assessee did file return of income within prescribed time limit and also offered long term capital gain income of Rs. 14,90,145/- for taxation and also paid due taxes etc. thereon. Therefore the basic premise on which the AO initiated reassessment proceedings has no legs to stand therefore the same is found to be *void ab initio* being bad in law. From the copy of the approval available at pages 6 and 7 of assessee paper book, I also note that the Ld. PCIT Meerut has put a seal above his signature which states “yes, I am satisfied that it is a fit case to issue notice u/s. 148 of the I.T. Act 1961”. In my humble understanding the requirement of approval u/s. 151 of the Act is not a formal ritual but it is mandatory legislative requirement which has to be done after due application of mind to the material gathered by the AO and reasons recorded by him. The approving

authority has to consider entire material before granting approval for initiation reassessment proceedings u/s. 147 of the Act and issuance of notice u/s. 148 of the Act. I am unable to agree with the contention of the learned Senior DR that the putting seal as statement of approval is sufficient as the any exercise in the part of the Ld. PCIT for application of mind towards the said material which was gathered by the AO and the reasons recorded by him for the purpose of initiation of reassessment proceedings and issuance of notice u/s. 148 of the Act. Merely putting a seal as approving statement is not sufficient and make it clear that the approving authority has granted approval in a mechanical manner without application of mind to the relevant material and reasons recorded by the AO. Therefore the initiation of reassessment proceedings also fails on this count. Therefore additional grounds of assessee are allowed and initiation of reassessment proceedings, issuance of notice u/s. 148 of the Act and all consequent proceedings and orders are hereby quashed.

11. Since by the earlier part of this order I have quashed the entire reassessment proceedings and consequent order therefore the

grounds of assessee on merits are not being adjudicated upon as having become academic.

12. In the result appeal of the assessee is partly allowed.

Order pronounced in the open court on 06.03.2023.

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Dated:06th March, 2023.

NV/-

Copy forwarded to :

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

// By Order //

Asstt. Registrar, ITAT, New Delhi