IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH :D: DELHI)

BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT &
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA No. 604/Del/2023
Assessment Year: 2013-14

Cricket South Africa (NPC), PO Box No. 55009, Northlands South Africa. (PAN:AAECC7322E)	Vs.	ACIT (International Taxation), Circle-1(2)(1), New Delhi.
(Appellant)		**(Respondent)**

Present for:

Assessee by : Shri Percy Pardiwalla, Sr. Adv. &
Mr. Nitesh Jodhi, Adv.
Department by : Shri Vizay B. Vasanta, CIT-DR

Date of Hearing : 12.10.2023
Date of Pronouncement : 27.10.2023

O R D E R

PER SAKTIJIT DEY, VICE PRESIDENT:

Captioned appeal has been filed by assessee assailing the final assessment order dated 25.10.2023 passed under Sections 147 read with section 144C(13) of the Income-Tax Act,1961 for the assessment year 2013-14, in pursuance to directions of learned Dispute Resolution Panel (DRP).

2. In the Memorandum of Appeal, assessee has raised multiple grounds, both on legal issues as well as on merits. However, in ground no.1, assessee has challenged the validity of assumption of jurisdiction by the Assessing Officer to reopen the assessment under Section 147 of the Act. Since, the issue raised in ground no.1, is a legal and jurisdictional issue going to the root of the matter, at the outset, we propose to deal with it.

3. Facts relevant for deciding this issue, briefly are, the assessee is a non-resident corporate entity incorporated under the laws of South Africa and is a tax-resident of South Africa. Admittedly, for the assessment year under dispute, assessee did not file any return of income in India. As stated by the Assessing Officer in the assessment order, as per AIR information available in AIMS module of ITBA, it was found that the assessee had entered into certain transactions resulting in generation of income in India. Whereas, assessee had not filed any return of income in India offering such income. Based on such information, the Assessing Officer reopened the assessment under Section 147 of the Act after recording reasons. In response to notice

issued under Section 148 of the Act, assessee filed its return of income and objected to the reopening of assessment under Section 147 of the Act. The case of the assessee was, during the year under consideration, it had entered into an agreement with TAJ Television Ltd., another non-resident entity, in respect of certain rights pertaining to live transmission of certain matches played in South Africa as well as transmission of recorded programs. It was submitted by the assessee that the license fee received from TAJ Television Ltd. is not taxable in India as neither the assessee nor TAJ Television Ltd. are Indian residents. Assessing Officer, however, was not convinced with the submissions of the assessee. He was of the view that the license fee received of Rs.53,40,00,000 from TAJ Television Ltd. is in the nature of royalty, hence, taxable in India. Accordingly, he brought the receipts to tax at the hands of the assessee while framing draft assessment order. Against the draft assessment order so passed, assessee raised objections before learned DRP, inter alia, on the ground that reopening of assessment under Section 147 is without jurisdiction. Learned DRP did not find merits in the objections of the assessee and accordingly, rejected them. In terms with the directions of learned DRP, assessment was finalized.

4. Before us, learned senior counsel appearing for the assessee submitted that assumption of jurisdiction under Section 147 of the Act is totally invalid as the Assessing Officer has considered non-existent and wholly irrelevant facts for coming to conclusion that income chargeable to tax at the hands of the assessee has escaped assessment.

5. Drawing our attention to the reasons recorded by the Assessing Officer to reopen the assessment, a copy of which is placed at page 8 of the paper books, learned counsel submitted, in the heading of reasons recorded, which was sent for approval of the higher authority, the Assessing Officer has mentioned the assessment year 2014-15, whereas, he has actually reopened the assessment for assessment year 2013-14. He submitted, even, the Assessing Officer has wrongly mentioned the name of the assessee. He submitted, in the opening paragraph, though, the Assessing Officer has stated that the assessee has not filed any return of income for financial year 2012-13, however, referring to AIR information, he has observed that assessee has filed TDS return under Section 194E for Rs.4,68,96,484 under Section 195 for Rs.1,07,16,433, whereas, the assessee has not filed any return of income. Therefore,

genuineness of financial transaction/business activities of the company could not be ascertained. Further, drawing our attention to paragraph 4 of the reasons recorded, he submitted that the Assessing Officer, while alleging escapement of income has referred to M/s. Cricket Australia not filing return of income in India. Thus, he submitted, the reasons recorded reveal complete non-application of mind by the Assessing Officer. He submitted, the facts discussed in the reasons recorded have absolutely no nexus with the material available on record.

6. Drawing our attention to the approval granted by the competent authorities under Section 151 of the Act, learned counsel submitted, while granting approval also, neither the Additional CIT nor the CIT have applied their mind to the facts and material on record and have granted approval in a thoroughly mechanical manner. Thus, he submitted, the assessment having been reopened under total factual misconception and without any tangible material on record to establish that income chargeable to tax has escaped assessment, assumption of jurisdiction under Section 147 of the Act is wholly invalid. Thus, he submitted, the assessment order is invalid. He submitted, without

properly examining the issue, the DRP has rejected assessee's contention in a purely perfunctory manner. Thus, he submitted, the assessment order deserves to be quashed.

7. Learned Departmental Representative relied upon the observations of learned DRP.

8. We have considered rival submissions and perused material on record.

9. It is a well-settled principle of law that the foundation of assumption of jurisdiction under Section 147 of the Act is the reasons recorded by the Assessing Officer to form the belief that income chargeable to tax in a particular assessment year has escaped assessment. The reasons recorded by the Assessing Officer for reopening of assessment, a copy of which is placed at page 8 of the paper books, reads as under:

"Reasons of reopening of the assessment in the case of M/s. CRICKET SOUTH AFRICA (ASSOCIATION), for Assessment Year 2014-15 u/s. 147 of the Act.

Name of the assessee	M/s. CRICKET SOUTH AFRICA (ASSOCIATION)
Address of the assessee	Post Box 55009, Northlands ZA

	2116, South Africa ZA 999999, Foreign
PAN of the assessee	AFECC7322E
Assessment Year	2013-14
Details of the Assessing Officer having jurisdiction over the Assessee	DCIT Cir-1(2)(a), Intl. Tax, New Delhi

2. As per NMS information disseminated through AIMS module of ITBA M/s. CRICKET SOUTH AFRICA (ASSOCIATION) (PAN No.AAECC7322E) has not filed ITR during F.Y. 2012-13.

3. As per AIR information, it is noticed that the said assessee has filed TDS return u /s 194E of Rs.4,68,56,484/- and u/s. 195 of Rs.1,07,16,433/-, but couldn't file ITR during F.Y.2012-13. In light of this, the genuineness of financial transaction/business activity of this company could not be ascertained.

4. Thus from the above discussion, it is clear that the incomes during FY 2012-13 has escaped assessment in India as M/s. Cricket Australia has not filed return in India for A.Y. 2013-14.

5. In view of the above, I have reason to believe that the income during the FY 2012-13 relevant to A.Y. 2013-14 has escaped assessment as defined u/s. 147 of the Income-Tax Act, 1961. Accordingly, notice u/s. 148 of the Act may be issued in this case.

6. In this case, the only requirement to initiate proceedings u/s. 147 is reason to believe which has been recorded above. This case is beyond four years & within six years from the end of the assessment year under consideration. Therefore, approval u/s 151(1) of the Act is solicited. Accordingly, put for your kind perusal and approval please.

Sd/-

Dy.Commissioner of Income Tax
Circle-1(2)(1), Intl. Tax, New Delhi"

10. On going through the reasons recorded, we are of the view that they are replete with various factual misstatement/inaccuracies and silly mistakes. Though, the Assessing Officer has reopened the assessment for assessment year 2013-14, however, the heading of the reasons recorded refers to assessment year 2014-15. Even, the name of the assessee has been wrongly mentioned. In paragraph 3 of the reasons recorded, the Assessing Officer has very clearly and categorically stated that, though, the assessee had filed TDS return under Section 194E of Rs.4,68,56,484 and under Section 195 of Rs.1,07,16,433, however, it didn't file any return of income. As a result of which, genuineness of financial transaction business activities of the assessee could not be ascertained. In paragraph 4 of the reasons recorded, the Assessing Officer has mentioned filing of return of income by M/s. Cricket Australia. Whereas, admitted facts are, the assessee has not filed any TDS returns whatsoever under Section 194E or section 195 of the Act. In fact, there is no reason for the assessee to file any TDS returns in India as it has not remitted any amount out of India to any other party.

11. On the contrary, the assessment order itself would reveal, instead of making any payment, assessee had receipts from Taj Cricket Ltd., another non-resident entity. Thus, the reasons recorded by the Assessing Officer for reopening of assessment under Section 147 of the Act clearly reveals that the formation of belief has no live link or nexus with any tangible material available on record. Rather the reasons recorded are based on either non-existent or completely irrelevant facts. In fact, while disposing of the objections of the assessee questioning the validity of the reopening of the assessment, the Assessing Officer has clearly admitted/owned up various factual inaccuracies in the recorded reasons. In this regard, following observations of the Assessing Officer in communication dated 19.01.2022, while disposing of the objections of the assessee, a copy of which is placed at page 61 of the assessee are reproduced:

> **"As per information available on records, the assessee had received certain payments from India on which TDS had been deducted by the remitters during the subject year and even in response to the aforesaid letter dated 17.03.2021, the assessee chose not to file any Income Tax Return or submit an appropriate response. In view of the same, the Assessing Officer formulated the reasons to believe that the assessee has willingly not filed ITR for the subject year to escape**

assessment. The Assessing Officer recorded the reasons that due to the failure of the assessee to file ITR, the transactions on record with the department and business activity of the assessee could not be verified. <u>However, the Assessing Officer had inadvertently written that the assessee had filed TDS return during the year, instead of writing that the assessee had received incomes on which TDS had been deducted by the remitters, as evident from the TDS returns filed by them."</u>

<u>[Emphasis by us]</u>

12. Thus, facts on record clearly reveal that the Assessing Officer has reopened the assessment under Section 147 of the Act on complete non-application of mind. Unfortunately, the higher authorities while granting approval under Section 151 of the Act have approached the issue in a mechanical manner without verifying the facts. The concept of approval under Section 151 of the Act by the higher authorities in the matter of reopening of assessment under Section 147 of the Act is only for the purposes of putting a safeguard against any arbitrary or highhanded exercise of power by the Assessing Officer while reopening of assessment under Section 147 of the Act. Therefore, the burden casts on the approving authority is onerous, as, based on the reasons recorded by the Assessing Officer for reopening of assessment, approving authority has to find out whether a case for reopening of assessment is made out.

13. In the facts of the present appeal, undoubtedly, the reasons recorded by the Assessing Officer certainly do not make out a case for reopening of assessment under Section 147 of the Act. However, without examining the facts on record, both the Additional CIT and CIT have granted approval under Section 151 of the Act. Granting approval under Section 151 of the Act is not an empty formality. Approval has to be granted with caution and proper application of mind to the facts and material on record to prevent miscarriage of justice, as, reopening of assessment involves reopening of an already concluded assessment. Therefore, it should not be used as a tool for harassment to the assessee. Unless there is concrete evidence and tangible material before the Assessing Officer indicating escapement of income, powers under Section 147 of the Act should not be exercised. However, this is not the case in the present appeal. Not only the Assessing Officer has acted in a cavalier manner while reopening of assessment under Section 147 of the Act but the approving authorities have also failed in discharging the duties cast upon them by the Statue while granting approval under Section 151 of the Act.

14. The most unfortunate part in the entire exercise is the approach adopted by learned DRP. Pertinently, while disposing of assessee's objections with regard to the validity of reopening of assessment under Section 147 of the Act, learned DRP has held as under:

> *"3.1.2 |The Panel has considered the submission, non filing of TDS return and related transactions, the business activity associated therewith cannot be considered totally shorn off income generating activities. Further, mere typographical error in the name does not or would not vitiate the proceedings. The Panel, therefore, finds no reasons to interfere with the action of the AO. The case law relied upon by the assessee is in the context of distinguishable facts and therefore does not lay down any general law of universal application. This objection is accordingly rejected."*

15. As could be seen from the observations of learned DRP, they have disposed of the objections of the assessee, being completely oblivious of the factual position, as, the DRP has referred to non-filing of TDS return and related transactions as the reasons for reopening. This, in our view, is totally unacceptable. When the Assessing Officer, while disposing of the objections of the assessee has admitted errors committed by him, it is surprising that learned DRP has fallen into the same error while

referring to non-filing of TDS return and related transaction as the cause for reopening of assessment.

16. As a matter of fact, DRP was set up under the statute as an alternative dispute resolution mechanism for speedy disposal/resolution of dispute between the assessee and the department in certain areas of taxation. The DRP is constituted by three very senior officers of the department in the rank of Principal CIT/CIT. Therefore, it is expected that when the panel decides the objections raised by the aggrieved assessee, they must decide the issues raised before them by considering both the facts and law. This is so because, after directions are issued by the DRP, assessee gets no further opportunity before the Assessing Officer as the Assessing Officer has to implement the directions of DRP in letter and spirit. However, we have come across several instances where the DRP has failed to discharge its obligation in a proper manner by dealing with the objections on merits with valid reasoning. The instant case is a classic example of failure of the DRP to effectively deal with the issues at hand.

17. Be that as it may, on overall consideration of facts and material available on record and based on the detailed discussion made by us in foregoing paragraphs, we hold that the reopening of assessment in the present case is invalid. Accordingly, we declare the assessment order as void ab initio and quash it.

18. In view of our decision in ground no.1, the issues raised in various other grounds including the grounds on merit of the additions made have become academic. Therefore, we desist from deciding them, however, all these issues are kept open.

19. In the result, appeal is allowed as indicated above.

Order pronounced in the open court on 27.10.2023.

Sd/- **(DR. BRR KUMAR)** **Sd/- (SAKTIJIT DEY)**
ACCOUNTANT MEMBER **VICE-PRESIDENT**

Dated: 27th October, 2023
Mohan Lal

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi