

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DEHRADUN BENCH: 'DB')
THROUGH VIDEO CONFERENCING
BEFORE: SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No:- 3071 & 3072/Del/2016
(Assessment Years: 2011-12 & 2012-13)**

M/s Uttarakhand Purv Sainik Kalyan Nigam Limited, Station Sub Area, Garhi Cantt. Dehradun.	Vs.	Income Tax Officer, Ward 2(5), Dehradun.
PAN No: AAACU7129D		
APPELLANT		RESPONDENT

Assessee by : Shri Sanjay Malik, Adv. &
Shri Sankalp Malik, Adv.
Revenue by : Smt. Poonam Sharma, Addl. CIT
Date of Hearing : 21.11.2023
Date of Pronouncement : .11.2023

PER M. BALAGANESH, AM:

These two appeals of the Assessee arises out of the order of the Learned Commissioner of Income Tax (Appeals), Dehradun, [hereinafter referred to as [‘Ld. CIT(A)’] in Appeal No.451/CIT(A)/DDN/2014-15, dated 28/03/2016 against the order passed by Income Tax Officer, Ward-2(5), Dehradun, (hereinafter referred to as the ‘Ld. ITO’) u/s 147/143(3) of the Income Tax Act (hereinafter referred to as ‘the Act’) on 25.02.2015 for the Assessment Year 2011-12.

2. The Assessee has raised the following grounds of appeal:

1. That, the Id. CIT(A) erred in holding that the appellant corporation was not set up by a central, state or provisional act for the welfare and economic upliftment of ex serviceman being the citizen of India as required u/s 10(2688) of the Income Tax Act, 1961.

2. That, Ld. CIT(A) and Ld Assessing Officer erred in holding that the appellant was not established by the a central, state or provisional act, both the Ld. A.O, and the CIT(A) erred in justifying that:

a. That Uttarakhand Purv Sainik Kalyan Nigam Limited was established by Government of Uttarakhand for welfare and economic upliftment of ex serviceman and having duly satisfied the prescribed conditions of section 10(26BBB) of the Income Tax Act, 1961.

b. The main objects of the Uttarakhand Purv Sainik Kalyan Nigam Limited were to provide employment, financial assistance, loans, subsidy/grants, to impart training for entrepreneurship to the ex-serviceman and their dependents and having duly satisfied the conditions prescribed in the section 10(26BBB) of the Income Tax Act, 1961.

3. That, as all the conditions prescribed in section 10(26bbb) of the Income Tax Act, 1961 were satisfied, the Ld.CIT(A) and Ld. Assessing Officer erred in holding that Assessee is not eligible for exempting the income of Rs 6,84,52,829/- for the Assessment Year 2011-12 in terms of the said Section.

4. That in the facts and circumstances of the case, the order U/s 143(3)/147 dated 25/02/2015 is merely change in opinion'. The action of the Ld. Assessing Officer u/s 148 of the Income Tax Act, 1961 was wholly unreasonable, uncalled for and bad in law."

5. That the levy of interest under section 234A/B/C and 234D is erroneous and deserves to be deleted.

6. That the intention of penalty proceedings u/s 271(1)(c) are bad in law and not sustainable in law under the facts and circumstances of the case in so far as there was neither any willful concealment of income nor did the appellant furnish inaccurate particulars on income.

7. The appellant craves to amend, leave to add, alter, delete, modify or substitute any of the grounds urged above.

8. Detailed written submission and statements of facts shall be filed at the time of hearing of the appeal.

9. In the view of the above and other grounds that may be urged at the time of the hearing of the appeal, the appellant prays that the appeal may be allowed in the interest of justice and equity."

3. The Assessee has also raised the Additional Grounds of appeal vide letter dated 23.11.2021.

"10. That on facts and circumstances of the case the return was not processed thus, relevant re- assessment is bad in law. Notice issued u/s 143(2) dated 04.02.2015 was also bad in law as the same was issued on the same date, along with notice u/s 143(3)/147. There was no application of mind by the A.O.

12. That having regard to the facts and circumstances of the case, the Ld. CIT(A) ought to have quashed the impugned reassessment order passed by the Ld. AO as the mandatory jurisdictional notice under section 143(2) was issued without any application of mind, on the same day, when the return was filed by the assessee in response to notice u/s 148 of the Act.

13. That having regard to the facts and circumstances of the case, the Ld. CIT(A) ought to have quashed the impugned reassessment order passed by the Ld. AO as the mandatory jurisdictional notice under section 143(2) was invalid, illegal and void-ab-inito.

14. That in any case and in any view of the matter action of Ld. CIT(A) is not quashing the impugned reassessment order passed by the Ld. AO u/s 147/148 of the Act, is bad in law and against the facts and circumstances of the case.

15. That on facts and in law the order passed on 25.02.2015 within a span period of less than one month from disposal of objection u/s 148 dated 12.02 2015 is bad in law and assessment need to be annulled.

16. That the re-assessment proceedings are non-Est, illegal and void-ab-inito as no sanction u/s 151 was obtained in the instant case.

17. That the non-adherence of mandatory conditions u/s 147 151 by the Ld. AO has rendered the instant proceedings null and void."

4. We have heard the rival contention and perused the material available on record.

5. The assessee corporation was formulated by the State through a ratified Government Order, towards meeting the objective of rehabilitation of ex-servicemen in the State of Uttarakhand, in lieu of which the assessee corporation has been claiming exemption u/s 10(26BBB) of the Act, like 7 other corporations set up by the respective States in India.

6. The assessee in the aforesaid appeals had primarily challenged the validity of reassessment proceedings by way of Additional Grounds. The Additional Grounds raised by the assessee go to the root of the matter and being legal issues, the Bench, by following the decision of Hon'ble Supreme Court in the case of NTPC Ltd reported in 229 ITR 383 (SC) is inclined to admit those Additional Grounds. We find that Bench on yearly occasion vide order sheet dated 16.10.2023 had recorded the submission of the Ld. AR that no approval as mandated u/s 151 of the Act was obtained by the Ld. AO for the purpose of reopening the assessment for the years under consideration. Despite several opportunities being given to the Revenue, we find that the Revenue was not able to produce the assessment records before us. On 16.10.2023, the Ld. DR, sought adjournment from the Bench to seeking instruction from the Ld. PCIT with regard to the approval, if any, obtained u/s 151 of the Act for reopening the proceedings. Today, when the matters were called on, the Ld. Sr. DR made a statement from the Bar that she had verified the records of the Assessing Officer

and the Ld. PCIT and clarified that no approval u/s 151 of the Act is on the records for the years under consideration.

7. For the sake of convenience, the provisions of Section 151 of the Act are reproduced here in below:

"151. Sanction for issue of notice.-(1) No notice shall be issued under section 148 by an Assessing Officer, after the expiry of a period of four years from the end of the relevant assessment year, unless the Principal Chief Commissioner or Chief Commissioner Principal Commissioner or Commissioner is satisfied, on the reasons recorded by the or Assessing Officer, that it is a fit case for the issue of such notice.

(2) In a case other than a case falling under sub-section (1), no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of Joint Commissioner, unless the Joint Commissioner is satisfied, on the reasons recorded by such Assessing Officer that it is a fit case for the issue of such notice.

(3) For the purposes of sub-section (1) and sub-section (2), the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner the Joint Commissioner, as the case may be, being satisfied on the reasons recorded by the Assessing Officer about fitness of a case for the issue of notice under section 148, need not issue such notice himself."

8. In view of the aforesaid explicit provision of the Act, we find that prior sanction of approval u/s 151 of the Act from the competent authority is mandatory before the reopening of assessment. As it has been duly confirmed that no approval U/s 151 of the Act is on record for the years under consideration, the assumption of jurisdiction U/s 147 of the Act becomes void ab initio. Accordingly, the entire reassessment proceedings are hereby quashed. Hence the Additional Grounds raised challenging the validity of the reopening are

hereby allowed. Since the reassessment is quashed, the other grounds raised by the assessee need not be adjudicated and they are left open.

10. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 28.11.2023.

**Sd/-
(KUL BHARAT)
JUDICIAL MEMBER**

**Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER**

Dated: 28 / 11 / 2023
Pooja, Sr. P.S.

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI

ITA Nos.- 3071 & 3072/Del/2016
Uttarakhand Purv Sainik Kalyan Nigam Limited.

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Order signed and pronounced on	
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