

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

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 2188/Del/2019
Assessment Year : 2008-09

SATYA KUMAR SAKHUJA,
C-41, NEW MULTAN NAGAR,
NEW DELHI – 110 056
(PAN: AAYPS1101L)
(Appellant)

Vs. ITO, WARD-45(3),
NEW DELHI

(Respondent)

Assessee by : Sh. Ved Jain, Advocate & Ms. Surbhi
Goyal, CA
Department by : Ms. Parul Singh, Sr. DR.

ORDER

This appeal filed by the assessee is directed against the order passed by the Ld. CIT(A)-15, New Delhi on 14.01.2019 in relation to the assessment year 2008-09.

2. At the time of hearing, Ld. Counsel for the assessee stated that the similar issue has already been adjudicated and decided by the various Benches of the ITAT, Delhi. He requested that respectfully following the same, the issue in dispute may be decided in favour of the assessee by deleting the addition in dispute and allowing the appeal filed by the assessee. In support of his contention, he filed a Paper Book containing pages 1-121 and the copies of the various decisions supporting the assessee's case.

3. On the contrary, Id. DR relied upon the orders of the authorities below, especially the impugned order passed by the Ld. CIT(A) and stated that Ld.

CIT(A) has passed a well reasoned order on the basis of the documentary evidences filed by the assessee and the remand report of the AO as well as on the basis of the various case laws mentioned in the impugned order. Ld. Sr. DR further 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. In view of above, she requested that the appeal filed by the assessee may be dismissed.

4. I have heard both the parties and perused the orders passed by the revenue authorities, especially the impugned order passed by the Ld. CIT(A). At the time of hearing, Ld. Counsel for the assessee draw my attention towards page no. 3 of the impugned order and the contention raised by the assessee before the Ld. CIT(A). For the sake of convenience, on the issue of approval u/s. 151 of the Act before issuing the notice u/s. 148 of the Act and the contention of the assessee and the decision thereof is reproduced as under:-

"4. DECISION: The contention of the Appellant has been considered and the order of AO has also been perused.

4.1 The appellant has objected to the initiation of 147 proceedings in this case on the ground that there was no material on record with the AO for such initiation and the AO has not applied his mind before issue of such notices. In this regard, the remand reports were called from the AO, the relevant portion of the remand report dated 26.07.2017 is reproduced below:

2.1 Approval u/s 151 of appropriate authority before issue of notice u/s 148: The assessee in his

submission before Your office has stated that, "the notice u/s. 148 was issued on 27.03.2015 and [he reasons were also recorded on the / same date, however sanction from CIT is obtained on 30.03.2015, which is after issue of notice"

AO's Comments-

It is submitted here that in this case prior approval of JCIT, Range-45 was required before issuing OT notice u/s 148 as per provisions of IT. Act, 1961. The AO for reopening the case u/s 147 recorded the reasons on 27.03.2015 and solicited the approval u/s 151 of JC/T, Range-45 on the same day i.e. 27.03.2015 and issue notice u/s 148 to the assessee after necessary prior approval of concerned authorities. The assessee's contention that the approval u/s 151 was obtained on 30.03.2017 and the same is after the issue of notice u/s 148, is not correct. The JCIT, Range- 45 himself marked the date of 27.03.2015 below his' signature on the proforma as well as on note sheet Copies of the same are attached herewith, the date 30.03.2015 mentioned on approval proforma is merely a typographical error. It is pertinent to mention here that copies of the same have already been provided to the AR of the assessee during inspection of file on 10.07.2017.

2.2 Disposal of objections raised against the issue of notice u/s 148:

The assessee in his submission before your office slated that during the course of assessments he requested the AO on 15.05.2015 to furnish copy of reasons recorded for re-opening the case & documents or the papers seized or the statements relied-upon by the investigation department and AO did not pay heed to the request of the assessee. Again on 12.01.2016 & 20.01.2016 assessee requested the AO to provide above said information. The assessee also submitted that he filed objections on 29.02.2016 with regards to reopening the case and the same have not been disposed off by the AO before passing the assessment order on 17.03.2016.

AO's Comments: -

It is to submit here that on perusal of scrutiny records, it has been noticed that on 15.05.2015 assessee filed a reply in response to notice u/s 148 stating that "his return filed on 30.09.2008 may be treated as his return in response to notice u/s 148 issued to the assessee." In the said reply assessee nowhere asked for any information regarding copy of reasons recorded or investigation department record pertaining to his case.

However only on 12.01.2016 assessee requested to provide copy of reasons recorded and the same was provided to assessee by the AO on 12.01.2016 itself. Further, it is submitted that the AO issued a show cause notice to the assessee regarding proposed

addition of Rs. 26,00,000/- paid by the assessee as capitation/donation fee to M/s Santosh Group of Institution/ Maharoji Educational Trust. In response to the said show cause notice assessee filed a reply dated 29.02.2016, in which he pleaded that he never paid any capitation fee Donation to M/s Santosh Medical College or any of its allied in reference to the admission of his son Mr. Deepak Sakuja to the post of MDS Orthodontics during the F.Y. 2008-09. In the same reply assessee also stated many reasons in support of his claim that mere the statement of Dr. P. Mahalingam (Chairman and managing trustee of Santosh group) and seized material from his premises could not be a presumption that he paid some capitation fee / Donation to the Santosh Medical College. Some of the reasons are as follows:

(a) The statement of Dr. P. Mahalingam does not bear the name of assessee, only the name of his son has been mentioned, no presumption can be drawn that the money had been paid by his father. .

(b) The seized sheet does not contains the cash components.

(c) Son of the assessee got admission on the basis of merits, etc.

From the facts above it is evident that the submission given by the assessee on 29,02.2016 was the reply in response of the show cause notice issued by the AO on 22.02.2016 & not the Objections

regarding issue of notice u/s 148, as submitted by the assessee before your office. Since no objections raised, in response to notice u/s 148, the question of disposal of objections does not arise.

2.3 No mention of Donation amount of Rs. 20,75,000/- in the seized material:

Assessee in his submission stated-that in the seized material the receipt of Rs. 5,10,000/- vide demand drafts and Rs. 15,000/- in cash is mentioned and nowhere in the records the amount of Rs. 20,75,000/- paid as capitation fee Donation fee paid by therassessee, is mentioned in the documents/ material seized during the search in the premises of M/s Santosh Group of Institutions & Trusts.

AO's Comment:

It is submitted that a search seizure action u/s 132 of the IT. Act was carried out on 27.06.2013 in Santosh Group of Institutions & Trusts, during the search proceedings various documents/registers/ vouchers were found pertaining to fee capitation fee paid by students who were studying/ had studied in Santosh Group of Institutions. During the Statement recorded during search proceedings, Dr. P Mahalingam (Chairman and managing trustee of Santosh group) admitted that he received facilitation fee-from students for admission in various courses offered by his group of institutions. In question no. 56 & 57 he admitted that money received was

unaccounted cash. Further, on showing the seized registers he admitted (Q. no. 64, 65 & 66) that total receipts reflecting in the registers are partly accounted for and partly not. All the registers contain detail of students who had paid cash [or-qettlnq admission in various courses of colleges run by Santosh Trusts, i.e. Santosh Medical College & Santosh Dental College.

However, in post search proceedings, Dr. P Mahalingam on 20/08/2016 submitted a consolidated list showing student-wise and course-wise contributions received as culled out from such material for each financial year. In the same submission he also accepted to have unaccounted contributions received at an aggregate amount of Rs. 159.34 crores from F. Y. 2004-05 to 2013-14, In the annexure of same submission the name of Dr. Deepok Sakuja is mentioned at 51. No, 9 of chart pertaining to F. Y. 2007-08. In sl. No 9 it is mentioned that cash receipt of Rs. 20,75,000/- on 23 Apr 2007 and page reference no, SG-2/A-59/P.9 (Copy of the same is attached herewith as an enclosure to this letter).

Therefore, from the assessment order and the remand report, it is apparent that specific information has been received by the investigation wing in the case of the appellant that the documents are seized as a result of search and seizure operation conducted in the case of Santosh Medical College

where a register has been seized having the details of regular fee and the capitation fee paid by the students /parents/ guardians which is partly not disclosed by Santosh Medical College in its gross receipt in the Return of Income. During the course of search and seizure action. the statement of Dr. P. Mahalingam was also recorded and this fact has been admitted by him and additional income was also surrendered and disclosed in the Return of Income as a result of search and seizure operation. In this light, information was given by the investigation wing to the respective Assessing Officers where the parents and guardians of the students are assessed to tax. As mentioned by the AO that he had gathered the information and he has reason to believe that income of Rs. 5,25,000/- which is paid as fee for the daughter of the appellant in cash has escaped assessment. During the assessment proceedings no objection against the initiation of reassessment proceedings was filed by the appellant, as it appears from the assessment order.

From the assessment order as well as from the appellant's submission, it is gathered that this is an undisputed fact that the appellant's son, Deepak Sakhuja was studying in Santosh Medical College in MBBS and this fact has not been challenged by the appellant. The plea of the appellant that there is no material with the AO for such initiation of 147 proceedings has been considered and it is gathered

that in the assessment order itself, the relevant seized document has been clearly mentioned on page 2, where the fee paid in cash of Rs. 20,75,000/- and Rs. 15,000/- and further, by DO Rs.5,10,000/- totaling to Rs.26,00,000/- is shown. In this light, there is no merit in the submission of the appellant that there is no material before the AO for initiation of reassessment proceedings in this case and the plea of the appellant deserves to be rejected. The following judgements of Hon'ble Courts clearly mention that sufficiency of reasons in initiation of reassessment proceedings is not necessary: -

In the case of S. Narayanappa vs. CIT 63 ITR 219 Hon'ble Supreme Court has held that "The sufficiency of the grounds which induced the ITO to act is not a justifiable issue. It is of course open for the assessee to contend that the ITO did not hold the belief that there had been such non-disclosure .. In other words, the existence of the belief can be challenged by the assessee but not the sufficiency of the reasons for the belief. "

Further in the case of Bawa Abhai Singh v. DCIT 117 Taxmann 12 Hon'ble High Court of Delhi has held that "After 1-4-1989 the position is somewhat different. Section 147 with effect from 1-4-1989 provides. that where the Assessing Officer has reasons to believe that any income chargeable to tax has escaped assessment for any assessment year,

he may apply the provisions of sections 148 to 153. He may assess or reassess the income which has escaped assessment. It is to be noted that section 147 as it stands with effect from 1-4-1989 not only merges clauses (a) and (b) of the pre-amended section 147 but also brings about a significant change in the preliminary requirement of certain conditions mandatory in character before reassessment proceedings should be initiated in the pre-amended section- Conditions precedent for initiation of action under section 147(a) or 147(b) of the pre-amended section are highlighted above. The amended provisions are contextually different and the cumulative conditions spelt out in clause (a) or (b) of section 147 prior to its amendment, are not present in the amended provision. The only condition for action is that Assessing Officer Should have reason to believe that income has escaped assessment, which income has escaped assessment, which belief can be reached in any manner and is not qualified by a pre-condition of faith and true disclosure of material fact by an assessee as contemplated in the pre-amended section 147(a) and the Assessing Officer can under the amended provisions legitimately reopen the assessment in respect of an income which has escaped assessment. Viewed in that angle power to reopen assessment is much wider under the amended provision and can be exercised even after assessee has disclosed fully and

truly all the materials facts. It is to be noted at this juncture that twin conditions must be fulfilled if the case is one which is covered by the proviso to section 147 operative with effect from 1-4-1989.

It is to be noted that decision to initiate proceedings is not to be preceded by any judicial or quasi-judicial enquiry. Reasons which may weigh with the Assessing Officer may be the result of his own investigation and may come from any source that he considers reliable. Formation of his belief is not a judicial decision but is an administrative decision. Nevertheless, he is required to act fairly and judiciously."

In the case of GKN Driveshafts (India) Ltd. v. ITO 125 Taxman 963 Hon'ble Supreme Court has held that "when a notice under section 148 is issued, the proper course of action for the notice is to file return and if he so desires, to seek reasons for issuing notice. The Assessing Officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the notice is entitled to file objections to issuance of notice and the Assessing Officer is bound to dispose of the same by passing a speaking order." Apparently in this case no objection has been filed by the appellant before the Assessing Officer regarding the reassessment proceedings.

The appellant has relied upon many decisions of Hon'ble Courts which is different from the facts and circumstances of the case and this will not apply mechanically without having the similar facts and circumstances and during the course of appellate proceedings the appellant has failed to co-relate the facts of the case of the appellant how these case laws are applicable in his case where the sufficient material was there before the Assessing Officer and where no objection was raised by the appellant on initiation of proceedings before the Assessing Officer. On the basis of the above, the objection raised by the appellant regarding the initiation of reassessment proceedings u/s 147 deserves to be rejected.

4.2 Another objection raised by the appellant in the written submission is that this assessment should have been made by the Assessing Officer under section 153C of the Act and not under section 148 of the Act. The objection of the appellant raised in the written submission has been considered on the basis of the material available on record and not found acceptable as per the discussion below:-

In this regard, it is relevant to reproduce the provisions of section 153C which has undergone changes .and the relevant provision during the year is as under:-

"Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and 'section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in section 153A; then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person" by Finance Act, 2015", w.e.f 01.06.2015".

Subsequently, the provision of section 153C has been Finance Act, 2015 with effect from 01.06.2.015 which is also reproduced as under:-

"Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that:-

(a) Any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to or

(b) Any books of account or documents, seized or requisitioned, pertains or pertain to, or an interrogation contained therein, relates to, a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other

person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for the relevant assessment year or years referred to in sub-section(1) of section 153A."

This makes it clear that in the earlier provisions, the basic requirement for initiation of section 153C is that the documents seized or requisitioned belonged to a person other than the person in whose case search has taken place. If it does not belong to the third party action u/s. 153C initiated by the Revenue Officers in many cases were held as quashed or null and void by various Hon'ble High Courts and Hon'ble ITAT including ITAT Delhi and Hon'ble High Court of Delhi. Some of these cases are as under:-

In the case of Pepsi Foods (P.) Ltd. vs. ACIT 52 taxmann.com 220 Hon'ble High Court of Delhi has held that -

"It is evident from the satisfaction note that apart from saying that the documents belonged to the petitioner and that the Assessing Officer is satisfied that it is a fit case for issuance of a notice under section 153C, there is nothing which would indicate

as to how the presumptions which are to be normal/y raised as indicated above, have been rebutted by the Assessing Officer. Mere use or mention of the word 'satisfaction' or the word I am satisfied in the order or the note would not meet the requirement of the concept of the satisfaction as used in section 153C of the said Act. The satisfaction note itself must display the reasons or basis for the conclusion that the Assessing Officer of the searched person is satisfied that the seized documents belong to a person other than the searched person. Going through the contents of the satisfaction note, any 'satisfaction' of the kind required under section 153C of the said Act could not be discerned.

[Para 11]

This being the position the very first step prior to the issuance of a notice under section 153C has not been fulfilled. Inasmuch as this condition precedent has not been met, the notices under section 153C are liable to be quashed. [Para 12]"

In the case of ACIT vs. Pepsi Foods (P.) Ltd. 89 taxmann.com 10 Hon'ble Supreme Court of India has held that "SLP dismissed against High Court ruling that before issue of notice under section 153C, Assessing Officer is required to arrive at a conclusive satisfaction that documents belongs to a person other than searched person."

Similar view is expressed by Hon'ble High Court of Delhi in the case of PCIT vs. N.S. Software (Firm) 93 taxmann.com 21(2018) where it is held by Hon'ble Court that "where in course of search carried out at premises of a third person, a hard disk was seized and on basis of same proceedings under section 153C were initiated against assessee, since Assessing Officer of searched person failed to record a specific satisfaction as to how said hard disk belonged to assessee, impugned proceedings under section 153C were unjustified."

After the amendment w.e.f. 01.06.2015, S.153C provisions can be initiated if the seized materials belong to any person or if it pertains to or relates to any person other than the person in whose case search has taken place. Apparently in the instance case of the appellant the search in the case of Santosh Medical College has been conducted u/s 132 of the Act on 27.06.2013 and notice u/s 148 was issued on 27.03.2015. Obviously, both the dates pertains to the earlier provisions of the Act where 153C proceedings could have been initiated only if the documents belong to the person other than the person in whose case search has taken place. Further, the documents seized in this case belong to the person in whose case search was initiated and the documents do not belong to the appellant. Hence, there is no merit in the submission. of the appellant and in considering this written submission

that proceedings u/s 153C should have been initiated by the Assessing Officer in this case and not the provisions of section 148 and the contention raised by the appellant during the course of appellant proceedings deserves to be dismissed. Hence, there is no substance and merit in the submission of the appellant that in this case initiation of proceeding u/s 147/148 (instead of 153C proceedings) is bad in law and in this light also the contention raised by the appellant is dismissed.”

4.1 As argued by the Ld. Counsel for the assessee that the notice u/s. 148 of the Act was issued on 27.3.2015 and the reasons for reopening of assessment have been recorded, after issuance of the notice on 30.3.2015. The evidences of this contention has been placed in Paper Book at page no. 20, 102 & 103. I have perused the page no. 20, 102-103 of the paper book and I am of the view that since the notice u/s. 148 of the Act has been issued on 27.3.2015 without recording the reasons on reopening of assessment proceedings, hence, the same is illegal and bad in law and reassessment proceedings are liable to be quashed on this ground only. Even otherwise, during the course of appellate proceedings, the assessee has raised this issue before the Ld. CIT(A) and the Ld. CIT(A) has called for the remand report from the Assessing Officer and the Assessing Officer in his remand report claimed that the date i.e. 30.3.2015 mentioned in the reasons merely a typographical error. Copy of the remand report is placed at page no. 99-106 of the Paper Book. After perusing the same, I am of the view that the AO is factually incorrect as the AO directed the Assessee to furnish the information called for u/s. 133(6) of the Act by 27.3.2015 as evident from the 3rd para of the reasons recorded which is placed at page no. 102 of the paper book and any further adverse action against the

assessee could have been taken only on failure of compliance to notice u/s. 133(6) of the Act, meaning thereby the AO has completed the whole procedure necessary for issuance of notice u/s. 148 of the Act i.e. the reasons were recorded and sanction from competent authority was obtained and also the notice u/s. 148 of the Act was issued on the same day. I am of the view that the reasons were recorded mechanically on 30.3.2015, post issue of notice u/s. 148 of the Act on 27.3.2015 and also the approval was granted mechanically. Ld. Counsel for the assessee further draw my attention towards page no. 102-103 of the Paper Book i.e. the reasons recorded for initiating the proceedings u/s. 147 of the Act and obtaining the approval of the Addl. Commissioner of Income Tax and stated that the approval by the Addl. Commissioner of Income, Range 45, New Delhi dated 30.3.2015 is made in a mechanical manner. On perusing the page no. 102-103 of the paper book, I also find that the Addl. CIT, Range-45, New Delhi while giving his approval has written that **"I am satisfied that it is a fit case for issue of notice u/s. 148 of the I. Tax Act, 1961"**. However, as per settled law that this type of mechanical approval is not sustainable in the eyes of law and re-assessment on this account is liable to be quashed, hence, I quash the reassessment order.

4.2 Keeping in view 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 therefore the same is quashed. My aforesaid view is fortified by the following decisions including the ITAT, SMC, Bench, New Delhi decision dated 16.10.2019 in the case of Dharmender Kumar vs. ITO, Ward 65(5), New Delhi decided in ITA No. 2728/Del/2018 relevant to assessment year 2008-09 wherein the following case laws were followed on similar facts and circumstances of the case.

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)."

4.3 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-45, 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 case is bad in law and therefore, the same is hereby quashed. Accordingly, this legal ground raised by the assessee's counsel is allowed. Since I have quashed the reassessment, hence, other grounds have become academic and therefore, are not being adjudicated.

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

Order pronounced on 13-02-2020.

Sd/-

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

Dated: 13-02-2020

SRB

Copy forwarded to:

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

AR, ITAT, NEW DELHI.