

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SHRI U.B.S.BEDI, JUDICIAL MEMBER
AND
SHRI S.V.MEHROTRA, ACCOUNTANT MEMBER**

**I.T.A .NO.2582/Del/2011
(ASSESSMENT YEAR-2001-02)**

Sunint Investment & Technologies Pvt. Ltd., 331, Ansal Chamber-II, Bikaji Cama Place, New Delhi PAN-AAFCS2625H (APPELLANT)	Vs	ACIT Circle 9(1), New Delhi (RESPONDENT)
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**Appellant by: Sh. Amit Goel, CA
Respondent by: Smt. Surjani Mohanty, Sr. DR**

ORDER

PER S.V.MEHROTRA, AM

This appeal filed by the assessee is against the order dated 25-02-2011 of the Ld. CIT(A)-XII, New Delhi for AY 2001-02.

2. Brief facts of the case are that the assessee filed its return of income on 31.10.2001 declaring total income of Rs.12,87,140/-. The Assessing Officer has observed that this return was processed u/s 143(1) of the Income Tax Act, 1961 on 15.05.2002. Thereafter, the case was reopened by serving notice u/s 148 of the Income Tax Act, 1961 on 28.03.2008. The assessee asked for the reasons for reopening the case and the same were supplied to the assessee vide letter dated 11.07.2008. The Assessing Officer has observed that on 23.12.2008, the assessee company filed an objection that the approval of CIT was taken in the name of

“M/s Sun Ind Investments Technologies Pvt. Ltd.” and not in the name of assessee’s name which is M/s Sunint Investments & Technologies Pvt. Ltd. The Assessing Officer pointed out that this technical objection was not raised earlier when the hearing took place on 05.08.2008, 18.08.2008 and 12.08.2008. He further pointed out that the details of the case re-opened pertained to assessee and hence on mere typographical error, the assessee cannot take objection. He also referred section 292B and pointed out that no notice can be invalid merely by reason of any mistake, defect or omissions. On merits, the Assessing Officer observed that Sh. Mukesh Gupta, the main person and authorized signatory of M/s Rajkar Electricals & Electronics Pvt. Ltd. in whose account No. CA51276 maintained with Corporation Bank, Paschim Vihar, New Delhi-110063, the money was deposited in two amounts of Rs.5,00,000/- each on 01.03.2008 and on the same date a demand draft of Rs.10,00,000/- was purchased and given to the assessee company. He, therefore, made an addition of Rs.10,00,000/- to the assessee’s income.

3. Before Ld. CIT(A), the assessee assailed the initiation of proceedings u/s 148, inter alia, on the ground that assessment was initiated u/s 147 without obtaining prior sanction as required u/s 151 of the Act. Ld. CIT(A) observed that since assessee did not raise any objection on this issue and submitted to the Jurisdiction of the Assessing Officer, the same cannot be challenged later on. On

merits, Ld. CIT(A) upheld the Assessing Officer's action. Being aggrieved, the assessee is in appeal before us.

4. Ld. Counsel submitted that as per section 151(2), since the assessment was completed u/s 143(1), the Assessing Officer was required to obtain sanction of the Joint Commissioner of Income Tax and not of CIT. Ld. Counsel further submitted that it is purely a legal issue going to the root of the matter and, therefore, can be raised at any stage of proceedings. Ld. Counsel relied upon the decision of Hon'ble Jurisdictional High Court in the case of CIT Vs SPL'S Siddhartha Ltd 345 ITR 223 wherein it was held that u/s 151 of the Act, it was only the Joint Commissioner or Additional Commissioner who could grant the approval of issue of notice u/s 148. Where the approval was not granted by the Joint Commissioner but by Commissioner of Income Tax, this is not irregularity curable u/s 292B. It was held that the notice was not valid.

5. Ld. DR submitted that in the case of SPL'S Siddhartha Ltd., the facts were different. She submitted that in the said case, the matter was routed through the Additional Commissioner of Income tax but in the present case, it was not so routed. On 25.07.2012, when the case was taken up for hearing, Ld. DR was directed to call for assessment records along with approval for issuing notice u/s 148. Ld. DR produced the said approval on the date of hearing i.e 26.07.2010 which reads as under :-

No. ITO/Ward 9(3)/Asstt./2007-08/27

Office of the
Income Tax Officer,
Ward 9(3), Room No-180,
C.R.Building, I.P.Estate,
New Delhi-110002.

Dated 28/03/2008

To,

The Commissioner of Income Tax,
Delhi-III,
New Delhi.

(Through Proper Channel)

Sir,

Sub:-Approval of Issue of Notice u/s 148 of the I.T.Act, 1961 in the case of
M/s Sun Ind Investments & Technologies Pvt. Ltd. for the A.Y 2001-02
reg.

Kindly refer to the above.

Please find enclosed herewith proposal in triplicate form duly recorded the
reasons alongwith annexure 'A' for initiating proceeding u/s 148 for the A.Y 2001-02.

Since the Assessment record in these cases are not readily available. Now it is
presumed for the safer side that the assessment were completed in these cases u/s
143(3) for the A.Y 2001-02, hence your kind approval for issue of notice u/s 148 is
solicited u/s 151(1) of the I.T.Act.

Submitted for your kind approval.

Yours faithfully

Encls.: Proposal in one cases in triplicate.

(A.N.Verma)
Income Tax Officer
Ward 9(3), New Delhi.

Form for recording the reasons for initiating proceedings u/s 148 and for obtaining the approval of the Commissioner of Income Tax, Delhi-III, Delhi

- | | | |
|-----|--|--|
| 1. | Name and address of the Assessee | Sun Ind Investments and Technologies Pvt. Ltd
A-1/B, DDA Flat, Munirika, New Delhi. |
| 2. | PAN | ----- |
| 3. | Status | Company |
| 4. | Circle/Ward | Ward 9(3) |
| 5. | Assessment Year in respect
Of which it is proposed to
Issue notice u/s 148 | 2001-02 |
| 6. | The Quantum of income
Which has escaped
assessment | Rs.10,00,000/- |
| 7. | Whether the assessment is
proposed to be made for the
first time, if the reply is in the
affirmative, please state
(a) whether any voluntary
return had already been filed.
(b) If so, date of filing of the
Said return. | No. |
| 8. | If the answer to item 7 is in
the negative. Please state
(a) The income originally
Assessed

(b) Whether it is a case of
Under assessment,
Assessment at low rate,
Assessment which has been
made subject depreciation. | Assessment record in this case is not readily
available. Now it is presumed for the safer side
that the assessment was completed u/s 143(3) for
the AY 2001-02.

Not covered under these reasons. |
| 9. | Reasons for the belief that
Income has escaped
Assessment | As per Annexure 'A' |
| | | (Income Tax Officer)
Ward 9(3), New Delhi |
| 10. | Whether the Commissioner of Income tax is satisfied on the reasons recorded by
the ITO Ward 9(3) that it is a fit-case for issue of notice u/s 148. | |

Date:

Commissioner of Income Tax
Delhi-III, New Delhi.

Issue of notice u/s 148 of the I.T.Act, 1961 in the case of M/s Sun Ind Investments and Technologies Pvt. Ltd. (now as per confirmation from the bank beneficiaries name is M/s Sunint Investments and Technologies Pvt. Ltd) for the A.Y 2001-02-reg..

Information about entry operators and their beneficiaries of Delhi has been received from the DIT (Investigation)-I, New Delhi through the Addl. Commissioner of Income Tax, Range-9, New Delhi vide letter No. Addl. CIT/Range-9/2005-06/2134 dated 13.03.2006 alongwith lists such entry operators and beneficiaries. After making inquiries the Directorate of Investigation in their report has established large amount of tax evasion in the transactions between entry operators and the beneficiaries. It is revealed from the CD information that the assessee company M/s Sun Ind Investments & Technologies Pvt. Ltd., (termed as beneficiary) during the previous year 2000-01 relevant to Assessment Year 2001-02 had taken accommodation entries from M/s Rajkar Electricals and Electronic Pvt. Ltd. (termed as entry operator). The detail of which is mentioned below:

Beneficiary's Name	Beneficiary Bank Name	Beneficiary Bank Branch	Value of Entry taken	Instrument No. by which entry taken
Sun Ind Investments & Technologies Pvt. Ltd.	Canara Bank	Munirika	10,00,000	895047
Date on which entry taken	Name of A/CIT(A) holder of Entry giving A/CIT(A)	Bank from which entry given	Branch of entry giving bank	A/CIT(A) No. Entry giving A/c
1/3/2001	Rajkar Electricals & Electronics Pvt. Ltd.	Corpn. Bank	Paschim Vihar	51276

Quantum of amount of such entries received by the assessee company M/s Sun Ind Investments & Technologies Pvt. Ltd. from M/s Rajkar Electricals & Electronics Pvt. Ltd. as per details mentioned above received from the Directorate of Investigation, New Delhi is Rs.10,00,000/-. This accommodation entry taken by M/s Sun Ind Investments & Technologies Pvt. Ltd. is also confirmed on the basis of the statement of Shri Rajan Jassal, S/o Shri Surinder Kumar Jassal, R/o-WZ-134, Plot No-170, Vishnu Garden, New Delhi recorded on 4/2/2004, statement of Shri Surinder Pal Singh, S/o-Late Shri Malik Singh, R/o-A-4/181, Sector-17, Rohini, New Delhi-85, recorded on 24/12/2003, 30/12/2003 & 5/1/2005 and statement of Shri Mukesh Gupta, S/o-Shri R.D.Gupta, R/o-WZ-414, Naraina Village, New Delhi recorded on 16/1/2004, revealed that these persons after receiving cash from clients and deposited in various companies bank account's and cheques are issued to the assessee company who gave the cash.

In view of facts stated herein above it is clear that the assessee company managed the above said transactions of accommodation entries out of its income from undisclosed sources. Assessment record in this is not readily available.

In view of above, I have reason to believe that income of Rs.10,00,000/- escaped assessment within meanings of the provisions of section 14 of the Income Tax Act, 1961, therefore, a Notice u/s 148 of the Income Tax Act, 1961 is required to be issued and served on the assessee company to assess the income escaped as stated hereinabove.

(A.N.Verma)
Income Tax Officer
Ward 9(3), New Delhi

6. With reference to aforementioned documents, she submitted that Assessing Officer took the approval of Ld. CIT in order to be more cautious.

7. Ld. Counsel submitted that since it is admitted that assessment records were not available with Assessing Officer, it is not clear as to how Assessing Officer acquired the requisite belief regarding escapement of income. He further submitted that in the case of SPL'S Siddhartha ltd. (supra), the objection was not raised before the Assessing Officer.

8. We have considered the submissions of both the parties and have perused the records of the case. Admittedly, the return was processed u/s 143(1), as per the assessment order, on 15.05.2002 and the notice u/s 148 was issued on 28.03.2008. Therefore, as per section 151, the Assessing Officer was required to obtain the sanction of Joint Commissioner of Income tax as four years had lapsed from the end of relevant assessment year. The department's contention is that assessee did not raise any objection before the Assessing Officer on this issue and

the only objection raised was in regard to the name of assessee which was duly dealt by the Assessing Officer. The contention is that once the assessee had submitted to the Jurisdiction of Assessing Officer then subsequently the objection with reference to jurisdiction cannot be raised. In this regard, reliance has been placed on section 124. We do not find any substance in the submission of Ld. DR because section 124 primarily deals with the territorial jurisdiction of Assessing Officer. Section 151 deals with sanction for issue of notice u/s 148 and it nowhere refers to section 124. The sanction by competent authority, as mentioned in section 151 only, can assign proper jurisdiction to the Assessing Officer and if such sanction was not obtained, the Assessing Officer lacked the jurisdiction to complete the reassessment proceedings. When the legislature has specifically assigned jurisdiction to a particular authority under the Act to grant sanction then, if all other conditions are fulfilled, the sanction has to be granted by that very authority. This function cannot be delegated to any other authority. It is the legal duty cast upon that authority to perform the said function. If that authority fails in performing his legal functions and the same is performed by the other authority then it goes to the very root of proper assumption of jurisdiction by the authority which was required to take that sanction. This is purely legal issue and can be raised at any stage of proceeding.

9. Hon'ble Delhi High Court in the case of SPL'S Siddhartha Ltd. (supra) has quashed the reassessment proceedings for want of sanction of Joint

Commissioner of Income tax when it was so required as per section 151(2), observing as under :-

“As per the aforesaid provision, it is only the Joint Commissioner or the Additional Commissioner, which can grant the approval. The argument of the assessee before the Tribunal was that the approval was not granted by the Joint Commissioner. Instead, it was taken from the Commissioner of Income-tax, Delhi-III, New Delhi, who was not competent to approve even when he was a higher authority inasmuch as section 151 of the Act specifically mentions Joint Commissioner as the competent authority. This contention of the respondent-assessee has been accepted by the Tribunal thereby quashing the assessment proceedings. The contention of the Revenue that it was merely an irregularity committed by the Assessing Officer and was rectifiable under section 292B of the Act, has not been found convincing by the Tribunal.

.....

Thus, if authority is given expressly by affirmative words upon a defined condition, the expression of that condition excludes the doing of the Act authorized under other circumstances than those as defined. It is also established principle of law that if a particular authority has been designated to record his/her satisfaction on any particular issue, then it is that authority alone who should apply his/her independent mind to record his/her satisfaction and further mandatory condition is that the satisfaction recorded should be “independent” and not “borrowed” or “dictated” satisfaction. Law in this regard is now well-settled. In Sheo Narain Jaiswal v ITO [1989] 176 ITR 352 (Patna), it was held:

“Where the Assessing Officer does not himself exercise his jurisdiction under section 147 but merely acts at the behest of any superior authority, it must be held that assumption of jurisdiction was bad for non-satisfaction of the conditions precedent.”

The Apex Court in the case of Anirudhsinhji Karansinhji Jadeja v. State of Gujarat [1995] 5 SSC 302 has held that if a statutory authority has been vested with jurisdiction, he has to exercise it according to its own discretion. If discretion is exercised under the direction or in compliance with some higher authorities instruction, then it will be a case of failure to exercise discretion altogether.

We are, therefore, of the opinion that the Tribunal has rightly decided the legal aspect, keeping in view well-established principles of law laid down in a catena of judgments including that of the Supreme Court.”

8. Respectfully, following the decision of Hon’ble Jurisdictional High Court, the reassessment proceedings are quashed. As we have quashed the reassessment proceedings, the adjudication of merits of the case will be academic only.

9. In the result, the assessee’s appeal is allowed.

Order pronounced in the open Court on 30/08/2012.

Sd/-

Sd/-

(U.B.S.BEDI)
JUDICIAL MEMBER

(S.V.MEHROTRA)
ACCOUNTANT MEMBER

Dated: 30/08/2012

Amit Kumar

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI

