

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER
AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकरअपीलसं./I.T.A.No.2134/Chny/2015
(निर्धारणवर्ष / Assessment Year: 2006-07)

M/s. Rasi Seeds Pvt.Ltd 174, Sathyamurthy Road, Ramnagar, Coimbatore-641 009. PAN: AABCR 2871C (अपीलार्थी/Appellant)	Vs	The Deputy Commissioner of Income Tax, Central Circle-II Coimbatore. (प्रत्यर्थी/Respondent)
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अपीलार्थीकीओरसे/ Appellant by	:	Mr. B.Ramakrishnan, FCA
प्रत्यर्थीकीओरसे/Respondent by	:	Ms. A.S. Bindu, CIT

सुनवाईकीतारीख/Date of hearing	:	17.05.2022
घोषणाकीतारीख /Date of Pronouncement	:	29.07.2022

आदेश / ORDER

PER G. MANJUNATHA, AM:

This appeal filed by assessee is directed against order of learned Commissioner of Income Tax (Appeals)-18, Chennai, dated 09.09.2015 and pertains to assessment year 2006-07.

2. The assessee has raised following grounds of appeal:-

“ 1) The learned CIT(A), has grossly erred in confirming the impugned proceedings u/s 143(3) r.w.s. 147 of Income Tax Act, 1961 as valid in the facts and circumstances of the case and in law.

2) The learned CIT(A), ought have quashed the impugned proceedings as ab initio void, in the facts and circumstances of the case and in law.

3) *The learned CIT(A) ought to have held that from the reasons recorded by the AO before the issue of notice u/s 148, the extended time limit u/s 147 could not have been availed by him.*

4) *The learned CIT(A) ought to have held that the required satisfaction u/s 151 was absent, as even assuming the learned CIT, Salem had accorded such sanction, it was mechanical and not after due application of his mind as required in law, in the facts of the case.*

5) *The learned CIT (A) has failed to appreciate that the additions are based purely on surmises and guesswork in the facts and circumstances of the case and not on the basis of any tangible materials in the facts and circumstances of the case and in law.*

6) *The learned CIT(A) ought to have deleted the addition of Rs.8,56,55,947/- made as unwarranted, in the facts and circumstances.”*

3. Brief facts of the case are that the assessee is engaged in the business of Research & Development of hybrid cotton seeds filed its return of income for the assessment year 2006-07 on 27.11.2006 declaring total income of Rs.11,88,99,130/- under normal computation and Rs.17,64,49,883/- u/s.115JB of the Income Tax Act, 1961. The assessment has been completed u/s.143(3) of the Income Tax Act, 1961 on 23.12.2008 and determined total income of Rs.11,92,02,577/-. A search & seizure operation u/s.132 of the Income Tax Act, 1961, was conducted in the premises of the assessee on 10.01.2013. The case has been subsequently reopened u/s.147

of the Income Tax Act, 1961, for the reasons recorded as per which income chargeable to tax had been escaped assessment on account of inflation of expenses on the basis of incriminating materials found during the course of search. Therefore, notice u/s.148 dated 28.03.2013 was issued. In response to notice, the assessee vide its letter dated 26.02.2014 submitted that return of income originally filed on 29.11.2006 may be treated as return filed in response to notice u/s.148 of the Income Tax Act, 1961. The case has been taken up for scrutiny and during the course of reassessment proceedings, the Assessing Officer noticed that the assessee has inflated purchases by booking purchases claims to have been made from various parties on cash and thus, after considering relevant details, including information gathered during the course of search, coupled with statement of Executive Director Mr. R.Rajendran made additions of Rs.8,56,55,947/- towards bogus purchases.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT(A). Before the learned CIT(A), the assessee has challenged reopening of assessment on multiple grounds, including change of opinion,

no proper satisfaction from approval authority and also questioning validity of notice. The sum & substance of the arguments made by the assessee before the learned CIT(A) in respect of legality of reassessment was that in the reasons recorded for reopening of assessment, there is no allegation on the part of the assessee to disclose fully and truly all material facts necessary for assessment and further, notice u/s.148 has been issued without proper approval from the competent authority. The assessee had also challenged additions made by the Assessing Officer towards disallowance of bogus purchases on the ground that except statement from the Executive Director, there is no material with the Assessing Officer to suggest that the assessee has booked bogus expenses to reduce profit.

5. The learned CIT(A), after considering relevant submissions of the assessee and also taken note of reasons recorded for reopening of assessment and also form for recording reasons for initiating proceedings u/s.147 of the Income Tax Act, 1961, and for obtaining approval of the Commissioner of Income Tax, opined that the Assessing Officer has reopened assessment on the basis of reasonable

belief of escapement of income and same has been approved by the Commissioner of Income Tax and thus, rejected legal ground taken by the assessee. The learned CIT(A) had also rejected arguments of the assessee that additions made by the Assessing Officer does not have support of necessary evidences by holding that information gathered during the course of search u/s.132 of the Act, coupled with statement of Executive Director clearly indicate suppression of income by booking bogus purchases and thus, opined that the Assessing Officer has rightly made additions towards bogus purchases and hence, confirmed additions made by the Assessing Officer. Aggrieved by the learned CIT(A) order, the assessee is in appeal before us.

6. The first issue that came up for our consideration from ground no. 1 to 4 of the assessee appeal is validity of reopening of assessment u/s.147 and consequent reassessment proceedings. The learned A.R. for the assessee submitted that the learned CIT(A) has grossly erred in sustaining validity of reopening of assessment u/s.147 of the Income Tax Act, 1961, even though, reasons recorded by the Assessing Officer does

not show any light on quantification of escapement of income and also failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. The learned A.R. for the assessee further referring to page no.9 to 14 of the paper book which contain copy of reasons recorded for reopening of assessment, form for recording reasons for initiating proceedings u/s.147 of the Income Tax Act, 1961, and for obtaining approval of the CIT submitted that nowhere in the reasons recorded for reopening of assessment, the Assessing Officer alleged that there is failure on the part of the assessee to disclose fully and truly all material facts necessary for reopening of assessment. Further, reasons recorded for reopening of assessment does not quantify escapement of income. The form for recording reasons for initiating proceedings and obtaining approval of the Commissioner of Income Tax clearly shows non-application of mind from the JCIT, Range-1, Salem and Commissioner of Income Tax, Salem, for granting approval, because both authorities have simply stated that 'Yes, approval is granted', and 'Yes, I am satisfied', without any application of mind to reasons recorded by the Assessing Officer to form reasonable belief of

escapement. The learned AR further submitted that it is well established principle of law by decisions of various courts, including decision of the Hon'ble Bombay High Court in the case of Nirmal Bang Securities Pvt.Ltd. Vs. ACIT (2016) 382 ITR 93, unless there is an allegation from the Assessing Officer on failure of the assessee to disclose fully and truly all facts necessary for assessment, notice issued u/s.148 is invalid, when the assessment has been reopened after a period of four years from the end of relevant assessment year. The learned AR further referring to decision of the Hon'ble Supreme Court in the case of CIT Vs. Goyanka Lime & Chemical Ltd. (2016) 237 taxman 378 submitted that where the JCIT or Commissioner of Income Tax recorded satisfaction in mechanical manner and without application of mind to accord sanction for issuing notice u/s.148 of the Act, reopening of assessment was invalid. In this regard, the assessee has relied upon decision of the Hon'ble High Court of Madhya Pradesh in the case of CIT Vs. S.Goyanka Lime & Chemicals Ltd. (2015) 231 taxman 73 and also decision of the ITAT., Mumbai in the case of Astra Exim Pvt. Ltd Vs. ITO in ITA No.277/Mum/298 dated 31.08.2018.

7. The learned D.R., on the other hand, supporting order of the learned CIT(A) submitted that reasons recorded for reopening of assessment is self-explanatory. If you go through reasons given for reopening of assessment, the Assessing Officer has clearly arrived at reasonable belief of escapement of income on the basis of fresh tangible materials and hence, question of disclosure of all material facts necessary for assessment does not arise. Further, if you go through form for initiation of proceedings u/s. 147 of the Act, and for getting approval from the Commissioner of Income Tax, it is very clear that reasons are reproduced and after going through reasons, concerned authorities have accorded their approval. No doubt, there is no discussion on the reasons recorded by the Assessing Officer on the issue for reopening of assessment by the Assessing Officer. However, on going through reasons, both the authorities have clearly expressed their satisfaction of escapement of income and in absence of any specified format for granting approval, it cannot be said that authorities have not applied their mind before according their approval.

8. We have heard both the parties, perused material available on record and gone through orders of the authorities

below. The facts borne out from records indicate that original assessment has been completed u/s.143(3) of the Income Tax Act, 1961 on 23.12.2008. It is also an admitted fact that notice u/s.148 of the Act was issued on 25.03.2013, which is beyond four years from end of the relevant assessment year. Therefore, reasons recorded for reopening of assessment has to be examined in light of proviso to section 147 of the Income Tax Act, 1961 and as per said proviso, where an assessment under sub-section (3) of Section 143 has been made for relevant assessment year, no action shall be taken under this section after expiry of four years from end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to disclose fully and truly all facts necessary materials for assessment in that assessment year. In this case, main argument in light of reasons recorded for reopening of assessment dated 18.03.2013 is that there is no allegation from the Assessing Officer on failure of the assessee to disclose fully and truly all facts necessary for assessment.

9. We have gone through copy of reasons recorded for reopening of assessment, which is available in page 11 & 12 of

paper book filed by the assessee and from the reasons recorded, there is no allegation from the Assessing Officer on the part of the assessee to disclose fully and truly all material facts necessary for assessment. Therefore, from the above it is very clear that when the assessment has been reopened after a period of four years from end of the relevant assessment year, there should be allegation from the Assessing Officer on the part of the assessee to disclose fully & truly all material facts necessary for assessment. Unless there is an allegation from the Assessing Officer, assessment cannot be reopened, because as per proviso to section 147 of the Income Tax Act, 1961, when the original assessment has been completed u/s.143(3) of the Income Tax Act, 1961, no action can be taken under this section without alleging failure on the part of the assessee to disclose fully & truly all material facts necessary for assessment. Since, there is no allegation from the Assessing Officer in the reasons recorded for reopening of assessment on failure of the assessee, reopening of assessment on the basis of said reasons is invalid and consequently, reassessment proceeding becomes null and void. This legal principle is supported by the decision of the Hon'ble Bombay High Court

in the case of Nirmal Bang Securities Pvt.Ltd. Vs. ACIT (supra) where the Hon'ble High Court has clearly held that in absence of allegation in the notice regarding non-disclosure of material facts, assessment cannot be reopened after a period of four years from end of the relevant assessment year, when the original assessment has been completed u/s.143(3) of the Income Tax Act, 1961.

10. Coming to another aspect of the issue. The learned A.R. for the assessee has also challenged validity of reassessment proceedings in light of provisions of section 151 of the Act in the context of approval required to be accorded from the CIT for initiating proceedings u/s.147 of the Income Tax Act, 1961. According to the learned counsel for the assessee, sanction accorded by the competent authority is mechanical and without any application of mind, because both the authorities have simply stated that 'yes, we are satisfied', without clearly specifying how reasonable belief of escapement of income formed by the Assessing Officer is having nexus with fresh tangible material and failure of the assessee to disclose fully & truly all material facts necessary for assessment. We have gone through arguments advanced by the learned counsel for

the assessee in light of provisions of section 151 of Income Tax Act, 1961, and as per said provisions, approval from the competent authority is must before issuing notice u/s.148 of the Income Tax Act, 1961. In this case, original assessment has been completed u/s.143(3) of the Act, and reopening of assessment is beyond four years from end of the relevant assessment year and thus, no notice u/s.148 shall be issued by the Assessing Officer, unless the Principal CIT or Chief CIT or Principal Commissioner or Commissioner is satisfied on the reasons recorded by the Assessing Officer that it is a fit case for issue of such notice. The assessee has produced copy of form for recording reasons for initiating proceedings u/s.147 of the Income Tax Act, 1961, and for obtaining approval of the Commissioner dated 18.03.2013. We have gone through relevant form, which is available in the paper book filed by the assessee and we find that the Assessing Officer has recorded reasons for reopening of assessment on 18.03.2013 without any allegation on the part of the assessee to disclose fully and truly all material facts necessary for assessment of that assessment year and the JCIT, Range-1, Salem has approved on very same date i.e. 18.03.2013 by stating that 'Yes, approval

may please be granted for issue of notice u/s.148' and on very same date, the Commissioner of Income Tax, Salem, has accorded approval by stating that "Yes, I am satisfied". From the above, what we could understand is that authority concerned for according approval u/s.151 of the Income Tax Act, 1961, has mechanically granted approval without recording his satisfaction as to whether it is a fit case for issue of notice u/s.148 of the Income Tax Act, 1961, or not on the basis of reasons recorded by the Assessing Officer that reasonable belief of escapement of income formed by the Assessing Officer is having any nexus with escapement of income and further, such escapement is on the failure of assessee to disclose fully and truly all material facts necessary for assessment. From the reasons recorded by the Assessing Officer nothing is discernible whether is there any basis for formation of belief of escapement of income, because in the said reasons there is quantification of escapement of income and also there is no allegation on the part of the assessee to disclose fully and truly all material facts necessary for assessment. Therefore, we are of the considered view that while granting approval for issuance of notice u/s.148 of the Act, the Commissioner of

Income Tax should have applied his mind to the reasons recorded by the Assessing Officer for reopening of assessment and then satisfy himself about reasons to ascertain whether it is a fit case for issuance of notice u/s.148 of the Act. In absence of such satisfaction, it can be safely held that approval accorded by the Commissioner of Income Tax in the given facts & circumstances of the case is mechanical and without application of mind.

11. It is well established principle of law by various decisions of courts and Tribunals that sanction for issue of notice prescribed u/s.151 is not mere procedure, but power conferred on the competent authority to exercise his powers in a quasi judicial manner and thus, while exercising such powers the authority must record his satisfaction in writing and state how and why it is necessary to issue notice u/s.148 of the Income Tax Act, 1961 . The Hon'ble Madhya Pradesh High Court in the case of S.Goyanka Lime & Chemicals (supra) while answering substantial question of law on the issue of recording sanction by approval authority held that merely writing on format 'yes, I am satisfied' cannot be considered as satisfaction required to be recorded by the competent authority while granting approval

for issuance of notice u/s.148 of the Income Tax Act, 1961. The Hon'ble Supreme Court has dismissed SLP filed by the Revenue and affirmed decision of the Hon'ble Madhya Pradesh High Court and held that where JCIT recorded satisfaction in mechanical manner and without application of mind to accord sanction for issuing notice u/s.148 of the Act, reopening assessment was invalid. The ITAT., Mumbai Benches in the case of Astra Exim Pvt. Ltd. in ITA No.277/Mum/2018 vide order dated 31.08.2018 had considered an identical issue and held that mere mentioning 'Yes, I am satisfied' is considered to be mechanical action, if learned CIT did not apply his mind on the issue of reopening of assessment without referring to reasons recorded by the Assessing Officer for reopening of assessment, contrary to provisions of section 151 of the Income Tax Act, 1961. The sum and substance of ratio laid down by various High Courts and Tribunals are that sanction for issue of notice as provided u/s.151 is not a mere procedural aspect, but proceedings which has to be carried out with due diligence and thus, in a case, where there is no proper approval or mechanical approval without any application of mind of the sanctioning

authority to the reasons recorded for reopening of assessment, then, it can be safely concluded that the concerned authority has accorded approval in a mechanical manner, contrary to scheme of provisions of Section 151 of the Income Tax Act, 1961.

12. In this case, on perusal of form of initiation of proceedings u/s.147 of the Act, and for granting approval of the Commissioner of Income Tax for issuance of notice u/s.148 of the Act, it is abundantly clear that the Assessing Officer has recorded reasons for reopening of assessment without there being any allegation on the part of the assessee to disclose fully and truly all material facts necessary for that assessment year and said reasons had been mechanically approved by the Commissioner of Income Tax, Salem, by stating that "Yes, I am satisfied". Therefore, we are of the considered view that notice issued u/s.148 of the Act dated 25.03.2013 in pursuant to reasons recorded for reopening of assessment dated 18.03.2013 and consequent approval granted by the learned CIT, Salem is without any application of mind and thus, reopening of assessment on the basis of said approval is bad in law and liable to be quashed. Hence, we quash notice issued

u/s.148 of the Income Tax Act, 1961 and consequent reassessment proceedings completed u/s.143(3) r.w.s 147 of the Act.

13. The assessee has raised ground no. 5 & 6 to challenge additions made by the Assessing Officer towards disallowance of bogus purchases on the ground that except statement recorded from the Executive Director, nothing is on record to show that the assessee has inflated purchases by booking bogus expenditure. Although, the assessee has raised grounds on merits of issue, but, because assessment order passed by the Assessing Officer has been quashed on legal grounds, other grounds taken by the assessee challenging issues involved on merit does not require to be adjudicated at this juncture and thus, ground no.5 & 6 of grounds of appeal raised by the assessee are dismissed as infructuous.

14. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 29th July, 2022

Sd/-

(वी. दुर्गा राव)

(V.Durga Rao)

न्यायिक सदस्य /Judicial Member

चेन्नई/Chennai,

दिनांक/Dated 29th July, 2022

Sd/-

(जी. मंजुनाथ)

(G.Manjunatha)

लेखा सदस्य / Accountant Member

DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.