

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "SMC" : DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA.No.418/Del./2020  
Assessment Year 2010-11

Shri Kadir Ahmed, Surajpur (V) G.B. Nagar PAN ADKPA7289E C/o.Shri Sanjay Parashar, Advocate, 47-A, 1 <sup>st</sup> Floor, Devika Chamber, Opp. Mahalaxmi Mall, RDC, Ghaziabad. (U.P.) 201306	vs.	The Income Tax Officer, Ward-2(1), Income Tax Office, A-2D, Sector-24, Noida – 201 012
(Appellant)		(Respondent)

For Assessee :	Shri Anoop Sharma & Shri Sanjay Parashar, Advocates.
For Revenue :	Shri Anuj Garg, Sr. DR

Date of Hearing :	29.09.2022
Date of Pronouncement :	04.10.2022

**ORDER**

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-1, Noida, dated 29.10.2018 relating to A.Y. 2010-11.

2. Briefly stated facts of the case are that the assessee filed return of income declaring income of Rs.1,27,521/- on 28.09.2017 which is in compliance to notices issued under section 142(1) dated 22.05.2017 and 14.08.2017. The Department has received Non PAN AIR information regarding cash deposit of Rs.21,55,000/- in the saving bank account of the assessee during the financial year 2009-10. Therefore, the case of the assessee was reopened under section 147 of the I.T. Act, 1961 by issuing notice under section 148 of the I.T. Act, 1961 on 24.03.2017. In compliance to the said notice, the Authorised Representative for the assessee appeared before the A.O. and filed a written reply dated 11.05.2017 stating that the assessee has sold a property which is located near Surajpur, Greater Noida and the cash sale proceed was deposited in the bank account. On perusal of the sale deed the A.O. noted that the assessee has sold plot measuring 100.33 metre in village Surajpur, Tehsil Dadri on 03.06.2009 for a consideration of Rs.6,00,000/-. The A.O. issued notice under section 142(1) of the I.T. Act, 1961 and

asked the assessee to furnish the complete source of cash deposit. The assessee filed his written replies on 25.09.2017 and 09.10.2017. The A.O, however, could not satisfy the explanations furnished by the assessee and noted that assessee failed to furnish any documentary evidences for the balance cash deposit of Rs.15,55,000/- [Rs.21,55,000/- - Rs.6,00,000] and made addition of the same under section 68 of the I.T. Act, 1961 on account of unexplained cash deposit and determined the total taxable income of assessee at Rs.16,82,520/- vide order dated 16.10.2017 under section 147/143(3) of the I.T. Act, 1961. The A.O. also initiated penalty proceedings under section 271(1)(c) of the I.T. Act, 1961 separately.

2.1. Aggrieved by the order of the A.O, the assessee carried the matter in appeal before the Ld. CIT(A) by challenging the reopening of the assessment as well as addition on merits. Before the Ld. CIT(A) it was submitted by the assessee that the A.O. recorded reasons for reopening of the assessment without independent application of mind. The A.O. did not verify or examine the

material produced before him. The A.O. merely adopted vague information provided by the Non PAN AIR. Therefore, reasons recorded by the A.O. are invalid and bad in law. The Ld. CIT(A), however, dismissed the appeal of assessee on both the grounds vide order dated 29.10.2018 and confirmed the order of the A.O.

3. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before the Tribunal and has raised the following grounds :

1. *“That the Learned Income Tax Officer, Ward 2 (1), Noida (Ld. AO) and Learned Commissioner of Income Tax (Appeals) -1 [Ld. CIT(A)] erred on facts and in law in completing the assessment under section 143(3) read with section 147 of the Income-tax Act, 1961 (the Act) at an assessed income of Rs.16,82,520.*
2. *That based on the facts and circumstances of the case and in law, the assessment reopened by the Ld. AO and as confirmed by Ld. CIT(A) lacks mandatory conditions prescribed under section 147 of the Act, thereby, leading to*

*invalid jurisdiction and illegal reassessment being made which is liable to be quashed.*

3. *That on the facts and in circumstances of the case and in law, the Ld. AO and Ld. CIT(A) erred in rejecting the explanation and evidences brought on record by the appellant to prove the identity, creditworthiness and genuineness of the transaction disallowed under Section 68 of the Act.*
4. *That on the facts and circumstances of the case and in law, the Ld AO and Ld. CIT(A) erred in determining the addition under section 68 of the Act based on factually erroneous premises and built upon surmises and conjectures.*
5. *That the Ld. AO erred on facts and in law in initiating penalty proceedings under section 271(1 )(c) of the Income Tax Act, 1961.*
6. *The appellant craves leave to add, amend, alter or vary, any of the aforesaid grounds of appeal before or at the time of hearing of the appeal.”*

3.1. The assessee has also raised the following additional ground :

*“That based on the facts and circumstances of the case and in law, the approval granted under section 151 of the Income Tax Act, 1961 was not in accordance with law as it was accorded in a mechanical manner without application of mind and hence reassessment proceedings initiated is bad in law and liable to be quashed.”*

4. During the course of hearing, the Learned Counsel for the Assessee, at the very outset submitted that the additional ground raised by the assessee may please be admitted as it goes to the root of the matter and the entire facts are also available on record before the lower authorities. He submitted that the A.O. has reopened the assessment under section 147 of the I.T. Act, 1961 without application of mind and the approval for reopening of the assessment accorded by the JCIT, Range-2, Noida and PCIT, Noida are not in accordance with law and, therefore, prayed that the reopening of the assessment proceedings be quashed. He also drew the attention of the Bench to PB-1 and 2 regarding the reasons for initiating proceedings under section 148 of the I.T. Act, 1961 and for obtaining the approval of the CIT/Addl. CIT/JCIT. CIT which reads as under :

(1)

**FORM FOR RECORDING THE REASONS FOR INITIATING PROCEEDINGS UNDER SECTION 148  
AND FOR OBTAINING THE APPROVAL OF THE COMMISSIONER OF INCOME TAX/ ADDL.  
COMMISSIONER OF INCOME TAX/JT. COMMISSIONER OF INCOME TAX.**

1. Name & address of the assessee : Sh. Kadir Ahamad S/o Kabir Ahmad  
Vill & Post- Surajpur,  
Gr. Noida
2. PAN : Non PAN
3. Status : Individual
4. District/Circle : ITO, Ward-2(1), Noida
5. Assessment Year in respect of which  
It is proposed to issue notice u/s 148 : 2010-11
6. Quantum of income which has  
Escaped assessment : As per Annexure
7. Whether the assessment is proposed  
to be made first time. If the reply is in  
Affirmative, please state : Yes
- (a) Whether any voluntary return has  
already been filed and : No
- (b) If so, the date of filing of the said  
Return. : N.A.
8. If the answer of col. No.7 is in negative,  
Please state. : N.A
9. The income originally assessed : N.A  
Whether it is a case of under  
Assessment at the low rate/  
Assessment which has been made  
The subject of excessive relief/or  
Allowing of excessive / or lesser  
Depreciation.

-2-

Shri. Ahmed

Contd...2.

Signature  
13/02/20

(2)

-2-

10. Whether the provisions of Section 150(1) : No  
Are applicable? If the reply is in affirmative  
The relevant facts may be stated against  
Item No.10 and it may also be brought  
That the provisions of Section 150(2)  
Would not stand in the way of initiating  
Proceedings u/s 148.

11. Reasons for the belief that the : As per Annexure-A  
Income has escaped assessment.

Date: 28.02.2017

(P.K.Nayyar)

Income Tax Officer,  
Ward-2(1), Noida.

12. Whether the Joint Commissioner of I.Tax  
is satisfied on the reasons recorded by the  
A.O. that it is a fit case for the issue of  
Notice U/s 148.

yes, I am satisfied that  
it is a fit case.

Bharat

(B.B.Garg)

Date: 02/03/2017

Joint Commissioner of Income Tax,  
Range-2, Noida.

13. Whether the Pr. Commissioner of I.Tax  
is satisfied on the reasons recorded by the  
A.O. that it is a fit case for the issue of  
Notice U/s 148.

fit case.

Date: 10/03/17

T. Tonsing Prasad

(T. Tonsing Prasad)

Pr. Commissioner of Income Tax,  
Noida.

Kadir Ahmed

13/03/20



4.1. He submitted that it is a settled position of law that reopening of the assessment accorded in a mechanical manner by the Competent Authorities cannot stand in the eye of law and in support of his contention, the Learned Counsel for the Assessee relied upon various orders of Coordinate Benches of Delhi Tribunal which are placed on record from page Nos.4 to 86 of the paper book in the cases of (1) Sh Udesh Sharma vs., ITO, Ward-2(1), Ghaziabad in ITA.No.7579/Del./2017 for the A.Y. 2009-10, (2) Sh Gopal Chand Mundhra and Sons vide ITA.No.1375/Del./2019 etc., order dated 21.08.2019 (3) Sh Bir Bahadur Singh Sijwali vs., ITO, Ward-1, Haldwani vide ITA.No.3814/Del./2011 for the A.Y. 2008-09 (4) Sh Tejendra Kumar Ghai vs., ITO, Ward-1(5), Rudrapur in ITA.No.970, 971/Del./2017 for the A.Ys. 2011-12 and 2012-13 (5) Smt. Baby Yadav vs., ITO, Ward-1(5), Ghaziabad, in ITA.No.5394/Del./2016 for the A.Y. 2008-09, (6) Sh Harish Tyagi vs., ITO, Ward-1(3), Ghaziabad (7) Space Chem Engineers Private vs., ITO, Ward-2(3), Ghaziabad, (8) Order of Hon'ble Madhya Pradesh High Court in the case of CIT, Jabalpur vs., M/s. S.

Goyanka Lime and Chemicals Ltd., in ITA.No.83 of 2012 order dated 15.10.2014 and (9) Order of ITAT Amritsar SMC Bench in the case of Gurpal Singh vs., ITO, Ward-1, Kapurthala in ITA.No.631/ASR/2015 dated 27.05.2016.

4.1. The Learned Counsel for the Assessee submitted that since the approval accorded by the competent authorities is in a mechanical manner and the Coordinate Benches of the Delhi Tribunal in the above cited appeals quashed such reopening of the assessment and thus, he, prayed that the reopening of the assessment made by the A.O. and confirmed by the Ld. CIT(A) be quashed and the addition be deleted.

5. The Ld. D.R. on the other hand strongly relied on the orders of the lower authorities. He submitted that the impugned addition has been made by the A.O. since the assessee has failed to discharge his onus cast on him to prove the genuineness of the cash deposit made by him in the bank account. Even before the Ld. CIT(A), the assessee has failed to put-forth his grievance with supporting

documentary evidences to prove the genuineness and creditworthiness of the cash deposit made by him in his bank account. The Ld. D.R. accordingly prayed that the order of the Ld. CIT(A) be confirmed.

6. I have considered the rival arguments made by both the sides and perused the orders of the Assessing Officer and CIT(A) and the paper book filed on behalf of the assessee. I have also considered the various decisions cited before me. Since the additional ground raised by the assessee goes to the root of the matter and all the material is also available before the lower authorities, I admit the additional ground raised by the assessee and decide as under.

6.1. I find that the case of the assessee was reopened under section 147 of the I.T. Act, 1961 by recording the reasons and after obtaining approval from the JCIT and the PCIT on the basis of the information received by the A.O. from the Non PAN AIR of the Department that the assessee deposited a sum of Rs.21,55,000/- in the saving bank

account during the financial year 2009-10. The reasons so recorded by the Assessing Officer has already been reproduced in the preceding paragraphs and, therefore, the same is not being reproduced here to avoid repetition. However, a perusal of the Column Nos.12 and 13 of the Form for recording the reasons for initiating the proceedings under section 147 and for obtaining the approval of the Joint CIT/PCIT, copy of which is placed at page 1 and 2 of the paper book, reveals that the JCIT while giving his approval has mentioned as under :-

*"Yes, I am satisfied that it is a fit case."*

6.2. Similarly, the Pr. CIT, while giving his approval has mentioned as under :-

*"Fit Case"*

6.3. I find the Coordinate Bench of the Delhi Tribunal in the case of Damyanti Mundhra, New Delhi vs., ITO, Ward-55(5), New Delhi quashed such reopening of the assessment by following the order of Coordinate Bench of the Tribunal in the case of ITO, Ward-17(4), New Delhi vs.,

M/s Virat Credit & Holdings Pvt. Ltd. vide ITA.Nos.1375/Del./2019 etc., and C.O.No.57/Del./2012 order dated 09.02.2018 wherein the Coordinate Bench of the Delhi Tribunal while deciding an identical issue has quashed the reassessment proceedings where the approving authorities while giving approval has simply mentioned "Yes. I am satisfied." The relevant observations of the Tribunal in the case of ITO, Ward-17(4), New Delhi vs., M/s Virat Credit & Holdings Pvt. Ltd. (supra) from para 10 onwards read as under :-

*"10. First of all, Id. AR for the assessee company drew our attention towards sanction accorded by the Addl.CIT for reopening of the assessment obtained by moving an application under Right to Information Act, 2005, available on file as Annexure 'A'. Perusal of the sanction accorded by Addl. CIT in the prescribed proforma shows that there is a question no. 13 viz.*

*"13. Whether the Addl. CIT is satisfied on the reasons recorded under section 147 that it is a fit*

*case for issue of notice under section 148 of the IT Act.*

*11. In response to aforesaid question no.13 in the prescribed proforma, Addl. CIT has written "Yes. I am satisfied." No doubt, columns of reasons recorded was there and it is also mentioned in column no. 12 that reasons for belief that income has escaped assessment are as per annexure enclosed but such annexure has not been produced before the Bench for perusal.*

*12. Apparently, from the approval recorded and words used that "Yes. I am satisfied.", it has proved on record that the sanction is merely mechanical and Addl.CIT has not applied independent mind while according sanction as there is not an iota of material on record as to what documents he had perused and what were the reasons for his being satisfied to accord the sanction to initiate the reopening of assessment u/s 148 of the Act.*

13. *Even AO while recording the reasons for initiating the reopening of assessment has not applied his mind independently. When we peruse the reasons recorded, available at pages 31-32 of the paper book, the entire reasons have been based on the statement of one Shri P.K. Jindal, who has furnished the list of companies stated to be not doing any business activities but engaged in providing accommodation entries. Before issuing the notice AO appeared to have not examined the profile of the said companies to arrive at a logical conclusion so as to issue the notice u/s 148 of the Act. When this fact is examined in the light of the completed assessment of the assessee u/s 143 (3), all the documents ITA Nos. 1375, 1721, 1722, 1523 & 1524/Del/2019 concerning share application money, now available at pages 1 to 30 of the paper book, were supplied to the AO. This fact has not been taken into consideration by the AO before initiating the proceedings u/s 147/148 of the Act. However, since*

*reopening of assessment in this case is otherwise not sustainable, we are not entering into any merits.*

14. *Hon'ble Supreme Court in case cited as CIT vs. S. Goyanka Lime & Chemical Ltd. - (2015) 64 taxmann.com 313 (SC) examined the identical issue as to according the sanction for reopening the assessment u/s 148 of the Act by merely recording "Yes. I am satisfied." And held that reopening on the basis of mechanical sanction is invalid by returning following findings :*

*"Section 151, read with section 148 of the 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 assessee] Search and Seizure- Procedure for block Assessment- Search was conducted at residential and business premises of Assessee and notice for block assessment u/s. 158-BC was issued- For block period, returns were filed that were processed u/s. 143 (1)- However, notice u/s. 148 was issued by AO, on basis of certain reasons recorded-Assessee objected to same before AO, that was rejected and assessment was completed u/ss. 143(3) and CO No.57/Del/20i2 147-CIT(A) found that reason recorded by Joint Commissioner of Income Tax, for according sanction, was merely recording 'I am Satisfied'-Action for sanction was alleged to be without application of mind and to be done in mechanical manner- Held, while according sanction, Joint Commissioner, Income Tax only recorded "Yes, I am satisfied"-Mechanical way of recording satisfaction by Joint Commissioner, that*

*accorded sanction for issuing notice u/s. 147, was clearly unsustainable-On such consideration, both Appellate authorities interfered into matter- No error was committed warranting reconsideration-As far as explanation to S. 151, brought into force by Finance Act, 2008 was concerned, same only pertained to issuance of notice and not with regard to manner of recording satisfaction-Amended provision did not help Revenue-No question of law involved in matter, that warranted reconsideration-Revenue's Appeals dismissed."*

15. *The Hon'ble Delhi High Court has also decided this legal issue in case cited as Pr. CIT vs. N.C. Cables Ltd. in ITA 335/2015 order dated 11.01.2017 by returning following findings :-*

*ITA Nos. 1375, 1721, 1722, 1523 & 1524/Del/2019 " Reassessment-Issuance of Notice-Sanction for issue of Notice- Assessee had in its return for A Y 2001-02 claimed that sum of*

*Rs. 1 Crore was received towards share application amounts and a further sum of Thirty Five Lakhs was credited to it as an advance towards loan-Original assessment was completed u/s 143(3)-However, pursuant to reassessment notice, which was dropped due to technical reasons, and later notice was issued and assessments were taken up afresh-After considering submissions of assessee and documents produced in reassessment proceedings, AO added back a sum of Rs. i,35,00,000-CIT(A) held against assessee on legality of reassessment notice but allowed assessee's appeal on merits holding that AO did not conduct appropriate enquiry to conclude that share inclusion and advances received were from bogus entities-Tribunal allowed assessee's appeal on merits-Revenue appealed against appellate order on merits-Assessee's cross appeal was on correctness of reopening of assessment- Tribunal upheld*

*assessee's cross-objections and dismissed Revenue's appeal holding that there was no proper application of mind by concerned sanctioning authority u/s Section 151 as a pre-condition for issuing notice u/s 148- Held, Section 151 stipulates that CIT (A), who was competent authority to authorize reassessment notice, had to apply his mind and form opinion- Mere appending of expression 'approved' says nothing- It was not as if CIT (A) had to record elaborate reasons for agreeing with noting put up-At same time, satisfaction had to be recorded of given case which could be reflected in briefest possible manner- In present case, exercise appears to have been ritualistic and formal rather than meaningful, which was rationale for safeguard of approval by higher ranking officer-Revenue's appeal dismissed."*

6.4. I find that since in the instant case the A.O. has not applied his independent mind while reopening the

assessment under section 147 and simply relied on the Non PAN AIR information. Even for recording reasons for initiating proceedings under section 148 and for obtaining approval of the JCIT, Range-2, Noida and PCIT, Noida respectively, the power vested by Commissioner under section 151 to grant or not to grant approval to the A.O. to reopen an assessment is coupled with a duty. The Commissioner is required to apply his independent mind to the proposal put up to him for approval in the light of material relied upon by the A.O. That power by the Commissioner cannot be exercised casually and in a routine manner. Since, the authorities below has granted approval for reopening of the assessment in a routine and casual manner, based on such approval, reopening of assessment by the A.O. is not at all sustained in the eye of law as held by the Coordinate Benches of the Tribunal which are relied upon by the Learned Counsel for the Assessee in the preceding paragraph and in absence of any contrary decision rendered by higher Forum placed by the Ld. D.R, I quash the reopening of the assessment made by the A.O.

and consequently the addition made by the A.O. and confirmed by the Ld. CIT(A) is deleted. Accordingly, the appeal of the assessee is allowed.

7. In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 04.10.2022.

Sd/-  
[CHANDRA MOHAN GARG]  
JUDICIAL MEMBER

Delhi, Dated 04<sup>th</sup> October, 2022

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	Ld. CIT(A) concerned
4.	CIT concerned
5.	DR ITAT "SMC" Bench, Delhi
6.	Guard File

//By Order//

Assistant Registrar, ITAT, Delhi Benches,  
Delhi.