

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC": NEW DELHI
BEFORE Shri C.M. Garg, Judicial Member**

ITA No. 2859/Del/2022
(Assessment Year: 2009-10)

Agroha Fincap Ltd, C-51, Mahendru Enclave GT Karnal Road, New Delhi (Appellant) PAN:AAACA8075G	Vs. ITO, Ward-1(4), New Delhi (Respondent)
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Assessee by :	Shri Raj Kumar Gupta, CA Shri Suraj Gupta, Adv
Revenue by:	Shri Om Parkash, Sr. DR
Date of Hearing	01/05/2023
Date of pronouncement	07/07/2023

ORDER

PER C. M. GARG, J. M.:

1. This is an appeal filed by the assessee against the order of the Id CIT(A), National Faceless Appeal Centre (NFAC) dated 10.10.2022 for AY 2009-10.

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

"1. That under the facts and circumstances initiation of proceedings under section 147/148 are without jurisdiction, on borrowed satisfaction, without application of mind, unwarranted, mechanical and unsustainable in law and on merits.

2. That the Ld. A.O., since failed in adjudicating all objections against reopening proceedings, properly, as per law and in totality and as per the directions of Hon'ble Supreme Court in the case of G.K.N. Drive Shafts, hence consequential proceedings and impugned asstt. is illegal and without jurisdiction.

3. That under the facts and circumstances, the approval under section 151 is fatally defective, mechanical and without application of mind which makes the whole proceedings without jurisdiction, illegal and unwarranted.

4. That under the facts and circumstances, addition of Rs. 10,00,000 under section 68 for the share capital/ share premium received from M/s Mani Mala Delhi Pro. Pvt. Ltd. by holding the same as received from

alleged entry operator is illegal and unsustainable in law as well as on merits.

4.1 That in the absence of providing copies of all material used against the assessee and by not providing cross-examination of relevant persons, the addition of Rs.10,00,000/- is unsustainable in law as well as on merits.

5. That under the facts and circumstances, addition of Rs. 15,00,000 under section 68 for the share capital/share premium received from M/s Vargin Capital Services (9) Ltd. by holding the same as received from alleged entry operator is illegal and unsustainable in law as well as on merits.

5.1 That in the absence of providing copies of all material used against the assessee and by not providing cross-examination of relevant persons, the addition of Rs.15,00,000/- is unsustainable in law as well as on merits.

6. That under the facts and circumstances addition of Rs.45,000/- as alleged commission expn. @1.8% of Rs.25,00,000/- is unsustainable in law and on merits."

3. Pressing into service ground No. 3 of the assessee the Id AR submitted that the issue is squarely covered in favour of the assessee by the order of ITAT Delhi SMC Benche order dated 17.10.2019 in assessee's own case in ITA No. 1063/Del/2019 for AY 2010-11, therefore, the appeal of the assessee deserves to be allowed only on this ground that approval u/s 151 of the Act is fatally defective, mechanical and without application of mind which makes the whole proceeding without jurisdiction, illegal and unwarranted.

4. Replying to the above, the Id SR. DR supported the orders of the authorities below and submitted that approving authority has granted approval u/s 151 of the Act by considering the entire facts and circumstances of the present case and due application of mind therefore, same is not fatal to the impugned assessment order and hence legal ground of assessee may kindly be dismissed. However, in all fairness the Id Sr. DR did not controvert the coordinate bench of Tribunal dated 17.10.2019 (supra) has adjudicated identical and legal ground of assessee in its favour.

5. On careful consideration of the above submissions, first of all from the order of the coordinate bench of Tribunal order dated 17.10.2019 for AY 2010-11 in assessee's own case the identical legal ground of assessee challenging the validity of approval u/s 151 of the Act has been decided in favour of the assessee with following observations and findings:-

"9. The Id. DR, on the other hand, submitted that the Assessing Officer, in the instant case, has duly applied his mind and has made a thorough analysis of the documents and after analyzing the documents has recorded his satisfaction and reopened the assessment. The Id. Addl. CIT had perused the note and had recorded his satisfaction that income pertaining to assessment year 2010-11 has escaped assessment and, hence, the case is required to be reopened u/s 147. The Pr. CIT had given his satisfaction u/s 151 separately as mentioned at page 5 of the paper book filed by the Id. counsel for the assessee. The Assessing Officer, in the instant case, has disposed of the objections by passing a speaking order, therefore, it is wrong to say that the assessment was reopened in a mechanical manner and the approving authorities have given the approval in a mechanical manner without due application of mind. He submitted that the reassessment proceedings were not initiated in a mechanical manner or on borrowed satisfaction and without application of mind since the perusal of the reasons recorded clearly show that there is a thorough application of mind by the Assessing Officer and the approving authorities have also given valid reasons for reopening of the case. So far as the merit of the case is concerned, the Id. DR submitted that S.K. Jain group of cases are known to be accommodation entry providers and the assessee, in the instant case, has obtained the accommodation entry of Rs.20 lacs and has failed to discharge the onus cast on it by proving the identity and capacity of the loan creditor and the genuineness of the loan transaction. Therefore, the Id.CIT(A) was fully justified in sustaining the addition of Rs 20 lacs made by the Assessing Officer and also the addition of Rs.36.000- added by the Assessing Officer being commission for the accommodation entries. He accordingly submitted that both factually and legally the Id CIT(A) has passed a reasoned order and, therefore, the same should be upheld and the grounds raised by the assessee should be dismissed.

10. I have considered the arguments of both the sides, perused the orders of the Assessing Officer and the CIT(A) and the paper book filed on behalf of the assessee. I have also considered various decisions cited before us. At the outset, I deem it proper to

adjudicate the legal ground raised by the assessee challenging the validity of the reassessment proceedings in absence of proper approval given u/s 151 of the IT Act. A perusal of the copy of approval given u/s 151, copy of which is placed at page 13 of the paper book, shows that the Addl. CIT, while giving approval has simply mentioned: "Yes. I am satisfied that it is a fit case for reopening of assessment u/s 148." Similarly, the PCIT, while giving approval has also simply mentioned: "I am satisfied that it is a fit case for issue of notice u/s 148 of the IT Act." From the above, it is clear that none of the supervisory authorities have applied their mind. I find, the Hon'ble Delhi High Court in the case of CIT vs N.C Cables Ltd., 391 ITR 11(Del), has observed as under-

"Reassessment-Issuance of Notice-Sanction for issue of Notice-Assessee had in its return for AY 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.1.35,00,000-CIT(A) held against assessee on legality of reassessment notice not 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 assessed'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 147/148-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."

11. *Similar view has been taken by the coordinate Benches of the Tribunal in a number of cases where it has been held that merely giving approval by mentioning. "Yes. I am satisfied that it is a fit case for reopening of assessment" is not a valid approval. Accordingly the reassessment proceedings have been quashed. Since, in the instant case, both the superior authorities have merely given their approval in a mechanical manner without independent application of mind, therefore, respectfully following the decision of the jurisdictional High Court in the case of N.C. Cables (supra). I hold that the reassessment proceedings are bad in law. Accordingly, the same is quashed. Since the reassessment proceedings have been quashed, the subsequent order passed by the Assessing Officer becomes bad in law and accordingly the same is quashed. Since the assessee succeeds on the legal grounds, the grounds raised by the assessee become academic and, therefore, are not being adjudicated."*

6. On perusal of the copy of approval available at page 14 of the assessee's paper book I note the facts of the present case and satisfaction recorded by the PCIT in the present case is similar worded was recorded in assessee's case for AY 2010-11. Therefore, respectfully following the conclusion drawn by the coordinate bench of the Tribunal in several order including the order in assessee's own appeal in AY 2010-11 (supra) wherein, it has been held that merely giving approval by mentioning "Yes, I am convinced it is fit case for re-opening of assessment u/s 147 by issuing notice u/s 148." Is not comply mandatory requirement of granting approval u/s 151 of the Act. Thus, the valid approval granted reassessment proceedings notice u/s 148 of the Act and impugned reassessment order 28.11.2016 for AY 2009-10 deserves to be quashed. As I have noted above noted above that in the instant case also both the approving authority have merely given a ritual approval in a mechanical manner, therefore, respectfully following the decision of the jurisdictional High Court of Delhi in the case of NC Cables (supra) I hold that the reassessment proceedings are bad in law. Therefore, reassessment proceedings and Impugned order of reassessment dated 28.11.2016 for AY 2009-10 are not sustainable being

bad in law. Accordingly, the same are quashed and ground No. 3 of assessee is allowed.

7. In earlier part of this order I have quashed the entire proceedings and impugned reassessment order allowing legal ground of assessee and Id Representative of both the sides have not made any submission on the other grounds of assessee, therefore, I do not deem it proper to adjudicate the same in absence of any submissions.

8. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 07/07/2023.

-Sd/-
(C. M. GARG)
JUDICIAL MEMBER

Dated: 07/07/2023
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi