

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH: 'F', NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
(THROUGH VIDEO CONFERENCE)

ITA NOS. 2165/DEL/2017 & 6693/DEL/2019

A.YR. : 2006-07

M/S RADHU DEVELOPERS (P) LTD., 811, PEARLS BEST HEIGHT-1, NETAJI SUBHASH PLACE, PITAMPURA, DELHI – 110 034 (PAN: AADCR0879A)	Vs.	ITO, WARD 15(1), NEW DELHI
(Appellant)		(Respondent)

Assessee by : Mr. Suresh K. Gupta, CA
Department by : Mr. Sunil, CIT(DR)

ORDER**PER H.S. SIDHU, JM**

These appeals are filed by the assessee against the respective impugned order dated 21.2.2017 passed in the quantum appeal and order dated 27.3.2018 passed in the penalty appeal relating to assessment year 2006-07 by the Ld. CIT(A)-7, New Delhi & Ld. CIT(A)38, New Delhi respectively.

2. The brief facts of the case are that the assessee filed its return of income declaring NIL income on 26.11.2006 against which the assessment u/s. 143(3) of the I.T. Act, 1961 was completed on 21.11.2008 at NIL income. Subsequently, information was received from the office of Director of Income Tax, (Inv.), New Delhi that the assessee had received accommodation entries amounting to

Rs. 75 lacs from various parties. The case of the assessee was reopened u/s. 147/148 of the Act and notice u/s. 148 of the Act was issued on 22.3.2013 with the prior approval of the CIT, Delhi-5, New Delhi, after recording the reasons. In view of the report received from the DIT (Inv.), New Delhi, the AO initiated the proceedings u/s. 147 of the Act and issued notice u/s. 148 of the Act dated 22.3.2013. In response to the same, assessee filed letter dated 22.4.2013 stating that the return of income originally filed on 28.11.2006 may be treated to have been filed in compliance of the notice u/s. 148 of the Act. After adopting the prescribed procedure, under the law, the AO made the addition of Rs. 75 lacs by holding that this sum credited in the books of accounts was not satisfactory explained and there was a prima facie evidence against the assessee viz. the receipt of bogus accommodation entries and the assessee has failed to discharge its onus to produce the legally evidence of creditworthiness of the subscribers and made the addition in dispute as unexplained investment of the assessee out of the undisclosed source of income being routed through such bogus accommodation entries and assessed in the hands of the assessee by completing the assessment u/s. 143/147 of the Act on 26.3.2014. Aggrieved with the same, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 21.2.2017 has dismissed the appeal of the assessee and upheld the order of the AO. Now aggrieved with the impugned order, the assessee is in appeal before the tribunal.

3. At the time of hearing, Ld. Counsel for the assessee draw our attention towards his written submissions in this appeal in which he has made the averments of the assessee already made in the grounds of appeal especially challenging the assessment order u/s. 143(3)/147 of the Act as invalid, illegal, without jurisdiction, in violation of principle of natural justice, perverse and void ab initio. In support of his contention, Ld. Counsel for the assessee has given his written submissions

challenging the notice u/s. 148 of the Act on various grounds. He has also argued and made the averments in the written submissions on merits also, but specifically he draw our attention towards the reasons recorded dated 20.3.2013 as well as the approval given by the Ld. CIT, Delhi-5, New Delhi dated 22.3.2013 and stated that Ld. CIT-5, New Delhi has not applied his mind and gave approval in a mechanical manner, which is not sustainable in the eyes of law and therefore, the notice u/s. 148 is not in accordance law. He requested that the notice u/s. 148 of the Act is invalid and accordingly the reopening in this case is bad in law and therefore the same may be quashed. In support of his contention, he draw our attention towards the reasons recorded and approval for issuance of notice u/s. 148 of the Act u/s. 151 of the Act, which he has attached in the paper book-II at page no. 164-167. He has also filed a paper Book –I containing pages 163 having the copies assessment as well as appellate records.

4. On the contrary, Ld. CIT(DR) relied upon the order passed by the Ld. CIT(A) and stated that reopening of the assessment by the AO is on the basis of specific information and as well as approval given by the Ld. CIT, V-, New Delhi and in accordance with law, after applying his mind. As regards the merits of the case is concerned, the Ld. DR stated that assessee has not discharged its onus required u/s. 68 of the Act, therefore, the addition made by the AO and confirmed by the Ld. CIT(A) need no interference and needs to be upheld and accordingly requested to uphold the same by dismissing the appeal of the assessee.

5. We have heard both the parties and perused the records, especially the legal ground argued by the Ld. Counsel for the assessee and perused the relevant documents available on record especially the assessment order, impugned order, reasons/satisfaction/approval recorded for issue of notice u/s. 148 of the Act which are placed in paper book-II at page no. 164-167, wherein the Ld. CIT,

Delhi-5, New Delhi granted the approval for issuing notice u/s. 148 of the Income Tax Act, 1961 by mentioning as under:-

“I am satisfied with the reasons.”

5.1 After perusing the aforesaid remarks of the Ld. CIT-5, New Delhi, we find that the approval granted by the Ld. CIT-5, New Delhi is a mechanical and without application of mind, which is not valid for initiating the reassessment proceedings, because from the aforesaid remarks, it is not coming out as to which material; information; documents and which other aspects have been gone through and examined by the Ld. CIT-5, New Delhi for reaching to the satisfaction for granting approval. Thereafter, the AO has mechanically issued notice u/s. 148 of the Act. Keeping in view of the facts and circumstances of the present case and the case laws applicable in the case of the assessee, we are of the considered view that the reopening in the case of the assessee for the asstt. Year in dispute is bad in law and deserves to be quashed. Our 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).”

6. In the background of the aforesaid discussions and respectfully following the precedents, as aforesaid, we are of the considered view that approval granted by the Ld. CIT-5, 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, the legal ground involved in the appeal No. 2165/Del/2017 is

allowed. Since we have quashed the reassessment, there is no need to adjudicate other grounds. In the result, the appeal is allowed.

7. As regards the penalty appeal No. 6693/Del/2019 is concerned, since we have already quashed the reassessment in the quantum appeal, as aforesaid, hence, the penalty, does not stand in the eyes of law, therefore, the same is deleted as such, by allowing the appeal of the assessee.

8. In the result, both the Appeals filed by the Assessee stand allowed.

Order pronounced on 05-10-2020.

Sd/-

(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Sd/-

(H.S. SIDHU)
JUDICIAL MEMBER

“SRB”

Copy forwarded to:

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

Asstt. Registrar, ITAT, New Delhi+