

(2024) 05 ITAT CK 0051

Income Tax Appellate Tribunal (Delhi G Bench)

Case No: Income Tax Appeal No. 2993/DEL/2023, Cross Objection No. 29/DEL/2024

Dy.CIT

Vs

Sandeep Bajaj

APPELLANT

RESPONDENT

Date of Decision: May 29, 2024

Acts Referred:

- Income Tax Act, 1961 - Section 2(22)(e), 56, 143(3), 147, 148, 151, 151(1), 151(2)

Hon'ble Judges: S. Rifaur Rahman, (AM); Yogesh Kumar U.S., J

Bench: Division Bench

Advocate: Amit Goyal, Pranav Yadav, Anuj Garg

Final Decision: Dismissed

Judgement

1. This appeal has been filed by the Revenue against the order of Learned Commissioner of Income Tax (Appeals)-27, Delhi ["Ld. CIT(A)", for short], dated 07/08/2023 for Assessment Year 2018-19, whereas the Cross Objection has been filed by the assessee.

2. The Revenue has raised the grounds of appeal:-

"1. Whether in the facts and circumstances of the case, the Ld.CIT(A) has erred in deleting the addition made u/s 56 of the Income Tax Act, 1961 of Rs. 2,96,61,877/-on account of deemed dividend u/s 2(22)(e) of the LT. Act, even when Shri Sandeep Bajaj is common shareholder of M/s Jupiter Laminators Pvt. Ltd. As well as M/s Sampark Laminators Pvt. Ltd.?"

2. Whether in the facts and circumstances of the case, the Ld.CIT(A) has erred in overlooking that Shri Sandeep Bajaj has holds 60.87% shares of M/s Sampark Laminators Pvt. Ltd. and 45.79% of M/s Jupiter Laminators Pvt. Ltd.?"

3. Whether in the facts and circumstances of the case, the Ld.CIT (A) has erred in overlooking that the assessee holds more than 10% of voting power in M/s Sampark Laminators Pvt. Ltd. and also entitled to more than 20% of income in M/s Jupiter Laminators Pvt. Ltd.?

4. Whether in the facts and circumstances of the case, the Ld.CIT (A) has erred in overlooking that M/s Jupiter Laminators Pvt. Ltd. does not hold any shares in M/s Sampark Laminators Pvt. Ltd., whereas Sh. Sandeep Bajaj is a common majority shareholder in both the transacting parties?

5. Whether in the facts and circumstances of the case, the Ld. CIT(A) has erred on facts and in law in relying upon case laws without appreciating that the facts of present case are distinguished from the facts of relied upon cases.

6. (a) The order of the Ld. CIT (A) is erroneous and not tenable in law and on facts.
(b) The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal."

3. The assessee has raised the following grounds in Cross Objection:-

"1. On the facts and circumstances of the case and in law, the notice under section 148 of the Income Tax Act, 1961 issued in the case is bad-in-law, void and without jurisdiction and, therefore, the said notice along with the assessment order passed by the AO.

2. On the facts and circumstances of the case and in law, the notice u/s 148 issued in this case is contrary to law including the specific provision of section 147 to 151 of the Act and CIT(A) erred in not holding so.

3. On the facts and circumstances of the case and in law, the assessment order passed by the assessing Officer liable to be quashed as there is no valid sanction u/s 151 of the Income Tax Act, 1961 for issue of notice u/s 148.

4. On the facts and circumstances of the case and in law, the addition of Rs.2,96,61,877/- made by the assessing officer is beyond the scope of provisions of section 147/148 of the Act."

4. The assessee has raised the jurisdictional issue in the Cross Objection filed by him, we proceeded to hear the Cross Objection first.

5. At the time of hearing, the Ld. AR specifically pressed ground No.3 of the Cross Objection filed by the assessee against the appeal of Revenue and submitted that the Assessing Officer has not taken proper approval and even the approval was granted mechanically by the Ld. JCIT without applying his mind. In this regard, he submitted

that the Ld. JCIT has granted approval u/s 151 of the Act before issuing notice u/s 148 of the Act. In this regard, he brought to our notice Page No. 6 of Paper Book, which is approval from u/s 151 of the Act, in which the Ld. JCIT has merely approved by recording as "Yes, I am satisfied. The Ld. AR submitted that use of the expressions such as "Yes", or "Yes I am satisfied" or "Approved" do not meet the requirements of law. The submission of the assessee is reproduced as under:-

The reassessment proceedings initiated is bad-in-law as the approval / JCIT is without recording satisfaction in accordance with the requirements of section 151 of Income Tax Act, 1961.

The sub-section (2) of section 151 of the Act provides that after the expiry of four years from the end of the relevant assessment year, notice u/s 148 shall not be issued unless the Joint Commissioner, is satisfied, on the reasons recorded by the assessing officer concerned, that it is a fit case for the issue of such notice. These are some in-built safeguards to prevent arbitrary exercise of power by an assessing officer to fiddle with the completed assessment.

The jurisdictional Delhi High Court in the case of United Electrical Co. (P) Ltd. vs CIT (2012) 258 ITR 317 has held that the power vested in the Joint Commissioner to grant or not to grant approval is coupled with a duty. The Joint commissioner is required to apply his mind to the proposal put up to him for approval in the light of the material relied upon by the assessing officer. The said power cannot be exercised casually and in a routine matter. In the appellant's case before your honour, the JCIT has not applied his mind. The JCIT has given the approval in a mechanical manner without verifying / examining the materials relied upon by the A.O. for recording the purported reasons. The JCIT has just written "Yes, I am Satisfied" at the proposal prepared by the A.O. and accorded satisfaction u/s 151(2) for reopening the assessment.

It is respectfully submitted that by merely stating "Yes, I am Satisfied" at the proposal prepared by A.O. cannot be termed as a sanction/ approval as required u/s 151 of Income Tax Act, 1961.

The Hon'ble MP High Court in the case of CIT v M/s S. Govanka Lime and Chemicals Ltd. 2015 (5) TMI 217 held that where the JCIT has granted sanction by merely recording "Yes I am satisfied", the same was not sustainable. The Hon'ble Apex Court has since upheld the said judgement reported at CIT v M/s S. Govanka Lime and Chemicals Ltd. [2015] 64 taxmann.com 313 (SC).

In the case of ITO v. N.C. Cables Ltd. (Delhi ITAT) - Judgement dated 22.10.2014 the commissioner gave the approval u/s 151 to the proposal u/s 148 by stating "Approved" and putting his signature. The Jurisdictional Delhi Bench of ITAT quashed the reassessment proceedings holding that the reopening was bad-in-law for the reason

that the commissioner has not recorded his satisfaction as contemplated u/s 151 of the Act. The said judgment of ITAT has been further affirmed by Hon'ble Delhi High Court vide its order dated 11.01.2017 (Pr. Commissioner of Income Tax v N.C. Cables Ltd. (ITA No. 335/2015).

In the case of Amar Lal Bajaj v ACIT (2013) 37 Taxmann.com 7 (Mum) (Trib) the CIT accorded his sanction/approval by simply affixing "approved" at the bottom of the proposal prepared by A.O.. It was held that such approval cannot be construed as sanction/approval u/s 151(1) of Income Tax Act, 1961. Accordingly, the reassessment proceedings were held to be bad-in-law. The head note of the judgement is as under:-

Section 151, read with section 147, of the Income-tax Act, 1961-Income escaping assessment Sanction for issue of notice Assessment year 1995-96 Assessing Officer completed original assessment under section 143(3) Subsequently he issued on assessee a notice under section 148 after four years seeking to reopen aforesaid assessment Commissioner simply affixed 'approved' at bottom of report prepared by Assessing Officer and accorded sanction under section 151(1) for reopening assessment Nowhere Commissioner had recorded a satisfaction note Whether Commissioner had accorded sanction under section 151(1) after applying his mind and after recording his satisfaction Held, no Whether, therefore, reassessment proceedings were bad in law - Held, yes

Reliance is also placed on the following case law:-

- M/S. M/S. Ess Advertising (Mauritius) S.N.C. Et Compagnie (Earlier Known As M/S. Espn Star Sports Mauritius S.N.C. Et Compagnie) 2021 (7) TMI 348-Delhi High Court.
- M/S. Madhu Apartment Private Limited Versus The Income Tax Officer, Ward-16 (1), New Delhi. 2021 (2) TMI 709-ITAT Delhi.
- ACIT Circle 45(1) v. Kamal Kapoor ITA No. 1167/Del/2016 ITAT, Delhi

The Ld. AR has further relied upon the following judicial pronouncements:-

- The Pr. Commissioner of Income Tax-7 Versus Pioneer Town Planners Pvt. Ltd. [2024] taxmann.com 652 - Delhi High Court
- M/S Raghav Technology (P) Ltd. Versus ITO Ward-20 (4) New Delhi 1064/Del/2019-ITAT Delhi
- Synfonia Tradelinks Pvt. Ltd. Versus Income Tax Officer, Ward-22 (4) [2021] 435 ITR 642 (Del).

6. On the other hand, the Ld. DR objected to the above submissions and brought to our notice page- 6 of the PB wherein Ld. JCIT has approved the proceedings u/s 151 of the

Act by observing "Yes, I am satisfied" and accordingly to Ld. DR submitted that it clearly shows, Ld. JCIT has applied his mind, therefore, it cannot be said that it was approved mechanically. It has been argued by the Ld. DR that the sanctioning authority is not required to give elaborate reasons for his satisfaction. For this proposition, he relied upon the following case laws: -

-PCIT V Pioneer Town Planners Pvt. Ltd. ITA No 91/2019 Delhi High Court.

-Experion Developers Pvt Ltd. V ACIT [2020] 422 ITR 355 (Del)

-PCIT v. Meenakshi Overseas Ltd. (ITA No. 692/2016) Delhi.

7. In rejoinder, the AR has submitted that so far as the decision of Pioneer Town Planners (supra) relied upon by Ld DR is concerned, the same is in favour of the assessee. With regard to decision of Experion Developers (supra), relied upon by Ld DR, it has been submitted by the Ld. AR that the facts of the case in Experion Developers (supra), are distinguished from the facts of the present case and also the case of Experion Developers (supra) has been distinguished by the Hon'ble High Court itself in the case of Pioneer Town Planners (supra). With regard to case of PCIT v. Meenakshi Overseas Ltd. (ITA No. 692/2016), it has been submitted by the Ld AR that there was no issue of approval involved before the Hon'ble High Court.

8. Considered the rival submissions and material placed on record, especially the impugned assessment order, reasons/ satisfaction /approval recorded for issue of notice u/s. 148 of the Act placed at page no. 6 of the paper book, which is a copy of performa for recording the reasons for initiating proceedings u/s. 148 wherein the Ld JCIT has granted approval by mentioning that

"Yes, I am satisfied."

In Para 15 & 16 the decision in the case of PCIT v. Pioneer Town Planner Pvt. Ltd., (supra) the Hon'ble High Court held as under: -

15. A plain reading of the aforesaid provision would indicate that Section 151 of the Act stipulates that the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner must be "satisfied", on the reasons recorded by the AO, THAT IT IS A FIT CASE FOR THE ISSUANCE OF SUCH NOTICE. Thus, the satisfaction Of the prescribed authority is a sine qua non for a valid approval as per the said Section.

16. A perusal of the proforma attached as Annexure-II in the instant appeal would suggest that though the ACIT has appended his signatures by writing in his hand- "Yes, I am satisfied", however, the Principal Commissioner of Income-tax ["PCIT"] has merely written "Yes" without specifically noting his approval, while recording

the satisfaction that IT IS A FIT CASE FOR ISSUANCE OF NOTICE UNDER SECTION 148 OF THE ACT.

From the above, it is evident that Hon'ble High Court has Held that satisfaction has to be recorded to the effect that "it is a fit case for issue of notice u/s 148 of the Act. "In the present case of the assessee no such satisfaction has been recorded and the JCIT has merely written- Yes, I am satisfied.

We also find that in the case of Raghav Technology (P) Ltd. V ITO ITA No. 1064/Del/2019 ITAT Delhi the approval was granted u/s 151 by writing- Yes, I am satisfied i.e same as in the case of the assessee before us. The coordinate bench of the tribunal vide order dated 30/04/2024 after considering the decision of Hon'ble Delhi High Court in the case of Pioneer Town Planners (supra), held as under: -

9. Considered the rival submissions and material placed on record. We observed from the record that Assessing Officer has received the approval from the PCIT-7 for reopening of the assessment on 28/03/2017 and Ld. PCIT in point No.13 mentioned that it is a fit case for issue of notice u/s 148 by observing that "Yes I am satisfied". At the time of hearing, the Ld. AR brought to our notice the case laws in particular PCTT vs. Pioneer Town Planners (P.) Ltd. [2024] taxmann.com 652, wherein the Hon'ble High Court has decided the issue in favour of the assessee by observing that PCTT had merely written 'yes' without discussion, specifically noting his approval, such approval could not be considered to be a valid approval. And further in the case of Safonia Tradelinks (P.) Ltd. vs. Income Tax Officer. Ward-22(4) wherein the approval u/s 151 was granted simply and endorsing as approved. Even in this case the issue was decided in favour of the assessee. Further, it is brought to our notice in the case of VCR Township Pvt. Ltd. vs. ITO, ITA No.1503/Del/2017 Dated 14/10/2020 wherein similar approval was granted for reopening of the assessment by approving authority as "Yes. I am satisfied" and the Co-ordinate Bench has decided the similar issue in favor of the assessee.

11. Respectfully following the above decision, the facts in the present case are also exactly similar to the above facts on record. Accordingly, ground No.3 raised by the assessee is allowed and other grounds of appeal raised by the assessee are not adjudicate at this stage. Accordingly, appeal filed by the assessee is partly allowed.

In the case of Experion Developers Pvt Ltd. (supra), in para 42 of the decision, it was held that where sanction was accorded by writing that" I am satisfied that it is a fit case for issuance of notice u/s 148, it was valid. In the present case of the assessee, no such satisfaction has been recorded by the JCIT and he has merely written- Yes, I am satisfied. It may be pertinent that in the case of Pioneer Town Planner (supra), the Hon'ble Delhi High Court has itself distinguished the case of Experion Developers (supra) because in the case of Pioneer Town Planner (supra) no such satisfaction that "I am satisfied that it is a fit case for issuance of notice u/s 148" was recorded. In the

present case of the assessee before us also, the JCIT has merely stated 'I am satisfied and has not recorded satisfaction that " it is a fit case for issue of notice u/s 148"and therefore, the approval u/s 151 is only mechanical and not a valid approval.

-In the case of United Electrical Company (P) Ltd. Vs. CIT & Ors. 258 ITR 317 (Del.) 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 Analyzing, the above satisfaction/approval, it has been held by the Honble High court that the CIT is required to apply his mind to the proposal put up to him for approval in the light of the material relied upon by the AO. The said power cannot be exercised casually and in a routine manner. It has been held by Hon'ble high court that 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).

In Svitzer Hazira v. ACIT (441 ITR 19) (Bom), the Hon'ble Bombay High Court has held that approval/sanction granted u/s 151 by writing - "Yes, I am satisfied "cannot be held to be a valid approval/sanction.

-The Hon'ble Madya Pradesh High Court in the case of CIT v. Goyanka Line & Chemical Ltd (2-15) 56 taxmann.com 390 (MP) has held that "Yes, I am Satisfied" cannot be held to be valid approval/sanction.

The Hon'ble Delhi High Court in the case of Pr. CIT vs. N.C. Cables Ltd. [2017]391 ITR 11, while deciding an identical issue has held that section 151 of the Act clearly stipulates that the CIT, who is the competent authority to authorize the reassessment notice has to apply his mind and form an opinion. Mere appending of the expression 'approved' says nothing. It is not as if the commissioner has to record elaborate reasons for agreeing with the noting put up before him. At the same time, satisfaction has to be recorded of the given case which can be reflected in the briefest possible manner. When such exercise appears to have been ritualistic and formal rather than meaningful which is the rationale for the safeguard of an approval by a higher ranking official, the finding of the Tribunal quashing the reassessment proceedings cannot be disturbed.

Hon'ble Supreme Court in the case of Chhugamal Rajpal vs. S.P. Chaliha & Ors [1971] 79 ITR 603 (SC) has held that where the commissioner had mechanically recorded permission and the important safeguards provided in the section 147 and 151 were lightly treated by the officer and the commissioner, the notice issued u/s 148 was held as invalid.

The The Hon'ble Supreme Court of India in the case of CIT vs. S. Govanka 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)."

9. Respectfully following the above decisions, the facts in the present case are also similar to the above facts on records. Accordingly, ground no 3 raised by the assessee in Cross Objection is allowed.

10. No other submissions were made against the other grounds raised in Cross Objection and Revenue's appeal.

11. In the result, the Cross Objection filed by the assessee is partly allowed and the jurisdictional issues raised by the assessee are decided in favour of the assessee. The appeal filed by the Revenue is accordingly dismissed.