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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 464/2018

MAHESH C. KHERA

..... Appellant

Through Mr.G.C.Srivastava and Mr.Daksh S.
Bhardwaj, Advocates.

versus

DY COMMISSIONER OF INCOME TAX

..... Respondent

Through Mr.Ajit Sharma and Mr.Asheesh Jain,
Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

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17.04.2018

The assessee's appeal under Section 260A of the Income Tax Act questions the order of the Income Tax Appellate Tribunal (ITAT). It is contended that the satisfaction recorded by the Commissioner of Income Tax [CIT (A)] in this case was, in essence, by an official authority not competent to authorize to reopen the assessment which stands completed. Learned counsel relied upon a judgment of this Court in *Commissioner of Income vs. Soyuz Industrial Resources Limited* reported as [2015] 58 taxmann.com 336(Delhi). It was contended that in Soyuz (supra) when called upon to decide an identical issue the Commissioner had authorized the reopening of the assessment; the Court had held that it is the official authorized by law only, who is entitled to initiate re-assessment proceedings and none-else. The ITAT's order went into issue of competence of the authority who sanctioned the re-assessment notice. The discussion by the

ITAT in the impugned order is as follows:

“6. We have considered the rival submissions and the orders of the authorities below in the light of relevant material available on record including the proposal sent for approval and the case laws relied upon. As regards the approval sought by the AO for initiating proceedings u/s. 147, we find that the ld. CIT(A) has not considered the distinguishing features in the decision relied upon by him in the case of SPL’s Siddhartha Ltd. [supra] vis-a-vis the case of assessee. In the reported case, proposal for approval was sent by the Assessing Officer to the ld. CIT through the Addl. CIT and the Addl. CIT did not record any of his satisfaction on initiation of proceedings, but referred the matter to CIT to accord the requisite approval, meaning thereby there was complete absence of approval by the competent authority in that case. In the instant case, the AO sent the proposal for approval to the Addl. DIT, who was the competent authority envisaged u/s. 151, for perusal and approval and the Addl. DIT after due application of his mind recorded his satisfaction as under:

“We may proceed to reopen the case u/s. 147 as proposed above. I am satisfied that this is a fit case for issue of notice u/s 148.”

7. This noting of the Addl. DIT, in our considered opinion, does constitute the approval of the competent authority in the instant case. Merely on the basis that Addl. DIT after recording his satisfaction sent the file to the DIT instead of sending it back to the AO and the DIT having given second approval in the matter, it cannot be said, in the peculiar circumstances of the case, that the competent authority, i.e. Addl. DIT did not accord its approval for initiating proceedings u/s. 147 against the assessee nor does the second approval given by DIT got to mitigate the authenticity of approval given by ld. Addl. DIT, as noted above. In fact, the first approval was given by the competent authority in the instant case. Such facts do not exit in the reported case relied upon by the ld. CIT(A). Therefore, the decision reached by the ld. CIT(A) on this count cannot be supported.”

The appellant has also annexed a copy of the AO's reasons, prior to the issuance of the notice under Section 148. It clearly reveals that the concerned authority authorized by statute i.e. the Joint Commissioner, had clearly stated that the proceedings may be initiated under Section 147. Having regard to these facts, we are of the opinion that Soyuz (supra) has no application. The appeal is without merit and consequently, it is dismissed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

APRIL 17, 2018

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