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

+ **ITA 14/2024**

PRINCIPAL COMMISSIONER OF INCOME TAX-15 DELHI

..... Appellant

Through: Mr. Sunil Agarwal, Sr.
Standing Counsel along with
Mr. Shivansh B. Pandya, Jr.
Standing Counsel and Mr.
Utkarsh Tiwari, Adv.

versus

KAMAL KAPOOR

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR

KAURAV

ORDER

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06.03.2024

CM APPL. 386/2024 (72 days delay in filing appeal)

Bearing in the mind the disclosures made, the delay of 72 days in filing the appeal is condoned.

The application shall stand disposed of.

ITA 14/2024

1. The Principal Commissioner of Income Tax-15 seeks to impugn the order dated 08 May 2023 passed by the Income Tax Appellate Tribunal [“ITAT”] for Assessment Year [“AY”] 2007-08 and has proposed the following questions of law for our consideration: -

“3.1 Whether on the facts and circumstances of the case and in law, Ld. ITAT erred in confirming the order passed by the Ld CIT(A) in the case of respondent-assessee.



3.2 Whether on the facts and circumstances of the case and in law, Ld ITAT erred in ignoring the fact that approval u/s 151 of the Act was granted by Addl CIT after being satisfied.

3.3 Whether on the facts and circumstances of the case and in law, Ld ITAT erred in observing that Additional CIT has not recorded his satisfaction, wherein as per Section 151 of the Act sanction of Range Head is required to authorize issuance of Notice U/s 148 of the Act and Range Head is not required to record the reasons again and he has to only satisfy himself on the reasons recorded by AO, moreover the detailed reasons recorded by AO already formed the part of the record?

3.4 Whether on the facts and circumstances of the case and in law, Ld ITAT erred in ignoring the facts of the decision rendered by the Hon'ble Supreme Court in GKN Driveshaft (India) Ltd. v. ITO 259 ITR 19 (SC), wherein it was directed by Apex Court that on receipt of reasons, the noticee is entitled to file objections to issuance of notice. In the current case, ITAT overlooked the fact that the information was provided to the Assessee after compliance of notice U/s 148 of the Act vide reply dated 24.08.2012. The Assessee on the contrary filed objections to the reopening of the case only after 18 months i.e. on 03.02.2014.

3.5 Whether on the facts and circumstances of the case and in law, Ld. ITAT erred in ignoring the fact that during the assessment proceedings, the Assessee had not filed any details/evidences in support of additions made in the Assessment Order U/s 147 of the Act?

3.6 Whether on the facts and circumstances of the case and in law, Ld ITAT erred in upholding the decision of Ld. CIT(A) of annulling the Order passed by AO U/s 147/143(3) of the Act in spite of the fact that objections were raised by Respondent-Assessee only at a later stage, which were disposed of through a speaking Assessment Order, hence the dictum of GKN Driveshafts (India) Ltd. v. ITO (supra) and other similar authorities does not apply in the present case, and non-disposal of objection vide a separate order was a mere irregularity which cannot tantamount to nullity?"

2. The issue itself emanates consequent to the initiation of proceedings referable to Section 147 of the Income Tax Act [**'Act'**] and which in turn was based on a report/information submitted by the ADIT (Investigation). The Commissioner of Income Tax (Appeals)



[‘CIT(A)’] had while considering whether the Assessing Officer [‘AO’] had duly applied its mind and if circumstances warranted reopening of the completed assessment observed as under:-

“4.3 I firstly deal with the issue of information received by AO from ADIT(Inv) to initiate the reassessment proceedings. Whether Information received from Investigation Wing can be a basis for reopening the assessment proceedings or not, has been answered by Hon'ble Jurisdictional High Court In the case AGR Investment Ltd. vs. Addl. CIT & Anr. 333 ITR146, wherein it was held that the specific Information received from the office of the Directorate of Investigation as regards the transactions entered into by the assessee with a number of concerns which had made accommodation entries and they were not genuine transactions, was neither a change of opinion nor did it convey a particular Interpretation of a specific provision which was done in a particular manner in the original assessment and sought to be done in a different manner in the proceedings u/s 147 of the Act. Rather the reason to believe was appropriately understood by the Assessing Officer and there was material on the basis of which the notice was issued. Similarly, in other case, Rajat Export Import India Pvt. Ltd. vs. ITO, 341 ITR135, Hon'ble jurisdictional High Court again substantiated the aforesaid standby holding that information received by Assessing Officer from investigation Wing regarding entry taken by assessee from entry provider with specific details was a valid ground for re-opening the assessment. It has been further held by Hon'ble Court that at the stage when reasons are recorded for reopening the assessment, the Assessing Officer is not required to build a fool-proof case for making addition to the assessee's income; all that he is required to do at that stage is to form a prima-facie opinion or belief that income has escaped assessment. The relevancy of the material before the Assessing Officer is to be judged only from that perspective and not from the perspective as to whether the material is sufficient or adequate to sustain the addition ultimately. Similar view has been taken by Hon'ble court in other case Contel Medicare Systems P. Ltd. vs. CIT, 349 ITR 649, wherein the reopening was initiated on the basis of information received by AO from the Directorate of Income Tax (Investigation) that assessee was beneficiary of accommodation entry taken from entry providers. The facts in the case of appellant are similar to aforesaid cases. Here also, information was received by AO from ADIT (Inv.) that rupees 1.80 crore through cheque and rupees 1.60 crore through cash has been Invested by assessee from unexplained sources in booking/purchasing of Unit No. GF, Area-5000 sq. ft. In Nehru Vikas Minar Project of M/s AEZ Group. Thus, there was valid ground with the AO to initiate the



reassessment proceedings in the case of appellant. I, therefore, hold the validity of reassessment proceedings and dismiss this part of grounds of appeal taken by appellant.

4.4 The second ground taken by appellant challenging the reassessment proceedings is that since the notice u/s 148 has been issued after the expiry of four years from the end of relevant assessment year, the satisfaction of JCIT is mandatory before the issuance of notice. As per appellant, the JCIT/Addl. CIT has merely approved the proposal of AO for issue of notice u/s 148, did not record his satisfaction, therefore, issuance of notice is invalid. I have gone through the issue raised by appellant. The statutory provisions of section 151(1) of the Act provide that the AO, below the rank of ACIT/DCIT, shall not issue notice u/s 148 unless the Joint Commissioner is satisfied on the reasons recorded by such AO that it is a fit case for the issue of such notice. Thus, the unambiguous provisions of this section clearly mandate that Joint Commissioner has to get himself 'satisfied' with the reasons recorded by AO before issuing notice and such satisfaction has to be recorded in writing in clear terms in the light of material relied upon by the AO. However, in the case of appellant, Addl. CIT has "approved" the proposal of AO for issuing notice u/s 148 of the Act. He has not recorded his satisfaction towards the reasons recorded by AO. Thus, merely affixing "approved" in mechanical manner without verifying/examining the material relied upon by AO cannot be termed as sanction as required u/s 151 of the Act. This view is supported by Hon'ble Jurisdictional High Court in the case United Electrical Co. (P) Ltd. vs CIT 258 ITR 317 wherein it is held that the power vested in the Commissioner (or Addl CIT in the case of appellant) to grant or not to grant approval is coupled with a duty. The said power cannot be exercised casually and in a routine manner. He is required to apply his mind to the proposal put up to him for approval in the light of material relied upon by AO. Similarly, Hon'ble Jurisdictional ITAT in the case ITO vs N.C. Cables Ltd. In the order dated 22.10.2015 has held the reopening bad in law on the ground that the Commissioner did not record his satisfaction as contemplated u/s 151 of the Act rather approved the proposal by stating 'approved' and putting his signature. Similar view has been taken by Hon'ble ITAT In the case ITO vs M.B. Jewelers (P) Ltd. vide order dated 14.11.2014 wherein Addl. CIT has simply recorded that he has granted approval and has not recorded his satisfaction as required under the Law. In view of this, I hold that in the case of appellant also, issuance of notice u/s 151 of the Act is invalid for the reason that the Addl. CIT has not recorded his satisfaction as required under the law in the light of material relied upon by AO. He has simply affixed the words "approved" below the proposal of AO for issuance of the notice u/s 151 of the Act which is contrary to the



provisions of Section 151 of the Act and the opinions of Hon'ble Jurisdictional High Court/ITAT.”

3. More importantly, the CIT(A) had found that the approval which was accorded in terms of Section 151 of the Act would also not meet the principles as laid down by a series of decisions rendered by different High Courts. Those decisions have consistently held that merely stamping the word ‘*approved*’ would not be sufficient to establish due application of mind by the approving authority.
4. Dealing with the aforesaid aspects, the ITAT has observed as follows: -

“4.5 The third objection raised by appellant is that reassessment proceedings are bad in law and without Jurisdiction as the objections raised by appellant were not disposed of by AO in terms of judgment of Apex Court in the case of GKN Driveshaft (India) Ltd. vs ITO 259 ITR 19. I have gone through the objections of appellant. The judgment of Hon'ble Supreme Court in the case GKN Driveshaft (India) Ltd. (supra) has settled the issue in this regard. As per the judgment, after the issue of notice u/s 148, assessee is required to file the return and if he seeks reasons for issuance of such notice, AO is bound to supply the same within reasonable time. On receipt of such reasons, the assessee is entitled to file preliminary objections to issuance of notice and the AO is under a mandate to dispose of such objections by passing a speaking order before proceedings of assessment in respect of the assessment year for which such notice has been issued. Following the judgment of Hon'ble Supreme Court, the jurisdictional High Court in a recent case Pr. CIT vs Tupperware India Pvt. Ltd. has held that it was mandatorily required on the part of AO to comply with the procedure laid down by Hon'ble Supreme Court in aforesaid case by disposing of the objections with a speaking order falling which the reopening and consequent assessment was liable to be quashed. Similarly, in other case Pr. CIT vs India Business Network Ltd. also, Hon'ble Court decided the issue against the Revenue on the ground that AO had not disposed of the objections raised by assessee she was mandatorily required to do in terms of the decision in GKN Driveshaft (India) Ltd. Now in the light of these decisions, the facts in the case of appellant are to be examined. In its case, notice u/s 148 of the Act was issued on 18.07.2012, In response to which, assessee filed a reply dated 24.08.2012 wherein it was mentioned that return already filed on 31.03.2008 vide Acknowledgement No. 265 be treated as having



been filed in response to the said notice. Thereafter, reasons recorded were supplied by AO to the appellant and she, vide letter dated 03.02.2014, filed objection to the reopening of the case. However, the assessment proceedings as well as remand proceedings do not reflect that objections filed by appellant were disposed of by the AO. It appears that the objections raised by appellant has been dealt with by AO in the assessment order itself. No separate order, disposing of the objections raised by appellant, has been passed. Thus, the AO has failed to follow the procedure laid down by Hon'ble Supreme Court in the case of GKN Driveshaft (India) Ltd. (supra) in the case of appellant which was mandatory on his part. Since the order of reassessment has been passed by AO without disposing of the objections raised by appellant against the issuance of notice u/s 148 by separate order, same is liable to be quashed.

4.6 In view of above discussion, it is held that since the Addl. CIT has not recorded his satisfaction on the reasons recorded by AO for reopening of reassessment and secondly, AO has not followed the mandatory procedure as laid down by Hon'ble Supreme Court in the case of GKN Driveshaft (India) Ltd. (supra), the issuance of notice u/s 148 of the Act and consequent reassessment proceedings in the case of appellant are invalid and liable to be quashed. I, therefore, hold the notice issued by AO u/s 148 of the Act as invalid and annul and reassessment proceedings. The grounds taken by appellant are allowed.”

5. It was this view which has come to be taken by the ITAT bearing in mind the consistent line of judgments rendered on this subject.

6. In view of the aforesaid, we find no infirmity in the views expressed by the ITAT. The appeal raises no substantial question of law. It shall consequently stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MARCH 06, 2024

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