

आयकर अपीलीय अधिकरण “SMC” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI

श्री महावीर सिंह, उपाध्यक्ष के समक्ष ।
BEFORE SRI MAHAVIR SINGH, VICE PRESIDENT

आयकर अपील सं./ ITA No. 8038/Mum/2019
(निर्धारण वर्ष / Assessment Year 2010-11)

Jap Infracon Pvt. Ltd. B-102, Twinkle Apt, New Link Road, Lokhandwala Complex, Andheri (W), Mumbai-400 053	Vs.	The Income Tax Officer, Ward-12(3)(1) Mumbai-400 020
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AAACP3809P		

अपीलार्थी की ओर से / Appellant by	:	S/Shri R C Jain & Ajay Daga
प्रत्यर्थी की ओर से / Respondent by	:	Smt. Smita Verma, DR

सुनवाई की तारीख / Date of hearing:	29.09.2021
घोषणा की तारीख / Date of pronouncement :	29.09.2021

आदेश / ORDER

महावीर सिंह, उपाध्यक्ष के द्वारा /
PER MAHAVIR SINGH, VP:

This appeal of the assessee is arising out of order of the Commissioner of Income Tax (Appeals)-21, Mumbai [in short CIT(A)], in appeal No. CIT(A)-21/it-873/ito-12(3)(1)/2017-18 vide dated 24.09.2019. The Assessment was framed by the Income Tax Officer, Ward 12(3)(1), Mumbai (in short ITO/ AO) for the A.Y. 2010-11 vide order dated 31.12.2016 under section 143(3) read with section 147 of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The first issue in this appeal of assessee is against the order of CIT(A) upholding the validity of assessment of



jurisdiction under section 147 of the Act. For this assessee has raised the following two grounds:-

“1. Grounds of appeal:

1. The Ld. CIT(A) erred in holding that the Assessing Officer has validity assumed jurisdiction u/s 147 of the Act.

1.i. In doing so, the Ld. CIT(A) erred in holding that the judgement of the high courts including of the jurisdictional high court relied upon by the appellant were distinguishable on facts without appreciating that the facts of the said cases are on all four with the appellant's facts.

2. The Ld. CIT(A) erred in not adjudicating additional grounds raised before him challenging the validity of notice issued under section 148 of the Act as the said notice discloses that it was issued after obtaining satisfaction of Jt. CIT though the satisfaction under section 151 of the Act was require from the Pr. CIT and challenging the sanction of the Pr. CIT as the same was not in accordance with law though the appellant supported the said ground by relying upon certain decisions including of jurisdictional high court to which he was bound as evidenced by written submissions which were reproduced in the order under appeal.”

3. Brief facts are that the assessee filed its return of income for Assessment Year 2010-11 on 14.10.2010 and the same was processed under section 143(1) of the Act. Subsequently, the notice under section 148 of the Act dated 02.06.2016 issued and duly served on the assessee. In response to notice under



section 148 of the Act, the assessee requested for reasons for reopening of the assessment, which was issued under Assessing Officer's office letter dated 28.07.2016. The relevant reasons are enclosed in assessee's paper book at page 41. The relevant notice under section 148 of the Act dated 02.06.2016 is also enclosed at page 35 of the assessee's paper book. The assessee challenged the reopening before the Assessing Officer stating that the approval under section 151 of the Act is not in accordance with the law. But CIT(A) dismissed the issue by observing as under:-

"The appellant contended that notice issue du/s 143(2) of the Act is not valid since approval for reopening has been taken from Jt. CIT has been mentioned in the notices. It is seen that the Assessing Officer has taken requisite approval from Pr. CIT and the approval letter is in possession of the assessee. Therefore, no omission is observed from the said notice. Further, it is evident from the provisions of Sect 292B of the Act that the said section applicable for any notice under any provisions of the Act. Therefore, the objections raised by the appellant do not stand merit."

Aggrieved, assessee came in appeal before Tribunal.

4. The learned Counsel for the assessee took us through the reasons recorded by the Assessing Officer and satisfaction proposal for reopening of the assessment mooted by ITO, ward 2(3)(1), Mumbai vide dated 18.03.2016. As per this proposal vide column 12 and 13, the CIT(A) recorded the satisfaction on



30.05.2016 and the relevant column 12 and 13 of the proposal form reads as under:-

12.	Whether the Jt. CIT, Range 12(3), Mumbai is satisfied on the reasons recorded by the Assessing Officer that it is a fit case for issue of notice under section 148 of the I.T Act, 1961	Yes I am satisfied that it is a fit case for the issue of a notice under section 148. Sd/- (SHRIKANT NAMDEO) Jt. Commissioner of Income-tax, Range 12(3), Mumbai
13	Whether the Pr. Commissioner of Income Tax-12, Mumbai is satisfied on the reasons, recorded by the I.T.O that is a fit case for the issue of a notice under section 148.	Satisfied that this is a fit case for the issue of notice u/s 148 of the Act.

Sd/-
(Vidhu Shekhar Singh)
Pr. Commissioner of Income Tax-12,
Mumbai

Date: 30/5/16

5. In view of the above, the learned Counsel for stated that the CIT(A) has recorded his satisfaction for reopening of assessment in a mechanical manner rather he has to record a subjective satisfaction for issuance of notice under section 148 of the Act on the reasons recorded. For this, the learned Counsel for the assessee relied on the decisions of Hon'ble Madhya Pradesh High Court in the case of CIT vs. S. Goyanka Lime & Chemicals Ltd. (2015) 56 taxman.com 390 (Madhya Pradesh) and Arjun Singh Vs. Asst. Director of Income-tax (2000) 246 ITR 363 (MP)

6. On the other hand, learned Sr. Departmental Representative Smt. Smita Verma supported the order of the CIT(A) and also relied on the case laws of Prem Chand Shaw (Jaiswal) vs. ACIT [2016] 67 taxmann.com 339 (Calcutta) and CIT vs. Uttam Chand Nahar [2007] 295ITR403 (Rajasthan).



7. After considering the rival submissions and perusing the relevant material on record, I noted from the perusal for reopening of assessment under section 147 of the Act mooted by the Assessing Officer vide dated 18.03.2016 and satisfaction recorded by PCIT-12, Mumbai vide dated 30.05.2016. The recorded satisfaction reads as "Satisfied that this is a fit case for the issue of notice u/s 148 of the Act". From his satisfaction it is clear that he is satisfied but from the recorded satisfaction it is clear that the satisfaction recorded which is not in terms of section 151 of the Act and the relevant provisions of section 151 reads as under:-

"151. (1) No notice shall be issued under section 148 by an Assessing Officer, after the expiry of a period of four years from the end of the relevant assessment year, unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice.

(2).....

(3)....."

8. I noted that this PCIT has only put his signature on the proposal sent by the Assessing Officer for reopening of assessment and noting is stated about the reasons recorded that he has satisfied and that this is a fit case for the issuance of notice under section 148 of the Act. The PCIT has nowhere discuss how he has satisfied that this is a fit case for reopening



of assessment as mandated by the Hon'ble Madhya Pradesh High court in the case of S. Goyanka Lime & Chemicals Ltd. (supra). Now, I am referring the proposition laid down by Hon'ble Madhya Pradesh High Court in the case of S. Goyanka Lime & Chemicals Ltd. (supra), wherein it is held as under:-

"7. We have considered the rival contentions and we find that while according sanction, the Joint Commissioner, Income Tax has only recorded so "Yes, I am satisfied". In the case of Arjun Singh (supra), the same question has been considered by a Coordinate Bench of this Court and the following principles are laid down:—

'The Commissioner acted, of course, mechanically in order to discharge his statutory obligation properly in the matter of recording sanction as he merely wrote on the format "Yes, I am satisfied" which indicates as if he was to sign only on the dotted line. Even otherwise also, the exercise is shown to have been performed in less than 24 hours of time which also goes to indicate that the Commissioner did not apply his mind at all while granting sanction. The satisfaction has to be with objectivity on objective material.'

8. If the case in hand is analysed on the basis of the aforesaid principle, the mechanical way of recording satisfaction by the Joint Commissioner, which accords sanction for issuing notice under section 148, is clearly unsustainable and we find that on such consideration both the appellate authorities have interfered into the matter. In doing so, no error has been committed warranting reconsideration.



9. As far as explanation to Section 151, brought into force by Finance Act, 2008 is concerned, the same only pertains to issuance of notice and not with regard to the manner of recording satisfaction. That being so, the said amended provision does not help the revenue.”

9. Further, the Hon'ble Madhya Pradesh High court followed the decision of co-ordinate Bench of Madhya Pradesh High court in the case of Arjun Singh (supra), wherein following the principle are laid down:-

“the commissioner acted, of course, mechanically in order to discharge his statutory obligation properly in the matter of recording sanction as he merely wrote on the formal “Yes, I am satisfied” which indicates as if he was to sign only on the dotted line.”

10. As against the above judgment, the Revenue file SLP before the Hon'ble Supreme court but SLP was also dismissed by Hon'ble Supreme Court.

11. In view of the entire discussion carried out above, I am of the view that in the instant appeal, the PCIT has recorded the satisfaction for reopening of assessment in a mechanical manner and this is not a proper satisfaction recorded for reopening of assessment for issuance of notice under section 148 of the Act. Respectfully, following the judgment of Hon'ble Madras High court in S. Goyanka Lime & Chemical Ltd. (supra) and Arjun Singh (Supra), I hold that the reopening done by issuing the notice under section 148 of the Act and recording of



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satisfaction by the PCIT is bad in law in the manner known law. Hence, I quash the reassessment and allow the appeal of the assessee on this sole issue. Needless to say as I have quashed the reopening, I do not want to go into merits of the case which have become academic.

12. In the result, the appeal of assessee is allowed.

Order pronounced in the open court on 29.09.2021.

Sd/-
(महावीर सिंह /MAHAVIR SINGH)
(उपाध्यक्ष / VICE PRESIDENT)

मुंबई, दिनांक/ Mumbai, Dated: 29.09.2021

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai