आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'ई' मुंबई ।

IN THE INCOME TAX APPELLATE TRIBUNAL " E " BENCH, MUMBAI

सर्वश्री आई.पी.बंसल, न्यायिक सदस्य **एवं** नरेन्द्र कुमार बिल्लैय्या, लेखा सदस्य के समक्ष

BEFORE SHRI I.P. BANSAL, JM AND SHRI N.K. BILLAIYA, AM

आयकर अपील सं./I.T.A. No.611/Mum/2004

(**निर्धारण वर्ष /** Assessment Year : 1995-96

Shri Amarlal Bajaj, Bajaj Niwas, 712, Linking Road, Khar (W), Mumbai-400 052		The ACIT, Circle-19(1), Piramal Chamber, Lalbaug, Mumbai-400 012

आयकर अपील सं./I.T.A. No.534/Mum/2004

(**निर्धारण वर्ष /** Assessment Year : 1995-96

The ACIT, Circle-19(1), Piramal Chamber, Lalbaug, Mumbai-400 012		Shri Amarlal Bajaj, Bajaj Niwas, 712, Linking Road, Khar (W), Mumbai-400 052
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AC CIR 19(1)/48-A		
(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

अपीलार्थी ओर से/ Appellant by**:** `	Shri Hiro Rai
प्रत्यर्थी की ओर से/Respondent by **:**	Shri Rajendra Kumar

सुनवाई की तारीख **/ Date of Hearing :11.07.2013**

घोषणा की तारीख /**Date of Pronouncement : 24.07.2013**

आदेश / O R D E R

PER N.K. BILLAIYA, AM:

These cross appeals by the assessee and the Revenue are directed the very same order of the Ld. CIT(A)-XX, Mumbai dt.18.11.2003

pertaining to A.Y. 1995-96. The assessee has raised 5 substantive grounds of appeal whereas revenue has raised in its appeal only one ground. Since both these appeals were heard together, they are disposed of by this common order for the sake of convenience and brevity.

ITA No. 611/Mum/2004 – Assessee's appeal

2. With ground No. 1, the assessee has questioned the validity of the reopening of the assessment u/s. 147 of the Act. It is the say of the assessee that the reopening of the assessment is without jurisdiction and void ab initio.

3. Facts of the case show that the return of income was filed by the assessee on 27.6.1996 declaring total income at Rs. 21,20,060/-. The assessment was completed u/s. 143(3) of the Act. Thereafter, the assessment was reopened by issue of notice u/s. 148 to examine issues regarding loans, expenses and the bills. The original assessment was completed on 30.3.1998 and the notices for reopening of the assessment were served upon the assessee on 27.3.2002. As the impugned assessment year is 1995-96, the reopening has been done after 4 years. The assessee has questioned the validity of this notice. The Ld. Counsel for the assessee vehemently submitted that the reopening is in contravention of the provisions of Sec. 151 of the Act. It is the say of the Ld. Counsel that it is mandatory for the AO if he proposes to reopen an assessment 4 years to take a prior sanction from the appropriate Commissioner. To substantiate, the Ld. Counsel relied upon the decision of the Hon'ble Supreme Court in the case of Chhugamal Rajpal Vs Chaliha (S.P) 79 ITR 603. The Ld. Counsel for the assessee argued that while giving the sanction, the Commissioner has mechanically accorded permission without applying his mind as is evident from the copy of the

order sheet submitted by the Ld. Departmental Representative which is on our record. The Ld. Counsel further relied upon the decision of the Hon'ble Calcutta High Court in the case of 93 ITR 103 and in the case of Lakhmani Mewal Das v. Income-tax Officer 99 ITR 296. The Ld. Counsel further argued that the facts of the case are identical with the facts of the decision of the Hon'ble Madhya Pradesh High Court in the case of Arjun Singh Vs CIT 246 ITR 363 and that of Delhi High Court in the case of United Electrical Co. P. Ltd. v. Commissioner of Income-tax. It is the say of the Ld. Counsel that the entire reopening is in violation of the mandate provided u/s. 151 of the Act r.w. proviso therefore the assessment is invalid and should be held as such.

4. Per contra, the Ld. Departmental Representative submitted that the sanction has been granted by the CIT by due application of mind. It is the say of the Ld. DR that the approval granted by the CIT is not mechanical on the contrary the CIT has fully considered the facts of the case and after due consideration of the facts has given a direction for reopening of the case by writing the word "approved". Therefore, it cannot be said that the sanction was granted mechanically or without application of mind. The Ld. DR contended that all citations by the Ld. AR in connection with this issue are infructuous on this account.

5. We have considered the rival submissions and carefully perused the orders of the lower authorities and also the material evidences brought on record from both sides. We have also the benefit of perusing the order sheet entries by which the Ld. CIT has granted sanction. Let us first consider the relevant part of the provisions of Sec. 151 of the Act.

151. *(1) In a case where an assessment under sub-section (3) of section 143 or section 147 has been made for the relevant assessment year, no notice shall be issued under section 148 [by an Assessing Officer, who is below the rank of Assistant Commissioner [or Deputy Commissioner], unless the [Joint] Commissioner is satisfied on the reasons recorded by such Assessing Officer that it is a fit case for the issue of such notice] :*

Provided *that, after the expiry of four years from the end of the relevant assessment year, no such notice shall be issued unless the Chief Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer aforesaid, that it is a fit case for the issue of such notice.*

(2) In a case other than a case falling under sub-section (1), no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of [Joint] Commissioner, after the expiry of four years from the end of the relevant assessment year, unless the [Joint] Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.]

[Explanation.—For the removal of doubts, it is hereby declared that the Joint Commissioner, the Commissioner or the Chief Commissioner, as the case may be, being satisfied on the reasons recorded by the Assessing Officer about fitness of a case for the issue of notice under section 148, need not issue such notice himself.]"

6. A simple reading of the provisions of Sec. 151(1) with the proviso clearly show that no such notice shall be issued unless the Commissioner is satisfied on the reasons recorded by the AO that it is a fit case for the issue of notice which means that the satisfaction of the Commissioner is paramount for which the least that is expected from the Commissioner is application of mind and due diligence before according sanction to the reasons recorded by the AO. In the present case, the order sheet which is placed on record show that the Commissioner has simply affixed "approved" at the bottom of the note sheet prepared by the ITO technical. Nowhere the CIT has recorded his satisfaction. In the case

before the Hon'ble Supreme Court (supra) that on AO's report the Commissioner against the question "whether the Commissioner is satisfied that it is a fit case for the issue of notice under section 148 merely noted " Yes " and affixed his signature there under. On these facts, the Hon'ble Supreme Court observed that the important safeguards provided in sections 147 and 151 were lightly treated by the officer and the Commissioner. The Hon'ble Supreme Court further observed that the ITO could not have had reason to believe that income had escaped assessment by reasons of the appellant-firm's failure to disclose material facts and if the Commissioner had read the report carefully he could not have come to the conclusion that this was a fit case for issuing a notice under section 148. The notice issued under section 148 was therefore, invalid. It would be pertinent here to note the reasons recorded by the AO.

> *"Intimation has been received from DCIT-24(2), Mumbai vide his letters dt. 22nd February, 2002 that one Shri Nitin J. Rugmani assessed in his charge had arranged Hawala entries in arranging loans, expenses, gifts. During the year Shri Amar G. Bajaj, Prop. Of Mohan Brothers, 712, Linking Road, Khar (W), Mumbai-52 was the beneficiary of such loans, expenses and gifts. The modus-operandi was to collect cash from the parties to whom loans were given and cash was deposited into account of Shri Nitin J. Rugani and cheques were issued to the beneficiary of the loan transaction. In order to ensure that the money reached by cheques to the beneficiary Shri Nitin J. Rugani kept blank cheques of the third parties. The assessee Shri Amar G. Bajaj had taken benefit of such entries of loans, commission and bill discounting of Rs. 8,00,000/-, 11,21,243/- and 9,64,739/- respectively. The assessment was completed u/s. 143(3) of the I.T. Act on 31st March, 1998 by DCIT-Spl. Rg. 40, Mumbai. It is seen from records that the aforesaid points have not been verified in the assessment. I have therefore reason to believe that by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment, income has escaped assessment within the meaning of proviso to Sec. 147 and explanation 2 (c)(i) of the income-tax Act, 1961."*

7. In the light of the above mentioned reasons, in our considerate view, Section 147 and 148 are charter to the Revenue to reopen earlier assessments and are, therefore protected by safeguards against unnecessary harassment of the assessee. They are sword for the Revenue and shield for the assessee. Section 151 guards that the sword of Sec. 147 may not be used unless a superior officer is satisfied that the AO has good and adequate reasons to invoke the provisions of Sec. 147. The superior authority has to examine the reasons, material or grounds and to judge whether they are sufficient and adequate to the formation of the necessary belief on the part of the assessing officer. If, after applying his mind and also recording his reasons, howsoever briefly, the Commissioner is of the opinion that the AO's belief is well reasoned and bonafide, he is to accord his sanction to the issue of notice u/s. 148 of the Act. In the instant case, we find from the perusal of the order sheet which is on record, the Commissioner has simply put "approved" and signed the report thereby giving sanction to the AO. Nowhere the Commissioner has recorded a satisfaction note not even in brief. Therefore, it cannot be said that the Commissioner has accorded sanction after applying his mind and after recording his satisfaction.

8. Hon'ble Delhi High Court in the case of United Electrical Co. Pvt. Ltd. Vs CIT 258 ITR 317 has held that "the proviso to sub-section (1) of section151of the Act provides that after the expiry of four years from the end of the relevant assessment year, notice under section 148 shall not be issued unless the Chief Commissioner or the Commissioner, as the case may be, 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-builts safeguards to prevent arbitrary exercise of power by an

Assessing Officer to fiddle with the completed assessment". The Hon'ble High Court further observed that "what disturbs us more is that even the Additional Commissioner has accorded his approval for action under section 147 mechanically. We feel that if the Additional Commissioner had cared to go through the statement of the said parties, perhaps he would not have granted his approval, which was mandatory in terms of the proviso to sub-section (1) of section 151 of the Act as the action under section 147 was being initiated after the expiry of four years from the end of the relevant assessment year. The power vested in the Commissioner to grant or not to grant approval is coupled with a duty. The 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 manner. We are constrained to observe that in the present case there has been no application of mind by the Additional Commissioner before granting the approval".

9. The observations of the Hon'ble High Court are very much relevant in the instant case as in the present case also the Commissioner has simply mentioned "approved" to the report submitted by the concerned AO. In the light of the ratios/observations of the Hon'ble High Court mentioned hereinabove, we have no hesitation to hold that the reopening proceedings vis-à-vis provisions of Sec. 151 are bad in law and the assessment has to be declared as void ab initio. Ground No. 1 of assessee's appeal is allowed.

10. As we have held that the reassessment is bad in law, we do not find it necessary to decide other issues which are on merits of the case.

11. In the result, the appeal filed by the assessee is allowed and the cross appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 24.07.2013

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आदेश की धोषणा खुले न्यायालय में दिनांकः 24.7.2013 को की गई ।

Sd/-	Sd/-
(I.P. BANSAL)	(N.K. BILLAIYA)
न्यायिक सदस्य/JUDICIAL MEMBER	लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 24/072013

व.नि.स./ *RJ* , Sr. PS

<u>आदेश की प्रतिलिपि अग्रेषित</u>/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

(Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**