IN THE INCOME TAX APPELLATE TRIBUNAL

"SMC" BENCH, MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.2926/Mum./2023
(Assessment Year : 2011–12)

Leelaben Kantilal Parekh
1002, Ivory Tower, Sayani Road
Next to Motilal Tower, Prabhadevi
Mumbai 400 025 PAN – AADPP8873F ……. Appellant

v/s

Income Tax Officer
\Ward-20(2)(1), Mumbai ……. Respondent

Assessee by : Shri Piyush Chhajed a/w
Shri Ayush Chhajed
Revenue by : Shri Nagnath B. Pasale

Date of Hearing – 18/12/2023	Date of Order – 29/12/2023

O R D E R

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 27/06/2023, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], for the assessment year 2011–12.

2. In this appeal, the assessee has raised the following grounds:–

> *"The Grounds of Appeal mentioned hereunder are without prejudice to one another:-*

"1. On the facts and circumstances of the case and in law, the Commissioner of Income Tax (Appeals), NFAC erred in confirming the addition u/s 69C of Rs.10,29,788/- on account of Purchases made from M/s International Trade Agency, without appreciating that said purchases are genuine purchases beyond doubt and supported by sufficient materials, full quantitative stock records have been maintained, all the goods purchased from said party have been backed by corresponding sales which are accepted to be genuine.

2. On the facts and circumstances of the case and in law, the Commissioner of Income Tax (Appeals), NFAC erred in confirming the addition with respect to the purchase made from M/s International Trade Agency only because a section 133(6) notice was not delivered/return back.

3. The appellant craves leaves to add, to delete or amend any of the above grounds of appeal at the time of hearing."

3. Vide application dated 06/12/2023, the assessee filed the following revised grounds of appeal:-

"The Grounds of Appeal mentioned hereunder are without prejudice to one another-

1. The notice issued u/s 148 after obtaining satisfaction of Pr. CIT is bad in law since there was no scrutiny assessment under 143(2) or no prior 147 assessment was done and therefore case is covered u/s 151(2) and therefore the appropriate authority for obtaining the satisfaction was Joint Commissioner of Income Tax. In view of Judgment rendered by Hon'ble Jurisdictional Bombay High Court in case of Aquatic Remedies (P) Ltd. 406 ITR 545 the notice issued U/s 148 is bad in law and consequently assessment mace pursuant to the same needs to be quashed.

2. On the facts and circumstances of the case, the Commissioner of Income Tax Appeals) ought to have appreciated that the reason to believe is formed based on information received from the office of DDIT (Investigation). There is no independent application of the mind, which is not in conformity with the requirement of provisions of section 147 and therefore the order passed pursuant to the same needs to be quashed

3. On the facts and circumstances of the case and in law, the Commissioner of Income Tax (Appeals), NFAC erred in confirming the addition u's 69C of Rs 10.29 788 ora Purchases made from M/s International Trade Agency without appreciating that said purchases are genuine purchases beyond doubt and supported by sufficient materials, full quantitative stock records have been maintained, all the goods purchased from said party have been backed by corresponding sales which are accepted to be genuine.

4. On the facts and circumstances of the case and in law, the Commissioner of Income Tax (Appeals). NFAC erred in confirming the addition with respect to the purchase made from M/s International Trade Agency only because a section 133(6) notice was not delivered/return back.

The appellant craves leaves to add, to delete or amend any of the above grounds of appeal at the time of hearing."

4. In the aforesaid application, it is submitted that the ground no.1 and ground no. 2 are legal grounds which go to the root of the matter. Accordingly, the assessee sought admission of these grounds in view of the decision of the Hon'ble Supreme Court in NTPC v/s CIT, [1998] 229 ITR 383 (SC). From the perusal of ground no. 1 and ground no. 2, raised by the assessee vide aforesaid application dated 06/12/2023, we find that the assessee has challenged the issuance of notice under section 148 in the absence of approval under section 151 of the Act from the appropriate authority under the Act. Further, the assessee has alleged that there was no independent application of mind by the AO while recording the reasons for reopening the assessment. Since the issues raised by way of revised grounds are legal issues, which can be decided on the basis of material available on record, we are of the view that the same can be admitted for consideration and adjudication in view of the ratio laid down by the Hon'ble Supreme Court in NTPC (supra).

5. The brief facts of the case pertaining to the issue raised vide revised ground no.1, as emanating from the record, are: The assessee is an individual and for the year under consideration e-filed her return of income on 17/09/2011 declaring a total income of Rs. 6,32,210. The return filed by the assessee was processed under section 143(1) of the Act. Subsequently, on the basis of information received from the office of DGIT (Investigation), Mumbai that the assessee is a beneficiary of bogus purchase activity, the proceedings under section 147 of the Act were initiated and notice under section 148 of the Act was issued on 29/03/2018. As per the information received from DGIT

(Investigation), Mumbai, M/s International Trade Agency has given bogus purchase bills to the assessee without actual transaction between them. During the hearing, the learned Authorised Representative ("*learned AR*") by referring to the reasons recorded for reopening the assessment submitted that the sanction under section 151 for issuing notice under section 148 of the Act was granted by the Principal Commissioner of Income Tax ("*PCIT*")-20, Mumbai instead of Joint Commissioner of Income Tax, who was the appropriate authority under the Act. Accordingly, it was submitted that since the sanction to issue notice under section 148 of the Act has not been granted by the appropriate authority, therefore reopening of assessment is unsustainable. On the contrary, the learned Departmental Representative ("*learned DR*") by referring to the provisions of section 151 of the Act, as applicable at the time of issuance of notice under section 148 on 29/03/2018, submitted that PCIT, inter-alia, was the appropriate authority for the grant of sanction for issuance of notice under section 148 of the Act.

6. We have considered the submissions of both sides and perused the material available on record regarding the revised ground no. 1 raised by the assessee. In the present case, it is evident from the record that the original return filed by the assessee was processed under section 143(1) of the Act and the said return was not selected for scrutiny. Subsequently, on the basis of the information received from DGIT (Investigation), Mumbai that the assessee is a beneficiary of the bogus purchase transaction, proceedings under section 147 of the Act were initiated after more than four years from the relevant assessment year and notice under section 148 of the Act was issued on 29/03/2018. From the perusal of the reasons recorded for reopening the

assessment under section 147 of the Act, forming part of the paper book on page 2, we find that the AO obtained the sanction required under the provisions of section 151 of the Act prior to the issuance of notice under section 148 of the Act. The only dispute raised by the assessee vide aforesaid revised ground of appeal is that the said sanction has not been granted by the appropriate authority, which in the present case is the Joint Commissioner of Income Tax and instead the same has been granted by the PCIT, who under the facts and circumstances of the present case was not authorised to grant the approval under section 151 of the Act.

7. Before proceeding further, it is pertinent to note the provisions of section 151 of the Act at the time of issuance of notice on 29/03/2018 under section 148 of the Act. Section 151 of the Act, as existed during the assessment year 2017-18, i.e. at the time of issuance of notice under section 148 of the Act, is reproduced as under:-

> *"**Sanction for issue of notice***
>
> *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) 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, 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.*
>
> *(3) For the purposes of sub-section (1) and sub-section (2), the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner or the Joint 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."*

8. Therefore, from the perusal of aforesaid provisions of section 151(1) of the Act, it is evident that in cases where four years have lapsed from the end of the relevant assessment year, Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner of Income Tax are empowered to grant the sanction if they are satisfied on the reasons recorded by the AO that it is a fit case for issuance of notice under section 148 of the Act. Whereas, sub-section (2) of section 151 of the Act deals with cases where notice under section 148 of the Act is to be issued prior to the expiry of the period of four years from the end of the relevant assessment year. Since, in the present case, notice under section 148 of the Act was issued after the expiry of four years from the end of the relevant assessment year, therefore we are only concerned with sub-section (1) of section 151 of the Act, according to which PCIT is empowered to grant the sanction.

9. However, it is the plea of the learned AR that since the year under consideration is the assessment year 2011-12, therefore the provisions of section 151 of the Act as existed during the relevant year will be applicable instead of the provision as was existing at the time of issuance of notice under section 148 of the Act, i.e. assessment year 2017-18 and accordingly only Joint Commissioner of Income Tax is empowered to grant the sanction in the present case. Section 151 of the Act, as existed during the relevant assessment year 2011-12, reads as under:-

> "***Sanction for issue of notice.***
>
> *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.]"

10. From the perusal of the provisions of section 151 of the Act, as existed during the assessment year 2011-12, we find that in cases where an assessment has not been made under section 143(3) or section 147, no notice under section 148 of the Act can be issued by an AO 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 the AO that it is a fit case for the issue of such notice under section 148 of the Act.

11. Therefore, from the comparative reading of section 151 of the Act, as existed during the relevant assessment year, i.e. 2011-12, and as existed at the time of issuance of notice under section 148 of the Act, i.e. assessment year 2017-18, we find that the sanctioning authority under section 151 of the Act for issuance of notice under section 148 of the Act has been amended from Joint Commissioner of Income Tax to PCIT. It, thus, means that whereas

under the old section 151, the approval by Joint Commissioner of Income Tax was required, whereas under the provisions of section 151, as stood at the time of issuance of notice under section 148 of the Act, approval of PCIT is required for issuance of notice under section 148 by the AO after the expiry of four years from the end of the relevant assessment year. Therefore, insofar as the requirement of granting sanction under section 151 prior to issuance of notice under section 148 of the Act is concerned, the same has not changed and even in the assessment year 2017-18 the said jurisdictional requirement continues under the provisions of the Act. The only change is the authority who has been empowered to grant the approval under section 151 of the Act.

12. We find that section 151, as it stood during the relevant assessment year, continues in the Act till its amendment vide Finance Act, 2015, with effect from 01/06/2015, except small amendment vide Finance (No.2) Act, 2014 whereby Principal Chief Commissioner and Chief Commissioner of Income Tax were included in provisos to sub-section (1) and (2) of section 151. However, the sanctioning authority for issuance of notice under section 151(2) of the Act continues to be the Joint Commissioner of Income Tax. However, vide Finance Act, 2015, with effect from 01/06/2015, section 151 of the Act was amended and Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner of Income Tax was empowered to grant the sanction for issuance of notice under section 148 of the Act after the expiry of four years from the end of the relevant assessment year. As per Circular No. 19 of 2015 issued by the CBDT on 27/11/2015, the said amendment was made in order to provide simplicity, as prior to the

amendment section 151 of the Act specified different sanctioning authorities based on various scenarios.

13. Therefore, in view of the above, the question arises whether the manner of granting sanction under section 151 of the Act is in the nature of procedural law. If the answer to the aforesaid question is in the affirmative then we are of the considered view that sanction by the PCIT under section 151 of the Act, in the present case, is in conformity with the provisions of the Act. We find that similar issue came up for consideration before the Hon'ble Jharkhand High Court in Navketan Enterprises v/s CIT, [2001] 250 ITR 508 (Jharkhand), wherein the Hon'ble High Court held that section 151 of the Act is in the nature of procedural law and therefore for the purpose of obtaining the approval, the Assessing Officer has to apply the law as it stands on the day when he decides, by recording his reasons, to invoke section 147 and thus, decides to issue notice under section 148 of the Act. The relevant findings of the Hon'ble High Court, in the aforesaid decision, are reproduced as under:-

> *"6. Section 151 is in the nature of procedural law. Power to invoke section 147 undoubtedly is subject to issuance of notice under section 148. The manner of issuing such a notice and the requirements to be complied with, with regard thereto, are contained in section 151. If, therefore, an Assess- ing Officer contemplates initiating proceedings under section 147and before he does so since he has to issue a notice under section 148, the requirements as contained in section 151 have to be complied with. These procedural requirements are relatable either to the nature of the original assessment order [whether it was passed under section 143(3) or section 147 or whether it was passed otherwise] and how much period has elapsed between the passing of the original assessment order and initiation of reassessment proceedings under section 147. The law as it presently stands, therefore, has to be pressed into aid to apply the aforesaid procedural requirements for invoking section 147 and, thus, for issuing notice under section 148, the Assessing Officer is supposed to look at the law as it presently stands and apply the same. He has not to go back to a law which stood at a point of time when the original assessment order was passed. Obtaining the approval of a superior officer is procedural in nature. Whether the approval of the Board is to be obtained or that of the Joint Commissioner is not substantive in nature. Therefore, for the purpose of obtaining the approval, the Assessing Officer has to apply the law as*

it stands on the date when he decides, by recording his reasons, to invoke section 147 and, thus, decides to issue notice under section 148. For doing this, he has not to look at the law which stood at a point of time when the original assessment order was passed.

7. There is another angle to this aspect of the applicability of the law on the subject. As section 147 clearly suggests, the decision to initiate proceedings for reassessment in respect of an order already passed is taken by the Assessing Officer much after the original assessment order has already been passed. Let us take the example of our case. In our case, the original assessment order was passed in the year related to the assessment year 1988-89. That event is long since over. Taking of the decision or making up of the mind with regard to reopening of the assessment in terms of section 147 has nothing to do with the assessment year in question, nor the passing of the original assessment order with respect of that assessment year. The decision to initiate proceedings under section 147 can be taken at any time after the passing of the original assessment order. It is, therefore, the point of time when this decision is taken which determines the applicability of the law on the subject. In other words, whenever the Assessing Officer decides to initiate proceedings for reassessment, it is only at that point of time that he is to look to the law as it exists then for its proper application to the procedure that he would apply for issuing notice in terms of section 148. The contention of Mr. Moitra is, therefore, totally devoid of any force because the law as it stood at a point of time relatable to the assessment year in question is totally irrelevant and has no applicability whatsoever."

14. Therefore, respectfully following the aforesaid decision of the Hon'ble Jharkhand High Court, the provisions of section 151 of the Act, as it stood during the assessment year 2017-18, i.e. the year in which reasons were recorded by the AO for reopening the assessment and notice under section 148 of the Act was issued, will be applicable and thus, we find no infirmity in the sanction granted by PCIT under section 151 of the Act in the present case. Before concluding, we may note that from the perusal of the decisions relied upon by the learned AR, we find that the sanction granted under section 151 of the Act was found to be improper as the sanction was not granted by the appropriate authority under the provisions of the Act, which is not so in the present case since PCIT had the authority under section 151 to grant the sanction for issuance of notice under section 148 of the Act after the expiry of four years from the end of the relevant assessment year. Hence, the decisions

relied upon by the learned AR are factually distinguishable. Accordingly, revised ground no. 1 raised by the assessee is dismissed.

15. The grievance of the assessee vide revised ground No. 2 is that there is no independent application of mind by the AO while recording the reasons for reopening the assessment and the same is formed based on the information received from the office of DGIT (Investigation), Mumbai. As is evident from the record, in the present case return of income filed by the assessee was not selected for scrutiny. The AO based on the information received from the DGIT (Investigation), Mumbai initiated the reassessment proceedings. The reasons recorded by the AO, while reopening the assessment, are as under:

> *"Reason for reopening recorded u/s 147 of the IT Act.*
>
> *1. In this case, the assesee has filed the return of income for AY- 2011-12 on declaring total income of Rs.636210/-. The return was processed u/s 143(1) of the IT Act, 1961.*
>
> *2. Information is received from the office of DGIT(Inv.), Mumbai in respect of various assesees who has taken bogus/ Hawala/ accommodation entries from certain parties to inflate their purchases, resulting into reduction of taxable profit. The assesee is also one of such parties. As per above referred information, the assesee has obtained bogus/ hawala purchase bills/entries from the following parties during the FY-2010-11 relevant to Ay-2011-12.*
>
> *3. On the basis of the above tangible material available on record and after analyzing it, I have reason to believe that income chargeable to tax, as indicated by the accommodation bills for purchases to the tune of Rs. 10,29,788/- from the above said parties, have escaped assessment for AY-2010-11 within the meaning of section 147 of the IT Act, 1961. A notice u/s 148 is therefore being issued to re-assess such income and also any other income chargeable to tax which has escaped assesement, which comes to my notice subsequently in the course of proceedings for reassessment for AY-2011-12.*
>
> *4. In this case more than four years have lapsed from the end of assessment year under consideration. The case is put up before the Pr.CIT.-20, Mumbai for his kind sanction to issue notice u/s.148 in the light of proviso to sub-section (1) of section 151 of I.T. Act, 1961."*

16. From the perusal of the aforesaid reasons, it is evident that information was received from the office of DGIT (investigation), Mumbai in respect of

various assessees who have taken bogus/hawala/accommodation entries from certain parties to inflate the purchases, resulting in reduction of taxable profit. From the perusal of the aforesaid information, the AO noted that the assessee is one such party and has obtained bogus/hawala purchase bills/entries from the entity named International Trade Agency. Accordingly, the AO recorded the reasons for reopening that income chargeable to tax as indicated by the accommodation bills for purchase to the tune of Rs. 10,29,788 has escaped assessment within the meaning of section 147 of the Act.

17. It is the plea of the assessee that the reassessment proceedings have been initiated without independent application of mind by the AO to come to the aforesaid conclusion. In the present case, it is pertinent to note that no scrutiny assessment was conducted in the case of the assessee and therefore the only data available with the AO was the data provided along with the income tax return and the information received subsequently from the office of DGIT (Investigation), Mumbai. The said information constitutes new and tangible material for initiating the reassessment proceedings in the case of the assessee.

18. It is also to be noted that the AO in the reasons recorded has categorically mentioned that the assessee has obtained bogus purchase bills amounting to Rs. 10,29,788 from International Trade Agency during the financial year. Though this information was received from DGIT (Investigation), Mumbai but the AO applying his mind extracted the relevant details pertaining to the assessee. In the second paragraph of the reasons, information of bogus transaction was noted. Based on this in second

paragraph, relevant details about the alleged bogus transaction of the assessee were identified. In the last paragraph, the AO has clearly identified the escapement of income, and the satisfaction of the AO is recorded. Thus, there was a "*tangible material*" on the basis of which the AO applied his mind independently. Hence, it is not correct to state that reopening has been made without independent application of mind by the AO. Thus, when new and tangible material in the form of a report from the DGIT (Investigation), Mumbai was received, we are of the view that the reassessment proceedings were validly initiated. Accordingly, revised ground no. 2 raised by the assessee is dismissed.

19. Revised grounds No. 3 and 4, raised by the assessee, pertain to addition under section 69C of the Act on account of purchases made from M/s International Trade Agency.

20. The brief facts of the case pertaining to this issue, as emanating from the record, are: Pursuant to the notice issued under section 148 of the Act, the assessee filed its reply submitting that the original return of income be treated as a return of income filed in response to notice issued under section 148 of the Act. Accordingly, statutory notices under section 143(2) as well as section 142(1) of the Act were issued and served on the assessee. The assessee is a proprietor of M/s Padam Prabhu Chemicals and is a reseller of chemicals and solvents. During the assessment proceedings, notice under section 133(6) of the Act was issued to the aforesaid accommodation entry provider, which was returned unserved by the postal authorities with the remark "*left/not known*". Further, in order to verify the facts, Ward inspector was also deputed to find

out the whereabouts of the said party, however it was reported that the said party was not available at the address mentioned in the PAN database of the ITD system. Further, on enquiry in the neighbourhood, it was found that the said party never existed at the given address. The report of the Ward Inspector was brought to the notice of the assessee and the assessee was asked to produce the party for verification and also to produce the stock register, in and out register, delivery challan, lorry receipts, etc. The assessee was also asked to show cause as to why the purchases made from the aforesaid entity should not be treated as bogus and added to the total income of the assessee. However, in the absence of any response from the assessee, the AO vide order dated 30/11/2018 passed under section 143(3) read with section 147 of the Act held that the assessee has taken accommodation entries in the form of bogus purchases. Accordingly, the AO made the addition of Rs. 10,29,788 under section 69C of the Act. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee and upheld the addition made by the AO under section 69C of the Act.

21. We have considered the submissions of both sides and perused the material available on record. In the present case, on the basis of the information received from the DGIT (Investigation), Mumbai that the assessee is the beneficiary of bogus purchases, reassessment proceedings in the case of the assessee were initiated. Further, notice issued under section 133(6) by the AO to the entity was also returned unserved. The AO made an addition of the entire amount of the alleged bogus purchases made from the said supplier. In support of his claim that the purchases are genuine, the assessee furnished copies of bills, and delivery challan issued by the supplier. Further, it is the

claim of the assessee that all the payments were made by account payee cheque. However, we find that before the lower authorities, the assessee was unable to produce the parties. Even before us, no such detail is available on record. Therefore, from the material available on record it is evident that the assessee has failed to prove the genuineness of the purchases made from the supplier. However, at the same time, the Revenue has not doubted the sales declared by the assessee. Further, it cannot be doubted that without the purchase of material, the assessee cannot carry out the sales. Therefore, it appears to be a case of bogus bills arranged from the aforesaid entity and material purchased from somewhere else at a lower cost. Thus, we are of the considered view that entire bogus purchases cannot be added in such a case. We are of the considered view that a reasonable disallowance of the purchases would meet the possibility of revenue leakage. Therefore, in view of the above findings, we deem it appropriate to restrict the disallowance to 10% of the disputed purchases. We find that the same is also in line with the judgment of the Hon'ble jurisdictional High Court in PCIT vs Paramshakti Distributors Ltd. in ITA No. 413 of 2017 decided on 15/07/2019. As a result, revised grounds no. 3 and 4 raised by the assessee are partly allowed.

22. In the result, the appeal by the assessee is partly allowed.

Order pronounced in the open Court on 29/12/2023

Sd/-	**Sd/-**
B.R. BASKARAN	**SANDEEP SINGH KARHAIL**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

MUMBAI, DATED: 29/12/2023

Copy of the order forwarded to:

(1) The Assessee;

(2) The Revenue;

(3) The PCIT / CIT (Judicial);

(4) The DR, ITAT, Mumbai; and

(5) Guard file.

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

Assistant Registrar
ITAT, Mumbai