IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'A' BENCH, NEW DELH I

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.8706/DEL/2019
[A.Y 2011-12]

Ishwar Chand Mittal 139, Deepali Enclave, Pitampura New Delhi PAN No.AANPC8865A	Vs.	ACIT Central Circle-25 New Delhi
[Appellant]		[Respondent]

Appellant by : Sh. Gautam Jain, Advocate
Respondent by : Sh. M. Barnwal, Sr. DR

Date of Hearing	**:**	**20.08.2020**
Date of Pronouncement	**:**	**25.08.2020**

ORDER

PER N. K. BILLAIYA, **AM**:

1. With this appeal the assessee has challenged the correctness of the order of the CIT(A)-29, New Delhi dated 04.01.2019 pertaining to A.Y. 2011-12.

2. Vide ground No. 1 to 1.4 the assessee has challenged the jurisdiction of the AO in initiating the proceedings u/s.147 of the

Act claiming that the reopening of the assessment was bad in law.

3. Vide ground No. 2 to 10 the assessee has challenged the additions made u/s. 68 of the Act on merits.

4. Representatives of both the sides were heard at length case record carefully perused with the assistance of the counsel we have considered the relevant documentary evidence brought on record.

5. Briefly stated the facts of the case are that the assessee filed original return of income on 27.07.2011. A search conducted at the premises of the assessee on 22.03.2012 and the assessment was framed u/s. 153 A of the Act vide order dated 28.02.2014.

6. On 31.03.2016 notice u/.s. 148 of the Act was issued and served upon the assessee. The reasons for reopening the assessment read as under:-

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Ishwar Chand Mittal
139, Deepali Enclave
Pitampura,
New Delhi – 110088
PAN : AANPC8865A
A.Y.: 2011-12

Recording reasons for initiating proceedings u/s 148 r.w.s. 147 of the Income Tax Act, 1961.

The Investigation Directorate of Kolkata has informed that large penny stock companies, whose share prices were artificially raised on the Stock Exchanges in order to book bogus claims of Long Term Capital Gains or Short Term Capital Loss by various beneficiaries. Extensive investigation including search and seizure/survey action on entry providers, riggers, beneficiaries etc. was conducted by the Investigation Directorate in such cases. The statement of various entry operators were also recorded who on oath admitted that they were engaged in providing accommodation entries as well as artificially raising the stock prices in order to book bogus claims of Long Term Capital Gains or Short Term Capital Loss by various beneficiaries Based upon outcome of such investigation and analysis of the data, the System Directorate has uploaded details of such information in respect of individual assesses who have made transactions in such penny stocks.

2. The investigation carried out by the department has proved that a scheme was hatched by various players to obtain/provide accommodation entry of bogus LTCG through manipulation of stock market. The basic aim of the scheme is to route the unaccounted money of LTCG beneficiaries into their account/books in the grab of Long Term Capital Gain. This entry of LTCG is taken by selling the shares on the stock exchange and registering the proceeds arising out of the sale of shares into the books as LTCG. For implementing this scheme, shares of some Penny Stock Company are used. The same modus is adopted for providing accommodation entry of bogus LOSS. Penny stocks are those stocks which trade at very low price and whose market capitalization is very low. The low price of the penny stocks makes manipulation of the share price very easy.

3. From the perusal of the information data, it is observed that Sh. Ishwar Chand Mittal (PAN: AANPC8865A) is one of the beneficiaries, who booked bogus long term capital gain. The detail of such transaction is annexed and is part of the satisfaction note.

4. From the transaction given in the sheet attached, it is observed Sh. Ishwar Chand Mittal has sold out 50000 scrips of "NOUVEA MULTI" for Rs. 7673000 in FY 2010-11 to different parties. In the Script NOUVEAU GLOBAL VENTURES LTD total trade of Rs. 203,87,23,071/- have been done in the annexed transaction details. From the perusal, it is evident that most of the purchases are on abnormally higher rates and were done by identified paper/Jamakharchi companies controlled by entry operators, most of them on oath admitted to have engaged in providing entries.

5. I have examined the details provided by the Investigation Directorate of Kolkata, details available in the ITD systems and information provided by assessee in the ITR and I am satisfied that the assessee has introduced her unaccounted income in the form of LTCG by manipulating the Penny Stock.

6. Further, the assessee has not offered this income of Rs. 7673000 in the return of income for AY 2011-12 to taxation and accordingly, claimed exempt u/s 10(38) of the Income Tax Act. Since the income chargeable to tax amounting to Rs. 7673000 has escaped assessment by way of reasons of failure on the part of the assessee to disclose fully and truly all material facts necessary

for the assessment for assessment year 2011-12 as discussed above. I have reasons to believe that income chargeable to tax has escaped assessment as detailed reasons given above for the A. Y. 2011-12 within the meaning of section 147 of the Income Tax Act, 1961.

Dated : 28.03.2016.

(Gautam Deb)
Deputy Commissioner of Income Tax
Central Circle – 25, New Delhi.

7. A perusal of the above show that the completed assessment was reopened on the basis of the information received from the Investigation Wing, Kolkata by which the AO came to know that some brokers have affirmed that they were providing accommodation entries in the form of long term capital gain and one of the such scrip was Nouvea Multimedia. The AO was of the opinion that since the assessee has also dealt in the said company the LTCG of Rs. 76.73 lacs is nothing but accommodation entry received by the assessee in lieu of his unaccounted cash introduced in his accounts as LTCG.

8. On the strength of this information the AO reopened the assessment and completed proceedings by making addition of Rs.76.73 lacs.

9. At the very outset and as mentioned elsewhere we have to state that a search was contended at the premises of the assessee on 22.03.2012 and pursuant to the notice u/s. 153 A of the Act. The assessee filed his return of income alongwith return of income a computation of income was also filed which clearly show under the head “DPS of exempt income” capital gains u/s. 10 (30)of the Act.

10. It is thus apparently a case where action has been initiated on the basis of search u/s. 132 (4) of the Act in the case of the

assessee. No incriminating material was found in the search of proceedings.

11. It is not the first time that assessee has filed the return of income in response to notice u/s 153A of the Act, prior to this the assessee had filed a return of income of Rs. 25.16 lacs which was also accompanied by the same computation of income which were filed with the return of income in response to notice issued u/s. 153 A of the Act.

12. We have carefully perused the assessment order framed u/s. 153 A of the Act and we find that no adverse inference was made to the returned income of the assessee when the AO was fully aware of the long term capital gains claimed as exempt from tax.

13. In our considered view while assuming jurisdiction u/s. 147 of the Act the AO merely acted on suspicion and we cannot say that he had “reasons to believe”.

14. In the garb of reassessment proceedings the AO sought to verify the same details on the strength of material which was already available on record. Duly considered and verified in the course of proceedings u/s. 153 A of the Act. Judgment of the Hon’ble Gujarat High Court in the case of Clearing Cargo Agency Vs. JCIT 307 ITR 1 (pages 31-52) is apt on the facts discussed here in above and the same read as under:

"In the present case, none of the exceptional contingencies exist. As already noticed, on a plain reading it becomes discernible that there are two separate streams of procedure provided by the Legislature: (1) under Chapter XIV of the Act which provides for "procedure for assessment", and (2) under Chapter XIV-B of the Act which provides for "a special procedure for assessment of search cases". Only in the event the special procedure for assessment has not provided for some procedure for assessment can one refer to the procedure under Chapter XIV of the Act. **Therefore, the interpretation sought to be placed by the Revenue on the provisions of the Act so as to read in the term "block period" for the purpose of invoking and applying sections 147 to 153 of the Act cannot be countenanced.** Neither does a plain reading of the provisions permit such an exercise, nor is there any lacuna in the provisions which is required to be filled up.

In Chapter XIV-B of the Act the only place where one finds the use of the term "assessment year" is in the definition of the term "block period". This itself indicates that if the "block period" was equivalent to "assessment year" the definition of block period would not have provided that "block period" means period comprising previous years relevant to 10/6 assessment years. To put it differently, reference to the number of assessment years is only a means, a measure to indicate and specify the period of previous years which would comprise block period. The Revenue, therefore, cannot contend successfully that wherever the term "assessment year" is used in the group of sections from section 147 to 153 of the Act the said term has to be replaced by the term "block period". Furthermore, the amendment which is retrospectively made in the definition of the block period by the Finance (No. 2) Act, 1996, itself indicates that originally the term "block period" meant as consisting of 10 previous years prior to the previous year in which the search was conducted and also the period of current previous year up to the date of search, but, before adoption of uniform previous year, in case of different assessees, "block period" would be different depending on the accounting period adopted in terms of section 3 of the Act. To depending on the accounting period adopted in terms of section 3 of the Act. To obviate this situation the definition of block period was amended. This becomes clear from Circular No. 762, dated February 18, 1998 ([1998] 230 ITR (St.) 12), issued by the Central Board of Direct Taxes extracted hereinbefore.

The apex court decision on which great emphasis has been placed on behalf of Revenue in fact goes to support the view adopted in the present case. The controversy before the apex court was in relation to the rate of tax which was to be applied to the undisclosed income assessed in terms of Chapter XIV-B of the Act. **The apex court itself has observed, as can be seen from the portion wherein emphasis is supplied by this court, that the Supreme Court was concerned mainly with computation of undisclosed income under section 158BB(1) of the Act. This court has already noticed that section 158BH of the Act provides for invoking other machinery provisions to an assessment made under Chapter XIV-B of the Act**

emphasis is supplied by this court, that the Supreme Court was concerned mainly with computation of undisclosed income under section 158BB(1) of the Act. This court has already noticed that section 158BH of the Act provides for invoking other machinery provisions to an assessment made under Chapter XIV-B of the Act

and does not require other provisions of the Act to be applied to a block assessment to be made under Chapter XIV-B of the Act.

The apex court decision also provides for a harmonious construction on the basis of reading of the mode of computation provided in Chapter IV of the Act and provided under Chapter XIV-B of the Act by stating that section 158BH, inter alia, provides that other provisions of the Act shall apply if there is no conflict between the provisions of Chapter XIV-B of the Act and other provisions of the Act. This becomes clear from the extracted portion wherein emphasis has been supplied. To put it differently, in a situation where there is a conflict between the provisions of block assessment procedure prescribed under Chapter XIV-B of the Act and other provisions of the Act, it will be the special procedure prescribed under Chapter XIV-B of the Act which has to prevail.

As already noticed hereinbefore, the entire scheme under Chapter XIV of the Act, more particularly from Sections 147 to 153 of the Act pertaining to reassessment, and the special procedure for assessing the undisclosed income of the block period under Chapter XIV-B of the Act are not only separate and distinct from each other, but if an effort is made to incorporate the scheme under Chapter XIV of the Act for the purpose of assessment of the block period there is a conflict between the provisions which becomes apparent on a plain reading. In the circumstances, as per the established rules of interpretation, unless and until a plain reading of the two streams of assessment procedure does not result in the procedures being independently workable, only then the question of resolving the conflict would arise. **But to the contrary, in the present case, in the light of the provisions of section 158BH of the Act, once there is a conflict between the two streams of procedure, as laid down by the apex court, the provisions of Chapter XIV-B of the Act shall prevail and have primacy.**

Thus, viewed from any angle, the stand of the Revenue does not merit acceptance. Once assessment has been framed under section 158BA of the Act in relation to undisclosed income for the block period as a result of search there is no question of the Assessing Officer issuing notice under section 148 of the Act for reopening such assessment as the said concept is abhorrent to the special scheme of assessment of undisclosed income for block period. At the cost of repetition it is required to be stated and emphasised that the first proviso under section 158BC(a) of the Act specifically provides that no notice under section 148 of the Act is required to be issued for the purpose of proceeding under Chapter XIV-B of the Act.

In the circumstances, the impugned notice dated April 16, 1999, under section 148 of the Act cannot be upheld and is hereby quashed and set aside. In the view that the court has adopted it has not been found necessary to go into the facts of the case and examine whether the reasons recorded by the respondent authority are germane or not as the matter has been decided only on the point of absence of jurisdiction in a case of block assessment."

2.7 Reliance is also placed on the judgment of Hon'ble Chattisgarh High case of **ACIT vs Sunil Kumar Jain reported in 367 ITR 370 (pag JPB-I)** has held that provisions of sections 147 and 148 are not a block assessment order passed under Chapter XIVB, th extracts are as under:

> "It is in this light that sections 147/ 148 are to be construed i.e they are to be construed strictly.
> 22. Section 147 of the Act is titled as 'Income Escaping Assessment'. It provides that if the Assessing Officer has reason to believe that any income chargeable to the tax has escaped in any assessment year, he could re-assess the income subject to fulfilling other conditions mentioned in that section.
> 23. Section 148 is titled as 'Issue of notice where income has escaped assessment'. It provides issuance of notice before making the assessment, re-assessment or re-computation under Section 147 of the Act.
> **24. Section 147 of the Act uses the words 'in any assessment year'; it does not use the words 'in any assessment year or for any block period'. Had it used the words 'in any assessment year or for any block period' the matter would have been different but in absence of these words, can we read these words in the section when they are not there. If we do so, then will it be not stretching the words too far?**
> **25. Often the block assessment is in respect of the years for which the assessment has already been done under the Act. The block assessment is a kind of re-assessment, on the basis of material found in the search.**

This is also indicated by first proviso to section 158BC (a) of the Act.

26. Section 158BC is titled as 'Procedure for Block Assessment'. The first proviso: The relevant portion of the proviso provided that no notice under section 148 is required to be issue for the purpose of proceeding under this chapter to section 158BC(a) of the Act provides that for the purpose of proceedings under Chapter XIVB of the Act, no notice under section 148 of the Act is required to be issued.

27. In case sections 147/ 148 of the Act are applicable to the block assessment, it will amount to reassessment of the reassessment proceeding.

28. Section 147 of the Act has not used the word 'the block period'. The reason seems to be simple that the block assessment itself is the re-assessment proceedings. There was no necessity for providing reassessment of the reassessment proceedings.

29. The Gujarat High Court has considered this question in detail in Cargo Clearing Agency (Gujarat) v. Jt. CIT [2008] 218 CTR (Guj) 541 (the Cargo-Clearing case) and has held that sections 147/ 148 of the Act are not applicable to the assessment under Chapter XIVB of the Act. We agree with the same and are unable to subscribe to the view taken by the Gauhati High Court in the Peerchand case.

30. The material for notice for reassessment under section 148 of the Act is the same as was for passing order under section 263 of the Act. The order under section 263 of the Act has been set aside by the Tribunal on the ground that the initial order passed by the AO was not prejudicial to the interest of the Revenue.

31. In view of above, the CIT-A has held that once the order under section 263 has been set aside, the same material cannot be used for notice under section 148 of the Act. However, neither the Tribunal has gone into this question nor this case has been admitted on the same. Thus, we refrain from expressing our view on this point or any other findings recorded in favour of the Assessee by the CIT-A.

CONCLUSIONS

32. Our conclusion is, that sections 147/ 148 of the Act for reassessment are not applicable to the assessment under Chapter XIVB of the Act.

33. In view of the above, the questions are answered in favour of the Assessee and against the Department. The tax case is dismissed."

15. Coming back to the facts of the case, in the reasons recorded mentioned elsewhere the AO observed that income of Rs. 76.33 lacs has not been offered to tax in the return of income for A. Y.2011-12 whereas as mentioned elsewhere in all his return of income which clearly mentioned income claimed to be exempt u/s. 10 (38) as mentioned elsewhere the same was thoroughly examined after search operations at the premises of the assessee and after thorough examination the assessment was framed u/s. 153 A of the Act, therefore, in the light of the decision of the Hon'ble Gujarat High Court (supra) we are of the considered view that reopening of the assessment which was framed u/s. 153 A of the Act is bad in law.

16. At para -11 of his assessment order the AO concluded as under :-

> *"In view of the above discussion it can be concluded that the assessee has not disclosed LTCG made through penny stock amounting to Rs. 76.70 lacs for the year under consideration. Accordingly in LTCG of Rs. 76.73 lacs is added to the income of the assessee.*

17. This observation of the AO clearly show that there was no application of mind while issuing of notice u/s. 148 of the Act in as much as had he gone through the assessment records of the assessee he would have seen the computation of income filed with original return income and also with the return of income tax in response to notice u/s. 153 A of the Act. If he had done this exercise he would have known that LTCG has not only been disclosed in the return of income but the same was also claimed to be exempt.

18. In our considered view the proceedings has been initiated on the basis of no material less any tangible and relevant material and as such reasons recorded do not constitute valid reasons. Moreover the reopening is only on the basis of borrowed satisfaction and as mentioned elsewhere reasons are factually incorrect and the conclusion drawn by the AO in the assessment is contradictory.

19. Considering the facts of the case discussed elsewhere in the light of the decision of the Hon'ble Gujarat High Court we hold that the assumption of jurisdiction by the issue of notice u/s. 148 of the Act is bad in law which is quashed and accordingly the assessment so framed is also quashed.

20. Since we have quashed the assessment order itself we do not find it necessary to dwell into the merits of the addition ground No. 1 to 1.4 are allowed.

21. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 25.08.2020.

Sd/-	**Sd/-**
[SUCHITRA KAMBLE]	**[N. K. BILLAIYA]**
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Dated: 25.08.2020
Neha
Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar
ITAT, New Delhi

Date of dictation	21.08.2020
Date on which the typed draft is placed before the dictating Member	25.08.2020
Date on which the typed draft is placed before the Other member	25.08.2020
Date on which the approved draft comes to the Sr.PS/PS	25.08.2020
Date on which the fair order is placed before the Dictating Member for Pronouncement	25.08.2020
Date on which the fair order comes back to the Sr. PS/ PS	25.08.2020
Date on which the final order is uploaded on the website of ITAT	25.08.2020
Date on which the file goes to the Bench Clerk	27.08.2020
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	