

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'B' BENCH, KOLKATA
(Virtual Court)**

(Before Sri J. Sudhakar Reddy, Accountant Member & Sri Aby T. Varkey, Judicial Member)

**I.T.A. No. 181/Kol/2019
Assessment Year: 2010-11**

DCIT, Circle-5(1), Kolkata.....Appellant

Vs.

**M/s. Sambuddha Tracon Pvt. Ltd.....Respondent
[PAN: AAEC5 4619 N]**

Appearances by:

Sh. Vijay Shankar, CIT(DR), appeared on behalf of the Revenue.

Sh. S.K. Tulsian, Adv., appeared on behalf of the Assessee.

Date of concluding the hearing : July 16th, 2020

Date of pronouncing the order : August 14th, 2020

ORDER

Per J. Sudhakar Reddy, AM:

This is an appeal filed by the Revenue directed against the order of the Commissioner of Income Tax (Appeals)-2, Kolkata dated 30.11.2018 ('CIT(A)' for short) passed u/s 250 of the Income Tax Act, 1961 ('the Act' for short) on the following grounds:

"1. Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in quashing the reassessment order u/s. 147/143(3) passed by the AO without disposing of the objection raised by the appellant is contrary to binding principal of law laid down in judgement of Hon.ble Supreme Court whereby it has been held that non-compliance of procedure would not make an order void or non est.

2. That the appellant craves for leave to add, delete or modify any of the grounds of appeal before or at the time of hearing."

2. The assessee is a company and filed its return of income on 31.10.2010 declaring total income of ₹36,89,317/-. The AO records that information was received from DDIT(Inv.), Unit-3(1), Kolkata based on which notice u/s 148 of the Act was issued on 30.03.2017. In response, the assessee filed its return of income on 24.10.2017 declaring the same total income of ₹36,89,317/-. Thereafter on 05.05.2017 the assessee requested the AO for copy of the reasons recorded for re-opening. This was supplied to the assessee. On 22.11.2017 and 24.11.2017 the assessee filed various objections to the

re-opening of assessment before the AO. The AO without disposing all these objections of the assessee, completed the assessment u/s 147 r.w.s. 143(3) of the Act on 20.12.2017 determining the total income of the assessee at ₹9,21,13,367/- inter alia making an addition of ₹8,84,24,050/-. The assessment order extracts reasons recorded and thereafter concludes as follows:

“During the assessment procedure Shri Santosh Choraria, A/R of the assessee appeared and submitted various documents. I have gone through all the documents very carefully. But the assessee could not disprove the above mentioned fact. Hence the alleged amount of ₹8,84,24,050/- is disallowed and added back to the total income of the assessee company. Penalty proceeding initiated separately.”

3. From the above extract it is not clear as to what claim made by the assessee is disallowed by the AO and under what Section that addition is made.

4. The assessee carried the matter in appeal challenging both the re-opening of the assessment as well as the disallowance made on merits. The ld. first appellate authority squashed the re-assessment proceedings on the ground that the AO has not applied his mind to the information received from the DDIT(Inv.), Unit-3(1), Kolkata and the reason to believe was recorded based on borrowed satisfaction. He squashed the assessment proceedings. Aggrieved, the Revenue is in appeal.

5. The ld. DR submitted that, though the grounds of appeal raised by the Revenue are confined to the issue of the ld. CIT(A) holding as illegal the re-assessment order, on the ground that, the objections raised by the assessee against the re-opening have not been disposed off by the AO, prior to framing of the assessment order, in view of the judgement of Hon'ble Supreme Court in the case of *GKN Driveshafts (India) Ltd. vs. Income-tax Officer* reported in [2003] 259 ITR 19 (SC), the Revenue challenges all the other conclusions drawn by the ld. CIT(A) for arriving at the conclusion that re-opening of assessment is bad in law. He took this Bench to the reasons recorded by the AO for coming to a conclusion that income subject to tax has escaped assessment, a copy of which is at page 45, 46 & 47 of the paper book and submitted that this is a case where the assessee company was an ultimate beneficiary of share capital which was received after being layered through multiple entities. He submitted that the Investigation Wing of the Income Tax Department has found the cash trail and the same was informed to the AO who considered this information and formed a reasonable belief that income of the assessee company for relevant assessment year has escaped assessment within the meaning of Section 147 of the Act. He relied on the decision of the Hon'ble Delhi High

Court in the case of *Aravali Infrapower Ltd. vs. DCIT* reported in [2017] 390 ITR 456 (Delhi) and submitted that under same circumstances the Hon'ble Delhi High Court upheld the re-opening of assessment and vehemently contended that there was application of mind by the AO to the information received and that under law a reasonable belief is sufficient and that the escapement of the income need not be proved with evidence at the time of recording reasons for re-opening. He submitted that the re-opening of the assessment should be upheld and the matter may be remanded to the file of the Id. CIT(A) for fresh adjudication.

6. The Id. Counsel for the assessee on the other hand opposed this contention and submitted that the AO had given a notice to the assessee on 08.03.2017, which was received by the assessee on 17.03.2017. Calling for the explanation on the information received by the AO from the DDIT(Inv.) regarding the investment from M/s. Subhalaxmi Vanijya Pvt. Ltd. and submitted a reply was filed by the assessee on 28.03.2017 explaining the transactions with documentary evidences.

7. He submitted that the AO, without waiting for the reply of the assessee on 17.03.2017 sent proposals to the PCIT through the ACIT for approval for initiating proceedings u/s 148 of the Act. He pointed out that on 29.03.2017 the JCIT, Range-5, Kolkata "rejected" the proposal of the AO for re-opening of the assessment. He pointed out that the AO made two separate proposals dated 17.03.2017 & 27.03.2017 and hence the ACIT advised the AO not to make two separate proposals. He submitted that after the rejection of the proposal to re-open the assessment by the ACIT, it is not understood as to how the AO claims that the approvals were received from the JCIT as well as the PCIT for re-opening the assessment. He pointed out that the AO has not substantiated his statement with evidence. Thus, he submits that the re-opening of the assessment was made without obtaining proper approval as required u/s 151 of the Act. Further he referred to the copy of the approval received on 27.03.2017 which was placed at page 42-44 of the paper book and submitted that the JCIT has simply signed without recording any view on the proposal for re-opening of assessment and the PCIT in a mechanical manner signed below the rubber stamp with the remark "Yes I am satisfied". He submits that the satisfaction on the reasons recorded by the AO, on the fitness of the case for re-opening, as mandatorily required u/s 151 of the Act was not recorded by the PCIT/JCIT prior to the grant of the approval for re-opening of the assessment. He relied

on a number of case laws to the propositions that the re-opening is bad in law on such facts.

8. He further drew the attention of the Bench to the notice issued u/s 148 of the Act and submitted that it is not mentioned therein as which authority has granted the approval for re-opening of assessment u/s 151 of the Act. He relied on the decision of the Hon'ble Delhi High Court in the case of *SABH Infrastructure Ltd. vs. ACIT* reported in [2017] 398 ITR 198 (Delhi) and submitted that the guidelines laid down for the Hon'ble Court in such cases were not followed.

9. He further submitted that the objections to the re-opening assessment were for not disposed off prior to framing of the assessment order, which makes the assessment bad in law. He also argued that the AO did not apply his mind independently to the information received from the Investigation Wing of the Department and had in a mechanical manner recorded reasons on borrowed satisfaction and re-opened the assessment. He relied on the order of the Id. CIT(A) and submitted that the same be upheld. He relied on a number of case laws and also filed written submissions.

10. The Id. DR, on the other hand, in his reply submitted that the very fact that the JCIT had at one stage rejected the proposal for re-opening demonstrates that there was application of mind prior to grant of approval. He submitted that this is a case of transfer of funds through layering and on investigation the same was found out by the Investigation Wing and based on these results, the AO, after being satisfied that income subject to tax had escaped assessment had re-opened the assessment. He prayed that the order of the Id. CIT(A) be reversed and that of the AO restored.

11. Rival contentions heard. On a careful consideration of the facts and circumstances of the case, perusal of the papers on record and case laws cited, we hold as follows.

12. The reasons recorded are extracted for ready reference:

The AO recorded the following reasons on 17.03.2017:

"An information has been received through which it appears that there are cash deposits in number of bank accounts followed by transfers of funds to number of accounts of ICICI Bank, Kolkata and also other banks. Prima facie from the pattern of transaction it appears that cash have been deposited to obtain cheques by the beneficiary companies. The trail of transactions suggests that there is a deposit of cash in the accounts of individuals followed by transfer of funds to various private companies i.e. in 2nd or 3rd layer or even 4th layer.

From the submission & bank statements prima facie following observations have been made in regard to the fund transfer of the companies.

Cash Deposits	Party Name
Rs.63,00,000 & Rs. 71,00,000	Sambuddha Tracon Pvt. Ltd.

Under the above factual circumstances, it is imperative on the part of the undersigned to verify the source of the said huge investment which remained unexplained and may lead to a case of income escaping assessment in the hands of the assessee company."

The AO again recorded the fresh reasons on 27.03.2017 as follows:

"An information is in the possession of the department from which it appears that there are cash deposits in number of bank accounts followed by transfers of funds to number of accounts of ICICI Bank, Kolkata and also other banks. From the pattern of transaction it appears that cash have been deposited to obtain cheques by the beneficiary companies. The trail of transactions suggests that there is a deposit of cash in the accounts of individuals followed by transfer of funds to various private companies i.e. in 2nd or 3rd layer or even 4th layer.

It is further revealed from the investigation conducted by ITO(Inv.), Unit-1 & AIU, Kolkata that MZs. Sambhudha Tracon Private Limited is the ultimate beneficiary company and has routed its unaccounted money through various parties in lieu of commission, which are only the paper/jamakharchi companies.

From the submission & bank statements following observations have been made in regard to the fund transfer of the companies.

A/C. No & Name of the A/c. holder	Bank name & branch	Cash deposited	Beneficiary
000605017752 M/s. Suhhalaxmi Vanijya Pvt. Ltd.	ICICI, Kolkata - 700001	Rs. 75,00,000/-	M/s. Sambhudha Tracon Private Limited
000605004447 Tapan Trading Pvt. Ltd.	ICICI. Kolkata - 700001	Rs. 6,00,000/-	M/s. Sambhudha Tracon Private Limited
000605019266 Trishna Distributors	ICICI. Kolkata - 700001	Rs. 25,00,000/-	M/s. Sambhudha Tracon Private Limited
000605018629 Hemlata Creation Pvt. Ltd.	ICICI. Kolkata - 700001	Rs.2,80,00,000/-	M/s. Sambhudha Tracon Private Limited
000605019532 Bandana Vyapaar Pvt. Ltd.	ICICI, Kolkata - 700001	Rs.83,00,000/-	M/s. Sambhudha Tracon Private Limited
00060518954 Mohit Textile	ICICI Bank A/c, Kolkata	Rs.2,81,24,050/-	M/s. Sambhudha Tracon Private Limited
0006050004448 Sri Biswajit Mukherjee	ICICI Bank A/c, Kolkata	Rs. 63,00,000/-	M/s. Sambhudha Tracon Private Limited
000605017752 M7s Subhlakshmi Vanijya Pvt Ltd	ICICI Bank A/c, Kolkata	Rs. 71,00,000	M/s. Sambhudha Tracon Private Limited
		Rs. 8,84,24,050/-	

In this regard assessee's submission dated 28-03-2017 are not properly explained in respect of the source of the investment.

Under the above circumstances, I have reason to believe that income of MZs Sambudha Tracon Pvt Ltd during the FY 2009-10 relevant to AY 2010-11 has escaped assessment within the meaning of section 147 of the Act."

13. A perusal of these reasons recorded on both these dates demonstrate that, the AO has relied only on the information furnished by the DDIT(Inv.).

14. Both on 17.03.2017 and on 27.03.2017, the AO sends separate proposals to the JCIT requesting for approval for re-opening of the assessment. The JCIT, Range-5, Kolkata vide his letter dated 29.03.2017 rejected the proposals dated 17.03.2017 and 28.03.2017 of re-opening of assessment. He also directed the AO to consider the reply of the assessee. He directed the AO not to send two separate proposals. Vide this letter dated 27.03.2017 by the ITO to the PCIT-2 bearing reference No. Ward-5(2)/Kolkata/147/2016-17/2667 speaks of approval by both, the JCIT, Range-5, Kolkata as well as the PCIT-2, Kolkata. These discrepancies could not be explained by the ld. DR.

15. Be it as it may it is absolutely clear that the objections raised by the assessee to the reasons recorded for re-opening and the re-opening itself vide its letter dated 22.11.2017 and 24.11.2017 were not disposed off by the AO. Thus the completion of assessment without disposal of these objections, makes the assessment bad in law as held in the case of *Rabo India Finance Ltd. vs. DCIT [2012] 346 ITR 528 (Bombay)* and in the case of *Vishwanath Engineers vs. ACIT [2013] 352 ITR 549 (Gujarat)*. Thus this finding of the ld. CIT(A) has to be upheld.

16. Even otherwise Section 151 of the Act mandates recording of satisfaction by the approving authority. In this case the satisfaction was mechanical and in fact a rubber stamp was used to state "Yes I am satisfied". Thus the assessment is bad in law for want of recording proper sanction u/s 151 of the Act as held in the following case laws:

- i. Hon'ble Apex Court in the case of *Chhugamal Rajpal* reported in [1971] 79 ITR 603 (SC).
- ii. Hon'ble High Court of Madhya Pradesh in the case of *CIT vs. S. Goyanka Lime & Chemicals Ltd.* reported in [2015] 56 taxmann.com 390 (Madhya Pradesh).
- iii. *Arjun Singh vs. Asstt. Director of Income-tax* [2000] 246 ITR 363 (MP).
- iv. Hon'ble Delhi High Court in the case of *PCIT vs. N.C.Cables Pvt. Ltd.*
- v. Hon'ble Jodhpur Tribunal in the case of *M/s. Vinod Commodities vs. ACIT.*

17. Even otherwise we find that the AO has not applied his mind to the information received from the Investigation Wing of the Department. He re-opened based on borrowed satisfaction. The assessee had no transaction with M/s. Mohit Textiles. The ld. CIT(A) held as follows:

"The assessee had no transactions with M/s Mohit Textiles and Sri Biswajit Banerjee. Further, only a sum of Rs.75,00,000/- was received from Subhalaxmi Vanijya Pvt. Ltd and not Rs.75,00,000/- plus Rs.71,00,000/- as stated in the reasons recorded. As such, the following amounts was not received by the assessee in the current year:

1. M/s Mohit Textile	Rs.2,81,24,050/-
2. Sri Biswajit Mukherjee	Rs.63,00,000/-
3. Subhalaxmi Vanijya Pvt. Ltd.	Rs.7100.000/-
	Rs.4,15,24,050/-

The learned AO has not conducted even preliminary enquiry/verification, post receiving of the information from outside sources, to identify the date and the amount of credit in the Bank A/c of the assessee company before forming his requisite "reason to believe" that income of the assessee to the tune of Rs.8,84,24,050/- has escaped assessment in the current year. He has not pointed out the basis as to how information received from the Investigation Wing leads to the inference that the income of the assessee has escaped assessment in the present case. In the reasons recorded, he has merely quoted the information received from outside sources without conducting even preliminary enquiry or verification. Date of receipt of funds was not mentioned in the reasons recorded. The trail of cash transactions which the learned AO is referring to in the reasons recorded was not annexed with the reasons recorded."

18. These findings could not be controverted; hence such re-opening based on incorrect, incomplete and vague facts is bad in law as held in the following case laws:

- i. Hon'ble jurisdictional Tribunal of Kolkata in ITA No. 660/Kol/2011 for AY 2002-03 in the case of *DCIT vs. Great Wall Marketing (P) Ltd.*
- ii. The Hon'ble Apex Court in case of *ITO vs. Lakhmani Merwal Das* [1976] 103 ITR 437.
- iii. *PCIT vs. Meenakshi Overseas Pvt. Ltd. (Del HC).*
- iv. Hon'ble Delhi Court in the case of *Sarthak Securities Co. Pvt. Ltd. vs. ITO* (2010) 329 ITR 110.
- v. *United Electrical Co. (P) Ltd. vs. Commissioner of Income-tax* (2002) 178 CTR 192.

19. Thus for all these reasons we have no other alternative but to uphold the finding of the ld. CIT(A) that re-opening of assessment in this case was bad in law.

20. In the result, the appeal of the Revenue is dismissed.

Kolkata, the 14th August, 2020.

Sd/-
[Aby T. Varkey]
Judicial Member

Sd/-
[J. Sudhakar Reddy]
Accountant Member

Dated: 14.08.2020
Bidhan

Copy of the order forwarded to:

1. ***DCIT, Circle-5(1), Kolkata.***
2. ***M/s. Sambuddha Tracon Pvt. Ltd., 7A, Bentinck Street, 2nd Floor, Room No. 217, Dalhousie, Kolkata-700 001.***
3. CIT(A)-2, Kolkata. (sent through mail)
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata. (sent through mail)

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches