

**IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'SMC' KOLKATA  
[BEFORE SHRI J. SUDHAKAR REDDY, HON'BLE ACCOUNTANT MEMBER]  
[THROUGH VIRTUAL COURT]**

**I.T.A. No. 2366/Kol/2019**

Assessment Year: 2011-12

**Ram Awatar Dhoot.....Appellant**  
**29B, Rabindra Sarani, 3<sup>rd</sup> Floor,**  
**Kolkata – 700 073..**  
**[PAN: ADEPD 7419 F]**

**VS.**

**ITO, Ward – 22(4), Kolkata .....Respondent**  
**54/1, Rafi Ahmed Kidwai Road,**  
**Kolkata – 700 016.**

**Appearances by:**

*Shri Ram Awatar Dhoot, AR appearing on behalf of the Assessee.*

*Shri Jayanta Khanra, JCIT, Sr. DR appearing on behalf of the Revenue.*

Date of concluding the hearing : April 7<sup>th</sup>, 2021

Date of pronouncing the order April 21<sup>st</sup>, 2021

**ORDER**

This is an appeal filed by the assessee directed against the order of Learned Commissioner of Income Tax (Appeals) – 6, Kolkata [hereinafter the “CIT(A) passed u/s 250 of the Income Tax Act, 1961 (the ‘Act’), dated 23.10.2019 for the Assessment Year 2011-12.

2. The assessee challenges the validity of reopening of assessment u/s 147 of the Act.

3. I have heard rival contentions. On a careful consideration of the facts and circumstances of the case, perusal of the papers on record and the case law cited, I hold as follows.

4. The reasons for reopening of the assessment as follows:

*“On perusal of the information received from the office of DDIT(Inv.)-Unit-3(1), Kolkata and the return of income filed by you for A.Y. 2011-12, it is evident that during the F.Y. 2010-11 relevant to the A.Y. 2011-12, you had*

*purchased/sold through NMCE earning a profit of Rs. 2,30,400/-. You have not shown any income/loss on the above trading in your return of income. The platform of the NCME was used by you through the broker Jet Air Agencies Pvt. Ltd. (Broker Code No. – CL0146) for earning the above profit. As per information available with the Department, the aforesaid trading was pre-arranged in nature and there was a meeting of minds between the trading entities while conducting the said trade through NMCE”.*

5. A perusal of the same demonstrates that there is a factual error in the reasons recorded. The assessee had received Rs. 2,97,469.97/- from Jet Air Agencies Pvt. Ltd. The amount of Rs. 2,30,400/- is part of this amount. Thus these transactions as well as the income therein was reflected in the accounts of the assessee as well as in the return of income filed by it.

6. It is factual incorrect to record in the reasons for reopening that income liable to tax as escaped assessment. The assessee had brought this factual inaccuracy to the notice of the Assessing Officer vide letter dated 23.08.2018. There is no reply by the AO to this letter. The objections were not disposed off. Non-disposal of objections to reopening of assessment render the assessment bad in law. Hence, the reopening is bad in law. Thus I quash the assessment order and allow the appeal of the assessee.

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

Order Pronounced in the Open Court on 21<sup>st</sup> April, 2021.

Sd/-

(J. SUDHAKAR REDDY)  
ACCOUNTANT MEMBER

**Dated: 21/04/2021**  
Biswajit, Sr. PS

Copy of order forwarded to:

1. Ram Awatar Dhoot, 29B, Rabindra Sarani, 3<sup>rd</sup> Floor, Room No. 10E, West Bengal – 700 073.
2. ITO, Ward – 22(4), Kolkata.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Assistant Registrar/DDO  
ITAT, Kolkata