

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA**

Before

SRI MANISH BORAD, ACCOUNTANT MEMBER

&

SRI SONJOY SARMA, JUDICIAL MEMBER

I.T.A. No.: 326/Kol/2022

Assessment Year: 2008-09

Konark Agency Pvt. Ltd.....Appellant
[PAN: AADCK 0561 G]

Vs.

ITO, Ward-4, Kolkata.....Respondent

Appearances by:

Sh. Somnath Ghosh, Adv., appeared on behalf of the Assessee.

Sh. Subhrajyoti Chakraborty, Addl. CIT(D/R), appeared on behalf of the Revenue.

Date of concluding the hearing : July 12th, 2022

Date of pronouncing the order : September 28th, 2022

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short "AY") 2008-09 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the "Act") by ld. Commissioner of Income-tax (Appeals)-2, Kolkata [in short ld. "CIT(A)"] dated 02.03.2017 which is arising out of the assessment order framed u/s 147/144 of the Act dated 28.01.2016.

2. The assessee is in appeal before this Tribunal raising the following grounds:

“1. FOR THAT the Ld. Commissioner of Income Tax (Appeals)-2, Kolkata failed to appreciate that none of the conditions precedent existed and/or have been complied with and/or fulfilled by the Ld. Income Tax Officer, Ward 4(4), Kolkata for his assumption of jurisdiction u/s. 147 of the Income Tax Act, 1961 and the alleged assessment order dated 28-01-2016 passed u/s. 147/144 of the Act in pursuance to the impugned notice dated 30-03-2015 issued u/s. 148 of the Act is therefore *ab initio* void, *ultra vires* and null in law.

2. FOR THAT on a true and proper interpretation of the scope and ambit of the provisions of s. 147 of the Income Tax Act, 1961, the Ld. Commissioner of Income Tax (Appeals)-2, Kolkata was absolutely in error in upholding the action of the Ld. Income Tax Officer, Ward 4(4), Kolkata of issuing notice u/s. 148 of the Act without adducing any tangible material on record in support of such illegitimate exercise and the purported conclusion reached on that behalf is utterly unsubstantiated, unauthorized, and unsound in law.

3. FOR THAT the spurious action of the Ld. Commissioner of Income Tax (Appeals)-2, Kolkata in upholding the initiation of proceedings u/s. 147 of the Income Tax Act, 1961 by the Ld. Income Tax Officer, Ward 4(4), Kolkata without any proper application of mind on the specious information received from A.C.I.T., Central Circle 3(1), Kolkata is invalid for want of jurisdiction since the pre-conditions for initiation of the impugned proceedings as stipulated therein are not fulfilled in the circumstances of the case.

4. FOR THAT the Ld. Commissioner of Income Tax (Appeals)-2, Kolkata acted unlawfully in upholding the validity of notice u/s. 148 of the Income Tax Act, 1961 issued by the Ld. Income Tax Officer, Ward 4(4), Kolkata on 30-03-2015 without proper approval required u/s. 151 of the Income Tax Act, 1961 by Ld. Additional Commissioner of Income Tax, Range 4, Kolkata in the facts of the case and the purported action on that behalf is entirely opposed to law.

5. FOR THAT on a true and proper interpretation of the scope of the provisions of s. 68 of the Income Tax Act, 1961, the Ld. Commissioner of Income Tax (Appeals)-2, Kolkata was absolutely in error in upholding the specious addition of Rs. 28,00,000/- resorted to by the Ld. Income Tax Officer, Ward 4(4), Kolkata on account of alleged accommodation entries without considering the matter in the proper perspective and such spurious conclusion reached on extraneous considerations not germane to the issue in dispute is absolutely arbitrary, unwarranted, and perverse.

6. FOR THAT the Ld. Commissioner of Income Tax (Appeals)-2, Kolkata acted unlawfully in sustaining the purported addition to the tune of Rs. 28,00,000/- within the province of s. 68 of the Income Tax Act, 1961 made by the Ld. Income Tax Officer, Ward 4(4), Kolkata on account of alleged accommodation entries received by misreading the facts and circumstances of the instant case and the adverse conclusion reached on that behalf in violation of the statutory prescription is completely unfounded, unjustified, and untenable in law.

7. FOR THAT the specious approach of the Ld. Commissioner of Income Tax (Appeals)-2, Kolkata of misreading evidence, considering improper facts, failing to consider proper position in law and thus coming to an erroneous finding in sustaining the addition in the sum of Rs. 28,00,000/- made by the Ld. Income Tax Officer, Ward 4(4), Kolkata on the manifestly wrong application of the provisions of s. 68 of the Income Tax Act, 1961 basing on consideration not relevant to the issue is wholly illegal, illegitimate and infirm in law.”

3. Brief facts of the case are that the assessee is a private limited company. Loss of Rs. 6,809/- declared in e-return filed on 09.09.2008 for AY 2008-09. Subsequently, notice u/s 148 of the Act issued for the reasons stated in the letter dated 15.05.2015 on the basis of information received from ACIT, Central Circle-3(1), Kolkata in connection to a search carried out in some other case namely, Mr. Santosh Kumar Shah and during search Mr. Santosh Kumar Shah admitted of providing accommodation entries and also named the assessee company giving reference of Axis Bank account held in name of Konark Agency Pvt. Ltd. being used for providing accommodation entries. The assessee raised objection on this issue challenging the validity of notice but failed to succeed. Proceedings were carried out u/s 147 of the Act after issuance of notices u/s 143(2) & 142(1) of the Act.

3.1. During the course of reassessment proceedings, the assessee submitted that the bank account number given in the reasons

recorded is not the one held by the assessee and thus, the show cause notice should be dropped. However, Ld. AO mentioned that there was a clerical mistake while typing the bank account number. Subsequently, the assessee did not comply on the further date of hearing, the assessment order was framed u/s 144 of the Act and total of the credit entries in the alleged bank account at Rs. 28 lakh was added to the income of the assessee and income assessed at Rs. 27,93,931/-.

4. Aggrieved, the assessee preferred appeal before Ld. CIT(A) but failed to succeed. Now, the assessee is in appeal before this Tribunal raising various grounds which are mainly focused towards challenging the legality of the reassessment proceedings carried out and secondly on the merits of the case for the alleged addition of Rs. 28 lakh u/s 68 of the Act.

5. Ld. Counsel for the assessee vehemently argued referring to various details filed in the paper book containing 89 pages, referred to various decisions in support of its claim that the case was reopened beyond four years and no new material was found which the assessee had not disclosed in the regular return of income. Even on merits, it was submitted that during the year the assessee company took loan from Navneel Ispat Pvt. Ltd. for making certain investments and advanced the said sum to M/s. Shirin Commodeal Pvt. Ltd. but before the end of the year the loan amount advanced at Rs. 14 lakh was returned back and was, thereafter, repaid to Navneel Ispat Pvt. Ltd. and all the details have been filed to prove the identity, genuineness and creditworthiness of Navneel Ispat Pvt. Ltd. and M/s. Shirin Commodeal Pvt. Ltd.

and, therefore, addition u/s 68 of the Act at Rs. 28 lakh is uncalled for.

6. Per contra Ld. D/R vehemently argued supporting the orders of both the lower authorities.

7. We heard rival contentions and perused the records placed before us and carefully gone through the decisions referred by Ld. Counsel for the assessee. We will first take up the legal issue challenging the validity of reopening and carrying out of reassessment proceedings u/s 147 r.w.s. 148 of the Act.

8. We find that the instant appeal pertains to AY 2008-09. Show cause notice u/s 148 of the Act is dated 15.01.2016 which is beyond 4 years. Now, under these circumstances where the reopening has been done beyond 4 years, provisions of section 147 of the Act provides that *“where an assessment under sub-Section (3) of Section 143 or Section 147 of the Act has been made for the relevant assessment year, no action shall be taken u/s 147 of the Act after the expiry of 4 years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return u/s 139 of the Act or in response to a notice issued u/s 142(1) or Section 148 of the Act or to disclose fully and truly all material facts necessary for his assessment, for that assessment year.”*

9. Now, examining the facts in light of the above provisions so as to see whether the reassessment proceedings in question have been validly carried out or not, we find that the reasons for

reopening was a statement of one Mr. Santosh Kumar Shah who was subject to search and he stated that the bank account held with Axis Bank held under the name of the assessee i.e. Konark Agency Pvt. Ltd. has been used for providing accommodation entry. Based on this information, the case of the assessee has been reopened and on non-furnishing of the details as called for during the assessment proceedings the total of the credits in the bank account held with the Axis Bank account no. 191010200008556 of Rs. 28 lakh have been added u/s 68 of the Act.

10. Now, we find that the assessee has filed the return of income u/s 139 of the Act on 09.09.2008. In this return, the assessee has provided the details of the bank account held by it with Axis Bank in Schedule 'BA' of the ITR-6. Company's financial statements are audited. The bank balance shown in the audited balance sheet as on 31.03.2008 is 22,240.45. The copy of alleged bank account claimed by the Revenue to be involved in providing accommodation entry is placed at page 46 to 56 of the paper book. As on 31.03.2008 the bank balance of Axis Bank account no. 191010200008556 is Rs. 22,240.45. So, it is proved that the bank account which is alleged to be held for providing accommodation entry has already been disclosed in the regular books of account and the audited financial statements and a valid return u/s 139(1) of the Act has been filed. It is not the case where the assessee had not disclosed fully and truly all material facts in its income tax return. As the assessee has already disclosed the bank account and the transactions carried out therein the reopening of the assessment beyond 4 years cannot be held to be valid as the Ld. AO had no new information or detail which the assessee has not

disclosed fully and truly in its income tax return. Therefore, since the very basis of reopening of reason is not valid to carry out the reassessment proceedings, the same deserves to be quashed. We, therefore, hold that the reassessment proceedings carried out in the case of the assessee by issuance of notice u/s 148 of the Act dated 15.01.2016 are bad in law and, therefore, the assessment order framed u/s 147 r.w.s. 144 of the Act dated 28.01.2016 is quashed. All the legal grounds raised by the assessee in ground nos. 1, 2, 3 & 4 are allowed.

11. As far as the grounds raised on merit are concerned, since we have already quashed the reassessment proceedings, dealing with the grounds on merit will be merely academic in nature. We, therefore, dismiss the grounds raised on merit in ground nos. 5, 6 & 7 as infructuous.

12. In the result, the appeal filed by the assessee is allowed as per terms indicated hereinabove.

Kolkata, the 28th September, 2022.

Sd/-

[Sonjoy Sarma]
Judicial Member

Dated: 28.09.2022

Bidhan (P.S.)

Sd/-

[Manish Borad]
Accountant Member

Copy of the order forwarded to:

- 1. Konark Agency Pvt. Ltd., C/o. S.N. Ghosh & Associates, Advocates, 2, Garstin Place, 2nd Floor, Suite No. 203, Off Hare Street, Kolkata-700 001.**
- 2. ITO, Ward-4, Kolkata.**
3. CIT(A)- 2, Kolkata.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata