

**आयकर अपीलीय अधिकरण, कोलकाता पीठ “बी”, कोलकाता**

**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA**

श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्यके समक्ष

[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

**I.T.A. No. 2184/Kol/2019**

**Assessment Year: 2011-12**

M/s Sakaar Commercial Pvt. Ltd. (PAN: AAJCS 4913 N)	Vs.	ITO, Ward-13(4), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	01.12.2022
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	21.12.2022
For the Appellant/ निर्धारिती की ओर से	Shri Somnath Ghosh, Advocate
For the Respondent/ राजस्व की ओर से	Smt. Ranu Biswas, Addl. CITDR

**ORDER / आदेश**

**Per Rajesh Kumar, AM:**

This is the appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-5, Kolkata (hereinafter referred to as the Ld. CIT(A)”) dated 25.06.2019 for the AY 2011-12.

2. Though the Registry has pointed out that the appeal is time barred, however, in view of the decision of the Hon’ble Supreme Court in Miscellaneous Application No. 665 of 2021 in SMW(C ) No. 3 of 2020, the period of filing appeal during the COVID-19 pandemic is to be excluded for the purpose of counting the limitation period. In view of this, the appeal is treated as filed within the limitation period.

3. The assessee has challenged the order of Ld. CIT(A) on merit as well as on legal issue. The assessee has raised legal issue vide application dated 30.08.2022 which is extracted as under:

*“For that the Ld. Commissioner of Income Tax (Appeals)-5, 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-13(4), Kolkata for his assumption of jurisdiction u/s 147 of the Income Tax Act, 1961 in the instant case and the alleged assessment order dated 27.12.2018 passed u/s 137/143(3) of the Act in pursuance to the impugned notice dated 29.03.2018 issued u/s 148 of the Act is therefore ab initio void, ultra vires and null in law.”*

4. The Ld. A.R. submitted before the Bench that the issue raised in additional grounds of appeal is emanating out of facts and record as available in the assessment folder and no new facts are required to be verified. Besides the Ld. A.R submitted that the issue raised by the assessee is a purely of legal nature which can be raised at any stage in the appellate proceedings. The Ld. A.R. therefore prayed the same may kindly be admitted.

5. The Ld. D.R. on the other hand strongly opposed the admission of additional grounds by stating that this was being raised for the first time before the tribunal.

6. After hearing the rival contentions and perusing the material on record, we find that the issue of initiation of proceedings u/s 147 of the Act by the AO has been challenged by raising an additional ground qua which all the facts are available on record and none of the facts are required to be verified at the end of the AO. We find merit in the contentions of Ld. A.R. that the legal issue can be raised at any appellate stage and accordingly we are inclined to admit the same for adjudication.

7. The Ld. Counsel for the assessee referred to the reasons recorded u/s 148(2) of the Act and submitted that in the reason recorded, the AO referred to the transactions in the bank account of the third party and no where the AO has recorded satisfaction/conclusion that income of assessee has escaped assessment. The Ld. A.R therefore submitted that these are only surmises and presumption on the part of the income and nowhere reason to believe has been recorded qua escaped income. The Ld.

A.R. submitted that in absence of proper reasons or satisfaction being recorded by the AO, the reopening is bad in law and so is the consequent order. In defense of his arguments the Ld. A.R relied on the decision of Hon'ble Supreme Court in the case Sheo Nath Singh vs. Appellate Assistant Commissioner of Income Tax reported in [1971] 82 ITR 147 (SC) and also the decision of Co-ordinate Bench of Gauhati in the case of MLB Commercial Pvt. Ltd. vs. ITO in ITA No. 459/Gau/2019 for AY 2011-12 dated 19.03.2021. The Ld. A.R submitted that in both the above decisions, the issue has been decided in favour of the assessee on the ground of reopening where the AO has not recorded any satisfaction as to the income escaping the assessment. The Ld. Counsel for the assessee also took the alternative plea that AO has recorded reason on borrowed satisfaction as there is no live link between the material received by the O and the reasons recorded. The Ld. A.R. submitted that the reopening of case on borrowed satisfaction is also bad and can not be sustained as has been held by the Hon'ble Delhi High Court in the case of PCIT vs. Meenakshi Overseas Pvt. Ltd. reported in [2017] 82 taxmann.com 300 (Delhi).

8. The Ld. D.R. on the other hand relied heavily on the order of Ld. CIT(A) and AO by submitting that the reopening was made after receipt of information that the assessee is beneficiary of Rs. 10,00,000/- received from Surya Commotrade Pvt. Ltd. through its bank account which is a layered company and the assessee is beneficiary of loan provided by the said company. The Ld DR contended that the AO had tangible material before him on the basis of which the reasons were recorded validly. The Ld DR therefore prayed the additional ground raised by the assessee may kindly be dismissed.

9. We have heard the rival submissions and perused the material on record and the reason recorded u/s 148(2) of the Act a copy of which is placed at page 28 of PB. We find from the perusal of the reasons that AO has simply discussed the issue that information was received from ADIT (Inv), Unit-4(1), Kolkata vide letter dated 26.03.2018 and the fact that the assessee has received Rs. 10,00,000/- from Surya

Commotrade Pvt. Ltd. through its bank account. We note that the AO has discussed in reason the transaction in the bank account of third party and no where recorded a satisfaction that the amount which is received by the assessee of Rs. 10,00,000/- has escaped assessment. Thus, we find merit in the contentions of the Ld. A.R. that reason recorded are based upon presumption and surmises without recording a clear cut finding as to escapement of income. The case of the assessee finds support from the decision of Co-ordinate Bench of Gauhati in the case of MLB Commerical Pvt. Ltd. (supra). The operative part is reproduced as under:

*“8. I have heard the rival contentions and gone through the records. In this case as noted above, the Assessing Officer received some information from the Investigation Wing that the assessee had brought back some unaccounted income to the tune of Rs.4,00,000/- through shell companies. However, which were those shell companies has not been mentioned in the reasons recorded. The ld. AR has pointed out that the assessee during the year did not get any profit on the alleged shares held/sold by him. The shares were sold by the assessee at cost price, therefore, there was no question of routing any unaccounted income by way of share profit. A perusal of the reasons recorded reveals that the Assessing Officer did not correlate the information received by him from the Investigation Wing with the Income-Tax Return/accounts of the assessee. He reopened the assessment on the basis of borrowed satisfaction without verifying about the genuineness of the information received. Such an information from Investigation Wing may give the Assessing Officer the reasons to suspect, but the same does not constitute reasons to believe, until and unless the Assessing Officer satisfies himself about veracity of the information received from the Investigation Wing so as to form the belief that the income of the assessee for the year under consideration has escaped assessment. The necessary ingredients of forming belief by the Assessing Officer of escapement of income are missing in this case. Therefore, the reopening of the assessment being bad in law, the assessment order is quashed. The consequential additions made by the Assessing Officer are accordingly ordered to be deleted.”*

Similarly we note that there is no application of mind by the AO to the information received and whatever has been supplied to the AO has been taken as it is without any independent application of mind by AO and thus AO has failed to demonstrate any live link between the material received and formation of reason to believe that income had escaped assessment. The case of the assessee find support from the decision of Delhi High Court in the case of Meenakshi Overseas Pvt. Ltd. (supra) wherein it has been held that where there is no independent application of mind by the AO to tangible material and conclusion of AO was reproduction of the investigation report, reasons failing to demonstrate link between tangible material and formation of reason to believe that income has escaped assessment , the reassessment is unjustified.

*I.T.A. No. 2184/Kol/2019*  
*Assessment Year: 2011-12*  
*M/s Sakaar Commercial Pvt. Ltd.*

In view of the legal proposition as discussed above, we are inclined to quash the reopening of assessment order for the reasons of non-recording of any reason to believe and re-opening the case on borrowed satisfaction.

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

Order is pronounced in the open court on 21<sup>st</sup> December, 2022

Sd/-  
 (Sonjoy Sarma /संजय शर्मा)  
 Judicial Member/न्यायिक सदस्य

Sd/-  
 (Rajesh Kumar/राजेश कुमार)  
 Accountant Member/लेखा सदस्य

Dated: 21<sup>st</sup> December, 2022

*SB, Sr. PS*

Copy of the order forwarded to:

1. Appellant- M/s Sakaar Commercial Pvt. Ltd., 106, Girish Ghosh Road, Belurmath, Howrah-711202.
2. Respondent – ITO, Ward-13(4), Kolkata
3. Ld. CIT(A)-5, Kolkata (Sent through e-mail)
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar  
 ITAT, Kolkata Benches, Kolkata