

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'ए', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री मनीष बोरड, लेखा सदस्य के समक्ष

Before Shri Sanjay Garg, Judicial Member and Dr. Manish Borad, Accountant Member

I.T.A Nos.431 & 432/Kol/2022
Assessment year: 2010-11

Jagdamba Ispat Pvt. Ltd.....Appellant
Room No.A, 1st Floor,
1C, Jorabagan Street, M.D. Road,
Kolkata-700006.
[PAN: AABCJ4827C]

vs.

ITO, Ward-3(3) , Kolkata.....Respondent

Appearances by:

Shri A. K. Tibrewal, FCA and Amit Agrawal, Advocate, appeared on behalf of the appellant.

Shri Vijay Kumar, Addl. CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : November 29, 2022

Date of pronouncing the order : January 10, 2023

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The captioned two appeals have been preferred by the assessee against the separate orders both dated 31.05.2022 of the National Faceless Appeal Centre [hereinafter referred to as the 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act'). ITA No.431/Kol/2022 is against the confirmations of quantum additions made by the Assessing Officer, whereas, the ITA No.432/Kol/2022 is against the confirmation of penalty levied u/s 271(1)(c) of the Act which in consequential of the aforesaid quantum addition made by the Assessing Officer and confirmed by the CIT(A). We, therefore, firstly take up the assessee's appeal relating to the quantum additions.

2. **ITA No.431/Kol/2022** - The assessee in this appeal has taken the following grounds of appeal:

“1. That the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, erred in dismissing the appeal filed by the Appellant Assessee Company without allowing proper and reasonable opportunity of hearing.

2 That the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre erred in passing the impugned order dated 31st May 2022 without considering the materials available on assessment records of the Appellant Assessee Company which inter alia included documents, explanations and objections furnished by the Appellant Assessee Company in course of the assessment proceedings.

3 That the Ld. Commissioner of Income Tax (Appeals) erred in dismissing the appeal filed by the Appellant Assessee Company against the assessment order passed under section 143(3) read with section 147 of the Act when the reopening proceedings initiated in the instant case was without jurisdiction, illegal and void ab initio.

4. That there being no satisfaction of escapement of income recorded in the reasons and/or the reasons were recorded based on assumption of incorrect facts, the Ld. Commissioner of Income Tax (Appeals) erred in dismissing the appeal confirming the addition of Rs.25,00,000.

5 That the Ld. Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs.25,00,000 made by the Assessing Officer alleging bogus accommodation entry received by the Appellant Assessee Company from M/s Stepan Commotrade Pvt. Ltd. whereas the reasons were recorded for alleged accommodation entry received from M/s Ideal Commosale Pvt. Ltd.

6. That the impugned order passed by Ld. Commissioner of Income Tax Appeal is liable to be set aside on the facts and circumstances of the case.”

3. A perusal of the above grounds of appeal would show that the assessee mainly has contested the reopening of the assessment u/s 147 of the Act on the ground that the Assessing Officer did not have valid reason to believe that the income of the assessee has escaped assessment.

4. At the outset, the ld. counsel for the assessee has invited our attention to the impugned reasons recorded by the Assessing Officer for reopening of the assessment, the contents of which are reproduced as under:

Office Of The I.T.O., Ward-3(3), Kolkata, Aayakar Bhawan,
4" Floor, P-7, Chowringhee Square, Kolkata-700 069.

F.NO:-ITO/WARD-3(3)/Ko/AABCI4827C/2017-18/207 Date: 10.08.2017

To
The Principal Officer,
M/s JAGDAMBA ISPAT PVT. LTD.
1C, JORABAGAN STREET,
ROOM NO. A, 1' FLOOR,
Kolkata-700 006.

Sub:- Furnishing reason for initiating of proceedings u/s 147/u/s148 of the 1.T.Act 1961, in the case of M/s.JAGDAMBA ISPAT PVT. LTD.

PAN:- AABCJ4827C for the A.Y. 2010-11:- Matter reg.

Ref:- Your letter dated 10.08.2017.

Sir,

With reference to your aforesaid letter, I would like to state that your case for the A.Y. 2010-11 has been re-opened u/s 147 of the 1.T.Act, 1961, and notice u/s 148 of the I.T. Act was issued and duly served upon you. In compliance to notice you have filled your I.T. return for the A.Y. 2010-11 on 13.07.2017. As desired by you, I am furnishing the reason records for initiating proceedings for re-opening your case for the A.Y., 2010-11 which is as under:

"Information was received from the DIT (Inv.) Kolkata that during the A.Y. 2010-11, assessee received total of Rs. 25,00,000/- from the Kotak Mahindra Bank account no.518011047214 maintained by a jamakharchi company M/s Ideal Commosale Pvt. Ltd. The promoter of this jamakharchi company admitted in his statement on oath that this is bogus accommodation entry given to assessee and undisclosed. income/money of assessee has been routed through his jamakharchi company and was deposited in bank account of assessee."

You are therefore, requested to file your explanation if any with supporting evidences in respect of transaction made by you. You are also requested to produce all the details like books of accounts, bills/vouchers, bank statements in original of Kotak Mahindra Bank account no.518011047214.

Thanking you.

*Yours faithfully,
(S. K. SINGH)
ITO WARD 3(3)/KOLKATA*

4. A perusal of the above reasons recorded would show that the Assessing Officer formed his belief that income of the assessee has escaped assessment solely on the basis of the information received from DIT(Inv.), Kolkata, whereby, it was pointed out that the assessee has received an accommodation entry of Rs.25,00,000/- from M/s Ideal Commosale Pvt. Ltd.. In reply of the aforesaid show cause notice issued by the Assessing Officer, the assessee replied that the aforesaid reasons recorded by the Assessing Officer were factually incorrect as the assessee did not receive any payment either by way of loan or share capital from M/s Ideal Commosale Pvt. Ltd. during the year under consideration. It was, therefore, requested that the reasons recorded were factually incorrect and that the proceedings u/s 148 of the Act be withdrawn. However, the Assessing Officer proceeded to frame the assessment. The ld. counsel has further invited our attention to the impugned assessment order that there is no mention in the impugned assessment order about any receipt of money by the assessee from the alleged company namely M/s Ideal Commosale Pvt. Ltd. Rather in the assessment order, the Assessing Officer has made the addition in respect of transaction done with some other company M/s Stepan Commotrade Pvt. Ltd. The ld. counsel, in this respect, has submitted that before proceeding to reopen

the assessment, the Assessing Officer is required to have reasonable belief that the income of the assessee has escaped assessment. That such a belief is to be formed by the Assessing Officer after due application of mind. That the reopening cannot be done on the basis of borrowed belief or satisfaction of third party. Such a reopening based on factual incorrect facts was liable to be quashed. The ld. counsel, in this respect, has relied upon the following case laws:

- a) Vishal Aggarwal vs. Income Tax Officer, Ward -23(3), New Delhi ITA No. 125/De1/2020- Delhi ITAT Judgement dated 14.09.2022
- b) Giraben Atulbhai Shah vs. ACIT, Ahmedabad R/Special Civil Application No. 26 of 2022 (Judgement of Hon'ble Gujarat High Court dated 28.01.2022)
- c) Narendrakumar Mansukhbhai Patel vs. Income Tax Officer [2018] 92 taxmann.com 259 (Gujarat) (Judgement dated 07.02.2018)
- d) PCIT V. M/s Coal Sale Co. Ltd. ITAT/71/2022 : IA No. GA/1/2022 (Judgement of Calcutta High Court dated 29th July 2022)
- e) Ankita A. Choksey vs. Income Tax Officer [Writ Petition No. 3344 of 2018 (Judgement of Bombay High Court dated 10th January 2019)]
- f) M/s Mono Orion Food India Pvt. Ltd. [ITA Nos. 2000 & 2001/Kol/2018 (Judgement dated 04.12.2019)]
- g) ACIT Vs. M/s Rakhi Properties and Leasing Pvt. Ltd. [ITA No. 947/Mum/2021 (Judgement dated 10.03.2022)]
- h) D. R. Patnaik vs. CCIT [2022] 141 taxmann.com 81 (Orissa) - Judgement dated 02.05.2022

5. The ld. DR, on the other hand, has submitted that there was typographical mistake in the reason recorded in mentioning the name of the company from whom the assessee allegedly received bogus accommodation entry. That the assessee did not appear before the Assessing Officer, therefore, the Assessing Officer was justified in making the impugned addition.

6. We have heard the rival contentions and gone through the records. It has been held time and again that before proceeding to reopen the assessment u/s 147 r.w.s 148 of the Act, the Assessing Officer should have reasons to believe that the income of the assessee has escaped assessment. Such belief of the Assessing Officer should be based on his independent application of mind. However, as noted above, in this case, there was no independent application of mind by the Assessing Officer. The Assessing Officer just relied upon the factually incorrect report of the investigation wing and thereby proceeded to reopen the assessment without comparing and verifying the said report with the assessment records. Even the assessee also filed reply to the show cause notice that the reasons recorded were factually incorrect but the Assessing Officer ignored the said objections and proceeded to frame the assessment. Therefore, the reopening of the assessment based on factually incorrect reasons cannot be held to be valid. Even there is no independent application of mind by the Assessing Officer to form belief that the income of the assessee has escaped assessment. In view of this, the reassessment order passed by the Assessing Officer being passed on factually incorrect and invalid reasons is not sustainable in the eyes of law. Reliance, in this respect, can be placed on the decision of the Coordinate Bench of the Tribunal in the case of Vishal Aggarwal vs.

Income Tax Officer (supra) and of the jurisdictional Calcutta High in the case of PCIT V. M/s Coal Sale Co. Ltd. (supra). In view of this, the reassessment order passed by the Assessing Officer is hereby quashed.

7. **ITA No.432/Kol/2022** – This appeal is relating to the levy of penalty u/s 271(1)(c) of the Act which is based upon the additions made in reassessment order passed by the Assessing Officer u/s 143(3) r.w.s 147 of the Act dated 04.12.2017. As discussed above, since we have quashed the aforesaid reassessment order, therefore, the impugned penalty has no legs to stand and the same is accordingly ordered to be deleted.

8. In the result, both the appeals of the assessee are hereby allowed.

Kolkata, the 10th January, 2023.

Sd/-

[डॉक्टर मनीष बोरड /Dr. Manish Borad]

लेखा सदस्य /Accountant Member

Sd/-

[संजय गर्ग /Sanjay Garg]

न्यायिक सदस्य /Judicial Member

Dated: 10.01.2023.

RS

Copy of the order forwarded to:

1. Jagdamba Ispat Pvt. Ltd
2. ITO, Ward-3(3) , Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches