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. 120/Kol/2022
Assessment Year: 2012-13

Ajay Trading Company (PAN: AAEFA 5369 A)	Vs.	ACIT, Central Circle-3(2), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	15.12.2022
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	02.02.2023
For the Appellant/ निर्धारिती की ओर से	Shri SonjoyMody, FCA Shri AngimKashyapBezboruah, CMA Smt. Banjita Bhattacharya, Advocate
For the Respondent/ राजस्व की ओर से	Shri Vijay Kumar, Addl. CIT

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)-21, Kolkata (hereinafter referred to as the Ld. CIT(A)"] dated 31.12.2021 for the AY 2012-13.

2. The assessee has assailed the order of Ld. CIT(A) on legal issue as well as on merit as raised in the concised grounds of appeal filed by the assessee which are reproduced below:

1. That in absence of valid approval under section 151 of the Act, the reassessment proceeding initiated in the instant case is vitiated and bad in law.

2. That in absence of service of any notice under section 143(2) of the Act, the impugned order of reassessment is without jurisdiction and bad in law.

3. That as the very basis of issuance of notice u/s 148 has vanished in view of the subsequent remand report, the impugned order of assessment is liable to be quashed.

4. That the initiation of reassessment proceeding having been made on borrowed satisfaction and without satisfying the pre-requisite conditions of the law and on a vague and self-contradictory recorded reasons which contains various errors, inconsistencies and therefore, the impugned order of reassessment is bad in law.

5. That the initiation of re-assessment proceeding being barred by limitation provided under first proviso to section 147 of the Act, the impugned order of reassessment is bad in law.

6. That the objections to reopening of assessment having been rejected on extraneous grounds only, the same is bad in law and consequently, the impugned order is liable to be quashed.

7. That CIT(A) ought to have held that addition of Rs. 74,50,000/- being a part of money received from M/s. Rahul Enterprises by invoking provisions of section 68 is self-contradictory, unjustified, without jurisdiction and bad in law and hence, the same is liable to be deleted and consequently, the impugned order is liable to be cancelled.

3. First of all, we would like to decide the issues raised in ground no. 1, 4& 5 as stated above. Vide ground no. 1, the assessee has prayed before the Bench to quash the reassessment proceedings and consequent assessment order on the ground of invalid approval u/s 151 of the Act and the common issue raised in ground no. 4 & 5 is against the reopening of assessment on borrowed satisfaction without recording reason to believe by the AO on his own and also in view of the several error and mistakes being crept in the reasons recorded which showed complete non-application of mind by the AO as well as by the approving authority.

4. Facts in brief are that the assessee filed return of income on 26.09.2012 u/s 139(1) of the Act declaring total income of Rs. 1,44,44,160/-. A search action was

conducted on 8.1.2015 and consequent to the said search, the assessment was framed u/s 143(3) read with 153A of the Act vide order dated 26.12.2016 accepting the returned income of Rs. 1,44,44,160/-. Thereafter the case of the assessee was reopened u/s 147 of the Act by issuing notice u/s 148 of the Act dated 28.03.2019 after the AO received information from ITO(Inv), Unit-1, Kolkata on 8.3.2019. Pursuant to said information the assessment was reopened apparently after a period of four years from the relevant assessment year. Finally the assessment was framed by the AO u/s u/s 143(3) r.w.s. 147 of the Act vide order dated 31.12.2019 assessing the total income at Rs. 4,48,84,501/- by making various additions.

5. The Ld. CIT(A) simply dismissed the appeal of the assessee by holding the AO ,after due application of mind to the information received ITO(Inv), Unit-1, Kolkata on 8.3.2019,has come to the conclusion that income of the assessee has escaped assessment and accordingly dismissed all the legal issues raised by the assessee. The Ld. CIT(A) observed that it is not the case that the AO has received a vague and unclear information on the basis of which case of the assessee was reopened. The Ld. CIT(A) observed that the specific information has received and case was accordingly reopened and thus justified the reopening of assessment.

6. The Ld. A.R vehemently submitted before us that there is a complete non-application of mind to the information received by the AO from the Investigation Wing. The Ld. A.R. took us through the copy of reasons recorded by the AO ,which is filed at page 4 to 6 of PB and contended that a careful perusal of the reasons recorded by the AO u/s 148(2) of the Act revealed that there was complete non-application of mind by the AO and also that reasons were recorded in a mechanical and most casual manner as there were several factual mistakes committed by the AO in the reasons recorded. Referring to second part of the said reasons recorded , the Ld. A.R submitted that as per information received from ITO(Inv), Unit-1, Kolkata on 4.8.2019 in respect of M/s Ajay Trading Co. wherein it has been stated that M/s Rahul Enterprise is a sole proprietorship maintaining account no. 029005003254 opened in

August, 2017 in Faizabad Branch, UP. The Ld. A.R, while laying stress on the date of the opening of the bank account in August, 2017, submitted that instant assessment year involved in this case was AY 2012-13 whereas the AO has referred to the account opened by M/s Rahul Enterprises a sole proprietorship in August, 2017 which is totally and factually incorrect and wrong and can not have any bearing on the instant assessment year. Thereafter the ld. A.R. submitted that as stated hereinabove that M/s Rahul Enterprises, a sole proprietary concern has opened an account in Faizabad Branch of UP, however in para 4 at page 5 of the reasons recorded, the AO stated that M/s Rahul Enterprises's account No. 029003254 maintained with ICICI Bank, Kolkata which is again a contradiction when compared with Para 2 of the reasons recorded at para 4. Again on this page no. 5 in the table, the bank account was stated as 029005003254 maintained with ICICI Bank, Kolkata which is again in contradiction to what is mentioned above. The Ld. A.R therefore prayed that there is a complete non application of mind and casual approach on the part of the AO while recording the reasons as is apparent from the fact that even the bank account no. was wrongly mentioned and so much so that it was stated to be maintained in UP, Faizabad Branch whereas in the para 4, the AO stated that the account was maintained with ICICI Bank, Kolkata. The Ld. A.R. submitted that how the case of the assessee can be reopened on the basis of such reasons recorded by the AO which are brought with several infirmities and mistakes. The Ld. A.R. submitted that it is a case of complete non application of mind to the information received by the AO. The Ld. A.R argued that had the AO applied his mind while recording the reasons such mistakes would not have occurred in the reasons recorded. The Ld. A.R submitted that since the reasons were recorded in a very casual and vague manner and therefore the reassessment proceedings as well as the assessment framed are invalid as the AO cannot be allowed to unsettle the already finalized assessment in a casual and mechanical manner. The Ld. A.R. also argued that since the case of the assessee was reopened after a period of four year from the end of relevant assessment year, the approval was obtained from PCIT, Central-2, Kolkata. The ld AR referred to column no. 13 of the approval granted wherein it was stated that *"Yes, I am satisfied may be*

reopened". The Ld. A.R submitted that this showed that the Ld. PCIT has not satisfied himself with the reasons as proposed by the AO and has not even perused the reasons placed before him and simply accorded the approval without application of mind. Had the Ld. PCIT applied his mind to the reasons recorded, the factual mistakes as appearing in the reasons recorded would have been highlighted and corrected but in absence of any application of mind by Ld. PCIT also the reasons as placed before him by the AO were approved which showed blatant non-application of mind on the part of the Ld. PCIT too which is against the spirit of the provisions of the Act. The Ld. A.R. argued that the safeguards of obtaining approval from Ld. PCIT is provided in the Act so that the AO does not reopen the assessment on wrong information or without application of mind but the whole scheme as envisaged under the Act was proved unfruitful when the ld PCIT also accords approval in casual manner resulting into the case of the assessee being reopened in a manner which is not permissible under the Act. In defense of his arguments the Ld. A.R. relied on the following decisions:

i) Decision of Hon'ble Calcutta High Court in the case of *Harish Gangji Dedhiya vs. Union of India &Ors. In Writ Petition NO. 1065 of 2022 dated 29.03.2022*

ii) Decision of Hon'ble Delhi High Court in the case of *PCIT vs. M/s N.C. Cable Ltd. in ITA 335/1015 dated 11.01.2017*

iii) Decision of Co-ordinate Bench of Gauhati in the case of *M/s Royal Heritage Tripura Castle vs. ITO in ITA Nos. 470 & 471/Gau/2019 for AY 2014-15 & 2015-16 dated 15.12.2021.*

The Ld. A.R finally prayed that in view of the above , the reassessment proceedings as well as reassessment order passed u/s 147 may kindly be quashed in view of the ratio laid down in the aforesaid decisions as the reasons recorded were containing apparent mistakes which showed a complete non-application of

mind by the AO as well as by the Ld. PCIT. The Ld. A.R. argued that that AO has made merely acted on the borrowed satisfaction as there was no live link between the information received / material before the AO and the reasons recorded. The ld. A.R also argued that the case of the assessee was reopened after a period of four year from the end of relevant assessment year. The ld AR argued that in order to reopen the case u/s 147 of the Act after a period of four year where assessment has been framed u/s 143(3) of the Act, the AO has to satisfy the conditions as envisaged in first proviso to Section 147 of the Act. The proviso to Section 147 of the Act provides that reopening after a period of four years from the end of relevant assessment year where assessment has been framed u/s 143(3) can only be made , if escapement of income has taken place because of failure on the part of the assessee to disclose any material fact in the return of income or during the assessment proceedings but since this is not the case before us therefore on this account also the Ld. A.R prayed that reassessment may kindly be quashed . In defense of the arguments the Ld. Counsel relied on the decisions of various judicial forums, namely, i)*New Delhi Television Ltd. vs DCIT (116 taxmann.com 151) (SC), ii) CIT vs Multiplex Trading & Industries Company Ltd. (63 taxmann.com 170) (Delhi HC), iii) Hubtown Ltd. vs DCIT (74 taxmann.com 18) (Bom HC), iv) Dr. RajivrajRanbirsinghChoudharyvs ACIT (79 taxmann.com 152) (Guj HC)", v)Haldia Petrochemicals Ltd. vs. ACIT in ITA no. 2455/Kol/2019 for AY 2008-09 dated 24.03.2021.*The Ld. A.R. prayed that in view of the facts of the assesse and the ratio laid down in the decisions as placed before the bench the assessment proceedings as well as consequent assessment may kindly be quashed.

7. Per contra, the Ld. D.R while controverting the arguments of the Ld. A.R submitted that infirmities as pointed out by the Ld. A.R in the reasons recorded are just clerical mistakes and are not fatal to the proceedings initiated on the basis of valid and correct information received from ITO(Inv), Unit-1, Kolkata. The Ld. D.R submitted that though the account number as well as the Branch where the account was opened were wrongly mentioned in the first para at page 4 and page 5 at second

para and the date of reopening account was stated to be August, 2017 which apparently appears to be wrong as assessment year under consideration is AY 2012-13. However clerical mistakes are not substantive and fatal which renders the assessment proceedings as invalid as well as assessment on the issue of non-application of mind by the AO. The ld DR stated that the similarly the approval granted by the PCIT was also given after due application of mind. The Ld. D.R argued that it is sufficient if it is mentioned by PCIT that approval is granted by stating *"Yes, I am satisfied, case may be reopened"*. The Ld. D.R. submitted that such approval showed the satisfaction arrived at by the Ld. PCIT before according the permission to re-open the assessment and only thereafter the said approval was granted. Therefore there is no merit in the contentions of Ld. A.R that the Ld. PCIT has not applied his mind and recorded satisfaction before granting approval of the case for re-opening. On the plea of the assessee, the Ld. D.R submitted that it has been stated by the AO in the reasons recorded that the income has escaped because of failure on the part of assessee to disclose fully and truly all material facts necessary for its assessment which satisfied the conditions as envisaged by proviso to Section 147 of the Act.

8. After hearing the rival contentions and perusing the material on record including the reasons recorded by the AO u/s 148 of the Act and approval granted by the Ld. PCIT to such reopening , we observe that there are several mistakes/ infirmities /contradictions in the reasons recorded. For the sake of ready reference the reasons recorded are reproduced below:

> *"29.03.2019*
>
> *In the instant case, the assessee filed Income Tax Return u/s 139 of the Income- Tax Act,1961 on 26.09.2012, showing total income of Rs, 1,44,44,160/-. Assessment u/s 153A/143(3) was completed on 28.12.2016 as per return.*
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> *An Information was received from ITO(Inv), Unit-1, Kolkata on 04/08.03.2019 in respect of M/s Ajay Trading Company wherein it has been stated that "Rahul Enterprise is a sole proprietorship maintaining account no,. 029005003254opened on August, 2017 in Faizabad Branch, UP. The PAN of the customer is AGAPK6813D. Occupation status is business. Account nos. 019605001938 and 019605000653 are PAN linked. Account No. 000605004320*

mentioned is transaction linked. The said amount was triggered under large Value D/W cash transactions in [CAA] ACCOUNTS. The transaction pattern observed in the account has been deposited mainly by cash followed by immediate withdrawals through transfers to the transaction linked account. During the period form 01.04.2011 to 05.01.2012, the total debits and credits in the account are Rs. 48.30 lacs and Rs.48.25 lacs respectively. Out cash is Rs.38.25 lacs. As per enhanced due diligence, it was found that the customer was not available at the given address at the time of visit. The neighbors informed that they are not aware of the customer. It is seen that the customer is getting cash deposits where the same is transferring to Ajay Trading and his own account. Based on the above mentioned facts, the account is being reported as suspicious".

During the course'of enquiry/investigation, requisition u/s 133(6) of the Income Tax Act, 1961 was issued to Branch Manager, ICICI bank, for the bank statements by the Investigation Department. The bank statements were dulyreceived and analyzed by the Investigation department.

Further, on going through the bank statement of M/s. Rahul Enterprises A/c./io. 029003254 maintained with ICICI Bank, Kolkata, it is perused that there were high value cash deposits followed by debits through RTGS/transfers in favour of M/s. Ajay Trading company. Subsequently, notice u/s.133(6) of the Income Tax Act, 1961 was issued to M/s. Ajay Trading Company and M/s. Rahul Enterprises. In response to this, submissions were received from M/s. Ajay Trading Company. However, the explanation for the transfer from M/s. Rahul Enterprises is not acceptable and remained unexplained. The Assessee M/s Ajay Trading Company is one of the beneficiaries which received funds amounting to Rs. 42,00,000/-

Source Bank A/c. Details: 029005003254, ICICI Bank, Kolkata(Rahul Enterprises)					
Si. No.	*Beneficiary*	*PAN*	*Jurisdiction*	*F.Y*	*Amount(In Rs. lakh)*
1	*M/s. Ajay Trading Company*	*AAEFA5369A*	*Central Circle-3(2), Kolkata*	*2011 -12*	*42*

Therefore I have reason to believe that total income of Rs.42,00,000/- has escaped assessment in the hand of the assessee for A.Y. 2012-13.

In this reopening u/s 147, there is no escapement of income chargeable to tax in relation to any assets (including financial interest in any entity) located outside India.

The facts narrated herein above , clearly indicates that the assessee M/s Ajay Trading Company had not disclosed full and truly all material facts necessary for its assessment It is evident that from the above discussion that in this case, the issues under consideration were never examined by the AO during the course of assessment this fact is corroborated from the contents of notices issued by the A.O. u/s 143(2) /142(1) during proceedings u/s!53A/ 143(3) of the IT Act. It is important to highlight here that materials facts relevant for the assessment on the issue(s) under consideration were not filed during the course of assessment proceedings . For the forestated reasons, it is not a case of change of opinion by the AO.in this case, since more than four years have lapsed from the end of assessment year under consideration, a proposal is put up before Ld. Pr. C.I.T, Central, Kolkata-2 through Add

C.I.T, Central, Range-3, Kolkata for giving necessary sanction to issue notice u/s. 148 of the IT. Act 1961 for the A.Y. 2012-13 as per the provisions u/s 151 of the I.T. Act,1961.

Form ITNS-10 along with relevant enclosures is put up before the Addl. CIT, Central, Range-3, Kolkata for kind perusal and approval."

The above reasons are placed at page no. 4 & 5 of the PB. A perusal of the para 2 in the above reasons states that M/s Rahul Enterprise is a proprietary concern ,from which the assessee has received money, has opened account no. 029005003254 on August, 2017 in Faizabad Branch, UP from ITO(Inv), Unit-1, Kolkata vide letter dated 4/8.3.2021. The instant assessment year before us is AY 2012-13 whereas the reasons state that account was opened in August, 2017 in Faizabad Branch, UP which is apparently wrong and contradictory and not practically possible. Similarly on the next page in para 4the AO has again mentioned that M/s Rahul Enterprise has opened account No. 029003254 with ICICI Bank, Kolkata while in the table prepared on page 5 of the PB, the AO stated the bank account no 029005003254 with ICICI Bank, Kolkata which showed that there was a total non-application of mind and mechanical recording of reasons by the AO. We note that there is a contradiction in the bank account no. as mentioned in para 1 at page 4 & 5 of the PB and also the branch of the bank where the account was reopened. In other words, Para 2 states that account was opened in Faizabad Branch, UP whereas in page 5 of the PB stated that it has been opened in ICICI Bank, Kolkata. We are also failed to understand as to how the account could be reopened in August, 2017 as stated in Para 2 page 4 while the case at hand relates AY 2012-13. Similarly we note that the Ld. PCIT while according to approval for reopening the assessment has either not perused these reasons and merely given a mechanical approval by stating in Item no. 13 of the approval granted dated 30.03.2019 that *"Yes, I am satisfied case may be reopened"*. In our opinion such a casual approach on the part of the authorities cannot be appreciated and encouraged because by reopening the assessment, the settled assessment are being unsettled and authorities are supposed to exercise utmost care and caution while recording the reasons and also while granting the approval. On this

count also, the reassessment proceeding as well as reassessment framed cannot be sustained. The case of the assessee find supports from the decision of Hon'bleCalcutta High Court in the case of *Harish GangjiDedhiya (supra)*wherein the relevant portion held as under:

> *"7. In the reasons recorded, a copy whereof is at Exhibit B to the petition, the proposed re-opening is set out to be for A.Y.2014-15. The information based on which respondent no.2 has formed an opinion that there is reason to believe escapement of income, in the reasons it is stated, relates to A.Y.2015-16. In the conclusion given in the reasons recorded for re-opening, respondent no.2 states ...I have reason to believe that the amount exceeding Rs. One Lakh chargeable to tax has escaped assessment for the assessment year 2016-17 within the meaning of Section 147 of the I. T. Act, 1961... Therefore, respondent no.2 himself is not clear for which year or based on information for which year that he proposed to re-open, as he had reasons to believe that income had escaped assessment. In the Affidavit-in-Reply respondent no.2 casually states that it was a typographical error. In our view, respondent no.2 owed an obligation to explain as to how a typographical error crept in, in more than one place and before affixing his signature did he read the reasons that he had recorded. Therefore, we are not satisfied with the casual excuse of typographical error.*
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> *8. Moreover, if only the Additional Commissioner, who has recommended the proposal of respondent no.2 to respondent no.3 or respondent no.3 himself, while expressing satisfaction that the case was fit for issue of notice under Section 148, had bothered to read the reasons recorded, certainly they would have found the errors and they would have directed respondent no.2 to correct the reasons or refused to grant approval on reasons fraught with errors. This also indicates non-application of mind by the recommending authority, who, Mr.Sharma says, must be an Additional Commissioner of Income Tax and respondent no.3. On this ground alone, the notice issued under Section 148 gets vitiated.*
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> *9. Paragraph 2 of the reasons recorded reads as under :*
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> > *"2. The A.O. has information that the assessee has entered into certain financial transaction/activities during the financial year 2013-14 relevant to the A.Y.2015-16. On going through the information, it is noticed that the assessee has involved in the share trading activity during the year and it involved an amount of Rs.2,46,07,261/-. It came to noticed that during the year assessee has made of shares/derivatives amounting to Rs. 2,46,07,261/- and made huge profit from these transactions. However, it has not been accounted in books of account. Further, it is observed that the assessee had earned long term profit from trading on shares/derivative, which found to be fictious and claimed as exempted profit as long term capital gain on share trading. Thus, it is crystal clear that the assessee has routed his unaccounted income as long term capital gain and accounted in books of account. Accordingly, given colour of genuine transaction. Thus, I am at the opinion that assessee has escaped assessment exceeding Rs. One Lakh."*
>
> *10. Reading this, nobody can make out or atleast we are unable to make out any demonstrable link between the information and the formation of belief. This paragraph does*

not even indicate what was the trading activity during the year that the petitioner was involved in or from what shares or derivatives the petitioner is alleged to have made huge profit. How can someone be expected to respond to such vague charges ?

11. In Income Tax Office, I Ward, District VI Calcutta and Others vs. LakhmaniMewal Das, it is held as under :

> *As stated earlier, the reasons for the formation of the belief must have a rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Income-tax Officer and the formation of his belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. It is no doubt true that the court cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the Income- tax Officer on the point as to whether action should be initiated for reopening assessment. At the same time we have to bear in mind that it is not any and every material, howsoever vague and indefinite or distant, remote and far- fetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment. The fact that the words "definite information" which were there in Section 34 of the Act of 1922 at one time before its amendment in 1948 are not there in Section 147 of the Act of 1961 would not lead to the conclusion that action cannot be taken for reopening assessment even if the information is wholly vague, indefinite, far- fetched and remote. The reason for the formation of the belief must be held in good faith and should not be a mere pretence.*
>
> *(emphasis supplied)*

*12. Therefore, there must be live link or close nexus between the material before the ITO in the case at hand and the belief which he was to form recording the escapement of income. It is also no doubt true that Court cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the Income Tax Officer on the point as to whether action should be initiated for re-opening assessment but at the same time, it is not any and every material, however vague and indefinite or distant, remote and far-fetched which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment. It is also settled law that the reasons for re-opening assessment has to be tested / examined only on the basis of the reasons recorded at the time of issuing a notice under Section 148 of the Act seeking to re-open the assessment. These reasons cannot be improved upon and/or supplemented much less substituted by an Affidavit and/or oral submissions (**First Source Solutions Limited vs. The Assistant Commissioner of Income Tax** - 12(2)(1) and Another).*

Therefore, the submission of Mr.Sharma that respondent no.2 has explained in the order on objections what was the report and information and details on which he formed a reason to believe, will be of no assistance to respondents.

13. In the circumstances, we hereby allow the petition in terms of Prayer Clause (a) which reads as under :

> *"That this Honble Court be pleased to issue a writ of Certiorari or a writ in the nature of Certiorari or any other appropriate writ under Article 226 of the Constitution of India, calling for records pertaining to the impugned reopening notice*

dated 31.03.2021 issued by the Respondent No.2 (being Exhibit A hereto) and after going into the validity and legality thereof to quash and set aside the same."

14. Petition disposed.

Similarly the case of assessee squarely covered by the decision of Hon'ble Delhi High Court in the case of *N.C. Cables Ltd. (supra)* wherein the Hon'ble Court has held that while the competent authority while authorizing the reassessment notice has to apply his mind and form an opinion and mere appending of the expression 'approved' says nothing. The operative part is reproduced as under:

"11. Section 151 of the Act clearly stipulates that the Ld. CIT(A), who is the competent authority to authorize the reassessment notice, has to apply his mind and form an opinion. The mere appending of the expression 'approved' says nothing. It is not as if the Ld. CIT(A) has to record elaborate reasons for agreeing with the noting put up. At the same time, satisfaction has to be recorded of the given case which can be reflected in the briefest possible manner. In the present case, the exercise appears to have been ritualistic and formal rather than meaningful, which is the rationale for the safeguard of an approval by a higher ranking officer. For these reasons, the court is satisfied that the findings by the ITAT cannot be disturbed.

12. The substantial questions of law framed are answered in favour of the assessee and against the Revenue. The appeal is dismissed."

Similarly the Co-ordinate bench of Gauhati in the case of *Royal Heritage Tripura Castle (supra)*has held that ritualistic approval granted in mechanical manner without application of mind is invalid and the notice issued by the AO is without jurisdiction. The operative part is reproduced as under:

"6. Having heard both the parties and perused the records. It is an admitted position that the AO had put up a note before Addl. CIT wherein he has put up a note along with the information as well as reason for forming his belief to re-open the assessment of the assessee for A.Y. 2014-15 on 28.11.2017 which action of AO required the approval of Addl./Joint CIT u/s 151 for issuance of notice u/s 148 of the Act. It is noted that the AO had put up the note for approval for reopening on 28.11.2017 and on the same day approval has been written by hand by the Addl. CIT and on the same date notice has been issued u/s 148 by the AO. Even though the Ld. DR stated that he has got online approval wherein the Ld. Addl. CIT has written "I am satisfied with the reason so approval granted" still according to me the action of the Addl. CIT cannot satisfy the requirement of law which is expected from an authority while exercising approval before issuance of notice for re-opening. It should be kept in mind that approval u/s 151 of the Act is a power given to the higher officer (Addl. CIT / Joint CIT) in certain cases like that of the assessee in this cases is for granting approval to re-open the assessment of the assessee which is a valuable safeguard to check against any arbitrary exercise of power by ITO/AO. This

> *safeguard given by the Parliament to the higher officer cannot be granted mechanically or in a ritualistic manner. Merely by scribbling "approved" or for argument sake even if the Ld. Addl. CIT has written "I am satisfied with the reason so approval given". This standard of approval cannot satisfy the test as to whether the Addl. CIT has applied his mind or not before approval was granted. It is noted that even this kind of approvals given by the higher authorities as contended by the Ld DR has been found not to satisfy the test as to whether the approving authority has applied its mind to the information received by the AO and to the reason recorded by the AO justifying the re-opening as held by the Hon'ble Delhi High Court and Madhya Pradesh High Court in the cases cited by the Ld. AR (supra). Therefore, in my opinion, approval granted by the Addl. CIT, Sillong Range has been done in a ritualistic manner mechanically without application of mind. Therefore, the approval granted by the Addl. CIT is bad in law for non-application of mind. Therefore, the issuance of notice u/s 148 of the Act by the AO without getting proper approval from the Addl. CIT as per section 151 of the Act being invalid, the action of the AO issuing notice u/s 148 of the Act is without jurisdiction and, therefore, consequently framing of assessment order dated 07.08.2018 is bad in law and accordingly quashed. "*

In view of the facts of the case and in the light of the ratio laid down in the decisions as discussed above, the reassessment proceedings as well as reassessment framed us/ 147 are liable to be quashed. On the issue reopening assessment beyond the period of four years where assessment is framed u/s 143(3), we are mindful of the condition as laid down by the first proviso to Section 147 of the Act which are required to be satisfied before reopening the assessment. The proviso states that there has to be failure on the part of the assessee to truly and fully disclose the material/ information which leads to escapement of income. In the present case, the assessment has been framed by the AO u/s 143(3) read with Section 153A and the assessee has provided details/information in the return of income as well as in the assessment proceedings. Therefore to draw inference that the assessee has failed to disclose truly and fully any material facts relating to assessment would be wrong. The case of the assessee finds support from the following decisions (*i). New Delhi Television Ltd. vs DCIT (supra),(ii) CIT vs Multiplex Trading & Industries Company Ltd. (supra),(iii). Hubtown Ltd. vs DCIT (supra).(iv). Dr. Rajivraj Ranbirsingh Choudhary vs ACIT (supra) and also* Haldia *Petrochemicals Ltd. vs. ACIT in ITA no. 2455/Kol/2019 for AY 2008-09 dated 24.03.2021* which has been passed by the Tribunal after following the decision of Kolkata Tribunal in the case of *Beekay Steel Industries Ltd. vs. DCIT in ITA No. 105/Kol/2015 dated 31.05.2017* wherein the issue has been allowed by quashing the assessment as well as the reopening proceedings.

On this count also, the reassessment proceedings as well as reassessment frame are liable to be quashed. Accordingly considering the facts and circumstances of the case and various judicial pronouncements as discussed above, we are inclined to set aside the order of ld CIT(A) and quash the proceeding u/s 147 of the Act and also the consequent assessment order. Consequently the ground nos. 1, 4 & 5 are allowed.

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

Order is pronounced in the open court on 2nd February, 2023

Sd/-	Sd/-
(Sonjoy Sarma /संजय शर्मा)	(Rajesh Kumar/राजेश कुमार)
Judicial Member/न्यायिक सदस्य	Accountant Member/लेखा सदस्य

Dated: 2nd February, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Ajay Trading Company, Room No. 408, 4th Floor, Mangalam, 24, Hemanta Basu Sarani, Kolkata-700001.
2. Respondent – ACIT, Central Circle-3(2), Kolkata
3. Ld. CIT(A)-21, 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