

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

**Before Shri Rajpal Yadav, Vice-President
&
Shri Rajesh Kumar, Accountant Member**

**I.T.A. No. 714/KOL/2022
Assessment Year: 2012-2013**

***M/s. Vishal Victory Oiltech Pvt. Limited,.....Appellant
502, Centre Point Apartment,
28/2, Shakespeare Sarani,
Kolkata-700017
[PAN:AABCV0848F]***

-Vs.-

***Assistant Commissioner of Income Tax,....Respondent
Circle-7(2), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700069***

Appearances by:

Shri S.M. Surana, Advocate, appeared on behalf of the assessee

Shri Supriya Pal, Addl. CIT (DR), appeared on behalf of the Revenue

Date of concluding the hearing : July 10, 2023

Date of pronouncing the order : July 11, 2023

O R D E R

Per Shri Rajpal Yadav, Vice-President (KZ):-

This appeal was heard by us but later on re-fixed for hearing and the order-sheet while fixing it for clarification reads as under:-

“The present appeal is directed at the instance of assessee against the order of ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 07.10.2022 passed for A.Y. 2012-13.

2. The appeal was listed for hearing on 23.02.2023. The ld. Counsel for the assessee filed an application for permission to raise additional ground of appeal. In this application, he submitted that no addition has been made on an item for which assessment order was reopened. He placed on record copy of the reasons dated 06.08.2019 and submitted that assessment was reopened for the reason that ld. Assessing Officer was satisfied to believe that the amount of Rs.142,18,37,911/- received by the assessee from M/s. Angel Commodities Broking Pvt. Limited has escaped assessment within the meaning of section 147. According to the assessee, the addition of this amount was not made, therefore, no other addition could be made. He put reliance upon a large number of judgments on this point of law, namely, Hon’ble Bombay High Court in the case of CIT -vs.- Jet Airways reported in 331 ITR 236, Hon’ble Delhi High Court in the case of Ranbuxy Laboratories reported in 336 ITR page 136 and Hon’ble Gujarat High Court in the case of Md. Juned reported in 353 ITR page 172.

*3. However, while dictating the order, we find that the reason referred by the ld. Assessing Officer is dated 30.03.2019. The assessee has filed its return of income in response to this reason on 24.04.2019. If this was the reason, then how the reason dated 06.08.2019 had come into the picture, whose copy has been placed on record by the ld. Counsel for the assessee. It is not discernable whether the assessment has been reopened again or otherwise. For want of complete facts, it is difficult to dictate the order, therefore, this file is re-fixed for clarification. Registry is directed to list the appeal for hearing on **22nd May, 2023**”.*

2. We have called for the assessment record also.

3. The ld. Counsel for the assessee apprised us that reason for re-opening was recorded on 30.03.2019. If it is to be construed as recorded on 06.08.2019 then it is time-barred because the

assessment year involved herein is 2012-13 and if the reason is to be recorded on 06.08.2019, then time limit of six year will be over. He pointed out that difference is date of the communication of the reason to the assessee, otherwise actually reasons were recorded earlier.

4. The Id. D.R. could not rebut this contention, rather submitted that reason was recorded on 30.03.2019 as contemplated in the assessment order.

5. We have duly considered the rival contentions and gone through the record carefully. The reasons for reopening are running into three pages, but the relevant observation for us is the last paragraph, which reads as under:-

“Reason to believe by the A.O.:

In the above facts and circumstances of the case, prima facie it appears that source of fund utilized by the assessee to the tune of Rs.142,18,37,911/- being deposit into the account of the assessee, utilized for making payment to M/s. Angel Commodities Broking Pvt. Limited has not been reported in its annual audited financial statement and the same has escaped assessment. The above escapement is on account of failure on the part of the assessee to fully and truly disclose material particulars in its return of income for A.Y. 2012-13.

Therefore, I have reason to believe that the amount of Rs.142,18,37,911/-, received by the assessee from M/s. Angel Commodities Broking Pvt. Limited has escaped assessment within the meaning of sec. 148”.

6. A perusal of the above reason would reveal that assessment was reopened on the ground that source of the funds utilized by the assessee for making payment to M/s. Angel Commodities

Broking Pvt. Limited amounting to Rs.142.18 crores is not discernable. On the other hand, perusal of the assessment order would reveal that no addition on account of this amount is being made. The addition made by the ld. Assessing Officer is of Rs.5,35,268/- and that finding also reads as under:-

“Difference of closing balance:-

On going through ledgers of M/s. Angel Commodities Broking Pvt. Limited, it is seen that the closing balance is Rs.3,54,31,949.52. However, the ledger of the assessee company obtained from M/s. Angel Commodities Broking Pvt. Limited shows the closing balance as Rs.3,59,67,211.72. Therefore, the assessee was asked to reconcile the difference of Rs.5,35,262/-. But the assessee has not filed submission. Hence, in absence of any reconciliation, Rs.5,35,262/- is added back to the total income of the assessee. Initiated penalty proceeding u/s 271(1)(c) of the I.T. Act, 1961 for furnishing inaccurate particulars of income”.

Addition: Rs.5,35,262/-“.

7. It is pertinent to observe that the assessee has originally filed its return of income on 29.09.2012 declaring total income of Rs.45,30,623/-. An assessment was passed under section 143(3)/144 on 15.03.2015 at a total income of Rs.16,64,03,410/-. The assessment was reopened and after reopening of the assessment, income has been determined at Rs.16,69,38,670/-. In other words, the only addition made by the ld. Assessing Officer in the income already assessed under section 143(3) is the addition of Rs.5,35,262/-.

8. The stand of the assessee is that if an addition on the item for which assessment was reopened is not made, then no addition can be made. The assessee has relied upon the judgment of the Hon'ble Bombay High Court, Hon'ble Delhi High Court and Hon'ble Gujarat High Court as noticed by us in our order-sheet. All three Hon'ble High Courts are unanimous in their approach that if an assessment is reopened on account of escapement of income of item 'A', then, discovery of any other escapement during reassessment proceedings would only be added if addition is being made on item 'A'. In this case we have extracted relevant part of the reason above but no addition is being made on that item, therefore, no other addition can be made. We allow this appeal of the assessee and delete the addition of Rs.5,35,262/-.

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

Order pronounced in the open Court on July 11, 2023.

Sd/-
(Rajesh Kumar)
Accountant Member

Sd/-
(Rajpal Yadav)
Vice-President(KZ)

Kolkata, the 11th day of July, 2023

*Copies to : (1) M/s. Vishal Victory Oiltech Pvt. Limited,
502, Centre Point Apartment,
28/2, Shakespeare Sarani,
Kolkata-700017*

*(2) Assistant Commissioner of Income Tax,
Circle-7(2), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square, Kolkata-700069*

- (3) *Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre, Delhi,*
(4) *The Departmental Representative*
(5) *Guard File*
TRUE COPY

By order

*Assistant Registrar
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.