

आयकर अपीलीय अधिकरण, कोलकाता पीठ “एसएमसी”, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH: KOLKATA
श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 651/Kol/2023
Assessment Year: 2010-11

M/s Saraff Jewels & Co. (PAN: AARFS 6807 L)	Vs.	ITO, Ward-33(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	09.08.2023
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	31.08.2023
For the Appellant/ निर्धारिती की ओर से	Shri Sunil Surana, A.R
For the Respondent/ राजस्व की ओर से	Shri Altaf Hussain, Addl. CIT

ORDER / आदेश

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)"] dated 16.06.2023 for the AY 2010-11.

2. In ground no. 1, the assessee has challenged the order of Ld. CIT(A) upholding the reopening of assessment by AO u/s 147 of the Act which is invalid and bad in law.

3. Facts in brief are that the assessee filed return of income on 27.09.2010 declaring total income of Rs. 11,14,480/- which were processed u/s 143(1) of the Act on 24.05.2011. Thereafter the AO received information that the assessee is beneficiary of bogus purchase entries given by M/s Khushi Gems Pvt. Ltd. to the tune of Rs. 24,49,590/-. Accordingly the case was reopened u/s 147 of the Act by issuing notice u/s 148 of the Act on 14.03.2017. The assessee complied with the said notice vide letter dated 28.03.2017 requesting the AO to treat the original return filed u/s 139(1) of


the act as a return in response to notice u/s 148 of the Act. Thereafter the AO called for the various details/ information from the assessee on the issue which did not favour with the AO and he added Rs. 28,49,590/- as unexplained purchases in the assessment framed u/s 143(3) of the Act besides adding Rs. 28,500/- towards commission on accommodation entries.

4. The assessee challenged the said order before the First Appellate Authority on legal issue as well as merit. However the Ld. CIT(A) dismissed the appeal of the assessee.

5. The Ld. A.R vehemently argued before us that the reopening of assessment has been made by AO u/s 147 of the Act without having any tangible material brought on record. The Ld. A.R argued that there was no application of mind by the AO to the information received which were vague itself and therefore the AO has simply relied on the information received from the Investigation Wing and has not applied his mind. In defense of his argument relied on the decision of Hon'ble Delhi High Court in the case of CIT vs. SFIL Stock Broking Ltd. in [2010] 325 ITR 285 (Del) wherein it was held that the AO has to apply his mind to the information and independently arrived at a belief that income had escaped assessment otherwise the reopening of assessment cannot be sustained. The Ld. A.R also submitted that the reasons have to be read as recorded and there cannot be any substitution or addition or deletion to the reasons by relying on the decision of Hon'ble Bombay High Court in the case of Hindustan Lever Ltd. vs R.B. Wadkar (No. 1) in 2004 137 TAXMAN 479 (Bom). The Id AR therefore prayed that re-opening of assessment u/s 147 of the Act is invalid and may kindly be quashed.

6. Per Contra ,the Ld. D.R relied on the order of authorities below by submitting the AO has got information from DDIT and therefore the AO has sufficient tangible material before him on which the AO has applied his mind and recorded the reasons u/s 148(2) of the Act. The Ld. D.R therefore prayed that the legal issue raised by the assessee may kindly be dismissed.

7. After hearing the rival contentions and perusing the material on record and also reasons recorded u/s 148(2) of the Act, we observe that the AO received information from office of the DDIT, Investigation wing that the assessee is beneficiary of bogus purchase entries to the tune of Rs. 28,49,590/-. The AO, after receiving approval of Ld. PCIT, issued letter u/s 133(6) to the assessee calling for details of transactions made with M/s Khushi Gems Pvt. Ltd. but there was no reply and thereafter the AO noted that he has reasons to believe that income has escaped assessment. For the sake of ready reference reproduced as under:


OFFICE OF THE INCOME TAX OFFICER, WARD – 33[1], KOLKATA
10B MIDDLETON ROW 3RD FLOOR ROOM NO 11 KOLKATA 700071
Phone: 033-2264-7221

No ITO Ward 33(1)/AARFS6807L/2016-17/ 1346 Date:30.03.2017

To
 The Principal Officer,
 M/s.Saraf Jewells & Co.,
 7/1, Lord Sinha Road
 Kolkata-700 071.


Sir,


Sub: Reasons for issue of notice u/s.148 of the I.T.Act, 1961 in the case of M/s.Saraf Jewells & Co., (AARFS6807L) for A.Y. 2010-11.
 Ref: Your letter dated 22.03.2017

Please refer to the above.
 I am providing the reasons recorded for reopening your case u/s.148 of the I.T.Act, 1961 for assessment year 2010-11 which is as under:-
 "Information was received that M/s.Saraf Jewells & Co. (AARFS6807L) has availed entries of bogus purchase from M/s. Kushi Gems Pvt. Ltd. to the tune of Rs.28,49,590/- in the financial year 2009-10 related to the assessment year 2010-11.
 Subsequently, after according approval of Ld.Pr.CIT, Kolkata-11, Kolkata letters u/s.133(6) of the I.T.Act, 1961 were issued to the assessee calling for details of alleged transactions made with M/s. Kushi Gems Pvt. Ltd. But, no required submission was made by the assessee.
 I, therefore, have reasons to believe that assessee i.e. M/s.Saraf Jewells & Co. (AARFS6807L) has made bogus purchase of Rs.28,49,590/- in the financial year 2009-10 related to assessment year 2010-11 has effect of escaped assessment of income related to such bogus purchase within the meaning of section 147 of the Income Tax Act, 1961 on account of bogus purchase made by the assessee."

This is to further inform you that notice u/s.148 of the I.T.Act, 1961 for assmt. Year 2010-11 has been issued after obtaining prior approval Pr. Commissioner of Income Tax, Kolkata-11, Kolkata.

This is for your information.

Yours sincerely,

 (Nani Gopal Saha)
 Income tax Officer, Ward 33(1)
 Mail ID: KOLKATA_ITO33.1@INCOMETAX.GOV.IN
 श्री गणेशाय नमः
 NANI GOPAL SAHA
 आयकर अधिकारी, वार्ड-33(1), कोलकाता
 Income Tax Officer,
 Ward. - 33(1), Kolkata



We observe from the perusal of above reasons that the AO has no where recorded his own satisfaction on the information received from the Investigation Wing. He has simply noted that since the assessee has failed to respond the notice, therefore he has reason to believe the amount of Rs. 28,49,590/- has escaped assessment. In our opinion, the AO has not brought any tangible material by applying his mind and therefore we find merit in the contentions of the assessee that there was no application of mind by the AO to vague information received from DDIT, Investigation Wing. Besides the reasons have to be read as recorded and no substitution, addition or

deletion can be made. The case of the assessee squarely covered by the decision of Bombay High Court in the case of Hindustan Lever Ltd. vs R.B. Wadkar (No. 1) in 2004 137 TAXMAN 479 (Bom). We therefore respectfully following the ratio laid down in the above decision we set aside the order of Ld. CIT(A) and direct the AO to delete the addition.

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

Order is pronounced in the open court on 31st August, 2023

Sd/-

Sd/-

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

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

Dated: 31st August, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- M/s Saraff Jewels & Co., Room No. 207, 2nd Floor, Lords Building, 7/1, Lord Sinha Road, Rabindra Sadan, Kolkata-700071
2. Respondent-ITO, Ward-33(1), Kolkata
3. Ld. CIT(A)- NFAC, Delhi
4. Ld. PCIT-
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata