

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

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री गिरीश अग्रवाल, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Shri Girish Agrawal, Accountant Member

I.T.A. No.8/Kol/2023
Assessment Year: 2009-10

Channel Eight Virtual Estudios Ltd.....Appellant
5A, Nandalal Jew Road,
Kolkata-700026.
[PAN: AABCC3761A]

vs.

ITO, Ward-3(1), Kolkata..... Respondent

Appearances by:

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

Shri P. P Barman, Addl. CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : July 12, 2023

Date of pronouncing the order : September 06, 2023

आदेश / ORDER

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

The present appeal has been preferred by the assessee against the order dated 21.12.2022 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee in this appeal has taken the following grounds of appeal:

"1. For that the Ld CIT(A) erred in confirming the order of the AO when the proceedings initiated U/s. 147 were not in accordance with law.

2. For that the Ld. CIT(A) erred in confirming the addition of Rs. 84,87,000/- when there was no evidence or finding that the assessee received more amount as sale consideration than declared.

3. For that the Ld CIT(A) erred in confirming the order of the AO on the specific submission that the shares were not sold at a price which was

below fair market price and the assessee did not receive any amount more than what was declared and actually received.

4. For that on the facts and in the circumstances of the case the addition of Rs. 84,87,000/- was not in accordance with law.”

3. At the outset, the ld. counsel raising the legal ground has submitted that the reopening of the assessment u/s 147 r.w.s 148 of the Act by the Assessing Officer was not justified in this case. He, in this respect, has brought our attention to the reasons recorded by the Assessing Officer for reopening of the assessment. Opening lines of the reasons recorded read as under:

“In this case direction of Ld CIT C-II, Kolkata was forwarded DCIT Central Circle-XVIII, Kolkata vide letter dated 31.07.2014. On perusal of said direction vide letter No.CITC-II/Kol/263/2013-14/5065 dated 18.03.2014 addressed to the ACIT, Central Circle-XVIII, Kolkata.....”

The ld. counsel in this respect has submitted that the reopening has not been done in this case by the Assessing Officer forming his own belief that the income of the assessee has escaped assessment, rather, the reopening of the case has been done on the direction of the CIT C-II, Kolkata and that, under the circumstances, there is no independent application of mind by the Assessing Officer, rather, he was directed to reopen the case of the assessee u/s 147 of the Act. He, therefore, has submitted that the reopening in this case cannot be held to be justified. The ld. counsel has further invited our attention to the reasons recorded to submit that in the reasons recorded, there is no mention of any tangible information suggesting that the income of the assessee for the assessment year under consideration has escaped assessment, rather, only reason mentioned in the reasons recorded of escapement of income is that the other persons had sold the shares of M/s Bangla Entertainment Pvt. Ltd. at a higher rate than the price at which the assessee sold the shares of the said company owned by it. The ld. counsel has submitted that it cannot be said to be a tangible

information of escapement of income. The reopening has been done on the basis of assumption that the assessee has under-valued its investment in M/s Bangla Entertainment Pvt. Ltd. The ld. counsel, therefore, has submitted that the reopening being bad in law, the impugned assessment order is liable to be quashed.

4. The ld. DR, on the other hand, has relied upon the findings of the lower authorities.

5. We have heard the rival contentions and gone through the record. We find merit in the contentions raised by the ld. counsel for the assessee. Firstly, the reopening has been done at the direction of the CIT C-II, Kolkata. The powers u/s 147 r.w.s. 148 of the Act for reopening of the assessment rests with the Assessing Officer. As per the provisions, if the Assessing Officer has reasons to believe that income of the assessee has escaped assessment for that assessment year, he can reopen the assessment by serving notice to the assessee u/s 148 of the Act. It has been held time and again that the reasons to believe regarding the escapement of the income should be based on certain tangible material and it should not be mere pretence of the Assessing Officer. The power to reopen the assessment vests with the Assessing Officer. The ld. CIT has been given separate powers under the Income Tax Act u/s 263 of the Act, whereby, he may call for and revise any order under the Income Tax Act, if the same in his opinion is found to be erroneous, so far as it is prejudicial to the interest of the revenue. However, the ld. CIT has no power under the Act to direct the Assessing Officer to reopen a particular case. The powers of reopening of the assessment are required to be exercised by the Assessing Officer if he has reasons to believe that the income of the assessee has escaped assessment.

Secondly, in this case, the Assessing Officer has not pointed out any tangible material for forming belief that the income of the assessee has escaped assessment. The reopening has been done on mere assumption of the Assessing Officer that the assessee might have under-valued his shares only on the ground that the other shareholder has sold the shares of M/s Bangla Entertainment Pvt. Ltd. at a higher rate. In our view, that information alone without any corroborative evidence that any extra money has been passed on to the assessee on sale of shares cannot be held to be a valid reasons for forming of belief of escapement of income of the assessee. In view of this, the reopening being held as bad in law, the consequential impugned assessment order passed u/s 147 of the Act is not sustainable as per law and the same is accordingly quashed.

6. In the result, the appeal of the assessee stands allowed.

Kolkata, the 6th September, 2023.

Sd/-
[गिरीश अग्रवाल /Girish Agrawal]
लेखा सदस्य/Accountant Member

Sd/-
[संजय गर्ग /Sanjay Garg]
न्यायिक सदस्य/Judicial Member

Dated:06.09.2023.

RS

Copy of the order forwarded to:

1. Channel Eight Virtual Estudios Ltd
2. ITO, Ward-3(1), Kolkata
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches