

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

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

**I.T.A. No. 119/KOL/2020  
Assessment Year: 2009-2010**

***R.K. Manufacturing Co. Limited,.....Appellant  
215-A, Manek Centre,  
P.N. Marg, Jamnagar-361008  
[PAN: AABCR5644R]***

***-Vs.-***

***Income Tax Officer,.....Respondent  
Ward-4(1), Kolkata,  
Aayakar Bhawan,  
P-7, Chowringhee Square,  
Kolkata-700069***

**Appearances by:**

*Shri N.S. Saini, A.R., appeared on behalf of the assessee*

*Shri Loviesh Shelley, JCIT, DR, appeared on behalf of the Revenue*

Date of concluding the hearing : October 09, 2023

Date of pronouncing the order : October 10, 2023

**O R D E R**

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

The assessee is in appeal before the Tribunal against the order of Id. Commissioner of Income Tax (Appeals)-2, Kolkata dated 2<sup>nd</sup> December, 2019 passed for A.Y. 2009-10.

2. This appeal was listed for hearing in the past and no one appeared on behalf of the assessee. The hearing was concluded on 28.06.2022. The Tribunal has dismissed the appeal vide its order dated 29.06.2022 because no one appeared on behalf of the assessee. Thereafter assessee filed a Miscellaneous Application bearing No. 56/KOL/2022 and the Tribunal was satisfied about the non-appearance of assessee and exercised its powers under Rule 24 of the Income Tax Appellate Tribunal Rules, 1963, recalled the order on 20.03.2023 and restore the appeal to its original number. Rule 24 authorizes the Tribunal to decide an appeal in the absence of parties before it, i.e. the Tribunal could decide an appeal *ex-parte*. However, proviso appended to this Rule further contemplates that if appellant could satisfy the Tribunal with a reasonable cause for its non-appearance, then, the earlier order would be recalled and appeal will be heard afresh. Accordingly, Tribunal has posted the appeal for fresh hearing.

3. The ld. Counsel for the assessee has filed an application for permission to raise an additional ground of appeal, whereby it was contended that reopening of assessment is not in accordance with law. On the strength of Hon'ble Supreme Court decision rendered in the case of NTPC -vs.- CIT reported in 229 ITR 383, it

was contended that it is a jurisdictional issue which goes to the root of taxability of the income of assessee. Accepting the application of the assessee, Tribunal has admitted that ground for consideration on merit.

4. In view of the above, we first take the ground challenging reopening of the assessment.

5. Brief facts of the case are that the assessee has filed its return of income on 30.10.2009 disclosing a total loss of Rs.36,611/-. According to the ld. Assessing Officer, he has received information from the DDIT (Investigation), Unit-2(3), Kolkata exhibiting that one Shri Panchanan Mondal, proprietor of M/s. P. Enterprises opened a Bank account. He has deposited certain cash in his account, which was later on transferred to three Companies. One of them is M/s. Express Plastichem Limited, which has received Rs.60,30,000/-. The ld. Assessing Officer has reopened the assessment of the present assessee and issued a notice under section 148 on 30.03.2016. The reasons recorded by the ld. Assessing Officer read as under:-

*“An information has been received from DDIT (Inv.), Unit-2(3), Kolkata vide letter No. DDIT(Inv)/Kol/U-2(3)/FIU-1000018036/2015-16/45802 dated 21.03.2016, wherein it has been communicated that on verification of A/c No. 000601527711 & 000605019116 maintained by Shri Panchanan Mondal,*

*Proprietor of M/s. P. Enterprises, at ICICI Bank Ltd. Sir R.N. Mukherjee Branch, Kolkata. It was observed that the Bank a/c. Was opened on 20.02.2009 and closed on 08.08.2009, there were multiple cash deposits in the A/c no. 000605019116 of M/s. P. Enterprise, ranging from Rs.35,000/- to Rs.8,50,000/- totalling to Rs.140.44 lacs, and immediately after deposits funds were transferred electronically. On going through transaction trails, it was found that funds were transferred mainly to M/s. Express Plastichem Ltd., M/s. Sp;ecialoity Vyapaar Pvt. Ltd. and M/s. Vista Vyapaar Pvt. Limited. There was fund transferred of Rs.60,30,000/- to the a/c of M/s. Express Plastichem Ltd. The Bank a/c. No. 000605019116 was opened on 20.02.2009 and closed on 08.08.2009.*

*Further, investigations reveals that M/s. Express Plastichem Ltd. was amalgamated with M/s. R.K. Manufacturing Ltd. in April 2009 but its bank account in HDFC Bank was remained operative till 09.10.2010.*

*M/s. R.K. Manufacturing Ltd. is assessed to tax in this charge, in pursuance of the above information income returned by the assessee company for A.Y. 2009-10 is perused and looked into in the balance sheet of the company, it is noticed t4hat there is an amount of Rs.42,41,786/- and Rs.2,91,40,376/- in respect of sundry debtors and sundry creditors respectively but in the P& L A/c., purchase and sale figure is shown as*

*NIL. Moreover, there is investment by the company in unlisted equity share of Rs.2,09,54,000/- which are required to be checked and verified”.*

6. The Id. Counsel for the assessee while taking us through these reasons submitted that there is no independent application of mind at the end of the Id. Assessing Officer to the information supplied by the DDIT (Investigation). He has reproduced such information and thereafter observed that these are to be checked and verified. An assessment is not to be reopened for checking and verification. This stage is internal investigation of the Department. There is no formation of belief at the end of the Id. Assessing Officer exhibiting escapement of income.

7. On the other hand, Id. Sr. D.R. has relied upon the following judgments pleading therein that quality of information is not required to be gone into for assessing the reasons recorded by the Id. Assessing Officer. The sufficiency for correctness of material is not a thing to be considered at this stage. His submissions are basically proposition laid down in different case laws, for the completeness of the record, we deem it appropriate to take note of these submission, which read as under:-

*The Hon'ble Supreme Court has held in a number of decision, in particular in the case of Phool Chand Bairang Lai Vs. ITO (1993) 203 ITR 456 that while considering validity of commencement of reassessment proceedings, it is only to be seen that whether there was some prima facie material or*

*information on the basis of which the department could reopen the case. The sufficiency or correctness of material is not a thing to be considered at that stage*

*In Raymond Woolen Mills Ltd. Vs. ITO (1999) 236 ITR 34 (SC) the Hon'ble Supreme Court have held as follows:-*

*“We have only to see whether there was prima facie some material on the basis of which the Department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage. We are of the view that the court cannot strike down the reopening of the case in the facts of this case. It will be open to the assessee to prove that the assumption of facts made in the notice was erroneous. The assessee may also prove that no new facts came to the knowledge of the Income-tax Officer after completion of the assessment proceeding. We are not expressing any opinion on the merits of the case. The questions of fact and law are left open to be investigated and decided by the assessing authority. The appellant will be entitled to take all the points before the assessing authority.*

*In Bawa Abhai Singh Vs. DCIT, 253 ITR 83 the Delhi High Court has observed that there must be some material which can be regarded as information, on the basis of which the Assessing Officer can have reason to believe that action under section 147 is called for. Information means the communication or reception of knowledge or intelligence. It includes knowledge obtained from investigation study or instruction. The reasons which may weigh with the A.O. may be result of his own investigation and may come from any source that is reliable.*

*In the case Gurera Gas Cylinders Pvt. Ltd. v. CIT, (2002) 258 ITR 170 again, it has been clearly held that at the stage of initiation of proceedings, the sufficiency, adequacy or correctness of reasons cannot be gone into.*

*In the case of Mulchand Rampuria v ITO, (2000) 252 ITR 758, it was held that what has to be seen at the stage of issue of notice u/s 148 of the Act is that whether there is Prima Facie some information on the basis of which the case could be reopened. The sufficiency or correctness of information is, as held in the decisions cited above, not to be considered at the stage of initiation of reassessment proceedings.*

*In the case of G. Sukesh v. Dv CIT (2001) 252 ITR 230, it has been held by the Hon'ble Kerala High Court that the information at the time of issuing notice need not be complete or even accurate.*

*Case Law Citations in the case of M/s R K Manufacturing for AY: 2009-10*

*The Hon'ble Supreme Court has held in a number of decision, in particular in the case of Phool Chand Bajrang Lai Vs. ITO (1993) 203 ITR 456 that while considering validity of commencement of reassessment proceedings, it is only to be seen that whether there was some prima facie material or information on the basis of which the department could reopen the case. The sufficiency or correctness of material is not a thing to be considered at that stage*

*In Raymond Woolen Mills Ltd. Vs. ITO (1999) 236 ITR 34 (SC) the Hon'ble Supreme Court have held as follows:-*

*“We have only to see whether there was prima facie some material on the basis of which the Department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage. We are of the view that the court cannot strike down the reopening of the case in the facts of this case. It will be open to the assessee to prove that the assumption of facts made in the notice was erroneous. The assessee may also prove that no new facts came to the knowledge of the Income-tax Officer after completion of the assessment proceeding. We are not expressing any opinion on the merits of the case. The questions of fact and law are left open to be investigated and decided by the assessing authority. The appellant will be entitled to take all the points before the assessing authority.*

*In Bawa Abhai Singh Vs. DOT, 253 ITR 83 the Delhi High Court has observed that there must be some material which can be regarded as information, on the basis of which the Assessing Officer can have reason to believe that action under section 147 is called for. Information means the communication or reception of knowledge or intelligence. It includes knowledge obtained from investigation study or instruction. The reasons which may weigh with the A.O. may be result of his own investigation and may come from any source that is reliable.*

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*In the case of G. Sukesh v. Dy CIT (2001) 252 ITR 230, it has been held by the Hon'ble Kerala High Court that the information at the time of issuing notice need not be complete or even accurate.*

8. Section 147 as it was available in A.Y. 2009-10 provides that “if ld. Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may subject to the provisions of section 148 to 153, assess or reassess such income...”. A bare perusal of this section would contemplate that it propounds the availability of relevant information and formation of belief on those information. In other words, there should be a direct co-relation between the information possessed by the ld. Assessing Officer, which authorizes him to form a belief that income has escaped assessment. A perusal of the reasons recorded by the ld. Assessing Officer would reveal that he has nowhere formed such a belief. The efforts at the end of the ld. Assessing Officer is to make roaming inquiry. He has nowhere propounded, which income appears to have escaped from assessment. The first paragraph of

the information was transmitted to the ld. Assessing Officer by the DDIT(Investigation). The third paragraph is the contribution of the ld. Assessing Officer where he has referred the figures available in the Balance-sheet of the Company and 'nil' income shown by it. He further made reference to a sum of Rs.2,95,04,000/- towards investment by the Company in unlisted equity shares, but no inquiry on these aspects was made. The ld. Assessing Officer has simply made the addition that one of the Company M/s. Express Plasticchem Limited had received some money from the proprietor Shri Panchanan Mondal, who in the opinion of DDIT was an entry operator. This Company has amalgamated with the assessee-company and, therefore, those receipts are treated to be as unexplained cash credit. In this connection, he has not made any independent investigation at the time of writing the reasons nor at the time of passing the *ex-parte* assessment order. He simply accepted the information submitted by the Investigation Wing as a gospel truth. No summons to Shri Panchanan Mondal either before writing reasons or at the time of passing the assessment order had ever been issued. The only reasoning given by the ld. Assessing Officer is that there is non-compliance at the end of the assessee for submitting the complete details.

9. As far as the stand of Id. Sr. D.R. is concerned, he has placed on record a large number of decisions, which are based on the facts in these cases. For example, the first judgment of the Hon'ble Supreme Court in the case of Phool Chand Bajrang Lal has been put for canvassing that sufficiency or correctness of material is not a thing to be considered at the stage of reopening. We find that in the present case, question regarding sufficiency of material is not being raised. The question is being raised as to how Id. Assessing Officer has formed an opinion that income has escaped. He has not formed his opinion. Similarly the other judgments are not applicable on the facts of the present case. The Id. Assessing Officer failed to formulate his opinion exhibiting the escapement of particular income, therefore, the reopening is not valid. We allow this ground of appeal and quash the reopening of assessment. Since reopening is quashed, therefore, we do not deem it necessary to go into the merits of the additions, hence appeal is allowed.

**10. In the result, the appeal of the assessee is allowed.**

Order pronounced in the open Court on October 10, 2023.

**Sd/-**  
**(Rajesh Kumar)**  
**Accountant Member**

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

***Kolkata, the 10<sup>th</sup> day of October, 2023***

*Copies to :(1) R.K. Manufacturing Co. Limited,  
215-A, Manek Centre,  
P.N. Marg, Jamnagar-361008*

*-Or-*

*B.K. Sahoo & Company,  
Karai Estates,  
209, A.J.C . Bose Road,  
5<sup>th</sup> floor, Room No. 188, Kolkata-700017*

*(2) Income Tax Officer,,  
Ward-4(1), Kolkata,  
Aayakar Bhawan,  
P-7, Chowringhee Square, Kolkata-700069*

*(3) Commissioner of Income Tax (Appeals)-2,  
Kolkata;*

*(4) Commissioner of Income Tax ,*

*(5) The Departmental Representative*

*(6) Guard File*

*TRUE COPY*

*By order*

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

**Laha/Sr. P.S.**