

**IN THE INCOME TAX APPELLATE TRIBUNAL “GAUHATI” BENCH,  
VIRTUAL HEARING AT KOLKATA**

[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

**I.T.A. No. 169/Gau/2020**  
Assessment Year: 2012-13

ACIT, Circle-1, Guwahati Room No. 613, 6 <sup>th</sup> Floor, Aayakar Bhawan, G. S. Road, Christian Basti, Guwahati-781005.	Vs.	Bath And Sanitary Opp. Aayakar Bhawan, G. S. Road, Christian Basti, Guwahati, Assam- 781005. (PAN: AAKFB5935B)
Appellant		Respondent

Date of Hearing	09.08.2023
Date of Pronouncement	30.10.2023
For the Appellant	Shri Arun Bhowmick, JCIT
For the Respondent	Shri Somnath Ghosh, Advocate

**ORDER**

**Per Shri Rajesh Kumar, AM**

This is an appeal preferred by the revenue against the order of Ld. CIT(A), Guwahati-2, Guwahati dated 03.07.2020 for AY 2012-13.

2. In ground nos. 1 and 2, the revenue has challenged the order of Ld. CIT(A) on the ground that Ld. CIT(A) has wrongly quashed the reopening of assessment by holding the same to be made on the basis of reason recorded in a mechanical manner and on borrowed satisfaction.

3. The facts in brief are that the case of the assessee was reopened u/s. 147 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) by issuing notice u/s. 148 on 30.03.2019 after obtaining the approval of the competent authority. The said notice was complied with by the assessee by filing return of income on 25.04.2019 showing total income of Rs.12,60,600/-. It is pertinent to state that assessee filed the original return of income on 30.02.2012 showing total income at Rs.12,60,600/-. Thereafter, the statutory notices were duly issued and served on the assessee. The assessee also challenged the reopening of assessment u/s. 147 of the Act by filing objection dated 23.12.2019 and the same were disposed of by passing a speaking order by the AO on 03.12.1990. The assessee also filed submission on merit explaining the amount of Rs.1,67,07,000/-. However, the AO rejected the reply of the assessee filed in response to the show cause notice on

20.12.2019 and added the same to the income of the assessee u/s. 68 of the Act. The assessee challenged the order before the Ld. CIT(A) on legal issue as well as on merit. The Ld. CIT(A) allowed the issue on wrong reopening of assessment by holding that the case of the assessee has been reopened by the AO in a mechanical manner and on borrowed satisfaction, without application of mind by the AO himself after following a series of decisions on the issue, Ld. CIT(A) also allowed the appeal on merit by holding that the amount received by the assessee of Rs.1,67,07,000/- was received from M/s. Sambhav Distributors Pvt. Ltd. (in short "SDPL") which is a partner in the assessee company whereas the AO has recorded a finding that the same is shell company.

4. After hearing the rival contentions and perusing the material available on record, we observe that the case of the assessee was undisputedly reopened u/s. 147 of the Act by issuing notice u/s. 148 of the Act after recording the reasons to believe as under:

*"Information received from DDIT (INV), Unit-1(2) Kolkata vide letter No.DDIT(Inv)/Info/Kol/Unit-1(2)/2018-19/11385-11406 dated 1/03/2019 that high value of cash transaction in the bank account of (i) Life Fashionware Supplier Pvt. Ltd (A/c. No. 015406700004300) (ii) Guru Tradecom, Rajkamal Exclusive was made. Shri Afsar Ali, was Proprietor of various firms. On verification, it was found that funds to the tune of Rs.10 crore have been credited in the accounts and most of cash receipts were just under the threshold limit. A number of inter-se transfers are also seen among these accounts. On the basis of bank statement, fund trail has been prepared and the ultimate beneficiaries had been identified. The assessee M/s. Bath and Sanitary was one of the beneficiary. The transaction of funds are as under:*

LIFE FASHIONWEAR SUPPLIERS PVT LTD A/c No. 015406700004300	19/08/2011	Sambhav Distributors Private Ltd. A/c 02642560003905	26/8/11	10,00,000	Bath & Sanitary
	15/09/2011	Sambhav Distributors Pvt. Ltd. 02642560003905	16/09/11	5,00,000	Bath & Sanitary
			Total	15,00,000/-	

*In view of above findings and on the basis of cash trail prepared, it is clear that the beneficiary concerns brought their unaccounted cash into the books of accounts by means of multiple layering through a number of paper companies/concern.*

3. *On perusal of report, it was observed that the assessee M/s Bath and Sanitary brought its unaccounted cash into books of account by means of multiple layering through a number of paper companies/concerns.*

4. *On verification of return of Income of the assessee for the AY 2012-13, the assessee had reflected sundry creditors to the tunes of Rs.1,68,67,667/-.*

5. *On the basis of facts as discussed above, it is observed that the transaction made by the assessee company with Shell Company M/s Sambhav Distributors Private Limited by way of transferring the Fund from various entities through banking channel. In the case of M/s LIFE FASHIONWEAR SUPPLIERS PVT LID, the cash has been received to the tune of Rs.10 crore and subsequently the fund reached to various beneficiary companies is nothing but the assessee's own unaccounted income. I have reason to believe that in the case of assessee, an amount of Rs. 15,00,000/- is nothing but assessee's own unaccounted money routed through shell company and has escaped assessment within the meaning of section 147 of the Income-tax Act,1961 and needs to be examined."*

5. We observe from the reasons recorded as extracted above that the case of the assessee has been reopened on the ground that assessee is beneficiary of Rs. 15 lakh received from SDPL, Rs. 10 lakh on 19.08.2011 and Rs.5,00,000/- on 15.09.2011 aggregating to Rs. 15 lakh. AO also noted that in the return of income the assessee has shown sundry creditors of Rs.1,67,67,667/- and in para 5, the AO noted that assessee has made this transaction with subsidiary company M/s. SDPL by way of transferring the funds through banking channels. The AO also referred to M/s. Life Fashionwear Suppliers Pvt. Ltd. wherein the cash was received to the tune of Rs. 10 cr. and subsequently passed on to various beneficiaries. Thereafter, the AO noted that it has forwarded Rs. 15 lakhs to the assessee and accordingly has escaped assessment and thus the AO justified the reopening of assessment. We also examine the return filed by the assessee for AY 2012-13 and observe from the details of persons who were partners in the assessee firm as on 31.03.2012 that SDPL is a partner in the assessee firm. During the course of assessment proceedings, the AO noted that assessee has received Rs.1,67,07,000/- as capital contribution from its partner SDPL. It is abundantly clear that AO has not applied his mind on the information received and reopened the assessment in a mechanical manner and that too on borrowed satisfaction without recording his own satisfaction. In our opinion, the Ld. CIT(A) has rightly quashed the reopening of assessment on the

ground of mechanical reopening and borrowed satisfaction. The case of the assessee finds support from 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 Hon'ble Bombay High Court in the case of Hindustan Lever Ltd. vs R.B. Wadkar (No. 1) in 2004 137 TAXMAN 479 (Bom) has held the reasons have to be read as recorded and there cannot be any substitution or addition or deletion to the reasons. Therefore, we do not find any infirmity in the order of Ld. CIT(A), accordingly we uphold the same on this issue by dismissing the ground nos. 1 and 2 of the revenue.

6. The issue raised in ground no. 3 is against the deletion of addition of Rs.1,67,07,000/- u/s. 68 of the Act which has also been allowed by Ld. CIT(A) by holding that the money received from the partnership concern as capital contribution cannot be added u/s. 68 of the Act. The case of the assessee finds support from the decision of Hon'ble Telengana High Court in Nova Medicare Vs. ITO (2023) 150 taxmann.com 363 (Telengana) wherein it has been held that firm/partner is not required to explain the source of income of its partners regarding contribution made towards capital of the firm and also that unexplained cash credit would have to be assessed in the individual partners of the firm not the firm itself and, therefore, the addition made u/s 68 on account of capital contribution has to be deleted. Similar ratio has been laid down by the Coordinate bench of the Tribunal in the case of M/s. Sarker Marine Service Vs. ITO, ITA No. 329/Kol/2011 order dated 02.09.2011 which is extracted as under:

*“3. We have heard rival submissions and gone through facts and circumstances of the case. Brief facts of the case are that during financial year 2004-05 relevant to Assessment Year 2005-06, Assessing Officer noticed that assessee firm's partner Shri N. C. Sarkar has introduced capital of Rs.6.20 lac for which it could not explain the sources and added this amount in the hands of firm. Aggrieved, assessee preferred appeal before CIT(A). The CIT(A) also confirmed the action of the Assessing Officer by holding as under:*

*"I have considered the above submission of the A/R. It is seen that the source of this amount has been claimed as retirement benefits received at the time of retirement, past savings and sale of immovable property. From the supporting documents submitted I find that Shri N. C. Sarkar retired in 1993 and the retirement benefits were received at that time which was about 77 years before the introduction of above cash of Rs.6,20,000/-. Similarly, the house property was sold in 2001 and the payment for the same was received by draft and cheque in January/February 2001. This receipt was also about three and half years prior to the cash introduction of Rs. 6, 20, 000/- in the assessee firm. From this it can be seen that the assessee has failed to explain the immediate source of this cash. It is an admitted fact that for assessment year 2005-06 and few earlier assessment years Shri N C Sarkar has not filed his personal return. Therefore, the so called capital introduction is not getting verified with the I T records also The A/R of the assessee produced a bank account of Shri N C Sarkar in Bank of India, South Suburbs (Behala Branch) for financial year 2004-05. It is seen that cash of about Rs.4,07,000/- has been withdrawn from this account during financial year 2004-05. However, during this period cash has been deposited also in this account. In fact, just after the end of financial year 2004-05 on 28.04.2005 cash of Rs.8,48,000/- is deposited in this account. From this it can be seen that it is not clear if the cash withdrawn from this bank account was deposited in the assessee firm or was re-deposited in the same bank account of Shri N C Sarkar. In view of the above discussion I am of the opinion that the source of the above amount of Rs. 6,20,000/- is not explained. Therefore, I confirm this addition made by the Assessing Officer. "*

*Aggrieved, now assessee is in appeal before us.*

*4) We find that this issue of introduction of capital by partners is covered by the decision of Hon'ble Gujarat High Court in the case of CIT vs. Pankaj Dyestuff Industries in IT Reference No.241 of 1993 wherein the Hon'ble High Court has held as under:*

*"13. Applying the aforesaid principles to the facts of the present case, it is apparent that the assessee had furnished the details which would discharge the onus which lay on the assessee. It is not the case of the revenue that the partners of the assessee firm are fictitious. The Income Tax Officer has not disputed that the credits in the accounts of the partners were not deposits from the partners. Moreover, it is an admitted position that this was the second year of the firm and that it was running in loss. It is true that the Income Tax Officer did not accept the explanation given on behalf of the assessee in respect of the new deposits or cash credits in the accounts of the partners. The mere non-acceptance of that explanation does not, however, provide material for finding that the said sum represented income of the assessee firm. As held by the Allahabad High Court in case of Commissioner of Income Tax, Allahabad v. Jaiswal Motor Finance (supra), in the absence of any material to indicate that there were profits of the firm, the amount credited to the partners' accounts could not be assessed in the hands of the firm. Once the partners have owned that the monies deposited in their accounts are their own, the Income Tax Officer is entitled to and may proceed against the partners and assess the same in their hands, if their explanation is not found satisfactory.*

*14. In the facts and circumstances of the present case, both the Deputy CIT (Appeals) and the Tribunal have found that the assessee had discharged the primary onus which was on it by offering explanation, which has not been found to be incorrect or false in any manner. The interest of the revenue is also safeguarded as the Income Tax Officer has been given the liberty to consider the said credits in the hands of the partners if he is not satisfied with the sources of investment of cash credits in the accounts of the partners. "*

*We further find that the issue is also covered by the decision of Hon'ble Allahabad High Court in the case of CIT Vs. Jaiswal Motor Finance (1983) 144 ITR 358 (All), wherein it has been held that if there are cash credit entries in the books of a firm, in which the accounts of the individual partners exist, and it is found as a fact that the cash was received by the firm from its partners, then, in the absence of any material to indicate that these were the profits of the firm, it could not be assessed in the hands of the firm. This is so because in such a case the onus placed on the assessee firm by section 68 should be deemed to have been discharged by it. Where certain deposits are found in the books of the firm in the names of its partners and such deposits are treated as income of the respective partners, it is not open to treat again such deposits as income of the firm.*

*In view of the above settled legal position, we are of the firm view that capital introduced by the partner in the absence of finding that these are introduced out of profit of firm, addition cannot be made in the hands of firm. Accordingly, we delete the addition and reverse the orders of lower authorities. Appeal of the assessee is allowed."*

7. Therefore, even on merit the assessee's case is very strong and has rightly been deleted by the Ld. CIT(A) and accordingly, we uphold the order of Ld. CIT(A) on this issue also. Consequently, ground no. 3 of revenue's appeal is also dismissed.

8. The issue raised in ground nos. 4 and 5 are general in nature and needs no specific adjudication.

9. In the result, the appeal of revenue is dismissed.

Order is pronounced in the open court on 30<sup>th</sup> October, 2023

Sd/-  
(Sonjoy Sarma)  
Judicial Member

Sd/-  
(Rajesh Kumar)  
Accountant Member

Dated: 30th October, 2023

*JD, Sr. PS*

Copy of the order forwarded to:

1. Appellant–
  2. Respondent .
  3. CIT(A, Guwahati-2, Guwahati
  4. CIT, . ,
  5. DR, ITAT, Guwahati
- True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Bench, Kolkata