

आयकर अपीलीय अधिकरण  
कोलकाता 'एसएमसी' पीठ, कोलकाता में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'SMC' BENCH, KOLKATA**

श्री राजेश कुमार, लेखा सदस्य  
के समक्ष

Before

**SRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**I.T.A. No.: 916/KOL/2023**

**Assessment Year: 2008-09**

***Ambika Tradelink Pvt. Ltd.....Appellant***  
***[PAN: AAGCA 2764 A]***

**Vs.**

***DCIT, Circle-4(2), Kolkata.....Respondent***

**Appearances:**

***Assessee represented by: Sh. Somnath Ghosh, Adv.***

***Department represented by: Smt. Archana Gupta, CIT (D/R).***

Date of concluding the hearing : October 31<sup>st</sup>, 2023

Date of pronouncing the order : November 30<sup>th</sup>, 2023

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

This is an appeal preferred by the assessee against the order of Learned Commissioner of Income-tax (Appeals)-NFAC, Delhi [hereinafter referred to Ld. 'CIT(A)'] dated 05.07.2023 for the Assessment Year (in short 'AY') 2008-09.

2. The assessee has challenged the order of Ld. CIT(A) on various legal issues as well as on merits. However, at the time of hearing the assessee pressed only one legal ground which is extracted as under:

*“For that the Ld. CIT(A) has erred in law and in fact in upholding the order of the AO thereby upholding the reopening of assessment u/s 147 of the Act by ignoring the fact that the approval u/s 151 of the Act was mechanically accorded and that too without application of mind.”*

3. The facts in brief are that the assessee filed the return of income on 30.09.2008 declaring loss of Rs. 6,207/- which was processed u/s 143(1) of the Act on 27.08.2009 accepting the returned income. Thereafter, the case of the assessee was reopened u/s 147 of the Act by issuing notice u/s 148 of the Act on 31.03.2015. The said notice was duly complied by the assessee by filing return of income dated 29.04.2015 by accompanying a copy of ITR 5 dated 28.04.2015 in compliance and also requested the AO to provide the copy of reasons recorded for the reopening of assessment which was duly supplied by the AO vide letter dated 26.05.2015. Finally, the assessment was made after making addition of Rs. 7 Lakh u/s 68 of the Act on the ground that the assessee has received the said sum from two parties which remained unexplained in the order passed u/s 147/143(3) of the Act dated 30.03.2016.

4. The appeal of the assessee was dismissed by Ld. CIT(A) *ex-parte* where the assessee failed to appear on the various dates given however, decided the issue after considering the facts on record and on merit.

5. After hearing the rival contentions and perusing the material on record including the copy of sanction accorded u/s 151 of the Act dated 30.03.2015 in which the Addl. CIT, Range-4, Kolkata has granted the approval to reopen the case and for initiating



6. Thus, it is clear from the above that approval has been granted in a mechanical manner without application of mind and is therefore, against the spirit of the Act in which this mechanism has been provided that approval has to be taken u/s 151 of the Act by the competent authority so that a settled assessment is not unsettled in a casual manner. The competent authority after going through the proposal of the AO if finds the proposal cogent and plausible, only then the approval is to be granted but in the present case, Addl. CIT, Range-4, Kolkata has just signed the proforma placed before him without any application of mind. The said re-opening of assessment on the basis of the approval granted by Addl. CIT, Range-4, Kolkata vide approval dated 30.03.2015 is therefore, not as per the provisions of the Act and cannot be sustained. The case of the assessee finds support from the decision of the Coordinate Bench in the case of *Ajay Trading Company vs. ACIT* in *ITA No. 120/KOL/2022* order dated 02.02.2023 wherein a similar issue has been decided in favour of the assessee by holding and observing as under:

*“8. After hearing the rival contentions and perusing the material on record including the reasons recorded by the AO u/s 148 of the Act and approval granted by the Ld. PCIT to such reopening, we observe that there are several mistakes/ infirmities /contradictions in the reasons recorded. For the sake of ready reference the reasons recorded are reproduced below:*

*“29.03.2019*

*In the instant case, the asses see filed Income Tax Return u/s 139 of the Income- Tax Act, 1961 on 26.09.2012, showing total income of Rs, 1,44,44,160/-. Assessment u/s 153A/143(3) was completed on 28.12.2016 as per return.*

An Information was received from ITO (Inv), Unit-1, Kolkata on 04/08.03.2019 in respect of M/s Ajay Trading Company wherein it has been stated that "Rahul Enterprise is a sole proprietorship maintaining account no. 029005003254 opened on August, 2017 in Faizabad Branch, UP. The PAN of the customer is AGAPK6813D. Occupation status is business. Account nos. 019605001938 and 019605000653 are PAN linked. Account No. 000605004320 mentioned is transaction linked. The said amount was triggered under large Value D/W cash transactions in [CAA] ACCOUNTS. The transaction pattern observed in the account has been deposited mainly by cash followed by immediate withdrawals through transfers to the transaction linked account. During the period from 01.04.2011 to 05.01.2012, the total debits and credits in the account are Rs. 48.30 lacs and Rs.48.25 lacs respectively. Out cash is Rs.38.25 lacs. As per enhanced due diligence, it was found that the customer was not available at the given address at the time of visit. The neighbours informed that they are not aware of the customer. It is seen that the customer is getting cash deposits where the same is transferring to Ajay Trading and his own account. Based on the above mentioned facts, the account is being reported as suspicious".

During the course of enquiry/investigation, requisition u/s 133(6) of the Income Tax Act, 1961 was issued to Branch Manager, ICICI bank, for the bank statements by the Investigation Department. The bank statements were duly received and analyzed by the Investigation department.

Further, on going through the bank statement of M/s. Rahul Enterprises A/c./io. 029003254 maintained with ICICI Bank, Kolkata, it is perused that there were high value cash deposits followed by debits through RTGS/transfers in favour of M/s. Ajay Trading company. Subsequently, notice u/s.133(6) of the Income Tax Act, 1961 was issued to M/s. Ajay Trading Company and M/s. Rahul Enterprises. In response to this, submissions were received from M/s. Ajay Trading Company. However, the explanation for the transfer from M/s. Rahul Enterprises is not acceptable and remained unexplained. The Assessee M/s Ajay Trading Company is one of the beneficiaries which received funds amounting to Rs. 42,00,000/-

Source Bank A/c. Details: 029005003254, ICICI Bank, Kolkata(Rahul Enterprises)					
Sl. No.	Beneficiary	PAN	Jurisdiction	E.Y	Amount/ln Rs. lakh)

1	M/s. Ajay Trading Company	AAEFA5369A	Central Circle-312), Kolkata	20 JI -12	42
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Therefore I have reason to believe that total income of Rs.42,00,000/- has escaped assessment in the hand of the assessee for A.Y. 2012-13.

In this reopening u/s 147, there is no escapement of income chargeable to tax in relation to any assets (including financial interest in any entity) located outside India.

The facts narrated herein above, clearly indicates that the assessee M/s Ajay Trading Company had not disclosed full and truly all material facts necessary for its assessment It is evident that from the above discussion that in this case, the issues under consideration were never examined by the AO during the course of assessment this fact is corroborated from the contents of notices issued by the A.O. u/s 143(2) / 142(1) during proceedings u/s 143A/ 143(3) of the IT Act. It is important to highlight here that materials facts relevant for the assessment on the issue(s) under consideration were not filed during the course of assessment proceedings. For the forestated reasons, it is not a case of change of opinion by the AO.in this case, since more than four years have lapsed from the end of assessment year under consideration, a proposal is put up before Ld. Pr. C.I.T, Central, Kolkata-2 through Add C.I.T, Central, Range-3, Kolkata for giving necessary sanction to issue notice u/s. 148 of the IT. Act 1961 for the A.Y. 2012-13 as per the provisions u/s 151 of the I.T. Act,1961.

Form ITNS-10 along with relevant enclosures is put up before the Addl. CIT, Central, Range-3, Kolkata for kind perusal and approval.”

The above reasons are placed at page no. 4 & 5 of the PB. A perusal of the para 2 in the above reasons states that M/s Rahul Enterprise is a proprietary concern from which the assessee has received money, has opened account no. 029005003254 on August, 2017 in Faizabad Branch, UP from ITO(Inv), Unit-1, Kolkata vide letter dated 4/8.3.2021. The instant assessment year before us is AY 2012-13 whereas the reasons state that account was opened in August, 2017 in Faizabad Branch, UP which is apparently wrong and contradictory and not practically possible. Similarly on the next page in para 4the AO has again mentioned that M/s Rahul Enterprise has opened account No. 029003254 with ICICI Bank, Kolkata while in the table prepared on page 5 of the PB, the AO stated the bank account no

029005003254 with ICICI Bank, Kolkata which showed that there was a total non-application of mind and mechanical recording of reasons by the AO. We note that there is a contradiction in the bank account no. as mentioned in para 1 at page 4 & 5 of the PB and also the branch of the bank where the account was reopened. In other words, Para 2 states that account was opened in Faizabad Branch, UP whereas in page 5 of the PB stated that it has been opened in ICICI Bank, Kolkata. We are also failed to understand as to how the account could be reopened in August, 2017 as stated in Para 2 page 4 while the case at hand relates AY 2012-13. Similarly we note that the Ld. PCIT while according to approval for reopening the assessment has either not perused these reasons and merely given a mechanical approval by stating in Item no. 13 of the approval granted dated 30.03.2019 that "Yes, I am satisfied case may be reopened". In our opinion such a casual approach on the part of the authorities cannot be appreciated and encouraged because by reopening the assessment, the settled assessment are being unsettled and authorities are supposed to exercise utmost care and caution while recording the reasons and also while granting the approval. On this count also, the reassessment proceeding as well as reassessment framed cannot be sustained. The case of the assessee find supports from the decision of Hon'ble Calcutta High Court in the case of Harish Gangji Dedhiya (supra) wherein the relevant portion held as under:

"7. In the reasons recorded, a copy whereof is at Exhibit B to the petition, the proposed re-opening is set out to be for A.Y.2014-15. The information based on which respondent no.2 has formed an opinion that there is reason to believe escapement of income, in the reasons it is stated, relates to A.Y.2015-16. In the conclusion given in the reasons recorded for reopening, respondent no.2 states ...I have reason to believe that the amount exceeding Rs. One Lakh chargeable to tax has escaped assessment for the assessment year 2016-17 within the meaning of Section 147 of the I. T. Act, 1961... Therefore, respondent no.2 himself is not clear for which year or based on information for which year that he proposed to re-open, as he had reasons to believe that income had escaped assessment. In the Affidavit-in-Reply respondent no.2 casually states that it was a typographical error. In our view, respondent no.2 owed an obligation to explain as to how a typographical error crept in, in more than one place and before affixing his signature did he read the reasons that he had recorded. Therefore, we are not satisfied with the casual excuse of typographical error.

8. Moreover, if only the Additional Commissioner, who has recommended the proposal of respondent no.2 to respondent no.3 or respondent no.3 himself, while expressing satisfaction that the case was fit for issue of notice under Section 148, had bothered to read the reasons recorded, certainly they would have found the errors and they would have directed respondent no.2 to correct the reasons or refused to grant approval on reasons fraught with errors. This also indicates non-application of mind by the recommending authority, who, Mr. Sharma says, must be an Additional Commissioner of Income Tax and respondent no. 3. On this ground alone, the notice issued under Section 148 gets vitiated.

9. Paragraph 2 of the reasons recorded reads as under:

“2. The A.O. has information that the assessee has entered into certain financial transaction/ activities during the financial year 2013-14 relevant to the A.Y.2015-16. On going through the information, it is noticed that the assessee has involved in the share trading activity' during the year and it involved an amount of Rs.2,46,07,261/-. It came to noticed that during the year assessee has made of shares/derivatives amounting to Rs. 2,46,07,261/-and made huge profit from these transactions. However, it has not been accounted in books of account. Further, it is observed that the assessee had earned long term profit from trading on shares/ derivative, which found to be fictions and claimed as exempted profit as long term capital gain on share trading. Thus, it is crystal clear that the assessee has routed his unaccounted income as long term capital gain and accounted in books of account. Accordingly, given colour of genuine transaction. Thus, I am at the opinion that assessee has escaped assessment exceeding Rs. One Lakh.”

10. Reading this, nobody can make out or at least we are unable to make out any demonstrable link between the information and the formation of belief. This paragraph does not even indicate what was the trading activity during the year that the petitioner was involved in or from what shares or derivatives the petitioner is alleged to have made huge profit. How can someone be expected to respond to such vague charges?

11. In *Income Tax Office, I Ward, District VI Calcutta and Others vs. Lakhmani Mewal Das*, it is held as under:

As stated earlier, the reasons for the formation of the belief must have a rational connection with or relevant bearing on the formation of the

*belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Income-tax Officer and the formation of his belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. It is no doubt true that the court cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the Income- tax Officer on the point as to whether action should be initiated for reopening assessment. At the same time we have to bear in mind that it is not any and every material, howsoever vague and indefinite or distant, remote and far- fetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment. The fact that the words "definite information" which were there in Section 34 of the Act of 1922 at one time before its amendment in 1948 are not there in Section 147 of the Act of 1961 would not lead to the conclusion that action cannot be taken for reopening assessment even if the information is wholly vague, indefinite, far- fetched and remote. The reason for the formation of the belief must be held in good faith and should not be a mere pretence.*

*(emphasis supplied)*

*12. Therefore, there must be live link or close nexus between the material before the ITO in the case at hand and the belief which he was to form recording the escapement of income. It is also no doubt true that Court cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the Income Tax Officer on the point as to whether action should be initiated for re-opening assessment but at the same time, it is not any and every' material, however vague and indefinite or distant, remote and far-fetched which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment. It is also settled law that the reasons for re-opening assessment has to be tested / examined only on the basis of the reasons recorded at the time of issuing a notice under Section 148 of the Act seeking to re-open the assessment. These reasons cannot be improved upon and/or supplemented much less substituted by an Affidavit and/or oral submissions (First Source Solutions Limited vs. The Assistant Commissioner of Income Tax - 12(2)(1) and Another).*

*Therefore, the submission of Mr. Sharma that respondent no.2 has explained in the order on objections what was the report and*

information and details on which he formed a reason to believe, will be of no assistance to respondents.

13. In the circumstances, we hereby allow the petition in terms of Prayer Clause (a) which reads as under:

*“That this Hon’ble Court be pleased to issue a writ of Certiorari or a writ in the nature of Certiorari or any other appropriate writ under Article 226 of the Constitution of India, calling for records pertaining to the impugned reopening notice dated 31.03.2021 issued by the Respondent No.2 (being Exhibit A hereto) and after going into the validity and legality thereof to quash and set aside the same.”*

14. Petition disposed.

Similarly the case of assessee squarely covered by the decision of Hon’ble Delhi High Court in the case of N.C. Cables Ltd. (supra) wherein the Hon’ble Court has held that while the competent authority while authorizing the reassessment notice has to apply his mind and form an opinion and mere appending of the expression ‘approved’ says nothing. The operative part is reproduced as under:

*“11. Section 151 of the Act clearly stipulates that the Ld. CIT(A), who is the competent authority to authorize the reassessment notice, has to apply his mind and form an opinion. The mere appending of the expression ‘approved’ says nothing. It is not as if the Ld. CIT(A) has to record elaborate reasons for agreeing with the noting put up. At the same time, satisfaction has to be recorded of the given case which can be reflected in the briefest possible manner. In the present case, the exercise appears to have been ritualistic and formal rather than meaningful, which is the rationale for the safeguard of an approval by a higher ranking officer. For these reasons, the court is satisfied that the findings by the IT AT cannot be disturbed.*

12. The substantial questions of law framed are answered in favour of the assessee and against the Revenue. The appeal is dismissed.”

Similarly the Co-ordinate bench of Gauhati in the case of Royal Heritage Tripura Castle (supra) has held that ritualistic approval granted in mechanical manner without application of mind is invalid and the notice issued by the AO is without jurisdiction. The operative part is reproduced as under:

*“6. Having heard both the parties and perused the records. It is an admitted position that the AO had put up a note before Addl. CIT*

*wherein he has put up a note along with the information as well as reason for forming his belief to re-open the assessment of the assessee for A.Y. 2014-15 on 28.11.2017 which action of AO required the approval of Addl./Joint CIT u/s 151 for issuance of notice u/s 148 of the Act. It is noted that the AO had put up the note for approval for reopening on 28.11.2017 and on the same day approval has been written by hand by the Addl. CIT and on the same date notice has been issued u/s 148 by the AO. Even though the Ld. DR stated that he has got online approval wherein the Ld. Addl. CIT has written "I am satisfied with the reason so approval granted" still according to me the action of the Addl. CIT cannot satisfy the requirement of law which is expected from an authority while exercising approval before issuance of notice for re-opening. It should be kept in mind that approval u/s 151 of the Act is a power given to the higher officer (Addl. CIT / Joint CIT) in certain cases like that of the assessee in this cases is for granting approval to re-open the assessment of the assessee which is a valuable safeguard to check against any arbitrary exercise of power by ITO/AO. This safeguard given by the Parliament to the higher officer cannot be granted mechanically or in a ritualistic manner. Merely by scribbling "approved" or for argument sake even if the Ld. Addl. CIT has written "I am satisfied with the reason so approval given". This standard of approval cannot satisfy the test as to whether the Addl. CIT has applied his mind or not before approval was granted. It is noted that even this kind of approvals given by the higher authorities as contended by the Ld. DR has been found not to satisfy' the test as to whether the approving authority has applied its mind to the information received by the AO and to the reason recorded by the AO justifying the re-opening as held by the Hon'ble Delhi High Court and Madhya Pradesh High Court in the cases cited by the Ld. AR (supra). Therefore, in my opinion, approval granted by the Addl. CIT, Sillong Range has been done in a ritualistic manner mechanically without application of mind. Therefore, the approval granted by the Addl. CIT is bad in law for non-application of mind. Therefore, the issuance of notice u/s 148 of the Act by the AO without getting proper approval from the Addl. CIT as per section 151 of the Act being invalid, the action of the AO issuing notice u/s 148 of the Act is without jurisdiction and, therefore, consequently framing of assessment order dated 07.08.2018 is bad in law and accordingly quashed."*

*In view of the facts of the case and in the light of the ratio laid down in the decisions as discussed above, the reassessment proceedings as well as reassessment framed us/ 147 are liable to be quashed. On the issue reopening assessment beyond the period of four years*

where assessment is framed u/s 143(3), we are mindful of the condition as laid down by the first proviso to Section 147 of the Act which are required to be satisfied before reopening the assessment. The proviso states that there has to be failure on the part of the assessee to truly and fully disclose the material/ information which leads to escapement of income. In the present case, the assessment has been framed by the AO u/s 143(3) read with Section 153A and the assessee has provided details/information in the return of income as well as in the assessment proceedings. Therefore to draw inference that the assessee has failed to disclose truly and fully any material facts relating to assessment would be wrong. The case of the assessee finds support from the following decisions (z). *New Delhi Television Ltd. vs DCIT (supra)*, (ii) *CIT vs Multiplex Trading & Industries Company Ltd. (supra)*, (Ui). *Hubtown Ltd. vs DCIT (supra)*, (iv). *Dr. Rajivraj Ranbirsingh Choudhary vs ACIT (supra)* and also *Haldia Petrochemicals Ltd. vs. ACIT in ITA no. 2455/Kol/2019 for AY 2008-09 dated 24.03.2021* which has been passed by the Tribunal after following the decision of Kolkata Tribunal in the case of *Beekay Steel Industries Ltd. vs. DCIT in ITA No. 105/Kol/2015 dated 31.05.2017* wherein the issue has been allowed by quashing the assessment as well as the reopening proceedings. On this count also, the reassessment proceedings as well as reassessment frame are liable to be quashed. Accordingly considering the facts and circumstances of the case and various judicial pronouncements as discussed above, we are inclined to set aside the order of Id CIT(A) and quash the proceeding u/s 147 of the Act and also the consequent assessment order. Consequently the ground nos. 1, 4 & 5 are allowed.

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

7. The Coordinate Bench has passed the above decision after following the decision of Hon’ble Calcutta High Court in the case of *Harish Gangji Dedhiya vs. Union of India & Ors. in Writ Petition No. 1065 of 2022 dated 29.03.2022* and the decision of the Hon’ble Delhi High Court in the case of *PCIT vs. M/s N.C. Cable Ltd. in ITA 335/1015 dated 11.01.2017* and also Co-ordinate Bench of Gauhati in the case of *M/s Royal Heritage Tripura Castle vs. ITO in*

ITA Nos. 470 & 471/Gau/2019 for AY 2014-15 & 2015-16 dated 15.12.2021.

8. In all the above decisions the Hon'ble Courts have held that approval granted without application of mind and in a mechanical manner would render the reopening of assessment as void and invalid. Accordingly, we quash the reopening of assessment.

9. In the result, the appeal filed by the assessee is allowed.

**Kolkata, the 30<sup>th</sup> November, 2023.**

Sd/-  
[Rajesh Kumar]  
Accountant Member

Dated: 30.11.2023

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

- 1. Ambika Tradelink Pvt. Ltd., C/o. S.N. Ghosh & Associates, Advocates Sagar Mansion, 2, Garstin Place, 2<sup>nd</sup> Floor, Suite No. 203, Hare Street, Kolkata-700 001.**
- 2. DCIT, Circle-4(2), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

*// True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata