

**आयकर अपीलीय अधिकरण, कोलकाता पीठ 'ए', कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA**

**श्री संजय गर्ग, न्यायिक सदस्य एवं श्री मनीष बोरड, लेखा सदस्य के समक्ष**  
Before Shri Sanjay Garg, Judicial Member and Dr. Manish Borad, Accountant Member

I.T.A No.516/Kol/2021  
Assessment year: 2012-13

**Rahul Pandey.....Appellant**  
224B, APC Road, Ghari Wali Building,  
Shyam Bazar, Kolkata-700004.  
[PAN: BAAPP1022N]

vs.

**ITO, Ward-44(1), Kolkata.....Respondent**

**Appearances by:**

Shri Miraj D. Shah, AR, appeared on behalf of the appellant.

Shri Umakanta Dhruapati, DR, appeared on behalf of the Respondent.

Date of concluding the hearing : September 19, 2023

Date of pronouncing the order : December 14, 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 22.10.2021 of the National Faceless Appeal Centre (hereinafter referred to as the 'CIT(A)') passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. In this appeal, the assessee, inter alia, has contested the validity of reopening of the assessment made by the Assessing Officer u/s 147 r.w.s 148 of the Act.

3. The assessee contested the reopening of the assessment on two grounds. Firstly that the Assessing Officer did not record valid reasons for forming belief regarding the escapement of the income of the

assessee. Secondly that no approval of the competent authority was taken by the Assessing Officer u/s 151 of the Act.

4. Before proceeding further, we deem it fit to reproduce here the order of the Tribunal dated 08.05.2023 as under:

*The present appeal is directed at the instance of assessee against the order of the ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 22.10.2021 passed for A.Y. 2012-13.*

*2. The assessee has filed his return of income on 22.03.2013 declaring a total income of Rs.18, 545/-. According to the ld. Assessing Officer, he received information from the Investigation Wing exhibiting that the assessee had undertaken a penny stock transaction, therefore, he issued notice under section 148 of the Income Tax Act. In order words, he reopened the assessment by recording reasons under section 147 of the Income Tax Act and issued a notice upon the assessee.*

*3. The ld. Counsel for the assessee submitted that right from the beginning, the assessee has been requesting for supply of Copy of reasons as well as approval granted by the Competent Authority under section 151 for empowering the ld. Assessing Officer to reopen, but such documents have not been supplied to the assessee.*

*4. In order to determine whether reopening is sustainable in the eyes of law or not. It is necessary to look into the reasons for reopening as well as fulfilment of procedural requirement i.e. approval granted by the Competent Authority for reopening of assessment under section 151 of the Income Tax Act. Considering the above respect, we direct the ld. Assessing Officer to submit copy of the reasons recorded for reopening as well as approval obtained from the Competent Authority by next date of hearing. Hearing is adjourned to 18th July, 2023. Copy of this order-sheet be supplied to both the parties for information and compliance.*

Sd/-  
MANISH BORAD  
ACCOUNTANT MEMBER

Sd/-  
RAJPAL YADAV  
VICE PRESIDENT

5. Though it has come on record that the reasons for reopening of the assessment were recorded by the Assessing Officer, however, the department could not produce the copy of the approval granted by the competent authority for reopening of the assessee's case u/s 151 of the Act. The opportunity was granted to the department for 18.07.23, 18.9.23 & 19.09.23, however, no copy of the approval of the competent authority u/s 151 has been produced on the file. Under the circumstances, the adverse inference is taken against the department and reopening of the assessee is held as bad in law for want of approval u/s 151 of the Act. Therefore, the impugned assessment order framed u/s 143(3) r.w.s. 147 of the Act is hereby quashed.

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

***Kolkata, the 14<sup>th</sup> December, 2023.***

Sd/-

[डॉक्टर मनीष बोरड /Dr. Manish Borad]  
लेखा सदस्य /Accountant Member

Sd/-

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

Dated: 14.12.2023.

RS

*Copy of the order forwarded to:*

- 1 Rahul Pandey
2. ITO, Ward-44(1), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches