

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

[Before Dr. Manish Borad, Accountant Member &  
Shri Sonjoy Sarma, Judicial Member]

**I.T.A. No. 1116/Kol/2023**  
**Assessment Year : 2013-14**

Panel Commerce Pvt. Ltd.	vs	ITO, Ward-4(1), Kolkata
PAN: AAGCP 4413 P		
Appellant		Respondent

Date of Hearing	20.12.2023
Date of Pronouncement	08.02.2024
For the Assessee	Shri Sunil Surana
For the Revenue	Shri Abhijit Kundu, CIT

**ORDER**

**Per Sonjoy Sarma, JM:**

This appeal of the assessee for the assessment year 2013-14 is directed against the order dated 27.09.2023 passed by the Id. Commissioner of Income-tax, Appeals, NFAC, Delhi [hereinafter referred to as 'the Id. CIT(A)']. The assessee has raised the following grounds of appeal:

*"1. For that the Id. CIT(A) erred in holding that reopening of assessment was proper when it was reopened only on the basis of information received from Inv. Wing borrowed satisfaction, non-application of mind and after recording vague reasons.*

*2. For that the Ld CIT(A) erred in confirming the action of Ld AO in making the addition on the basis of statement recorded during survey u/s 133A in the case of some third party when it has no evidentiary value as per law.*

*3. For that the Ld CITA) erred in holding that the appellant did not request for the copy of the statement and opportunity to cross examine the deponents when it was specifically requested by assessee vide letter dated 14.9.21 and therefore, the addition made on that basis is not in accordance with law.*

4. For that the Ld CIT(A) erred in confirming the addition of sale price of unquoted shares (held as stock-in-trade) without allowing deduction on account purchase cost when the purchases were accepted u/s 143(3).

5. For that the Ld CIT(A) erred in confirming the addition of sale price of unquoted shares (held as stock-in-trade) only because the purchaser did not comply with notice u/s 133(6).

6. For that the Ld CIT(A) erred in confirming the addition of cash deposit of Rs 6,55,000/- on the ground that cash deposits were made prior to cash withdrawals when in fact, it was submitted that the cash deposits were not made from the cash withdrawals but from the advance received against sale of shares, the details were filed and the Ld. AO did not proceed further to verify the same inspite of specific request.

2. Brief facts of the case are that the assessee company is involved in the business of trading of equity shares and finance. The assessee company has also filed its return of income for the assessment year in question declaring total income of Rs. 27,180/-. The ld. AO after getting information from the ADIT (Inv.), OSD, Unit-4, Kolkata which reveals that assessee company had received Rs. 1,25,00,000/- from one M/s. Brahma Tradelink Pvt. Ltd. and it was also observed that cash deposit aggregating to Rs. 2.12 crores and RTGS credit aggregating Rs. 5.85 crores was made in the said account of M/s. Brahma Tradelink Pvt. Ltd. Accordingly, notice u/s 148 was issued followed by statutory notice issued u/s 143(2) as well as u/s 142(1) of the Act to the assessee by directing him to furnish the details about the nature of business, details of sales and purchase were made during the year along with particulars of books of accounts, copy of bank account statement etc. The assessee has also raised objection in the context of notice issued u/s 148 of the Act stating that no income has escaped within the meaning of section 147 of the Act as the alleged amount has been truly credited in the profit & loss account of the assessee. However,

the claim of the assessee was turned down by the ld. AO and after examining the various facts of the case additions were made in the following manner:

- i. On account of sale of shares to UTC Marketing Pvt. Ltd. amounting to Rs. 24 lakhs.*
  - ii. Sachit Textiles Pvt. Ltd. as 10 lakhs.*
  - iii. M/s. Brahma Tradelink Pvt. Ltd. Rs. 1,25,00,000/-.*
  - iv. Various credits in the bank account to the tune of Rs. 2,78,00,000/-.*
  - v. Deposits made in the bank account of Rs. 6,55,000/-.*
  - vi. Unexplained credits to the tune of Rs. 1,82,60,000/-.*
- By assessing the total income of the assessee at Rs. 6,26,42,180/-”.*

3. Dissatisfied with the above order, assessee went into appeal before the ld. CIT(A) where the appeal of the assessee was partly allowed.

4. Feeling aggrieved by the above order assessee is in appeal before this Tribunal raising multiple grounds. Ground no. 1 & 2 are connected on which the ld. AR of the assessee stating before the bench that the reassessment proceeding initiated by the ld. AO is bad in law as the same has been done only on the basis of information received from Investigation Wing without making any enquiry by the AO prior to reopening of assessment. He further stated that in the case of assessee there was neither any independent application of mind by the AO nor any tangible material available on record to prove the fact that there was any escapement to the income of the assessee. He stated that the reopening as made in the case of assessee is on borrowed satisfaction which is not permitted under the provisions of law by inviting our attention to the judgement rendered by the Hon'ble High Court on the issue involved wherein clearly stated that where reopening was made on direction of the higher authority in such a

case reopening was not valid. Accordingly, there was no plea whatsoever by the assessing officer that there was escapement of income. The ld. AO has not independently made up his mind in order to make assessment u/s 148 of the Act. The ld. AR further pointed out before this bench that while framing the assessment, ld. AO vaguely referred to the statement of two parties in the assessment order namely Shri Praveen & Akash Agarwal. However, their names were nowhere mentioned in the reasons recorded in the case of assessee. In such a situation, the statements were never confronted to the assessee in the entire reassessment proceedings to find out whether the assessee was named as beneficiary of accommodation entry made by them. In this context, the submission of the assessee is that assessee was never given any opportunity to cross-examine such persons on whose statements purported additions were made. In reference to the above context, the AR of the assessee relied on the judgement of the Hon'ble Apex Court as in the case of Andaman Timber Industries, Sunita Dhadda and Eastern Commercial Enterprises where clearly stated that reasonable opportunity of cross examination should be afforded to the assessee. Similarly, the ld. AO did not proceed further issuance of notice u/s 133(6) of the Act neither any summon was issued to the parties u/s 131 of the Act nor any Inspector was deputed to verify the transaction from the assessment record of the party. The alleged addition was made by the AO only because there was no compliance to the notices which was in fact issued almost after 8 years of undertaking the transaction made with assessee. The assessee discharged its onus in order to prove the identity and genuineness of the transaction by filing all the sale bills, copies of the bank statement by proving the fact that transaction were made

through banking channels, copy of ledger of the party and MCA Master data showing that the company was active and compliant company. Since the transaction of shares were shown as stock in trade in the asset side of the balance sheet and sale as revenue in profit & loss account. Therefore, the transaction cannot have been treated as unexplained cash credit u/s 68 of the Act in the case of assessee. In terms of the order passed by co-ordinate bench of ITAT Kolkata in the case of Adbhut Vinimay P Ltd. vs ITO, Ward-4(3) in ITA No. 2404/Kol/2017.

5. On the other hand, ld. DR supported the decision rendered by the authorities below and objected to the prayer made by the AR of the assessee before this bench.

6. We after hearing the rival submission of the parties and perused the material available on record notice that the facts of the case is similar to various judgments rendered by the assessee on the context that the reopening on borrowed satisfaction is not permitted as pronounced by the Hon'ble Delhi High Court in the case of CIT vs SFIL Stock Broking Ltd. stating in paragraph no. 8, 9 & 10 are as under:

*"8. After having heard the counsel for the parties, we are inclined to agree with the submissions made by the Respondent/assessee. We find that the Supreme Court in Rajesh Jhaveri (supra) made it absolutely clear that before an assessing officer issues a notice under section 148, thereby re-opening the assessment under section 147 of the said Act, he must have formed a belief that income had escaped assessment and that there must be some basis for forming such a belief. The Supreme Court made it clear that the basis of such belief could be discerned from the material on record which was available with the assessing officer. However, the Supreme Court in Rajesh Jhaveri (supra) did not say that it was not necessary for the assessing officer to form a belief and that the mere fact that there was some material on record was sufficient.*

9. In the present case, we find that the first sentence of the so-called reasons recorded by the assessing officer is mere information received from the Dy. Director of IT (Inv.). The second sentence is a direction given by the very same Dy. Director of IT(Inv.) to issue a notice under section 148 and the third sentence again comprises of a direction given by the Addl. CIT to initiate proceedings under section 148 in respect of cases pertaining to the relevant ward. These three sentences are followed by the following sentence, which is the concluding portion of the so-called reasons:

*‘Thus, I have sufficient information in my possession to issue notice under section 148 in the case of M/s. SFIL Stock Broking Ltd. on the basis of reasons recorded as above.*

10. From the above, it is clear that the AO referred to the information and the two directions as reasons on the basis of which he was proceeding to issue notice under section 148. We are afraid that these cannot be the reasons for proceeding under section 147/148 of the said Act. The first part is only an information and the second and the third parts of the beginning para of the so-called reasons are mere directions. From the so-called reasons, it is not at all discernible as to whether the assessing officer had applied his mind to the information and independently arrived at a belief that, on the basis of the material which he had before him, income had escaped assessment. Consequently, we find that the Tribunal has arrived at the correct conclusion on facts. The law is well settled. There is no substantial question of law which arises for our consideration.”

7. We after applying the ratio of the aforesaid case find that the reasons recorded by the assessing officer as in the case of assessee mere information received from the borrowed satisfaction from ADIT (Inv.), OSD, Unit-4, Kolkata. The ld. AO do not apply his mind and make any independent enquiry in order to arrived at a plea that income had escaped assessment. Accordingly, applying the above proposition of law, the addition made in the hands of assessee is not tenable and we set aside the addition made in the case of assessee. Similarly assessee in the present facts of the case has

shown that shares were shown as stock in trade in assets side of the balance sheet which could not be treated as unexplained cash in the case of assessee. In terms of the jurisdiction tribunal order as in the case of ITAT Kolkata Adbhut Vinimay P Ltd. (supra) and accordingly the addition is not tenable by applying the ratio of the above facts in the case of assessee also.

8. The remaining issues are need no required to be adjudicated. Since in terms of our above finding, the reassessment proceeding itself is void ab initio. Therefore, there would be no legs to stand upon on the other issues. Accordingly, the other additions made in the case of assessee are also liable to be deleted. In terms of the above, the additions made in the case of assessee are hereby deleted and appeal of the assessee is hereby allowed.

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

Order pronounced in the open court on 08.02.2024.

Sd/-

Sd/-

(Dr. Manish Borad)  
Accountant Member

(Sonjoy Sarma)  
Judicial Member

Dated: 08.02.2024  
Biswajit, Sr. PS

Copy of the order forwarded to:

1. Appellant – Panel Commerce Pvt. Ltd., 4, Synagogue Street, 8<sup>th</sup> Floor, Room No. 814, Kolkata-700001.
2. Respondent – ITO, Ward-4(1), Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata