

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

Before Shri Rajesh Kumar, Accountant Member

**I.T.A. No. 992/KOL/2023
Assessment Year: 2011-2012**

Subhlaxmi Chem Private Limited,.....Appellant
R. No. C452, 71, B.R.B,B. Road,
Bagri Market, Kolkata-700001
[PAN: AAHCS1598R]

-Vs.-

Income Tax Officer,.....Respondent
Ward-12(4), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700069

Appearances by:

Shri B.C. Jain, FCA, appeared on behalf of the assessee
Shri Vijay Kumar, Addl. CIT, appeared on behalf of the
Revenue

Date of concluding the hearing : December 20, 2023

Date of pronouncing the order : February 15, 2024

O R D E R

This appeal at the instance of assessee for assessment year 2011-12 is directed against the order of ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 24.07.2023, which is arising out of the order under section 143(3) read with 147 of the Act on 26.11.2018 framed by Income Tax Officer, Ward-12(4), Kolkata.

2. The assessee has challenged the assessment framed by the ld. Assessing Officer on legal issue as well as on merit. The legal issue raised by the assessee is against the order of ld. CIT(Appeals) upholding the order of ld. Assessing Officer by ignoring the facts on record and without application of mind and on wrong facts.

3. Facts in brief are that the assessee filed its return of income for the impugned financial year on 29.09.2011 showing total income of Rs.4,96,240/-, which was duly processed under section 143(1) of the Act on 24.01.2012. Thereafter the case of the assessee was reopened under section 147 of the Act by issuing notice under section 148 of the Act on 23.03.2018 after noticing that the assessee has received Rs.45,00,000/- from M/s. Ajanta Vanijya Pvt. Limited by way of accommodation entry. Accordingly statutory notices were duly issued and served upon the assessee. Thereafter the assessee appeared before the ld. Assessing Officer from time to time furnishing all the details as requisitioned by the ld. Assessing Officer. Finally the ld. Assessing Officer treated the money receipt of Rs.45,00,000/- as unexplained cash credit in the books of account of the assessee under section 68 and added it to the total income of the assessee. In the appellate proceeding, ld. CIT(Appeals) also affirmed the order as passed by the ld. Assessing Officer.

4. After hearing the rival contentions and perusing the material available on record, I observe that the case of the

assessee was reopened for the reason that the assessee has received Rs.45,00,000/- as share application money which is nothing but an accommodation entry from M/s. Ajanta Vanijya Pvt. Limited. The ld. Assessing Officer recorded the reasons for reopening the assessment, copy of which is placed on record at pages no. 10-11 of the paper book. On page no. 1 of the reasons, ld. Assessing Officer stated that during the course of remand proceeding for A.Y. 2012-13, it was observed that during financial year 2010-11, the assessee has received a total amount of Rs.45,00,000/- from M/s. Ajanta Vanijya Pvt. Limited as share application money and on 18.03.2015, the application of share allotment of shares was rejected and the said amount was converted into unsecured loan. In page no 2 of the reasons recorded, the AO stated that M/s. Ajanta Vanijya Pvt. Limited has a share capital of Rs.44,50,000/- and net profit of Rs.41,358/- that means the financial status of M/s. Ajanta Vanijya Pvt. Limited was not so sound and it had no creditworthiness and capacity of making payment of such a huge amount to the assessee. The ld. A.R. pointed out that the facts recorded by the ld. Assessing Officer are incomplete as the ld. Assessing Officer has taken only the share capital of Rs.44,50,000/- and net profit of Rs.41,358/- while capital reserve of Rs.3,91,50,000/-, which was coming from the earlier years was not considered. The total funds such as share capital, reserve & surplus and net profit are to be taken into account for determining the creditworthiness whereas the ld. Assessing Officer has omitted to consider the amount of capital reserve while recording his satisfaction as to the creditworthiness of the

investor. Ignoring all the papers and explanation given by the assessee, the ld. Assessing Officer passed the impugned order thereby making an addition of Rs.45,00,000/- treating the amount received as unaccounted/undisclosed income. In my opinion, the ld. Assessing Officer has not applied his mind properly to the facts of the case and recorded the reasons in a mechanical manner. I am of the view that the reasons recorded by the ld. Assessing Officer are incomplete and therefore, the assessment framed by the ld. Assessing Officer cannot be sustained. The case of the assessee finds support from the decision of the Hon'ble Bombay High Court in the case of Hindustan Lever Limited -vs.- R.B. Wadkar, Asst. CIT reported in 268 ITR 332(Bom), wherein it has been held that the reasons have to be read as they are recorded and it cannot be substituted. The Hon'ble Court has held that there has to be satisfaction of the Assessing Officer for reopening of the assessment and reopening cannot be made for borrowed satisfaction in a mechanical manner. The Hon'ble Bombay High Court in the above decision has held as under:

“20. The reasons recorded by the Assessing Officer nowhere state that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment of that assessment year. It is needless to mention that the reasons are required to be read as they were recorded by the Assessing Officer. No substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn based on reasons not recorded. It is for the Assessing Officer to disclose and open his mind through reasons recorded by him. He has to speak through his reasons. It is for the Assessing Officer to reach to the conclusion as to whether there was failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the concerned assessment year. It is for the Assessing Officer to form his opinion. It is for him to put his opinion on record in black and white. The reasons recorded should be

clear and unambiguous and should not suffer from any vagueness. The reasons recorded must disclose his mind. Reasons are the manifestation of mind of the Assessing Officer. The reasons recorded should be self-explanatory and should not keep the assessee guessing for the reasons. Reasons provide link between conclusion and evidence. The reasons recorded must be based on evidence. The Assessing Officer, in the event of challenge to the reasons, must be able to justify the same based on material available on record. He must disclose in the reasons as to which fact or material was not disclosed by the assessee fully and truly necessary for assessment of that assessment year, so as to establish vital link between the reasons and evidence. That vital link is the safeguard against arbitrary reopening of the concluded assessment. The reasons recorded by the Assessing Officer cannot be supplemented by filing affidavit or making oral submission, otherwise, the reasons which were lacking in the material particulars would get supplemented, by the time the matter reaches to the Court, on the strength of affidavit or oral submissions advanced.

21. Having recorded our finding that the impugned notice itself is beyond the period of four years from the end of the assessment year 1996-97 and does not comply with the requirements of proviso to section 147 of the Act, the Assessing Officer had no jurisdiction to reopen the assessment proceedings which were concluded on the basis of assessment under section 143(3) of the Act. On this short count alone the impugned notice is liable to be quashed and set aside.”

4.1. I, therefore, respectfully following the said decision of the Hon'ble Bombay High Court quash the reopening of assessment and direct the Id. Assessing Officer to delete the addition. The appeal of the assessee is allowed on legal issue.

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

Order pronounced in the open Court on 15/02/2024.

Sd/-

**(Rajesh Kumar)
Accountant Member**

Kolkata, the 15th day of February, 2024

*Copies to :(1) Subhlaxmi Chem Private Limited,
R. No. C452, 71, B.R.B,B. Road,
Bagri Market, Kolkata-700001*

*(2) Income Tax Officer,
Ward-12(4), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square, Kolkata-700069*

*(3) Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre (NFAC), Delhi;*

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.