

**THE INCOME TAX APPELLATE TRIBUNAL,
'A' BENCH, KOLKATA**

**Before Shri Sanjay Garg, Judicial Member
&
Dr. Manish Borad, Accountant Member**

**I.T.A. No. 695/KOL/2023
Assessment Year: 2011-2012**

**Reliable Vinimay Private Limited,.....Appellant
Kaveri House,
132/1, Mahatma Gandhi Road,
5th Floor,
Kolkata-700001
[PAN:AADCR7841N]**

-Vs.-

**Income Tax Officer,.....Respondent
Ward-7(1), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700069**

Appearances by:

*Shri Manoj Kataruka, A.R. and Shri Rajeev Kumar
Choudhury, Advocate, appeared on behalf of the assessee*

*Shri B.K. Singh, JCIT Sr. DR, appeared on behalf of the
Revenue*

**Date of concluding the hearing: December 13, 2023
Date of pronouncing the order: March 12, 2024**

O R D E R

Per Sanjay Garg, Judicial Member:-

The present appeal has been preferred by the assessee against the order of Id. Commissioner of Income Tax (Appeals),

National Faceless Appeal Centre (NFAC), Delhi dated 21st June, 2023.

2. The assessee in this appeal has agitated against the confirmation of addition of Rs.3,03,00,000/- made by the ld. Assessing Officer under section 68 of the Income Tax Act, 1961 treating the amount received by the assessee on sale of investments as unaccounted income of the assessee.

3. The assessee apart from challenging the addition on merits has also taken legal grounds relating to the validity of reopening of the assessment under section 147 read with section 148 of the Income Tax Act.

4. At the outset, ld. Counsel for the assessee has brought our attention to the reasons recorded for reopening of the assessment, which for the sake of ready reference are reproduced as under:-

REASON' TO BELIEVE FOR INITIATION OF THE PROCEEDINGS
U/s.147 OF THE I.T. ACT

“From the information available with the department, it was noticed that Shri Santosh Kumar Seth (PAN- CVZPS5S65D) maintaining an account being no.627705500263 under the name of M/s. Braidnam Food Supplier, a proprietorship firm since 30-09-2010 and closed the a/c on 02-02-2011. It is found that total credits by cash deposits in the account from 04/10/2010 till 02/02/2011 was around Rs. 4,32,42,160/- & debits by RTGS transfer was Rs.5,54,50,305/-, From tire bank statements of the above mentioned concern and also the bank account statements intermediary/beneficiary concerns maintained with various banks, 03 cash/fund deposit bank accounts was identified as M/s Brajdham Food Supplier; 627705500263 (ICICI Bank), M/s A-One infotech: 160505500024 (ICICI Bank) & M/s Palak Distributors: 627735500287 (ICICI Bank).

On examination of bank statements of the abovementioned concerns, it is observed that these accounts have frequently been used for depositing of unaccounted cash which were layered through the several bank accounts of jamakharchi/shell concerns and immediately transferred to the interlinked bank accounts and then ultimately to the bank accounts of the Beneficiary. In this way the beneficiary companies have brought back their unaccounted income into their regular books of accounts in the guise of bogus share/share premium, pre-arranged bogus LTCG/5TCL, unsecured loans etc. There was no other financial rationale behind such transactions.

During the financial year 2010-11 relevant to A.Y.2011-12, the assessee Company M/s Reliable Vinimay Pvt has received Rs.4430,000/- as beneficiary in its a/c. Considering the facts, it is found that the fund so received by the assessee company remain unexplained in its books of accounts. The assessee filed return of income for AY 2011-12 on 19/09/2011 disclosing total income of Rs.17,154/-. No scrutiny assessment has been made in this case for AY 2011-12.

In view of the above, I have reasons to believe that income of Rs.44,50,000/- chargeable to tax has escaped assessment for AY 2011-12 warranting issue of the notice u/s. 148 for the A.Y 2011- 12.

Accordingly your petition dated 01/09/2018 for furnishing the reason of reopening the case is hereby disposed off.

5. The ld. Counsel in this respect has submitted that in first two paras of the aforesaid reasons recorded, the ld. Assessing Officer has mentioned a general modus operandi adopted by one Shri Santosh Kumar Seth of rotating funds through his entities M/s. Brajdharm Food Supplier, M/s. A-One Infotech and M/s. Palak Distributors. The only reason recorded by the ld. Assessing Officer for reopening of the assessment in the case of the assessee was that the assessee-company has received Rs.44,50,000/- in its accounts. The ld. Assessing Officer solely relying on the basis of

the aforesaid information without correlating the said information with the accounts of the assessee and further without any verification relating to the source etc. of the said amount simply held that he has reason to believe that the aforesaid amount of Rs.44,50,000/- was unexplained income of the assessee, which has escaped assessment. The ld. Counsel relying upon the various case laws has submitted that the aforesaid information of deposit of Rs.44,50,000/- in the bank account of the assessee, in itself, was not an information to form the belief that the income of the assessee has escaped assessment. That it has been held time and again that the mere information of deposit of an amount in a Bank account through Banking Channel is not enough to infer that the said deposit is income of the assessee. That it can be a capital receipt, loan or other receipt not falling in the definition of income.

6. The ld. D.R., on the other hand, submitted that since the ld. Assessing Officer was having information of the deposit of the amount of Rs.44,50,000/- in the accounts of the assessee, therefore, the ld. Assessing Officer was justified in reopening of the assessment as the said income has escaped assessment.

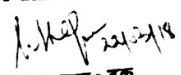
7. We have carefully considered the contentions of both the parties on this issue. A perusal of the reasons recorded by the ld. Assessing Officer would show that only information relating to the assessee available to the ld. Assessing Officer was deposit of Rs.44,50,000/- and nothing more. The ld. Assessing Officer did not attempt to get information about the nature and source of the

said deposits. The ld. Assessing Officer simply presumed that the said deposit of Rs.44,50,000/- was the unaccounted income of the assessee, which has escaped assessment. It has been held time and again by the various Courts of law that the reopening of the assessment should be based on cogent and convincing reasons to believe of escapement of income of the assessee. That the reasons to believe does not mean the reasons to suspect. That the reasons to believe of escapement of assessment should be based on some tangible cogent and convincing information or evidence. It should not be on the basis of mere pretence of the Assessing Officer. In this case, mere information of the ld. Assessing Officer of deposit of Rs.44,50,000/- in the accounts of the assessee, in our view, is not a sufficient information to form the belief of escapement of income of the assessee. During the course of assessment proceeding, the ld. Assessing Officer has made addition of Rs.3,03,00,000/- on account of the amount received by the assessee, which has been claimed as receipt from two firms, namely M/s. Durgesh Sales Pvt. Limited and M/s. Radha Ballav Sales Pvt. Limited. The aforesaid names of the entities from whom the assessee received the amount of Rs.3.03 crores on sale of investment are missing in the reasons recorded. Therefore, the ld. Assessing Officer for reopening of the assessment did not enquire either about the nature of transaction or the source of the amount received by the assessee in its Bank account. It has been held time and again that reopening cannot be made for making fishing and roving enquiries, rather it should be based on some reliable information for forming belief of escapement of income. In view of

the above discussion, it is held that reopening of the assessment was made by the ld. Assessing Officer on the basis of borrowed satisfaction in the shape of information received by him and the said information was not enough to form the belief of escapement of income. The reopening of the assessment, therefore, is held to be not justified.

8. The next contention raised by the ld. A.R. is that even the concerned ld. Pr. CIT has not applied his mind in giving approval for reopening of the assessment. That the permission to reopen the assessment has been given in a mechanical manner without going through the facts of the case. The ld. Counsel in this respect has brought our attention to pages 19 to 22 of the paper book. The permission has been granted by the ld. Pr. CIT under Column 12 of the Proforma, the relevant contents of the same are reproduced as under:-

12. Comments of the Pr. C.I.T. -2, Kolkata, on the reasons recorded by the ACIT(OSD),Wd-4(1), Kolkata whether it is a file cases for issue of the notice u/s.148

Yes, I am Satisfied

एम० डब्ल्यू० हाक
M. W. HAQUE
प्रधान आयकर अधिकारी-2, कलकत्ता
Pr. Commissioner of Income Tax-2, Kolkata

9. A perusal of the above satisfaction/approval given by the ld. Pr. CIT would show that the same has been given in a mechanical manner. The ld. Pr. CIT has signed on a pre-designed stamp with the words “Yes, I am satisfied”. Ld. Pr. CIT has just signed on the space meant for his signature. The process has been made so mechanically that the words “Yes, I am satisfied” has even been imprinted in the form of stamp, which is affixed by the staff and

thereupon the signature of the Id. Pr. CIT has been obtained. There does not seem any application of mind by the Id. Pr. CIT in giving approval for reopening of the assessment.

10. Hon'ble Madhya Pradesh High Court in the case of Commissioner of Income Tax -vs.- S. Goyanka Lime & Chemicals Ltd. Reported in (2015) 231 Taxman 73 (MP) has deliberated on the issue of such mechanical approval given by the Id. Pr. CIT and in para 7 of the said decision held as under:-

7. *We have considered the rival contentions and we find that while according sanction, the Joint CIT has only recorded so "Yes, I am satisfied". In the case of Arjun Singh (supra), the same question has been considered by a Co-ordinate Bench of this Court and the following principles are laid down:— 'The CIT acted, of course, mechanically in order to discharge his statutory obligation properly in the matter of recording sanction as he merely wrote on the format "Yes, I am satisfied" which indicates as if he was to sign only on the dotted line. Even otherwise also, the exercise is shown to have been performed in less than 24 hours of time which also goes to indicate that the CIT did not apply his mind at all while granting sanction. The satisfaction has to be with objectivity on objective material.'*

8. *If the case in hand is analysed on the basis of the aforesaid principle, the mechanical way of recording satisfaction by the Jt. CIT, which accords sanction for issuing notice under s. 148, is clearly unsustainable and we find that on such consideration both the appellate authorities have interfered into the matter. In doing so, no error has been committed warranting reconsideration.*

9. *As far as explanation to s. 151, brought into force by Finance Act, 2008 is concerned, the same only pertains to issuance of notice and not with regard to the manner of recording satisfaction. That being so, the said amended provision does not help the revenue.*

10. *In view of the concurrent findings recorded by the learned appellate authorities and the law laid down in the case of Arjun Singh (supra), we see no question of law involved in the matter, warranting reconsideration.*

11. Further, Hon'ble Delhi High Court in the case of Principal Commissioner of Income Tax-Vs.- N.C. Cables Ltd. Reported in (2017) 391 ITR 11 (Del.) in para 11 has held as under:-

“Sec. 151 clearly stipulates that the CIT, 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 CIT 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 findings by the Tribunal cannot be disturbed”.

12. Further, the Hon'ble Bombay High Court in the case of My Car (Pune) (P) Ltd.- -vs.- Income Tax Officer & Ors. reported in (2019) 263 Taxman 626 (Bom.) has held that *“it is a settled position in law that grant of the sanction by the CIT under section 151, is not a mechanical act on his part but it requires due application of mind to the reasons recorded before granting the sanction. This has been so provided as to safeguard against issue of reopening notice (which seeks to disturb the settled position) to ensure that assessee is not troubled with reopening issues without satisfactory reasons. Therefore, it must pass muster of the superior officer in the context of ss. 147 and 148, before it is issued to the party”.*

Hon'ble High Court, therefore, held that as the sanction order in the said case indicated non-application of mind to the reasons recorded by the Assessing Officer, the reopening notice under section 148 of the Income Tax Act was bad in law.

13. In view of the various decisions of the Hon'ble High Courts on the aforesaid issue, since it appears that the approval has been

given by the Id. Pr. CIT in this case in a mechanical manner without application of mind, therefore, the reopening notice under section 148 of the Income Tax Act was bad in law. The reopening of the assessment on this issue is also set aside.

14. Now coming to the merits of the case, the assessee before the Id. Assessing Officer had explained that an amount of Rs.3.03 crores was received by the assessee (against the information of the Id. Assessing Officer of receipt of Rs.44,50,000/- only) on account of sale of investments. The assessee has given the details of the investments sold in a chart, which reads as under:-

RELIABLE VINIMAY PRIVATE LIMITED

Details of Investment Sold

Script Name#	Opening Balance as on 31.03.2010		Sold during the year		Closing Balance as on 31.03.2010		Name of the party to whom sold
	Quantity	Amount	Quantity	Amount	Quantity	Amount	
Damodar Tie Up Pvt Ltd	20000	1,00,00,000.00	5000	25,00,000.00	.	.	Durgesh Sales Pvt. Ltd.
			15000	75,00,000.00			Radha Ballabh Sales Pvt. Ltd.
Dignity Merchants Pvt. Ltd.	37500	1,50,00,000.00	13125	52,50,000.00	.	.	Durgesh Sales Pvt. Ltd.
			24375	97,50,000.00			Radha Ballabh Sales Pvt. Ltd.
Ganga Marketing Pvt. Ltd.	15000	75,00,000.00	5100	25,50,000.00	4,400.00	22,00,000.00	Durgesh Sales Pvt. Ltd.
			5500	27,50,000.00			Radha Ballabh Sales Pvt. Ltd.

The assessee has also given the details of list of investments as on 31.03.2010, which read as under:-

RELIABLE VINIMAY PRIVATE LIMITED

LIST OF INVESTMENTS AS ON 31.03.2010

<u>Sr. No.</u>	<u>Companies Name</u>	<u>Amount</u>
1.	Camellia Vanijya Private Limited	23,00,000.00

2. Damodar Tie-Up Private Limited	1,00,00,000.00
3. Dignity Merchants Private Limited	1,50,00,000.00
4. Ganga Marketing Private Limited	75,00,000.00
5. Glitter Distributors Private Limited	1,00,00,000.00
6. GSD Trading Private Limited	4,00,00,000.00
7. Jagdhatri Commodities Private Limited	1,05,00,000.00
8. Jagjoti Commercial Private Limited	1,00,00,000.00
9. Jamuna Distributors Private Limited	1,00,00,000.00
10. V. Gandhi Finvest Private Limited	1,00,00,000.00
11. Labhdhan Mercantile Private Ltd.	55,000.00

12,53,55,000.00

15. It is to be noted that in the assessment order, the ld. Assessing Officer has not discussed even a word about the investment that the assessee was holding, out of which the investment that were sold by the assessee to M/s. Durgesh Sales Pvt. Ltd. and M/s. Radha Ballav Sales Pvt. Ltd., the value of investments sold, the market value of such investment etc. The only ground for which the addition has been made is that there were deposits of huge cash in the accounts of M/s. Brajdhham Food Suppliers and further certain amounts were transferred from the account of the said Brajdhham Food Suppliers to the accounts of M/s. Durgesh Sales Pvt. Ltd. and M/s. Radha Ballav Sales Pvt. Ltd. However, there is no discussion by the ld. Assessing Officer relating to the genuineness of the transactions relating to the sale

of investments made by the assessee to M/s. Radha Ballav Sales Pvt. Limited and M/s. Durgesh Sales Pvt. Ltd. Under the given facts and circumstances, in our view, the addition made by the Id. Assessing Officer, even on merits, is not sustainable in the eyes of law. In view of this, the impugned order of the Id. CIT(Appeals) is hereby set aside. The addition made/confirmed by the lower authorities stands deleted.

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

Order pronounced in the open Court on 12/03/2024.

Sd/-

Sd/-

(Manish Borad)
Accountant Member

(Sanjay Garg)
Judicial Member

Kolkata, the 12th day of March, 2024

*Copies to :(1) Reliable Vinimay Private Limited,
Kaveri House,
132/1, Mahatma Gandhi Road,
5th Floor,
Kolkata-700001*

*(2) Income Tax Officer,
Ward-7(1), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square, Kolkata-700069*

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

(4) CIT- , Kolkata

(5) *The Departmental Representative;*
(6) *Guard File*
TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.