

| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
&
SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER

I.T.A. No. 1360/Kol/2023
Assessment Year: 2012-13

Surinder Films (P) Ltd. C/o Subash Agarwal & Associates Advocates Siddha Gibson 1, Gibson Lane Suite 213, 2 nd Floor Kolkata - 700069 [PAN : AANCS0075K]	Vs	Dy. Commissioner of Income Tax, Circle-3(1), Kolkata
--	----	---

अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
------------------------	--------------------------

Assessee by :	Shri Siddharth Agarwal, Advocate
Revenue by :	Shri Arun Kumar Meena, JCIT, Sr. D/R

सुनवाई की तारीख /Date of Hearing : 08/02/2024
घोषणा की तारीख /Date of Pronouncement: 09/04/2024

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The present appeal is directed at the instance of the assessee against the order of the National Faceless Appeal Centre, Delhi (hereinafter the "ld. CIT(A)") dt. 23/11/2023, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2012-13.

2. The assessee has raised the following grounds of appeal:-

1. (a) For that the Ld. CIT(A) was not justified in upholding the validity of re-opening proceedings u/s 147 which was without jurisdiction and as such, not sustainable in the eyes of law.
(b) For that the purported approval granted by the Principal CIT - 1, Kolkata u/s 151, if any, does not fulfill the requirements of law thereby vitiating the entire proceedings.
2. For that the Ld. CIT(A) was not justified in confirming the addition made by the A.O. of Rs. 30,00,000/- on account of unsecured loan received from Mirabelle Tradecom Pvt Ltd. u/s 68.

3. *For that the Ld. CIT(A) was not justified in confirming the addition made by the A.O. of Rs. 10,00,738/- on account of unsecured loan received from Albino Investment Consultants (P) Ltd. u/s 68.*
4. *For that the Ld. CIT(A) was not justified in confirming the addition made by the A.O. of Rs. 33,35,000/- on account of unsecured loan received from Surinder Singh and Gurjit Singh Arora u/s 68.*
5. *For that the Ld. CIT(A) was not justified in confirming the addition made by the A.O. of Rs. 73,39,427/- u/s 68 in respect of the above stated loan creditors when the total amount of loan received from them was to the tune of Rs. 73,35,738/-.*
6. *For that the Ld. CIT(A) was not justified in confirming the addition made by the A.O. of Rs. 1,28,35,948/- as unexplained expenditure u/s 69C though the said amount related to advances given and reimbursement of expenses claimed by the assessee's director.*
7. *For that the Ld. CIT(A) was not justified in confirming the addition made by the A.O. of Rs. 1,42,19,736/- on account of alleged undisclosed income as per Form 26AS.*
8. *The appellant craves leave to add further grounds of appeal or alter the grounds at the time of hearing."*

3. First we will take up Ground No. 1 challenging the validity of reopening proceedings u/s 147 of the Act being without jurisdiction and not sustainable in the eyes of law.

4. Brief facts of the case are that the assessee is a private limited company engaged in the business of production and distribution of feature films and television serials. Return for Assessment Year 2012-13 furnished on 28/09/2012 declaring income of Rs.41,38,830/-. Case processed u/s 143(1) of the Act by CPC vide order dt. 21/02/2013. No regular assessment u/s 143(3) of the Act was made. Subsequently, after expiry of four years, notice u/s 148 of the Act was issued on 20/03/2019 for reopening the assessment u/s 147 of the Act after taking prior approval. The reopening proceedings were initiated on the basis of information that assessee company has received accommodation entry of Rs. 30,00,000/- from M/s. Mirabelle Tradecomm Pvt. Ltd. during financial year 2011-12. The assessee challenged the reopening by raising objections to the reasons recorded. However, the ld. Assessing Officer

after disposing off the objections carried out the assessment proceedings and completed the same after making various additions including addition for unsecured loan taken from M/s. Mirabelle Tradecomm Pvt. Ltd..

4.1. Aggrieved assessee raised specific grounds challenging the reopening but failed to succeed as the Id. CIT(A) was of the view that the Id. Assessing Officer has fulfilled statutory requirements before reopening and the Id. Assessing Officer has examined the information received along with the information available with the him in the form of return of income and past assessment records. While holding the reopening of assessment as valid, the Id. CIT(A) referred to various judicial pronouncements.

5. Aggrieved, the assessee is now in appeal before this Tribunal.

6. The Id. Counsel for the assessee took us through various documents placed in the paper book containing 42 pages filed on 31/01/2024 and also through various decisions in support of its contentions that the reopening was not valid. Further referring to the reasons recorded it was submitted that the Id. Assessing Officer has not brought on record the proof/evidence in support of the finding that unaccounted cash was paid for the alleged accommodation entry and also no opportunity was provided to cross-examine Mr. Jivendra Mishra, on whose statement, the Id. Assessing Officer has relied while framing the assessment order. He further stated that the Id. Assessing Officer has not applied his mind before reopening and has only referred to the information received by it without making any further enquiry

including the examination of the income tax return filed by the assessee.

Reliance placed on the following decisions:-

- i) *CIT vs. Shri Atul Jain [299 ITR 383 (Delhi)]*
- ii) *CIT vs. SFIL Stock Broking Ltd. [325 ITR 285 (Delhi)]*
- iii) *PCIT vs. Meenakshi Overseas Pvt. Ltd. [395 ITR 677 (Delhi)]*
- iv) *PCIT vs. G & G Pharma India Ltd. [384 ITR 147 (Delhi)]*
- v) *PCIT vs. RMG Polyvinyl (I) Ltd. [396 ITR 5 (Del)]*
- vi) *Signature Hotels (P) Ltd. vs. ITO [338 ITR 51 (Del)]*

6.1. On the other hand, the ld. D/R vehemently argued supporting the detailed findings of the ld. CIT(A) at para 6.1. to 6.4. of the impugned order stating that reopening is valid and there was a specific information that assessee had taken accommodation entry from M/s. Mirabelle Tradecomm Pvt. Ltd.

7. We have heard rival contentions and perused the material placed on record and carefully gone through the decisions referred and relied by both the sides. The assessee has challenged the validity of reopening u/s 147 of the Act. For examining this issue, we will first go through the reasons recorded by the Assessing Officer for reopening placed at page 10 to 11 of the paper book, which reads as under:-

"As per your requisition dated 16/04/2018. I am sending herewith the reason recorded for proceeding u/s 147 in your case below:-

The assessee filed its return of income on 28/09/2012 with a returned income of Rs. 41,38,830/-. The company was engaged in the business Films and distribution of rights. The said case was processed under section 143(1) on 21/02/2013 by the CPC, Bangalore. The said case was not selected for regular scrutiny under section 143(3) for the instant year.

2. In this case, a credible information was received by the undersigned from ADIT(InV), Unit-5 Kolkata as per information a FIU information was received in the case of M/s Odyssey Pvt. Limited that the credit in the bank account of M/s Odyssey Pvt. Limited are transfer transaction in round amounts ranging from 20 Lacs to 80 Lacs. Investigation has been done on various lines to verify the

genuineness of banking transactions in the accounts of the three concerns and money trail has been prepared. The account are controlled and managed by host of entry operators whose names figure in the data base maintained with this directorate. In the statement recorded the dummy director has agreed to the finding that the account were opened with the sole purpose of providing accommodation entries. From the details it is seen that though the maize of shell companies the funds are routed to the actual beneficiaries in lieu of cash. It was found that the credited fund in the accounts of M/s Odyssey Sales Pvt. Limited, M/s Odyssey Pvt. Limited and M/s Albino Commerce Pvt. Limited have been transferred to other 14 accounts is that initially funds got credited in the accounts of the three concerns. Thereafter these funds got routed among themselves and the other 14 accounts in the 1st and 2nd layer of routing process without any economic rationale. And finally in the 3rd layer it reaches to its final destination. As per the information the assessee company M/s Surinder Films Pvt. Limited had received accommodation entries of Rs. 30,00,000/- from Mirabelle Tradecom Pvt. Limited during the F.Y. 2011-12.

3. In this case a return of income was filed for the year under consideration but no scrutiny assessment under section 143(3) of the Act was made. Accordingly, in this case, the only requirement to initiate proceeding under section 147 is reason to believe which has been recorded above Para No- 2. It is pertinent to mention here that in this case the assessee had- filed.return of income for the year under consideration but no assessment as stipulated under section 2(40) of the Act was made and the return of income was only processed under section 143(1) of the Act.*

In view of the above, provision of clause (b) of explanation 2 to section 147 are applicable to facts of this case and the assessment year under consideration is deemed to be a case where income chargeable to tax has escaped assessment. In this case more than four year have lapsed from the end of the assessment year under consideration. Thus I have reason to believe that income of Rs. 30.00,000/- had escaped assessment for which the Return of AY 2012-13 needs to be reassessed u/s 147, Necessary sanction to issue notice under section 148 has been obtained separately from Pr. CIT-1, Kolkata as per the provision of section 151 of the I.T. Act.

If you have any objection, in this regards you are directed to raised your written objection within Five (5) days of receipt of this notice."

8. Now, from perusal of the above reasons we notice that information was received in the case of M/s. Odyssey Sales Pvt. Limited and various transactions carried out in the bank account of this company. Reference is also made that the accounts are controlled and managed by host of entry operators whose names figure in the database maintained. Further reference has been made to two more companies,

namely, M/s. Tejaswini Vincom Pvt. Limited., M/s. Albino Commerce Pvt. Ltd. and these two companies along with M/s Odyssey Sales Pvt. Limited, have transferred the funds to 14 accounts. Thereafter it is stated that these funds got routed within these concerns in the 14 accounts and thereafter in first and second layer of routing process without any economic rationale. It was in the third layer that it reaches to the final destination. In this information provided in the reasons recorded upto the second layer, there is no reference of the assessee company. The information was received in the case of M/s Odyssey Sales Pvt. Limited and thereafter various other concerns were engaged and then after two layers funds have routed but there is not whisper about the assessee company's involvements in any such transaction. Finally, in the third layer it is stated that the assessee company has received accommodation entry from M/s. Mirabelle Tradecomm Pvt. Ltd.. In the reasons recorded, it is nowhere mentioned that what is the connection of M/s. Mirabelle Tradecomm Pvt. Ltd. with M/s. Odyssey Sales Pvt. Ltd. and other three concerns mentioned in the reasons recorded. It is also not mentioned that what is the quantum of income earned by the assessee in the said transactions. It seems that just on the basis of information about the company, namely, M/s Odyssey Sales Pvt. Limited, the assessee has been subjected to the reassessment proceedings. Now it is not emanating from the reasons recorded that whether the Assessing Officer had a reason to believe that income has escaped assessment nor it seems that the Assessing Officer has made proper application of mind before coming to the conclusion that the assessee had received an accommodation entry.

9. It is an admitted fact that the assessee company has filed its regular return of income enclosing the audited financial statements and closing balances of unsecured loan from M/s. Mirabelle Tradecomm Pvt. Ltd. which is duly reflected therein. Interest on loan is also credited and this loan has subsequently been repaid during FY 2013-14. Now, the Assessing Officer was in possession of the income tax return for Assessment Year 2012-13 and the information of the unsecured loan taken from M/s. Mirabelle Tradecomm Pvt. Ltd., was appearing therein. However, in the reasons recorded, there is no mention as to how can the loan taken from M/s. Mirabelle Tradecomm Pvt. Ltd., is an accommodation entry. There is no whisper about the role of M/s. Mirabelle Tradecomm Pvt. Ltd. as part of the entry operating business. In the reasons recorded there is no connection between M/s. Mirabelle Tradecomm Pvt. Ltd. and M/s. Odyssey Sales Pvt. Ltd.. Now, once the reopening is after a lapse of four years, the Assessing Officer has to bring on record, the information as to whether the assessee has not disclosed any particulars of income in the income tax return or wilfully omitted to disclose certain income and the Assessing Officer has credible information with evidence to prove that income has escaped to be added in the hands of the assessee. This complete exercise is missing. Under these facts and circumstances, where the ld. Assessing Officer had not made proper application of mind before reopening and has not drawn any live nexus between the reasons recorded and income escaped, such reopening is held to be invalid. We draw support from judgments of various Hon'ble Courts and Co-ordinate Benches. Relevant extracts of few of such judgments are reproduced below:-

9 (i) **CIT vs. Shri Atul Jain 299 ITR 383 (Delhi)**

“After a foundation based on information is set up, there must still be some reasons which warrant the holding of a belief so as to necessitate the issuance of a notice under section 148 of the Act.

Looked at in the light of the decisions placed before us and the law laid down therein, it is necessary to appreciate the information available with the Assessing Officer in the present case. The only information is that the assessee had taken a bogus entry of capital gains by paying cash along with some premium for taking a cheque of that amount. The information does not indicate the source of the capital gains (which in this case are shares). We do not know which shares have been transacted and with whom has the transaction taken place. There are absolutely no details available and the information supplied is extremely scanty and vague. In so far as the basis for the reasons is concerned, even this is absent. The Assessing Officer did not verify the correctness of the information received by him but merely accepted the truth of the vague information in a mechanical manner. The Assessing Officer has not even recorded his satisfaction about the correctness or otherwise of the information or his satisfaction that a case has been made out for issuing a notice under section 148 of the Act. Read in this light, what has been recorded by the Assessing Officer as his "reasons to believe" is nothing more than a report given by him to the Commissioner of Income-tax. As held by the Supreme Court in Chhugamal Rajpal [1971] 79 ITR 603. The submission of a report is not the same as recording of reasons to believe for issuing a notice. The Assessing Officer has clearly substituted form for substance and, therefore, the action of the respondent falls foul of the law laid down by the Supreme Court in Chhugamal Rajpal [1971] 79 ITR 603 which is clearly applicable to the facts of these appeals.

For these reasons, we are of the view that there is no error in the decision rendered by the Tribunal and no substantial question of law has arisen for our consideration. Therefore, the appeals are dismissed. "

9 (ii) **CIT vs. Vs. SFIL Stock Broking Ltd. 325 ITR 285 (Delhi)**

"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, (he 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 (he Assessing Officer is mere information received from the Deputy Director of Income Tax (Investigation). The second sentence is a direction given by the very same Deputy mf Income Tax (Investigation) to issue a notice under Section 148 and the third again comprises of a direction given by the Additional Commissioner of Income to initiate proceedings under Section 148 in respect of cases pertaining to the relevant ward. These three sentence 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 u/s 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 Assessing Officer 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 paragraph 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.

The appeal is dismissed. "

9 (iii) PCIT vs. Meenakshi Overseas Pvt. Ltd. 395 ITR 677 (Delhi)

36. *In the present case, as already noticed, the reasons to believe contain not the reasons but the conclusions of the AO one after the other. There is no independent application of mind by the AO to the tangible material which forms the basis of the reasons to believe that income has escaped assessment. The conclusions of the AO are at best a reproduction of the conclusion in the investigation report. Indeed it is a 'borrowed satisfaction'. The reasons fail to demonstrate the link between the tangible material and the formation of the reason to believe that income has escaped assessment.*

37. *For the aforementioned reasons, the Court is satisfied that in the facts and circumstances of the case, no error has been committed by the IT AT in the impugned order in concluding that the initiation of the proceedings under Section 147/148 of the Act to reopen the assessments for the AYs in question does not satisfy the requirement of law.*

38. *The question framed is answered in the negative, i.e., in favour of the Assessee and against the Revenue. The appeal is, accordingly, dismissed but with no orders as to costs.*

9 (iv) PCIT vs. G & G Pharma India Ltd. 384 ITR 147 (Delhi)

"12. *In the present case, after setting out four entries, stated to have been received by the Assessee on a single date i.e. 10th February) 2003. from four entities which were termed as accommodation entries, which information was given to him by the Directorate of Investigation, the AO stated: "I have also perused various materials and report from Investigation Wing and on that basis it is evident that the assessee company has introduced as unaccounted money in its bank account by way of above accommodation entries." The above conclusion is unhelpful in understanding whether the AO applied his mind to the materials that he talks about particularly since he did not describe what those materials were. Once the date on which the so called accommodation entries were provided is known, it would not have been difficult for the AO, if he had in fact undertaken the exercise, to make reference to the manner in which those very entries were provided in the accounts of the Assessee, which must have been tendered along with the return, which was filed on" 14th November 2004 and was processed under Section 143(3) of the*

Act, Without forming a prima facie opinion, on the basis of such material, it was not possible for the AO to have simply concluded: "it is evident that the assessee company has introduced its own unaccounted money in its bank by way of accommodation entries". In the considered view of the Court, in light of the law explained with sufficient clarity by the Supreme Court in the decisions discussed hereinbefore, the basic requirement that the AO must apply his mind to the materials in order to have reasons to believe that the income of the Assessee escaped assessment is missing in the present case.

13. Mr. Sawhney took the Court through the order of the CIT(A) to show how the CIT (A) discussed the materials produced during the hearing of the appeal. The Court would like to observe that this is in the nature of a post mortem exercise after the event of reopening of the assessment has taken place. While the CIT may have proceeded on (he basis that the reopening of the assessment was valid, this does not satisfy the requirement of law that prior to the reopening of the assessment, the AO has to, applying his mind to the materials, conclude that he has reason to believe that income of the Assessee has escaped assessment. Unless that basic jurisdictional requirement is satisfied a post mortem exercise of analysing materials produced subsequent to the reopening will not rescue an inherently defective reopening order from invalidity.

14. In the circumstances, the conclusion reached by the ITAT cannot be said to be erroneous. No substantial question of law arises."

9 (v) PCIT vs. RMG Polyvinyl (I) Ltd. 396 ITR 5 (Del)

13. As in the above case, even in the present case, the Court is unable to discern the link between the tangible material and the formation of the reasons to believe that income had escaped assessment. In the present case too, the information received from the Investigation Wing cannot be said to be tangible material per se without a further inquiry being undertaken by the AO. In the present case the AO deprived himself of that opportunity by proceeding on the erroneous premise that Assessee had not filed a return when in fact it had.

14. To compound matters further the in the assessment order the AO has, instead of adding a sum of lis. 78 lakh, even going by the reasons for

reopening of the assessment, added a sum of lis. 1.13 crore. On what basis such an addition was made has not been explained.

15. *For the aforementioned reasons, the Court is satisfied that no error was committed by the IT AT in holding that reopening of the assessment under Section 147 of the Act was bad in law.*

10. Further in view of our observation that the reasons recorded should be clear and unambiguous, we draw support from the following decisions:-

- i) *Krown Agro Foods (P) Ltd. vs. ACIT [375 ITR 460 (Del)]*
- ii) *Hindustan Lever Ltd. vs. R.B. Wadkar [2004] 268 ITR 332 (Bom.)*

10.1. Also in case where the return has been processed u/s 143(1) of the Act, and no regular assessment has been carried out by way of selecting the case for scrutiny, for reopening the case after four years, tangible material is required which in the instant case is missing and under such circumstances also the reopening of the assessment has been held to be invalid. We draw support from the following decisions:-

- i) *Khubchandani Health Parks Pvt. Ltd. vs. ITO & Ors. {384 ITR 322}*
- ii) *CIT vs. Orient Craft Ltd. {354 ITR 536}*

11. In view of the above discussions and respectfully following the ratio laid down by the Hon'ble Courts, we are of the considered view that firstly, the reasons recorded are vague, secondly there is no live nexus between the reasons recorded and income escaped, thirdly the reopening has been carried out merely on the basis of the information and there is no application of mind by the Assessing Officer on such information taking into consideration the income tax return filed by the assessee and, therefore, the reopening after four years of the assessment year in question are bad in law. We accordingly are of the considered

view that reopening u/s 147 of the Act is invalid and inconsistent in the eyes of law and the same deserves to be quashed. The assessee succeeds on the legal issue raised in Ground No. 1(a). Accordingly, the order of the Id. CIT(A) is set aside and since we have quashed the reassessment proceedings, the addition made also stands deleted. All other grounds raised are rendered academic in nature and are not being dealt with.

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

Order pronounced in the Court on 9th April, 2024 at Kolkata.

Sd/-
(SONJOY SARMA)
JUDICIAL MEMBER

Sd/-
(DR. MANISH BORAD)
ACCOUNTANT MEMBER

Kolkata, Dated 09/04/2024
SJC/SJP

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Assessee
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाईल/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
 आयकर अपीलीय अधिकरण
 ITAT, Kolkata