

आयकर अपीलीय अधिकरण, "पटना" न्यायपीठ पटना
IN THE INCOME TAX APPELLATE TRIBUNAL
"PATNA" BENCH, PATNA

(Heard from Kolkata Benches through web-based video conferencing platform)

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

I.T.A. No. 211/Pat/2024
Assessment Year: 2013-14

Sangeeta Goel 506, Santosha Complex Fraser Road Bander Bagicha Patna - 800001 [PAN: ACBPG0887A]	Vs	Chief Commissioner of Income-tax/NFAC
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri S.K. Tulsian, Advocate
Revenue by :	Shri Sushil Kumar Mishra, JCIT D/R

सुनवाई की तारीख/Date of Hearing : 06/03/2024
घोषणा की तारीख /Date of Pronouncement: 12/04/2024

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 (hereinafter the "ld. CIT(A)") dt. 30/11/2023, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2013-14.

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

1. a. That the initiation of proceeding u/s 147 r.w.s 148 of the IT Act, 1961 based on alleged information of bogus trade amounting to Rs. 35,09,213/- in the shares and securities of M/s Ayaan Commercial Pvt Ltd being bereft of fact and assessee having not carried on any such transaction, the assumption of jurisdiction u/s 147 of the IT Act, 1961 is bad in law.
- b. That the Ld. A.O. having rejected the objection of the assessee although these facts are brought on record his action in doing so is bad in law.
- c. That the reopening u/s 147 was based on mere suspicion and surmises, the proceeding u/s 147 r.w.s. 148 of the IT Act, 1961 is bad in law.

2. That the Ld. CIT(A) erred in upholding proceeding u/s 147 r.w.s. 148 of the IT Act, 1961 even after admitting that information based on which reopening was done was not correct.
3. That the order of the Ld. A.O. being without substance and the Ld. CIT(A) having continued with illegality committed by A.Q., needs to be quashed.
4. That the provisions of section 147 of the IT Act, 1961 pertaining to Explanation-3, although permits the Ld. A.O. to make addition beyond reason recorded, however, that is possible only if the escapement on the basis of reason recorded is proved.
5. That, as the order of the Ld. C.I.T.(A) on the above issues suffers from illegality and is devoid of any merit, the same should be quashed and your appellant be given such relief(s) as prayed for.
6. That, the appellant craves leave to amend, alter, modify, substitute, add to, abridge and/or rescind and or all of the above grounds."

3. First we will take up the legal ground challenging the reopening of the assessment proceedings being *void ab initio* and without jurisdiction. Facts in brief are that the assessee is an individual and filed her regular return of income for Assessment Year 2013-14 on 27/07/2013, which was processed u/s 143(1) of the Act on 26/03/2015, accepting the returned income. Thereafter, notice dt. 31/03/2021 was issued u/s 148 of the Act asking the assessee to furnish the return of income to which necessary compliance was made and the assessee submitted return on 30/04/2021. The assessee asked for the reasons recorded for initiating proceedings u/s 147 of the Act and the same was supplied to the assessee which reads as follows:-

*"As requested by you wide letter dated 26/01/2021, the reason to belief for issue of notice u/s 148 are as under:
"reason to belief"*

Credible information has been received in the case of M/s Ayaan Commercial Private Limited that this company and its associated companies have been used for routing of unaccounted funds. The key persons of the company have accepted in their statements under oath recorded by the department on different dates, that they have facilitated accommodation entries to beneficiaries in the form of bogus LTCC through trading in bogus penny scrips,

From the list of beneficiaries it is found that the assessee SANGEETA GOEL (PAN: ACBPG0887A) has undertaken bogus trade amounting to Rs. 5740517/-. From the perusal of the ITR filed by the assessee, it is observed that the assessee has claimed exempt income of Rs.3069138/-in the form of Long-term capital gains from transactions on which Securities Transaction Tax is paid.

In the light of above facts and circumstances of the case, I have reason to believe that an income of Rs. 3069138/- for AY 2013-14 has escaped assessment within the meaning of section 147 of the IT Act 1961.

The notice u/s 148 has been issued after getting approval from competent authorities."

4. After receiving the reasons, the assessee filed objections stating that no such transactions to have been entered by her with M/s Ayaan Commercial Private Limited, or its associate companies nor any transactions of Rs. 5740517/- has been entered into during the year. However, the Id. Assessing Officer after replying to the reasons recorded, carried out the assessment proceedings. He noticed that the assessee had claimed long term capital gain of Rs. 35,60,613/- and having made certain observations, came to a conclusion that long term capital gain is bogus in nature and denied the exemption u/s 10(38) of the Act. Thereafter, the assessee preferred appeal before the Id. CIT(A) taking a legal ground challenging the initiation of proceedings u/s 147/148 of the Act but failed to succeed as Id. CIT(A) was of the view that the assessee had claimed long term capital gain in her return of income and Assessing Officer had information about bogus long term capital gain being arranged through accommodation entry providers and has rightly issued notice u/s 148 of the Act with reason to believe that income chargeable to tax has escaped assessment.

5. Now, the assessee is in appeal before this Tribunal.

6. On legal grounds, the Id. Counsel for the assessee submitted that, the assessment proceedings has been initiated on the basis of information received by the department that M/s Ayaan Commercial Private Limited and its associate companies allegedly

found to have provided accommodation entries in the form of bogus long term capital gain. He submitted that the department does not have any credible information or reason to believe on which the assessment proceedings has been initiated. There is no adverse material on record referred by the Assessing Officer in the scrutiny proceedings. The assessment has been concluded only on the basis of statement on oath given by three persons. Submissions of the assessee can be summarized wherein it is stated that the Assessing Officer has acted merely on *reasons to suspect* and there is no *reasons to believe* that income has escaped assessment, that there is no direct or circumstantial evidence referred to by the Assessing Officer and the Assessing Officer has acted on mere suspicion, gossip and rumor, that the proceeding has been initiated with an object to carrying out fishing investigation and/or roving inquiry, that there is no live link or nexus between the material/information which are vague, indefinite, far-fetched and remote, that the proceeding has been initiated on mere change of opinion.

6.1. Reliance has been placed on the following judgments:-

- (i) Hon'ble Supreme Court in the case of *ITO, Calcutta and Ors. vs. Lakhmani Mewal Das* [1976] 103 ITR 437 (SC);
- (ii) Hon'ble Supreme Court in the case of *CIT vs. Kelvinator India Ltd.* [2010] 320 ITR 561 (SC)
- (iii) Hon'ble Delhi High Court in the case of *CIT vs. SFIL Stock Broking Ltd.* (2010) 325 ITR 285 (Del.);

6.1. On the other hand, the Id. D/R vehemently argued supporting the order of the lower authorities.

7. We have heard rival contentions and perused the material placed before us. Reopening of the assessment proceedings is in challenge before us. Admittedly, the assessee had claimed long term capital gain in its regular return of income furnished on 27/07/2013 and details of the transactions of purchase and sale of the equity share have been furnished. The assessee earned the long term capital gain from sale of equity shares of M/s. Access Global Limited, name of the assessee appears in the list of shareholders of the companies in 2011. The shareholders were dematerialized on 03/03/2012 with the Stock Holding Corporation of India Limited and assessee sold 8000 equity shares on 17/10/2012 and 6000 equity shares on 14/02/2013 and the details of the transaction is mentioned below:-

<i>Date of Sale</i>	<i>No. of shares</i>	<i>Sales</i>	<i>Purchase Cost</i>	<i>Capital Gain</i>
17.10.2012	8000	20,87,134.14	82,382.98	20,04,751.16
14.02.2013	6000	15,66,249.57	61,787.23	15,04,462.34

8. The above transactions are duly reflected in the income tax return. Four years have passed from the assessment year in question and the impugned proceedings were commenced after four years. After the expiry of four years from the end of the relevant Assessment Year as per the proviso of Section 147 of the Act, the reopening cannot be held valid unless any income chargeable to tax has escaped assessment for such Assessment Year by reason of the failure on the part of the assessee to file a return u/s 139 of the Act or in response to the notice issued u/s 142(1) of the Act or 148 of the Act to disclose fully and truly of material facts necessary for the assessment for this Assessment Year. Now, the addition in question relates to long term capital gain for which necessary details were filed by the assessee in

the income tax return voluntarily filed u/s 139(1) of the Act. Now for reopening such assessment after lapse of four years, the Assessing Officer should have reason to believe that the assessee has not disclosed truly and fully all material facts necessary for the assessment and for this purpose reasons are recorded before initiating the reassessment proceedings. For the sake of convenience, we again go through the reasons record for reopening of the alleged proceedings:-

*"As requested by you wide letter dated 26/01/2021, the reason to belief for issue of notice u/s 148 are as under:
"reason to belief"*

Credible information has been received in the case of M/s Ayaan Commercial Private Limited that this company and its associated companies have been used for routing of unaccounted funds. The key persons of the company have accepted in their statements under oath recorded by the department on different dates, that they have facilitated accommodation entries to beneficiaries in the form of bogus LTCC through trading in bogus penny scrips,

From the list of beneficiaries it is found that the assessee SANGEETA GOEL (PAN: ACBPG0887A) has undertaken bogus trade amounting to Rs. 5740517/-. From the perusal of the ITR filed by the assessee, it is observed that the assessee has claimed exempt income of Rs.3069138/-in the form of Long-term capital gains from transactions on which Securities Transaction Tax is paid.

In the light of above facts and circumstances of the case, I have reason to believe that an income of Rs. 3069138/- for AY 2013-14 has escaped assessment within the meaning of section 147 of the IT Act 1961.

The notice u/s 148 has been issued after getting approval from competent authorities."

9. Now, in the above reasons, firstly it has been referred that information has been received that M/s. Ayaan Commercial (P) Ltd. and its associate companies have been used for routing of unaccounted funds. Now, the Id. Assessing Officer has not mentioned as to whether the assessee has entered into any transactions with M/s Ayaan Commercial Private Limited and if not then whether any associate companies has been found to have entered into any transactions with the assessee. If it is so alleged, then details of such associate companies should also appear in the reasons. Secondly, reference has been made to the statements on oath taken by various persons alleged to be engaged in facilitating accommodation entries

but no such statements were confronted to the assessee for cross-examination. Thirdly, we notice that the assessee has been alleged to have undertaken bogus trade amounting to Rs.57,40,517/-. However, no such transactions of this amount has been entered by the assessee. Lastly, it is observed that the assessee has claimed long term capital gain as exempt income of Rs.30,69,138/- but the long term capital gain earned by the assessee is Rs.35,09,213/-.

10. Considering these aspects, we find that the Id. Assessing Officer has not made proper application of mind and had no proper reason to belief before suspecting that income has escaped to be assessed in the hands of the assessee. Reason to believe cannot be reason to suspect. There must be a direct nexus with the tangible material coming to the notice of the Assessing Officer and a subsequent formation of belief based on such material. The basis of the belief should be discernible from the material on record. Considering the information mentioned in the reasons recorded, we find that the said material cannot lead to the formation of belief that income of the assessee, has escaped assessment because of his failure or omission to disclose truly and fully all material facts. We find support from the ratio of law laid down by the Hon'ble Apex Court in the case of *ITO, Calcutta and Ors. vs. Lakhmani Mewal Das (supra)* and Hon'ble Delhi High Court in the case of *CIT vs. SFIL Stock Broking Ltd. (supra)*, where also the Hon'ble Court has held that when based on the reasons recorded, it is not at all discernible as to whether the Id. 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.

10.1. We further notice that the Id. Assessing Officer except giving reference to general information and third party statements, has not referred to any tangible material to demonstrate the live link and formation of belief that income has escaped assessment. It seems that the Id. Assessing Officer has merely a reason to suspect since he has referred to information in a covered manner about some entry providers but he lacked to have sufficient information/tangible material against the assessee for reason to believe. The Hon'ble Apex Court in the case of *CIT vs. Kelvinator India Ltd. (supra)* has held that the Id. Assessing Officer has power to reopen an assessment provided that there is tangible material to come to the conclusion that there was escapement of income from assessment. It has also been consistently held by Hon'ble Courts that mere receipt of information is not a sufficient ground of reopening. We find support from the judgment of the Hon'ble Delhi High Court in the case of *CIT vs. SFIL Stock Broking Ltd. (2010)*, wherein the Hon'ble Court has held that:

"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 the facts. The law is well settled. There is no substantial question of law which arises for our consideration.

11. Respectfully following the above judgments and our discussions hereinabove, we find that in the instant case where the reopening has been carried out after four years of the Assessment Year, the Id. Assessing Officer failed to bring any tangible material on record which can prove that Id. Assessing Officer had a reason to believe of escapement of income in the hands of the assessee and we also find that the reopening is made merely on the basis of third party information without application of mind and examining the income tax returns of the assessee *vis-à-vis* the information received by it and also failing to observe that the parties and the transactions amount referred in the reasons recorded were remotely not connected to the assessee and, therefore, for such loose reasons recorded, the reopening after lapse of four years cannot be held to be valid and justified. Accordingly, the alleged re-assessment proceedings are hereby quashed. All effective grounds raised by the assessee challenging the reopening u/s 147 r.w.s. 148 of the Act, are allowed.

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

Order pronounced in the Court on 12th April, 2024 at Kolkata.

Sd/-

**(SONJOY SARMA)
JUDICIAL MEMBER**

Sd/-

**(MANISH BORAD)
ACCOUNTANT MEMBER**

Kolkata, Dated 12/04/2024

S/S

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

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

आदेशानुसार/ BY ORDER,
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Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Patna