

आयकर अपीलीय अधिकरण  
कोलकाता 'बी' पीठ, कोलकाता में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'B' BENCH, KOLKATA**

श्री राजेश कुमार, लेखा सदस्य  
एवं  
श्री प्रदीप कुमार चौबे, न्यायिक सदस्य  
के समक्ष

Before

**SRI RAJESH KUMAR, ACCOUNTANT MEMBER  
&  
PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER**

**I.T.A. No.: 265/Kol/2024  
Assessment Year: 2013-14**

***M/s. R.S. Darshan Singh Motor Car Finance Pvt. Ltd.....Appellant  
[PAN: AABCR 8978 C]***

***Vs.***

***ITO, Ward-11(3), Kolkata.....Respondent***

**Appearances:**

***Assessee represented by:*** S.K. Tulsiyan, Adv. &  
Mita Rizvi.

***Department represented by:*** P.P. Barman, Addl. CIT, Sr. D/R.

Date of concluding the hearing : April 24<sup>th</sup>, 2024

Date of pronouncing the order : May 2<sup>nd</sup>, 2024

**ORDER**

**Per Pradip Kumar Choubey, Judicial Member:**

The instant appeal filed by the assessee is directed against the order passed by the Commissioner of Income Tax (Appeals)-NFAC, Delhi [in short Id. 'CIT(A)'] u/s 250 of the Income Tax Act, 1961 (in brevity the 'Act') dated 25.01.2024 arising out of the assessment order framed u/s 147 read with Section 144B of the Act dated 27.09.2021.

2. The brief facts of the case of the assessee is that the assessee, a non-banking financial company filed its return of income on 26.09.2013 declaring total income at Rs. 49,140/-. The return was processed u/s 143(1) of the Act.

On 19.03.2020 a notice u/s 148 of the Act was issued and served upon the assessee. The notices issued u/s 148 of the Act depicts the reasons recorded for selection of the scrutiny u/s 147 of the Act and which as per the assessee is that the Assistant Director of Income Tax (Investigation) (OSD), Unit-4, Kolkata furnished an information in respect to STR Reference No. 1000054178 vide his letter No. ADIT(Inv)/Unit-4/Kol/S-55/STR No. 1000054178/2017-18/12357-60 dated 20.03.2018 with regard to layering of funds through several bank accounts of jamakharchi/shell concerns. From the above letter, it is seen that the assessee company received a total amount of Rs. 35,00,000/- from M/s. Brahma Tradelinks Pvt. Ltd. which is a jamakharchi/shell company. It is also observed that the BANK accounts of M/s Regus Mercantile Pvt Ltd have frequently been used for layering the fund through several bank accounts of jamakharchi/shell companies and immediately transferred the fund to the interlinked bank account and then ultimately to the bank account of the concerned beneficiary.

2.1. M/s. R S Darshan Singh Motor Car Finance Ltd., PAN: AABCR8978C is one of such beneficiaries who received its unaccounted money of Rs. 35,00,000/- which was routed through the bank account of M/s. Brahma Tradelinks Pvt. Ltd. during the FY 2012-13 providing bogus accommodation entries and transferred its undisclosed income and receive the same back to its regular books of accounts.

2.2. From the above facts and circumstances, it reveals that M/s. R S Darshan Singh Motor Car Finance Ltd., PAN: AABCR8978C is a beneficiary company, providing bogus accommodation entries and transferred its undisclosed income of Rs. 35,00,000/- to its regular books of account for the AY 2013-14.

2.3. Thus, I have reason to believe that in this case Income has escaped to the tune of Rs. 35,00,000/- and consequent to the above facts, your kind approval for issuing notice u/s 148 of the IT Act, 1961 for AY 2013-14 may be given to initiate proceeding u/s 147 of the IT Act, 1961.”

2.4. In response to the notice issued u/s 148 of the Act the assessee filed return of income under protest filed its objection challenging the re-opening of the proceeding alleging the escapement of income to the tune of Rs. 35 Lakh. The AO disposed of the objection without assigning any reason thereby holding that the assessee escaped the income to the tune of Rs. 35 Lakh and therefore, the total income of the assessee enhanced by Rs. 35 Lakh accordingly. On appeal before Id. CIT(A) again raved the grounds challenging the order of the AO but Id. CIT(A) confirmed the impugned addition of Rs. 35 Lakh upholding the order of the AO.

3. Being aggrieved by the order of Id. CIT(A) the assessee is in appeal before this Tribunal. Id. Counsel for the assessee challenges the impugned order on several grounds and also took an additional ground which is as follows:

*“That, the impugned order passed u/s.147 of the Act making an addition of Rs. 35,00,000/- is not based on any information leading to escapement of Rs. 35,00,000/- and therefore the entire proceeding is without jurisdiction and hence bad in law.”*

3.1. Ld. Counsel for the assessee in course of argument gave force on this additional ground by submitting that there was nothing brought by the AOs with respect to the amount received as alleged to the tune of Rs. 35 Lakh though the burden lies upon him. Ld. Counsel for the assessee further submits that the AOs before issuing notice had to verify the genuineness of the credible information but the AO did not do so. Hence, accordingly the issuance of notices u/s 148 of the Act is bad in law. Ld. Counsel for the assessee further drew the attention of the Bench by saying that in fact the AO had no information of receiving Rs. 35 Lakh from M/s. Brahma Tradelinks Pvt. Ltd. though in reality there was a receipt of total Rs. 20 Lakh only from the said party. He has filed the statement of bank account that goes to show the receiving of Rs. 20 Lakh from M/s. Brahma Tradelinks Pvt. Ltd. on 11.07.2012 & 18.07.2012. The Id. Counsel for the assessee further submits that in proceeding for AY 2012-13 the re-opening of proceeding was initiated by the then Id. AO against the assessee on the same issue and it is after

verification of the facts and details submitted and further after being satisfied with the identity of the entity and the genuineness of the transaction no addition was made in this regard. He has filed the assessment order of the AY 2012-13. The submission of the ld. Counsel for the assessee is that there was no credible information nor the AO has verified the genuineness of the information hence issuance of notice u/s 148 of the Act is wrong, illegal and liable to be quashed. The ld. Counsel for the assessee cited following decisions: -

*CIT(Exemption) vs. B. P. Poddar Foundation for Education* reported in [2022] 448 ITR 695 (Calcutta).

*CIT vs. Lakshmanarh Estate & trading Co. (2014)220Taxman122(Kolkata)*

*Peerless General Finance And Investment Co.Ltd. vs. Deputy commissioner of Income Tax* reprinted in (2005)273ITR 16 Kolkata

4. On the contrary, ld. D/R submitted that it is the duty of the assessee to produce the documents and onus lies upon him to establish that there was no escapement to the tune of Rs. 35 Lakh.

5. On the rival submissions of the Counsels of the respective parties the points for determination in this appeal which according to us is essential to decide the issue,

**(i) Whether the notice issued u/s 148 of the Act is illegal, wrong and liable to be quashed.**

6. In the present case the order of ld. AO reveals that he received an information and there was a reason to believe that income chargeable to tax has escaped assessment within the meaning of u/s 147 of the Act. Therefore, notice u/s 148 of the Act issued on 19.03.2020 after recording reasons and taking prior approval of ld. Pr. CIT-4, Kolkata.

First of all, we have gone through the Explanation 3 to Section 147 of the Act which was inserted by the Finance [No. 2] Act, 2009 w.e.f. 01.04.1989, reads as under:

*“For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148.”*

6.1. In the present case, evidently the assessee received a sum of Rs. 20 Lakh as the statement submitted by the Id. Counsel for the assessee from M/s. Brahma Tradelinks Pvt. Ltd. during the relevant financial year. There is nothing brought by the AO with regard to the receiving of Rs. 35 Lakh, save and except this fact that he received credible information. The AO failed to provide any details of the alleged receipt of Rs. 35 Lakh from the said party at any point of time. We have gone through the judgment cited by Id. Counsel for the assessee in the case of *CIT(Exemption) vs. B. P. Poddar Foundation for Education* reported in [2022] 448 ITR 695 (Calcutta) which read as under:

*“Though the Explanation 3 inserted by the amendment empowers the Assessing Officer to assess the income in respect of any issue which has escaped assessment when such issue comes to his notice subsequently in the course of the proceedings under section 147 notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148, the prerequisite is there should be a valid notice. Admittedly, in the case on hand, the notice was held to be not sustainable. If that be so, the Assessing Officer cannot be stated to be empowered to make a roving enquiry into other issues which according to him came to his notice during the reassessment proceedings. The foundation of a reassessment proceeding is a valid notice and if this notice is held to be invalid the entire edifice sought to be raised on such foundation has to collapse.”*

6.2. In another judgment Hon'ble Calcutta High Court in the case of *CIT vs. Lakshmangarh Estate & Trading Co. Ltd.* reported in (2014) 220 Taxman 122 held as follows:

*“basis of suspicion, howsoever strong, it is not possible to record any finding of fact. As a matter of fact, suspicion can never take the place of proof. The*

*finding arrived at by the Tribunal that both the sale and purchase were genuine transactions was not even alleged by the revenue to have not been based on evidence. Since the finding of the Tribunal was factually correct, the Tribunal had no option but to direct the AO to give the benefit of the losses suffered by the assessee, which he had disallowed. The appeal did not raise any question of law and was therefore not to be admitted.”*

6.3. The Hon'ble Calcutta High Court in another case of *Peerless General Finance and Investment Co. Ltd. vs. Deputy Commissioner of Income Tax and Others* reported in [2005] 273 ITR 16 (Cal) held the following:

*“The law is now well settled by the Hon'ble apex court, as discussed above, that the reason for the formation of the belief must have a rational connection with or relevant bearing with the information received. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Income-tax Officer and the formation of the belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. It is to be borne in mind that it is not any and every material, howsoever vague and indefinite or distant remote and far-fetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment. The reason for the formation of the belief must be held in good faith and should not be a mere pretence. The powers of the Income-tax Officer to reopen assessment, though wide, are not plenary. The words used in the statute are "reason to believe" and not "reason to suspect". But from our discussion above, we are of the opinion that there was no reason to believe on the part of the Assessing Officer to hold that there was escapement of income of the assessee in a particular year and as such it must be held that the Assessing Officer was not justified in issuing the notice in question.”*

7. Above cited decisions of the assessee as well as facts of the case, constrained us to opine that the burden lies upon the AOs to verify the genuineness of the credible information. In the present case, there is nothing brought by the AO to substantiate that an amount of Rs. 35 Lakh had been received by the assessee from M/s. Brahma Tradelinks Pvt. Ltd., contrary to that the statement filed by the assessee goes to establish that an amount of Rs. 20 Lakh was received. So, we are of this opinion that information as alleged to be received by the AO cannot be said to be a credible information. Moreover, we further find that in the preceding A/Y 2012-2013, reopening proceeding was initiated by the then Ld. AO against the assessee on the same

issue, i.e the transaction of the assessee with the same entity, viz. M/s Brahma Tradelink Pvt. Ltd. and after being satisfied with the identity of the entity and the genuineness of the transaction, no addition was made. (Order of A/O passed on 30-11-19 in on the record.) Keeping in view the above discussion we are of this view that A/O did not apply his own mind to the information and examine the basis and material of the information. He(AO) accepted the plea in a mechanical manner. It is settled law that mere reliance on the information received, without having acted there on before recording the reason, showing non application of mind on the part of the A/O.,is unsustainable in law. Accordingly, we hold that the issuance of notices u/s 148 of the Act is illegal, wrong and it is hereby quashed. The entire proceedings held after that has also been quashed.

8. In the result, the appeal filed by the assessee is allowed.

**Order pronounced in the open Court on 2<sup>nd</sup> May, 2024.**

Sd/-

**[Rajesh Kumar]**

Accountant Member

Sd/-

**[Pradip Kumar Choubey]**

Judicial Member

Dated: 02.05.2024

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

1. **M/s. R.S. Darshan Singh Motor Car Finance Pvt. Ltd., 57/2H, Diamond Harbour Road, Ekbalpore, Kolkata-700 023.**
2. **ITO, Ward-11(3), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata