

आयकर अपीलीय अधिकरण, कोलकाता पीठ “ए”, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
श्री राजेश कुमार, लेखा सटस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 574/Kol/2022
Assessment Year: 2010-11

Event Developers Pvt. Ltd. (PAN: AABCE 9276 E)	Vs.	ITO, Ward-5(3), Kolkata (now merged with ITO, Ward-5(1), Kolkata)
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	01.04.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	03.05.2024
For the Appellant/ निर्धारिती की ओर से	Shri A. K. Tibrewal, FCA
For the Respondent/ राजस्व की ओर से	Shri B. K. Singh, JCIT (Sr. D.R)

ORDER / आदेश

Per Rajesh Kumar, AM:

This is the appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-2, Kolkata (hereinafter referred to as the Ld. CIT(A)”) dated 02.04.2019 for the AY 2010-11.

2. At the outset the Ld. Counsel for the assessee pressed ground no. 3 and 4 which are extracted below:

3. That, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was wrong in ignoring the fact that the notice u/s 148 is not jurisdictional since the necessary conditions required as per law were not fulfilled before issuance of the same.

4. That, on the facts and in the circumstances of the case, the Ld. CIT(A) was wrong in ignoring the fact that the Ld. AO was wrong in opening the case for assessment proceedings u/s 148 of the Act on the basis of vague reason recorded.

3. The only issue raised in these grounds is against the wrong reopening of assessment u/s 147 of the Act by issuing notice u/s 148 of the Act without satisfying the conditions for reopening the assessment.

4. Facts in brief are that the assessee filed return of income on 26.09.2010 declaring total income of Rs. 818/- which was processed u/s 143(1) of the Act. The case of the assessee was reopened for the reason that there were credits in the bank aggregating to Rs. 1.00 Crore from M/s Rupak Developers Pvt. Ltd. and accordingly the case was reopened u/s 147 by issuing notice u/s 148 of the Act on 29.03.2017. The said notice was complied with by the assessee by filing return of income on 17.04.2017 followed by issuing of statutory notices which were duly served on the assessee. The AO required the assessee to furnish evidences in support of the genuineness of its claim of long term capital gain and Short term capital gain. However the assessee did not file any documents and finally the amount was added to the income of the assessee in the assessment framed u/s 143(3) r.w.s. 147 of the Act dated 15.12.2017.

5. In the appellate proceedings, the Ld. CIT(A) dismissed the appeal of the assessee upholding the order of AO when the assessee failed to appear on the various dates.

6. The Ld. A.R while admitting to all the observations of authorities below straightway drew our attention to the reasons recorded u/s 148(2) of the Act a copy of which is placed at page no. 3 of PB. The Ld. A.R ,by referring to the said reasons recorded, submitted that the AO has not recorded proper reasons and his objective satisfaction to reopen the assessment of the assessee. The Ld. A.R, while referring to first para of the reason recorded ,argued that the AO has only stated that the dept. was having information in its possession that there was an opinion on the position of the Department which revealed that the assessee has received Rs. 1.00Cr from M/s Rupak Developers Pvt. Ltd. through account no. 415010200002349. The Ld. A.R further submitted that in para no. 2, the AO just stated that during the course of survey carried out by DIT(Inv), Mumbai on M/s Rupak Developers Pvt. Ltd. it was revealed that no business activity were being carried out by the said company and was used for providing accommodation entry to the beneficiary in the form of bogus LTCG/STCG on sale of penny stocks. The ld. AR argued that in the above two paras the has not recorded any reasons to believe or objective satisfaction that income has escaped and how it has escaped. The Ld. A.R further argued that since the case has been reopened after a period of four years from the end of relevant assessment year, there is no whisper in the said reasons as to the failure of the assessee to disclose the income of the assessee truly. The Ld. A.R submitted that the reasons recorded by the AO are required to be read as they were recorded by the AO and no subsequent deletion or addition or substitution can be made to those reasons. The Ld. A.R therefore prayed that the reasons were recorded in mechanical manner and without application of mind as no finding by the AO as recorded as to how the income has escaped assessment and therefore the reopening of assessment is itself invalid and so is a consequent proceedings under the Act. The ld. A.R in defense of arguments relied on the following decisions:

i) Hindusthan Lever Ltd. vs. R. B. Wadkar [2004] 137 TAXMAN 479 (Bom)

ii) Pasari Casting & Rolling Mills Pvt. Ltd. vs. Income Tax Department & Ors. W.P (T) No. 1850 of 2022, dated 25.01.2024 (Jharkhand HC)

iii) Shark Packaging (India) Pvt. Ltd. vs. ITO ITA Nos. 8309 & 8310/Del/2019 and ITA No. 2163/Del/2022 dated 17.10.2023 (Del-ITAT)

7. The Ld. D.R on the other hand relied on the authorities below.

8. After hearing the rival contentions and perusing the material on record including the reason recorded u/s 148(2) of the Act to reopen the assessment u/s 147 of the Act, we observe that the AO has in first para stated that dept. is in possession of information as to receipt of Rs. 1.00 Cr by the assessee from Rupak Developers Pvt Ltd. from Current A/C No. 415010200002349 and in the second para the AO has noted that the said company was found to be engaged in providing accommodation entries to the beneficiaries in the form LTCG/STCG on sale of penny stocks and nowhere any objective satisfaction has been recorded as to how the income has escaped assessment. For the sake of ready reference the said reason are extracted below:



OFFICE OF THE INCOME TAX OFFICER, WARD-5(3) KOL
 Room No. 15, 8th Floor, Aaykar Bhawan, P-7, Chowringhee Square, Kolkata-700069
 Ph:- 22136277, E-mail ID: anup.k.mondal@incometax.gov.in

No.ITO/W-5(3)/Kol/148/2017-18/ 181

Date: 10.08.2017

148/17

SPEED POST
B.N.P.L.

Code No:CCU-001-441

To
 The Principal Officer
 M/s Event Developers Pvt Ltd
 3rd Floor, Room No. 10
 9/12 Mercantile Building
 Lal Bazar Street, Kolkata - 700 001

Sir,

Sub: Reason for reopening in the case of M/s Event Developers Pvt Ltd, AABCE9276E for A.Y. 2010-11 - Matter regarding.

The reason for reopening your case for the AY: 2010-11 is submitted as under:

Information is in possession of the department in respect of M/s Event Developers Pvt. Ltd., PAN -AABCE9276E from which it is revealed that the aforesaid company has received Rs. 1,00,00,000 (Rupees One Crore Only) on 28.08.2009 from Current A/c No. 415010200002349 of M/s Rupak Developers Pvt. Ltd.

It is also revealed through the survey operation carried out on 09.06.2015 by Mumbai Directorate (Investigation) in the case of M/s Rupak Developers Pvt. Ltd. that no business activities are being carried out by the said company and is being used merely for providing accommodation entries to beneficiaries in the form of bogus LTCG / STCL on sale of penny stocks.

Yours faithfully,

[Anup Kumar Mondal]
 Income Tax Officer
 Ward-5(3), Kolkata

अनुप कुमार मण्डल
 ANUP KUMAR MONDAL
 आयकर अधिकारी, वार्ड-5(3), कोलकाता
 Income Tax Officer, Ward-5(3), Kolkata



8.1. Perusal of the above reasons recorded by the AO reveals that the AO just discussed about the information which was in the opposition in the Department stating the assessee has received Rs. 1.00 Cr from M/S Rupak Developers Pvt Ltd. which was an accommodation entries provider to the beneficiaries in the form of LTCG/STCG on sale of penny stocks and the same was revealed during the course of survey on 09.06.2015 conducted by DIT(Inv), Mumbai in the case of M/s Rupak Developers Pvt. Ltd. but has not recorded any satisfaction to reopen the assessment. In our opinion the reason recorded are mechanically recorded and lacks objective satisfaction. In our opinion the reasons recorded have to be read as recorded and no substitution or addition or deletion is allowed therein. Therefore the reopening of assessment on the basis of said reasons cannot be sustained. The case of the assessee finds support from the decision of Hon'ble Bombay High Court in the case of the Hindusthan Lever Ltd. (supra) wherein it has been 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.”

8.2. Similarly the Co-ordinate Bench in the case of Shark Packaging (India) Pvt. Ltd. (supra) has held that the reopening of assessment cannot be on the basis of vague

report of investigation by the AO without applying his mind to the report for AY 2011-12 and 2012-13.

8.3. Considering the above facts in the light of the ratio laid down in the above decision we are of the view that in the present case also the AO has reopened the case on very vague reasons without recorded objective satisfaction as to how the income has escaped assessment. Therefore the reopening of assessment is itself invalid and is accordingly quashed. Accordingly ground no. 3 and 4 is allowed.

9. The issue raised on merit are not adjudicated at this stage and is being left to be decided if the needs arises for the same in future.

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

Order is pronounced in the open court on 3rd May, 2024

Sd/-
(Sonjoy Sarma /संजय शर्मा)
Judicial Member/न्यायिक सदस्य

Sd/-
(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 3rd May, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Event Developers Pvt. Ltd., Room no. 10, 3rd Floor, Block-A, Mercantile Building, 9/12 Lal Bazar Street, Kolkata-700001
2. Respondent- ITO, Ward-5(3), Kolkata (now merged with ITO, Ward - 5(1), Kolkata
3. Ld. CIT(A)-2, Kolkata
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata