

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
'C' BENCH, KOLKATA**

**Before Dr. Manish Borad, Accountant Member  
&  
Shri Sonjoy Sarma, Judicial Member**

**I.T.A. Nos. 493, 494 & 495/KOL/2023  
Assessment Years: 2009-10, 2013-14 & 2014-15**

***Gillanders Arbuthnot And Co. Ltd.,.....Appellant  
C-4, Gillanders House,  
Netaji Subhas Road, B.B.D. Bag,  
Kolkata-700001  
[PAN:AAACG9832F]***

**-Vs.-**

***Deputy Commissioner of Income Tax,.....Respondent  
Circle-4(1), Kolkata,  
Aayakar Bhawan,  
P-7, Chowringhee Square,  
Kolkata-700069***

**Appearances by:**

*Shri Akkal Dudhewala, A.R., appeared on behalf of the  
assessee*

*Shri Arun Kumar Meena, JCIT, Sr. DR, appeared on behalf  
of the Revenue*

**Date of concluding the hearing : 8<sup>th</sup> February, 2024**

**Date of Pronouncing the Order: May 3<sup>rd</sup>, 2024**

**O R D E R**

**Per Dr. Manish Borad, Accountant Member:-**

These three appeals bearing ITA Nos. 493/KOL/2023,  
494/KOL/2023 and 495/KOL/2023 filed by the assessee

are directed against the orders of ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 21.03.2023, 22.03.2023, 21.03.2023 for the assessment years 2009-10, 2013-14 and 2014-15 respectively.

2. We observe that the impugned orders for A.Ys. 2013-14 & 2014-15 are *ex-parte* orders and the ld. CIT(Appeals) has not dealt into the merit of the case. Further we notice that the some dates of hearing were during COVID 19 restriction period. The ld. Counsel for the assessee stated that replies were filed before the ld. CIT(Appeals), but the replies have not been considered while framing the impugned orders. The ld. Counsel for the assessee further stated that most of the issues raised in the appeals for two years, i.e. A.Ys. 2013-14 & 2014-15 are covered by the decisions of the Tribunal in assessee's own case in ITA No. 589/KOL/2012 - order dated 19.1.2.2013, ITA No. 744/KOL/2012 - order dated 30.10.2015, & ITA No. 905/KOL/2013 - order dated 29.02.2016.

3. Considering these facts and since the ld. CIT(Appeals) has not dealt with the merit of the case, the issue raised in these two appeals needs to be restored back to the file of ld. CIT(Appeals) for fresh adjudication. There being no objection raised by the ld. D.R. to this, therefore, we restore all the issues raised in these two appeals for A.Ys.

2013-14 and 2014-15 to the file of Id. CIT(Appeals) for adjudication and to pass a speaking order after giving reasonable opportunity of hearing to the assessee. Both these appeals are allowed for statistical purposes.

4. Now we take up the **ITA No. 493/KOL/2023** for A.Y. 2009-10.

5. The assessee has raised the legal ground challenging reopening of assessment under section 147 of the Act and on merit, has challenged the order of Id. CIT(Appeals) confirming the action of Id. Assessing Officer disallowing purchases of Rs.99,35,000/- from M/s. S.R. Sales Corporation.

6. The facts in brief are that the assessee is a Limited Company and declared 'NIL' income in the e-return filed for A.Y. 2009-10 on 29.09.2009 and the adjusted book profit under section 115JB of the Act declared at Rs.17,34,37,864/-, which was subsequently revised on 27.07.2010 at Rs.20,19,97,136/-. The assessee's income was scrutinized under section 143(3) of the Act and the proceeding completed vide order dated 28.12.2011. Thereafter based on the information received from ITO(Investigation), (HQ), Gurgaon vide letter dated 23.03.2016 regarding suspicious transaction of Rs.99,35,000/- with M/s. S.R. Sales corporation, after

recording the reasons, notice under section 148 of the Act was issued and duly served upon the assessee. The assessee raised objection, which was considered. The Id. Assessing Officer during the course of assessment proceedings in order to cross verify the genuineness of transaction of purchases made by the assessee with M/s. S.R. Sales Corporation issued notice under section 133(6) of the Act, but the notice returned unserved with the Postal Department remarks "left this place". The Id. Assessing Officer considering the fact that the payments made by the assessee for purchases have been withdrawn in cash by M/s. S.R. Sales Corporation create suspicion on the genuineness of the transactions, made the addition thereof. Aggrieved, the assessee preferred appeal before the Id. CIT(Appeals), but failed to succeed.

7. Being aggrieved, the assessee now is in appeal before the Tribunal.

8. Ld. Counsel for the assessee vehemently submitted that reopening of assessment are bad in law and there is no application of mind by the Id. Assessing Officer before initiating the reassessment proceeding. As far as merits of the case are concerned, he submitted that complete details of purchases, invoice copy, copy of excise declaration, road permit, packing list and L.R. copy are filed in order to support the genuineness of transactions.

9. On the other hand, ld. D.R. supported the orders of lower authorities.

10. We have heard the rival contentions and perused the relevant material placed before us. Firstly, we take up the legal issue challenging the validity of reopening under section 147 of the Act. The facts of the case are that the assessee is a Limited Company and for A.Y. 2009-10, the case was scrutinized under section 143(3) of the Act. After four years of the assessment year in question, the assessee was issued notice under section 148 of the Act for the following reasons:-

**“Reason for issuance of notice u/s 148**

*The assessment in the case of the assessee for the A.Y. 2009-10 was completed u/s 143(3) of the I.T. Act, 1961 on 28.12.2011 on a total income of Rs.20,21,06,410/- as against the total income assessed u/s 143(1) of Rs.20,19,96,410/- on 18.03.2011. Subsequently, information has been received from ITO (Inv) (HQ), Gurgaon vide letter dated 23.03.2016, which is placed on record.*

*Suspicious Transactions Report (STR) in the case of M/s. S.R. Sales Corporation (prop. Sh. Milkh Raj (PAN:AIEPR5631C}, S/o. Sh. Buta Ram, Shop No. 52B, Anaj Mandi, Fatehabad] was obtained by ITO (Inv.)(HQ), Gurgaon and on perusal of the said report, it was revealed that the said company M/s. S.R. Sales Corporation was getting funds from M/s. Gillander Arbuthnot & Co. Ltd. And immediately after that cash was being withdrawn by M/s. S.R. Sales Corporation. It was observed by ITO (IV.)(HQ), Gurgaon, from the ledger account of M/s. Gillander Arbuthnot & Co. Ltd., that Rs.99,35,000/- had been shown as payment against purchase of cotton yarn from M/s. S.R. Sales Corporation during F.Y. 2008-09.*

*In the above perspective, I have reasons to believe that income of the assessee chargeable to tax for the assessment year 2009-10 has escaped assessment within the meaning of section 147 of the Act.*

11. Based on the above reasons, reopening proceedings have been carried out and addition has been made in the hands of assessee for bogus purchases. We observe that the assessee has to purchase cotton yarn from the market. These purchases are being consistently made from past many years through the brokers located at various parts of the country. In the reasons recorded extracted supra, the allegation against the assessee is that it is making purchases from a party namely M/s. S.R. Sales Corporation and the funds transferred by the assessee-company to M/s. S.R. Sales Corporation have been immediately withdrawn. Now the transaction of the assessee with M/s. S.R. Sales Corporation is duly recorded in the books and the books of account were placed before the assessing authorities in the course of regular assessment proceedings. Books of account have not been rejected and a detailed inquiry has been conducted while carrying out the assessment proceedings. Quantitative records are maintained. The transaction in question has also been part of those scrutiny proceedings. All details relating to the said transactions are already placed before the Id. Assessing Officer. There is no new information brought on record by the Id. Assessing Officer

which could indicate that the assessee has furnished any inaccurate particulars in its return, or has not disclosed fully and truly all material facts necessary for the assessment. As per Section 147 of the Act, until and Unless ld. Assessing Officer records a finding that there is a failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment, the reopening of the assessment after four years from the end of relevant assessment year, cannot be taken up.

12. Further we notice that even before recording the reasons, ld. Assessing Officer ought to have examined the transaction from the assessment records. Merely taking support from the suspicious transaction report of M/s. S.R. Sales Corporation without observing any defect in the details filed by the assessee in the course of assessment proceedings in the regular return of income, the proceeding seems to be one-sided and ld. Assessing Officer without having any reason to believe has acted mechanically by not making proper application of mind on the transactions. Even during the course of assessment proceedings also, one-sided approach of the ld. Assessing Officer is discernible from the fact that the information was received from M/s. S.R. Sales Corporation by the ITO, (Inv.), HQ, Gurgaon about suspicion on the genuineness of the transactions. But surprisingly the information has been called from S.R. Sales Corporation only and the

notice was returned unserved. It means that on one hand, reassessment proceedings have been carried out on the basis of information about S.R. Sales Corporation and the surprisingly same information is reconfirmed with S.R. Sales. Revenue authorities seems to have no authentic information. Just on the basis of some cash withdrawals appearing in the Bank account of S.R. Sales Corporation after receiving sale consideration from assessee, purchase transactions carried out by the assessee in the regular course of business have been alleged to be bogus.

13. Under these given facts and circumstances, we are inclined to hold that reopening proceedings are bad in law, illegal and untenable and deserves to be quashed on account of lack of reason to believe and change of opinion at the end of ld. Assessing Officer because alleged transaction has already been examined by the ld. Assessing Officer in the course of regular assessment proceeding. Thus, we allow this legal issue raised by the assessee in Ground No. 1 and quash the re-assessment proceeding. Since we have allowed the legal issue in favour of the assessee by allowing ground No. 1, dealing with the remaining grounds of appeal on merit, will be merely an academic exercise, which we refrain to carry. Thus, the appeal of the assessee is allowed.

**14. To sum up, the appeal bearing ITA No. 493/KOL/2023 is allowed. The appeals bearing ITA Nos. 494 & 495/KOL/2023 are treated as allowed for statistical purposes.**

Order is pronounced in the open court on May 3<sup>rd</sup> , 2024

**Sd/-  
(Sonjoy Sarma)  
Judicial Member**

**Sd/-  
(Manish Borad)  
Accountant Member**

***Kolkata, the 3<sup>rd</sup> day of May, 2024***

- Copies to :*
- (1) Gillanders Arbuthnot And Co. Ltd.,  
C-4, Gillanders House,  
Netaji Subhas Road, B.B.D. Bag,  
Kolkata-700001*
  - (2) Deputy Commissioner of Income Tax,  
Circle-4(1), Kolkata,  
Aayakar Bhawan,  
P-7, Chowringhee Square, Kolkata-700069*
  - (3) Commissioner of Income Tax (Appeals)-  
National Faceless Appeal Centre (NFAC),  
Delhi;*
  - (4) Commissioner of Income Tax- ,  
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.**