

**आयकर अपीलीय अधिकरण, कोलकाता पीठ 'सी', कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA**

**Before Shri Sanjay Garg, Judicial Member and Shri Sanjay Awasthi, Accountant Member**

**I.T.A. No.452/Kol/2024**  
**Assessment Year: 2010-11**

**Brentford Merchants Pvt. Ltd.....Appellant**  
**C/o Subash Agarwal & Associates,**  
**Advocates, Siddha Gibson,**  
**1, Gibson Lane, Suite 213, 2<sup>nd</sup> Floor,**  
**Kolkata – 700069.**  
**[PAN: AABCB2698B]**

**vs.**

**ACIT(OSD), Ward-1(4), Kolkata..... Respondent**

**Appearances by:**

Shri Siddharth Agarwal, Advocate, appeared on behalf of the appellant.

Shri Prabhakar Prakash Ranjan, Addl. CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : May 21, 2024

Date of pronouncing the order : May 30, 2024

**आदेश / ORDER**

**संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:**

The present appeal has been preferred by the assessee against the order dated 13.02.2024 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee in this appeal has taken the following grounds of appeal:

*"1. 1. For that the Ld. CIT(A) was not justified in upholding the validity of re-opening proceedings u/s 147/144 which is bad in law and is liable to be quashed.*

*2. For that the Ld. CIT(A) was not justified in upholding the re-opening proceedings in spite of the fact that the reasons to believe were invalid and improper thereby, vitiating the reopening proceedings.*

3. For that the Ld. CIT(A) was not justified in upholding the validity of reopening proceedings in spite of the fact that the purported sanction u/s 151 not obtained or was not in accordance with law which vitiated the reopening process.

4. For that the Ld. CITA) ought to have considered that the principles of natural justice was violated by the AO by not confronting the assessee with the alleged adverse materials collected behind its back, as such the additions made are vitiated in law and are liable to be deleted.

5. For that on the facts and in the circumstances of the case, the ld. CIT(A) grossly erred in confirming the addition made by the A.O to the tune of Rs.1,80,50,000/- by wrongly treating the same as unexplained cash credit u/s 68 of the Act.

6. The appellant craves leave to add further grounds of appeal or alter the grounds at the time of hearing.”

3. The sole issue contended by the assessee before us is relating to the validity of reopening of the assessment.

4. At the outset, the ld. Counsel for the assessee has invited our attention to page 12 of the paper-book, which is the copy of reasons recorded, the same, for the sake of ready reference, is reproduced as under:

*"Information has been received from Pr. DIT(lnv), Kolkata, that DDIT(Inv), Unit – 4(2), Kolkata, carried investigation of bank accounts which were opened during the F.Y. 2009-10 with ICICI Bank and operated upon for 1 to 2 months. On examination of the bank statements it was observed that unaccounted cash had frequently been deposited in such bank accounts which were immediately transferred to the interlinked bank accounts and then ultimately to the beneficiary's accounts. In this way the beneficiary companies have brought back unaccounted income into their regular books of accounts in the guise of bogus share/unsecured loans etc.*

*It has been further informed that the concerns maintaining the bank accounts are mere paper concerns having no existence and real business activity controlled by Shri Pranab Kumar Modi. Shri Pranab Kr. Modi in his statement under oath before the Directorate has accepted that he was engaged in the business of providing accommodation entry in the form of bogus share capital, unsecured loans etc. to various beneficiaries through concerns controlled and managed by him in lieu of commission in cash.*

*DDIT(Inv), Unit - 4(2), Kolkata, has prepared a detailed cash trail identifying the fund layering trail and the ultimate beneficiaries. It has been observed that the assessee M/s Brentford Merchants Private Limited was a beneficiary, and it received accommodation entries of Rs.1,80,50,000/- "*

4.1 The Id. Counsel referring to the aforesaid reasons recorded has submitted that in the first two paras, the Assessing Officer has mentioned about the information received from the investigation wing that certain parties were involved in providing accommodation entries. That only in the last three lines, it has been mentioned that 'DDIT(Inv.), Kolkata has prepared a detailed cash trail identifying the fund layering trail and the ultimate beneficiaries'. That it has been further noted that it has been observed that the assessee was a beneficiary as it had received accommodation entries of Rs.1,80,50,000/-. The Id. Counsel has further referred to the objections filed by the assessee against the reopening of the assessment, wherein, the assessee had duly contested the aforesaid reasons recorded and claimed that the assessee is not the beneficiary of any such amount as alleged by the Assessing Officer, the relevant part of the objections in this respect is reproduced as under:

*"Further it can be seen from the Balance Sheet of our company that the company is not beneficiary of any such amounts alleged by you. It is very clear from the audited accounts that there is neither any increase in capital by way of issue of fresh shares nor the company has taken any unsecured loans. We fail to understand how the company becomes beneficiary without actually having any increase in capital or liability. Thus it is very clear that your belief that the company have brought back unaccounted income into their regular books of accounts in the guise of bogus shares/unsecured loans is not supported by any material facts."*

4.2 The Id. Counsel has also referred to the bank statement of the assessee for the financial year under consideration, which is placed at page 8-9 of the paper-book to demonstrate that no such cash deposits have been received by the assessee in its bank account during the financial year under consideration. The Id. Counsel has referred to the

assessment order to submit that even the Assessing Officer has not mentioned in the assessment order about any transaction made by the assessee of any such amount and neither referred to the nature of the transaction nor any method of receipt of the amount and even did not mention any bank account of the assessee in which the said amount of Rs.1,80,50,000/- was allegedly received by the assessee. The submission of the ld. Counsel at this stage is two-fold. Firstly, that there was no sufficient information in the possession of the Assessing Officer to form belief that the income of the assessee has escaped assessment and further that the satisfaction arrived by the Assessing Officer in forming the belief of the escapement of income was based on borrowed satisfaction. Secondly, even on merits, there is nothing on record that the assessee has received any such amount as alleged by the Assessing Officer. That the entire additions were made on assumptions, surmises and conjecture.

5. The ld. DR, on the other hand, has submitted that the assessee did not properly participate during the assessment proceedings and that prompted the Assessing Officer to make the impugned additions on ex parte assessment order u/s 144 of the Act.

6. We have considered the rival submissions and gone through the record. Before deliberating upon the merits of the additions in the *ex parte* order passed u/s 144 of the Act, the first and foremost contention raised by the ld. Counsel for the assessee is relating to the validity of the reopening of the assessment u/s 147 of the Act. As also contended by the ld. Counsel, the only information received by the Assessing Officer from the investigation wing was that the assessee was beneficiary of an accommodation entry of Rs.1,80,50,000/-. The Assessing Officer was supposed to correlate the said information with

the assessment records of the assessee and also with the financial statement of the assessee to arrive at the satisfaction that whether any such transaction has been carried out by the assessee during the year and whether the assessee has received any such accommodation entry and then to examine as to what was the nature of the transaction relating to such accommodation entry and the amount, if any, actually received by the assessee and also the bank and bank account no. of the assessee in which the alleged deposits were made. The Assessing Officer did not correlate the said vague information with the records of the assessee and straightway reopened the assessment. The Assessing Officer did not make his own satisfaction to form the belief of escapement of income of the assessee. The reopening of the assessment has been made by the Assessing Officer on the basis of borrowed satisfaction. It has been held time and again by the various High Courts that the reasons to believe regarding the escapement of the income should be based on certain tangible material and it should not be mere pretence of the Assessing Officer. The reasons to believe does not mean reason to suspect. Reopening of the assessment is not permitted for making fishing and roving enquiries. The Assessing Officer, after receipt of alleged information received from the Investigation Wing was supposed to correlate the same with the records and thereafter should have satisfied himself of escapement of income. Reopening is not permissible on the basis of borrowed satisfaction of the Assessing Officer.

7. Even, on merits, during the assessment proceedings, the Assessing Officer has not mentioned the nature of the transaction/nature of the accommodation entry, the name of the payer and even the name of the bank or the bank account belonged to the assessee. The entire addition has been made on suspicion basis without

bringing even an iota of evidence on the file relating to the receipt of any accommodation entry by the assessee. Even though the assessee has not properly participated in the assessment proceedings resulting into an *ex parte* assessment, yet, in such circumstances, the initial burden was cast upon the Assessing Officer to bring on record the prima facie facts and evidence thereto relating to the nature of the transaction, the name of the payer, the name of the bank and bank account of the assessee etc. Thereafter, if the said facts and evidence would have been confronted to the assessee, then the burden would have been shifted upon the assessee to rebut the alleged contentions of the Assessing Officer. In the case in hand, the assessee even had filed cross-objections duly disputing the aforesaid bald allegation levelled by the Assessing Officer. However, the Assessing Officer, even without considering the objections raised by the assessee, not only proceeded to reopen the assessment but also made the additions in the assessment order in a clandestine manner. Such additions made by the Assessing Officer are not sustainable as per law. The reopening of the assessment is held to be bad in law as well as the additions made on merits are also not sustainable in this case. The impugned additions are accordingly ordered to be deleted. The appeal of the assessee stands allowed.

8. In the result, the appeal of the assessee stands allowed.

***Kolkata, the 30<sup>th</sup> May, 2024.***

Sd/-

**[Sanjay Awasthi]**

लेखा सदस्य/Accountant Member

Sd/-

**[Sanjay Garg]**

न्यायिक सदस्य/Judicial Member

Dated: 30.05.2024.

RS

*Copy of the order forwarded to:*

1. Brentford Merchants Pvt. Ltd
2. ACIT(OSD), Ward-1(4), Kolkata
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches