

**THE INCOME TAX APPELLATE TRIBUNAL,
'B' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Dr. Manish Borad, Accountant Member**

**I.T.A. No. 410/KOL/2024
Assessment Year: 2011-2012**

***Jainco Transmission Limited,.....Appellant
70, Diamond Harbour Road, 3rd Floor,
Ekbalpore, Kolkata-700023
[PAN:AABCJ7859G]***

-Vs.-

***Deputy Commissioner of Income Tax,.....Respondent
Circle-11(1), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700069***

Appearances by:

*Shri Miraj D. Shah, A.R., appeared on behalf of the
assessee*

*Shri P.P. Barman, Sr. D.R. appeared on behalf of the
Revenue*

**Date of concluding the hearing : May 15, 2024
Date of pronouncing the order : June 07, 2024**

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The present appeal is directed at the instance of assessee against the order of ld. Commissioner of Income Tax (Appeals),

National Faceless Appeal Centre (NFAC), Delhi dated 4th January, 2024 passed for assessment year 2011-12.

2. The assessee has taken 15 grounds of appeal. However, its grievances revolve around two issues, namely-

(a) whether reopening of the assessment by issuance of a notice under section 148 is valid or not;

(b) whether an addition of Rs.94,50,000/- deserves to be made to the total income of the assessee as unexplained cash credit under section 68 of the Income Tax Act or not.

3. Brief facts of the case are that the assessee has filed its return of income on 30.09.2011 declaring total income of Rs.10,56,550/-. This return was processed under section 143(1) on 14.01.2012 determining total income of assessee at Rs.10,56,550/-. The ld. Assessing Officer thereafter reopened the assessment by issuance of a notice under section 148 on 27.03.2018. The reasons recorded for reopening the assessment are being reproduced by the ld. Assessing Officer on pages no. 1 & 2. The ld. Assessing Officer thereafter made an analysis of the details and observed that the assessee has received share application money from three Companies, namely Nextgen Tradecom Pvt. Ltd., Rajlaxmi Dealcom Pvt. Ltd. & Rexnox Trexim Pvt. Limited. He confronted the assessee as to why share

application money received by it amounting to Rs.94,50,000/- be not added to the total income of the assessee.

4. In response to the show-cause notice, the assessee has filed written submission. It contended that it had received 84.50 lakh rupees from three Companies, namely Nextgen Tradecom Pvt. Ltd. (Rs.35,00,000/-), Rajlaxmi Dealcom Pvt. Ltd. (Rs.25,00,000/-) & Rexnox Trexim Pvt. Limited (Rs.24,50,000/-). The Id. Assessing Officer, however, did not examine these details, but he reproduced the observation of the Revenue from investigation report exhibiting as to how unaccounted money was layered. Thereafter he determined the alleged share capital money at Rs.94,50,000/- and ultimately made the addition vide assessment order dated 15.11.2018.

5. Appeal to the Id. CIT((Appeals) did not bring any relief to the assessee.

6. In the first fold of grievance, the assessee has challenged reopening of assessment. The Id. Counsel for the assessee drew our attention towards the reasons recorded by the Id. Assessing Officer, which are available on pages no. 1 & 2 of the assessment order. For the facility of reference, we deem it appropriate to take note of those reasons, which read as under:-

“This office is in the possession of the information in respect of you pertaining to financial year 2010-11 (A.Y. 2011-12) where you were the ultimate beneficiary of unaccounted money to the extent of Rs. 94,50,000/- which was routed through following companies:

Sl.	Name of the company	Bank Name	Bank A/ c No.
1	Nextgen Tradecom Pvt. Ltd.	Axis Bank	255010200014003
2.	Rajlaxmi Dealcom Pvt. Ltd.	Axis Bank	255010200013934
3.	Vaishnawi Trade (India)	Axis Bank	143010200037590
4.	Divy Prakash Suppliers Pvt. Ltd.	Axis Bank	910020035930581
5.	Shobha Investment Pvt. Ltd.	Axis Bank	255010200015899
6.	Shivshakti Communication P Ltd	Axis Bank	255010200015808
7.	Rexnox Trexim Pvt. Ltd	Axis Bank	017010200031329
8.	Tripund Motor & General Fin Ltd.	Axis Bank	255010200017161
9.	Daffodil Goods Pvt. Ltd.	Axis Bank	255010200016579
10.	Indradev Goods Pvt. Ltd.	Axis Bank	255010200008396
11.	Mahaqjogi Vinimay Pvt. Ltd.	Axis Bank	255010200016533
12.	Deepa Holding Pvt. Ltd.	Axis Bank	017010200031824
13.	Nivedan Vyapar Pvt. Ltd.	Axis Bank	255010200004824

As per MCA data and ITD Module, these companies are paper/shell companies having no real existence & business activities and involved in providing accommodation entries in the form of bogus share capital/share premium, prearranged bogus LTCG/STCL & unsecured loans etc. to various beneficiaries/parties in lieu of commission in cash.

As per departmental data base, some of the concerns mentioned above are interlinked and existing merely on paper having no real existence and business activities and are controlled and managed by Dinesh Dhandhania, Pankaj Agarwal, Vijay Kumar Gupta, Anand Singhanian and Bhagwan Das Agarwal, well known entry operators of Kolkata for the purpose of providing accommodation entries in the form of bogus share capital/share premium, pre-arranged bogus LTCG/STCL & unsecured loans etc. to various beneficiaries/parties in lieu of commission in cash. There was no other financial rationale behind such transactions.

On examination of the bank statements of the concerns which was immediately transfer to the interlink accounts and then ultimately to the beneficiary's account. Your company is one of the such beneficiary, who received an amount of Rs. 94,50,000/- during the previous year 2010-11 relevant to the A.Y. 2011-12.

7. The Id. Counsel for the assessee while taking us through the reasons submitted that in the reasons, the Id. Assessing Officer has made a reference to 13 Companies but the assessee has not dealt with all these companies. It has received alleged share capital from three parties, namely Nextgen Tradecom Pvt. Ltd. (Rs.35,00,000/-), Rajlaxmi Dealcom Pvt. Ltd. (Rs.25,00,000/-) & Rexnox Trexim Pvt. Limited (Rs.24,50,000/-). These details were duly shown by the assessee in its accounts. A perusal of these reasons would not show as to how a nexus has been determined by the Id. Assessing Officer with the information received by him, vis-à-vis related to the assessee. The Id. Counsel for the assessee further took us through the written submission filed by the assessee exhibiting as to how these reasons are vague and cannot goad any prudent man to believe that income has escaped assessment. For buttressing his contention, he relied upon a large number of judgments mentioned in the written submission, which are running into 80 pages and out of that first 35 pages are devoted towards invalidity of reopening. Copies of the five judgments have been placed on the record. The citations of these judgments read as under:-

SI. No.	Decisions	Before	Reference
1	M/S. COAL SALE CO. LTD. AND DCIT Vs. CIRCLE-6 (1), KOLKATA	ITAT, Kolkata	I.T.A. No. 2364/KOI/2019 And C.O. No. 46/KOI/2019 Dated:-17th December 2021
2	M/S COAL SALE CO. LTD Vs. PRINCIPAL COMMISSIONER OF INCOME TAX-2 KOLKATA	CALCUTTA HIGH COURT	ITAT/71/2022 (IA NO.GA/1/2022) Dated: - 29 th JULY 2022
3	SHRI SANJAY MEHTA VS. ACIT, CIRCLE-36, KOLKATA	ITAT, Kolkata	ITA No. 2003/Kol/20219 Dated :- 08 th JUNE 2023
4	M/S. PASARI CASTING AND ROLLING MILLS PRIVATE LTD VS INCOME- TAX DEPARTMENT	JHARKHAND HIGH COURT	W.P.(T) No. 1850 of 2022 Dated:- 25 th JANUARY 2024
5	M/S. PASARI CASTING AND ROLLING MILLS PRIVATE LTD Vs. INCOME-TAX DEPARTMENT	JHARKHAND HIGH COURT	W. P. (T) No. 1850 of 2022 Dated:- 25 th JANUARY 2024

8. The ld. Sr. D.R., on the other hand, contended that reasons are specific. The ld. Assessing Officer has obtained the information from the MCA data and ITD module of the Department, which demonstrate these Companies as paper/shell companies having no real existence and business activities. The ld. Assessing Officer believed that they are involved in providing accommodation entries in the form of bogus share capital/share premium, pre-arranged bogus LTCG/STCG and unsecured loans etc. He relied upon the orders of Revenue Authorities in this regard.

9. We have duly considered the rival contentions and gone through the record carefully. Section 147 of the Income Tax Act would contemplate that *“if the ld. Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or re-assess such income and also any other income chargeable to tax, which has escaped assessment and which comes to his notice subsequently.....”*.

10. A perusal of this provision would indicate that ld. Assessing Officer has to believe that any income chargeable to tax has escaped. For formation of such belief, he should have sufficient reasons and for having some reasons, there should be some information, which establish a live nexus between the material possessed by the ld. Assessing Officer, vis-à-vis formation of the belief that income has escaped assessment. In other words, there should be the material possessed by the ld. Assessing Officer and on whose analysis, he formed a belief that income has escaped assessment. The material should not be of that quality which only creates a suspicion, but it should have a rational connection for the formation of belief that income had escaped assessment. It is pertinent to observe that all these judgments referred by the ld. Counsel for the assessee before us (whose copies has been placed before us) as well as cited before the ld. CIT(Appeals) in the written submission, the common thread is that a material/information should be possessed by an ld. A.O. of such a degree, which can goad a prudent man to believe that income has escaped assessment. Therefore, for the sake of brevity, we do not deem it

necessary to recite and recapitulate the discussion made in each judgment brought to our notice by the ld. Counsel for the assessee. The meaning and construction of section 147 has been expounded in all judgments that the formation of belief made by the ld. Assessing Officer should have a live nexus between the information possessed by him, vis-à-vis his belief.

11. In the light of above, let us evaluate the information possessed by the ld. Assessing Officer, which has been reproduced by us. A perusal of the above reasons would indicate that the first four line only make a mention about the nature of information possessed by the ld. Assessing Officer. The ld. Assessing Officer thereafter made reference to a list of 13 Companies. The ld. Assessing Officer after reproduction the details of 13 Companies and observed that as per MCA data and ITD module, these Companies are paper/shell companies having no real existence and business activities. The ld. Assessing Officer himself has not made any inquiry about the nature of these Companies. The assessee had not taken the money from all these 13 Companies. The ld. Assessing Officer nowhere analyzed as to how which Company has received the money from the assessee and how it has been layered to reach to the accounts of the assessee. He has simply reproduced certain information from the Website of the Income Tax Portal and formed the belief that income has escaped. He has made a mention of certain individuals, namely Dinesh Dhandhnia, Pankaj Agarwal, Vijay Kumar Gupta, Anand Singhania and Bhagwan Das Agarwal, but according to the assessee, it has no connection with any of such person. It has not

taken any money from the concerns of these person. Even the ld. Assessing Officer does not know from whom actually assessee has taken the money and how it has been taken. He has just mentioned the details of 13 Companies and there account with Axis Bank. In paragraph no. 2 of these reasons, the ld. Assessing Officer has only observed that the assessee has filed return and asked for reasons for reopening, but nowhere his actual application of mind is depicted. It is pertinent to note that the information has been reproduced in inadvertent commas, on this information as to how he has applied his mind is not discernable from the reasons. He has just got certain portion of information from somewhere and pasted in the reasons reproduced in the assessment order. After this pasting the next line reads, “subsequently, in response to notice”, shows, to our mind, there is no analysis of the ld. Assessing Officer. We try to evaluate the operative force of reasoning in the mind of Assessing Officer, even with the help of revenue observations reproduced on pages no. 3, 4 & 5 (which is an aspect of merit and not considered in the reasons). Now in the first table, the Revenue has observed that on 06.05.2010 in the account of Blackbird Tie up Pvt. Ltd. (Rs.10,00,000/-), on 26.04.2010 in the account of Nextgen Tradecom Pvt. Ltd. (Rs.10,00,000/-) and on 28.04.2010 in the account of Jainco Transmission Ltd. (Rs.10,00,000/-) i.e. the assessee, how the amounts have been layered. The beneficiary entry as on 28.04.2010, whereas the first entry is of 06.05.2010, then where is the nexus of this information. All these information have not been examined by the ld. Assessing Officer independently, rather he just reproduced certain information from

other sources and believed it as a gospel truth without analytically cross verifying with the assessee. He made the addition of Rs.94,50,000/-, whereas the assessee has actually received share application money of Rs.84,50,000/-. Therefore, we are of the view that there was no application of mind at the end of Id. Assessing Officer while forming a belief that income has escaped assessment. He has relied upon the information without analytically examining at his own end and reopened the assessment. We allow this fold of grievance and quash the reopening of assessment.

12. Since we have quashed the reopening of assessment, therefore, we desist ourselves from recording of any finding on merits of the issue. Once the reopening has declared as bad-in-law thereafter nothing survives for adjudication. We allow this appeal of the assessee and delete the addition.

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

Order pronounced in the open Court on 07/06/2024.

Sd/-

(Manish Borad)
Accountant Member

Sd/-

(Rajpal Yadav)
Vice-President (KZ)

Kolkata, the 7th day of June, 2024

*Copies to :(1 Jainco Transmission Limited,
70, Diamond Harbour Road, 3rd Floor,
Ekbalpore, Kolkata-700023*

(2) *Deputy Commissioner of Income Tax,
Circle-11(1), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square, Kolkata-700069*

(3) *Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre (NFAC), Delhi;*

(4) *CIT- , 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.