

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

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री मनीष बोराड, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Dr. Manish Borad, Accountant Member

I.T.A. No.829/Kol/2023
Assessment Year: 2012-13

M/s Shankar Logistics (P) Ltd.....Appellant
207, Maharshi Divendra Road,
West Bengal-700007.
[PAN: AAJCS8693P]

vs.

DCIT, Circle-7(1), Kolkata..... Respondent

Appearances by:

Shri Miraj D. Shah, AR, appeared on behalf of the appellant.

Shri P. P. Barman, Addl. CIT-Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : April 10, 2024

Date of pronouncing the order : July 08, 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 23.06.2023 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 agitated against the confirmation of addition of Rs.85,98,795/- by the ld. CIT(A) as made by the Assessing Officer treating the unsecured loans taken by the assessee as bogus and thereby making the addition of the aforesaid amount as unexplained income of the assessee. The assessee apart from challenging the additions on merits has also contested the validity of the reopening of the assessment.

3. At the outset, the Id. Counsel has invited our attention to the copy of the reasons recorded by the Assessing Officer for reopening of the assessment. A perusal of the said reasons recorded would reveal that the reasons recorded consists of three pages. In the first two pages, the name of various companies and their directors have been mentioned and it has been further stated that as per the information received from the Investigation Wing, the said companies are shell companies being used for providing accommodation entries on commission basis by their directors. In the third page, the Assessing Officer has mentioned the analysis of information vis-à-vis, the reasons to believe that the assessee has received an accommodation entry of Rs.20,00,000/- and that he has reasons to believe that the income of the assessee for the assessment year under consideration has escaped assessment. The relevant part of the reasons recorded is reproduced as under:

“3. Analysis of information collected/ received and findings of the AO:

From the aforesaid information a conclusion can be drawn that the assessee M/s Shanker Logistics Pvt. Ltd. PAN AAJCS8693 P is the beneficiary company during the AY 2012-13 and has taken entries from the aforesaid shell entities/ companies which do not have any real business and was operated only to bring their unaccounted money in the books. Thus, the assessee has introduced its unaccounted cash back in the books without paying any tax by taking bogus purchases or payment entries from these shell companies.

4. Basis of Forming reason to believe and details of escapement of income:

There is specific information that the aforementioned companies are shell companies which provide accommodation entries to the various beneficiaries. Perusal of the bank accounts of the companies reveals that M/s Shanker Logistics Pvt. Ltd. was a beneficiary of the transactions of the above companies during the FY 2011-12. It can be concluded that M/s Shanker Logistics Pvt. Ltd. had used the company as a conduit to bring its own out of books income into the books of the company and thereby avoiding taxation on same and also to book bogus expense,

thereby reducing taxable income and thus escaping taxation. As such income to tune of Rs. 20,00,000/- has escaped assessment during the FY 2011-12. Therefore, in the light of the above discussion, I have reason to believe that income assessable to Tax amounting to Rs. 20,00,000/- has escaped assessment within the meaning of Section 147 of the I.T. Act, 1961 during the FY 2011-12.

6. Applicability of the provision of Section 147/151 to the facts of the case:

In this case the assessee filed return of income for the AY 2012-13 on 10.09.2012. Assessment u/s 143(3) of the I.T. Act, 1961 was made on 14.11.2014 the requirement to initiate proceedings u/s 147 is reason to believe which has been recorded above.

Therefore the provisions of clause (e) of Explanation 2 to Section 147 are applicable to the facts of this case.

In this case more than four years have lapsed from the end of assessment year under consideration and escapement of income is more than Rs. 1,00,000/-. Hence, necessary approval to issue notice u/s 148 of the I.T. Act, 1961 for the assessment year 2012-13 may kindly be recorded by the Pr. CIT-3, Kolkata.”

3.1 The Id. Counsel referring to the aforesaid reasons recorded has submitted that the information received by the Assessing Officer from the Investigation Wing was vague. The only allegation in the reasons recorded is that the assessee has received an accommodation entry of Rs.20,00,000/-, however, there is no mention as to from whom/which entity, the accommodation entry has been received by the assessee and on what account i.e. whether the sum in the shape of share application money or loan or any other form. The Assessing Officer reopened the assessment after four years of the relevant assessment year on the basis of such vague information. The said information received by the Assessing Officer may have been relevant to make further enquiries if he suspects that the income of the assessee has escaped assessment. However, the said information in itself was not enough to form the belief that the income of the assessee has escaped assessment. That the Assessing Officer was supposed to correlate the said vague information

received from the Investigation Wing with the assessment records of the assessee and thereafter he could have formed the belief that the income of the assessee has escaped assessment. The ld. counsel has, therefore, submitted that the reopening in this case was bad in law.

3.2 The ld. Counsel for the assessee has further submitted that the assessment order involved in this case is A.Y 2012-13 and the reasons for reopening of the assessment were recorded on 26.03.2019. He has further submitted that the original assessment in this case was carried out u/s 143(3) of the Act. He, therefore, has submitted that Proviso to section 147 of the Act is attracted in this case, which provides that where original assessment has been carried out u/s 143(3) of the Act, no action shall be taken u/s 147 of the Act after the expiry of four years from the end of the relevant assessment year unless the income chargeable to tax has escaped assessment by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for that assessment year. He has submitted that the assessee has fully disclosed all the material facts relating to the transactions carried out by the assessee. He has further invited our attention to the reasons recorded by the Assessing Officer to submit that there is no allegation either in the reasons recorded or otherwise that the income of the assessee has escaped assessment owing to any failure on the part of the assessee to fully and truly disclose the material facts necessary for the assessment. He, therefore, has contended that the reopening of the assessment was bad in law on the score also.

4. The ld. DR could not rebut the aforesaid contentions raised by the assessee.

5. We find force in the contention raised by the ld. counsel for the assessee. We find that the Assessing Officer has reopened the

assessment merely based on the information received from investigation wing without verifying the veracity and truthfulness of such information. The information was wrong and the Assessing Officer reopened the assessment on the basis of borrowed satisfaction without correlating the same with the facts of the case. Even there is no allegation that the income of the assessee has escaped assessment due to non-disclosure of the facts necessary for the assessment and since the assessment has been reopened after four years of the end of relevant assessment year, hence, the exception provided under 1st Proviso to section 147 is attracted. The issue is covered by various decisions of the higher courts and even of the hon'ble supreme court. Hon'ble Supreme Court in the case of "Dr. Jagmittar Sain Bhagat & Ors vs Dir. Health Services, Haryana" in Civil Appeal No.5476 of 2013 decided on July 11, 2013, while relying upon another decision of the Hon'ble Supreme Court in the case of "Sushil Kumar Mehta v. Gobind Ram Bohra" (1990) 1 SCC 193 and further placing reliance on the other decisions of the Hon'ble Supreme Court in the cases of "Premier Automobiles Ltd. v. K.S. Wadke & Ors.", (1976) 1 SCC 496; "Kiran Singh v. Chaman Paswan", AIR 1954 SC 340; and "Chandrika Misir & Anr. v. Bhaiyalal", AIR 1973 SC 2391 has observed that where a statute places obligation and enforces the performance in specified manner, "performance cannot be forced in any other manner." Under the relevant provisions of section 147 & section 148 of the Income Tax Act, for assuming jurisdiction to reopen an assessment by the Assessing Officer, there is a condition precedent that the Assessing Officer must have reasons to believe that the income of the assessee for that year has escaped assessment. It has been held time and again that such reasons to believe must have a material bearing on the question of escapement of income. It does not mean a purely subjective satisfaction

of the assessing authority, such reason should be held in good faith and cannot merely be a pretence. The reasons to believe must have a rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Assessing Officer and the formation of belief regarding escapement of income. The powers of Assessing Officer to reopen an assessment, though wide, are not plenary. The words of the statute are "reason to believe" and not "reason to suspect". There can be no manner of doubt that the words "reason to believe" suggest that the belief must be that of an honest and reasonable person based upon reasonable grounds and that the Income-tax Officer may act on direct or circumstantial evidence but not on mere suspicion, gossip or rumour. The Income-tax Officer would be acting without jurisdiction if the reason for his belief that the conditions are satisfied does not exist or is not material or relevant to the belief required by the section. Such an action of the Assessing Officer regarding formation of belief of escapement of assessment and thereby in starting proceedings u/s 147 is open to challenge in a court of law. The entire law as to what would constitute "reason to believe" has been summed up by the hon'ble Supreme Court in the case of "Income Tax Officer v Lakhmani Mewaldas" (1976) 103 ITR 437. Reliance in this respect can also be placed on the decision of the Hon'ble Punjab & Haryana High Court in the case of 'CIT vs Paramjit Kaur' (2008) 311 ITR 38 (P&H), wherein, making identical observations, the Hon'ble High Court has held that in the absence of sufficient material to form satisfaction of the Assessing Officer that income of the assessee had escaped assessment, the issuance of notices u/s 148 of the Act was not valid.

6. Even on merits, the ld. counsel for the assessee has brought our attention to the assessment order to submit that the Assessing Officer has made the additions solely on the basis of information received from the investigation wing and by observing that the creditor, M/s Annapurna Dealmark Pvt. Ltd. from whom the assessee had received loan amount of Rs.98,795/- was a shell company operated by certain persons or their agents who were in the business of providing accommodation entries. The Assessing Officer, however, has not discussed a single document furnished by the assessee to prove the identity, creditworthiness and genuineness of the transaction. On the other hand, the ld. counsel for the assessee has relied upon the following documents to prove the identity and creditworthiness of the creditors and genuineness of the transaction:

- a) ITR Acknowledgement
- b) Audited accounts
- c) director list
- d) loan confirmation
- e) source of source of creditor
- f) bank statement of creditor
- g) bank statement of assessee
- i) notice & reply u/s 133(6) of the Income Tax Act 1961
- j) Assessment Order for A.Y 2012-13
- k) loan refund confirmation

6.1 A perusal of the aforesaid documents would reveal that the assessee had duly furnished the sufficient documents to prove the identity and creditworthiness of the creditors and genuineness of the transaction including the list of directors of the creditor, the loan confirmation from the creditor, the source of creditor, the bank statement of the creditor and even the said creditor had also replied to the notice issued u/s 133(6) of the Act issued by the Assessing Officer and duly confirmed the loan transaction. The most relevant document

in this case is the assessment order of the creditor, M/s Annapurna Dealmark Pvt. Ltd. for assessment year 2012-13, copy of which has been placed at page 127 of the paper-book. A perusal of the assessment order dated 22.10.2014 in the case of M/s Annapurna Dealmark Pvt. Ltd. would show that no addition has been made by the Assessing Officer in the case of said creditor M/s Annapurna Dealmark Pvt. Ltd. on account of receipt of any unaccounted money, share subscription or otherwise, except some minor additions u/s 14A of the Act. Under the circumstances, the creditworthiness of the M/s Annapurna Dealmark Pvt. Ltd. has been accepted by the Assessing Officer for the relevant assessment year 2012-13. Therefore, the additions even on merits are not warranted in this case.

7. In view of the above discussion, the Assessee succeeds in both legal grounds as well on factual merits of the case. Therefore, the assessment framed by the Assessing Officer is held as bad in law and the same is accordingly quashed.

8. In view of the discussion made above, the appeal of the assessee stands allowed.

Kolkata, the 8th July, 2024.

Sd/-
[डॉक्टर मनीष बोरड /Dr. Manish Borad]
लेखा सदस्य /Accountant Member

Sd/-
[संजय गर्ग /Sanjay Garg]
न्यायिक सदस्य /Judicial Member

Dated: 08.07.2024.

RS

Copy of the order forwarded to:

1. M/s Shankar Logistics (P) Ltd
2. DCIT, Circle-7(1), Kolkata
3. CIT (A)-
4. CIT- ,

5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches