

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

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

**I.T.A. No. 637/KOL/2024
Assessment Year: 2013-2014**

***Anchita Properties Pvt. Limited,.....Appellant
29, Collotola Street,
Kolkata-700029
[PAN:AAHCA9115E]***

-Vs.-

***Income Tax Officer,.....Respondent
Ward-12(1), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700069***

&

**I.T.A. No. 1067/KOL/2024
Assessment Year: 2013-2014**

***Anchita Properties Pvt. Limited,.....Appellant
29, Collotola Street,
Kolkata-700029
[PAN:AAHCA9115E]***

-Vs.-

***Principal Commissioner of Income Tax,...Respondent
PCIT, Kolkata-2,
Office of the Income Tax Officer, Ward-12(1),
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700069***

Appearances by:

*Shri S.K. Tulsian, Advocate and Lata Goyal, ACA,
appeared on behalf of the assessee*

*Shri Subhendu Datta, CIT (DR), appeared on behalf of
the Revenue*

Date of concluding the hearing: June 20, 2024

Date of pronouncing the order: August 22nd, 2024

O R D E R

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

The present two appeals are directed at the instance of assessee in Assessment Year 2013-14. ITA No. 637/KOL/2024 emanates from the order of ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 2nd February, 2024 passed under section 250 of the Income Tax Act against an assessment order dated 28.09.2021 passed under section 147 of the Income Tax Act.

1.1. The ITA No. 1067/KOL/2024 emanates from the order of ld. Principal Commissioner of Income Tax, Kolkata-2 dated 30th March, 2024 passed under section 263 of the Income Tax Act. In this revisional order, ld. PCIT has observed that assessment order dated 30.03.2014 passed under section 143(3) is erroneous, which has caused prejudice to the interest of revenue and, therefore, deserves to be set aside.

2. First we take ITA No. 637/KOL/2024. The assessee has taken seventeen grounds of appeal. However, perusal of these grounds reveals that grievances of the assessee revolve around two-folds, namely-

- (a) Id. CIT(Appeals) has erred in confirming reopening of the assessment by issuance of a notice under section 148 of the Income Tax Act.
- (b) Ld. CIT(Appeals) has erred in confirming the addition of Rs.1,55,00,000/-, which was added by the Id. Assessing Officer with the aid of section 68 in a re-assessment order passed under section 147 of the Income Tax Act.
- (c) The revenue authorities have erred in charging interests under sections 234A, 234B and 234C of the Income Tax Act.

3. First we take the issue challenging reopening of the assessment.

4. Brief facts of the case are that the assessee has filed its return of income under section 139(1) of the Income Tax Act on 30th March, 2014 declaring total income of Rs.55,10,070/-. This return was selected for scrutiny assessment and a notice under section 143(2) was issued and served upon the assessee. The Id. Assessing

Officer has passed the scrutiny assessment on 16.12.2015 determining the taxable income of the assessee at Rs.55,15,880/-.

5. The ld. Assessing Officer thereafter got some information and issued a notice under section 133(6) dated 20.02.2020. Copy of this notice is available on pages no. 16 & 19 of the paper book. The ld. Assessing Officer has directed the assessee to submit information regarding transactions with (i) M/s. Rudramukhi Builders (P) Ltd., (ii) M/s. Evershine Dealtrade Pvt. Ltd., (iii) M/s. Fantom Dealers Pvt. Ltd. and others during A.Y. 2013-14. He further directed the assessee to submit copies of financial statements, Bank statement, computation of income, details of transactions with the above referred concerns during F.Y. 2012-13, profit & loss account of such transaction and Bank pass book with narration for the period 01.04.2012 to 31.03.2013. The assessee has filed a detailed reply. It has submitted that scrutiny assessment has already undertaken, wherein such details must have gone through. The ld. Assessing Officer did not respond to it but with the approval of the ld. PCIT, he issued one more show-cause notice under section 133(6) of the Income Tax Act directing the assessee to submit details with regard to nine other companies. For the purpose of this reopening, these details are not relevant because ultimately ld. Assessing Officer has not recorded the reasons for reopening the assessment on the strength of transactions with these companies. He might have satisfied with the explanation of the assessee submitted in response to the show-cause notice under section 133(6) of the Income Tax Ac. The ld. Assessing Officer thereafter recorded the

reasons. The reasons are being reproduced by the ld. Counsel for the assessee in his written submission, which read as under:-

“In the instant case, return of income was filed on 30/03/2014 declaring total income Rs.55,10,070/-. The return was assessed u/s 143(3) on 26/12/2015 of Rs. 55,15,880/-.

A Credible information was received from DDIT, Inv, Unit-3 (1), Kolkata vide his letter bearing no. DDIT(Inv)/Unit-3(l)/Kol /2018-19/13701-981 Dated 12/03/2019 in relation to the investigation proceeding in the case of M/s. Samrat Udyog (proprietor Shri Abhay Sultania PAN AVQPS4386L) and related beneficiaries that the assessee M/s. ANCHITA PROPERTIES PVT. LTD has taken accommodation entry and brought back its unaccounted money into its regular books of accounts during the financial year 2012-13 through layering of i) M/s. Rudramukhi Builders Pvt Ltd. Rs.65,00,000/- ii) M/s. Ever shine Dealtrade Pvt. Ltd., Rs. 30,00,000/- iii) M/s. Fantom Dealers Pvt. Ltd Rs.50,00,000/- totaling Rs.1,45,00,000/-

Subsequently, another information has been disseminated by ITO, Ward-10(4), Kolkata vide its communication No. ITO/Wd-10(4)/Kol/Information/2018-19/13101 did 11/03/2019 in relation to the investigation proceeding in the case of M/s. Hitendra Commercial Pvt. Ltd. that the assessee M/s. ANCHITA PROPERTIES PVT. LTD has taken accommodation entry and brought back its unaccounted money to the tune of Rs, 10,00,000/- into its regular books of accounts during the financial year 2012- on 24/12/2012.

Accordingly with Prior approval of the Ld. Pr.CIT-4, Kolkata for necessary enquiries by issuing notice u/s 133(6) of the IT Act has been carried out. Effort of finding out the creditworthiness or physical existence of those Business entities, using the departmental instrument has also gone in vain. Therefore, it is concluded that, the above entities are nothing but a Paper/Shell entities and the bank accounts of those entities have been used as intermediary for routing of unaccounted fund of different beneficiary parties.

While examining the information disseminated by the investigation wing it is observed that the account of Smart Udyog A/c No. 1784000002215 was opened with Yes Bank Limited and funds were credited/debited in form of RTGS /bank transfer, cash and NEFT etc. and most of the transactions in the account are internal fund transfer with no apparent economic/

business justification. The entities with whom transaction are found recorded, did not filed their return of income, therefore identity and creditworthiness of those entities are remain unverified. Name of Few of those entities are found being paper /shell entities which are/were managed and controlled by Kolkata based entry Operators for providing accommodation entry to various beneficiary in the form of bogus unsecured loan, bogus share capital/premium, bogus billings etc.

As per ROC data base, M/s. Fantom Dealers Pvt. Ltd is found Strike off. Analysis of bank account statement and money trail of the transaction are examined. The transaction pattern of the account identically matched with the operator driven transaction for moving funds to the desired destination through banking channel. The subject account of M/s. Samrat Udyog Prop. Abhay Sultania could not be verified as he did not file any return of income.

Shri Dilip Das & Shri Ganesh Mal Singh, the director of M/s. Rudramukhi Builders Pvt. Ltd. are found in the list of dummy director at the departmental data base of paper/shell companies controlled by entry operator, Shri Janardhan Chokhani & Shri Abhishek Chokhani.

In reply to notice u/s. 133(6), the assessee merely stated that the receipt from i) M/s. Rudramukhi Builders Pvt Ltd. (Rs. 65,00,000/-) ii) M/s. Ever shine Dealtrade Pvt. Ltd., (Rs. 30,00,000/-) Uj) M/s. Fantom Dealers Pvt. Ltd (Rs. 50,00,000/-) totaling Rs. 1,45,00,000/- were the sale proceed of investment. However, the details of investment are not furnished. On verification of financial statement for the year ending 31.03.2013, no such sale of investments are found recorded. Further no trading of shares are also found recorded except income from interest.

Similarly it is noticed that M/s. Hitendra Commercial Pvt. Ltd. maintained a bank account bearing no. 040505005901 with ICICI Bank Chandannagar. During the period since inception i.e. 21.07.2011 to closure of account on 25.03.2013 there were large value non cash transactions noted. Funds credited, either same day or next day the amount was found transferred to another accounts including the account of the assessee M/s. ANCHITA PROPERTIES PVT. LTD to the tune of Rs.10,00,000/-. Effort of finding out the physical existence of M/s. Hitendra Commercial Pvt. Ltd. at its registered address and its business activities using the departmental instrument has also gone in vain. As per ROC data base the status of M/s. Hitendra Commercial Pvt. Ltd. is strike off. Further the name of Shri Manoj Kumar & Shri Sanjay

Kumar Agarwala, two office directors are found in the list of dummy director at the departmental data base of paper/shell companies controlled by entry operator, Shri Pankaj Agarwal. As such the transaction is remained unverified.

In view of the above I have reason to believe that the assessee company, M/s. ANCHITA PROPERTIES PVT. LTD, has brought back its own unaccounted money of Rs. 1,45,00,000/- & Rs.10,00,000/- totaling to Rs. 1,55,00,000/- in its books from the above dubious entities in the financial year 2012-13 relevant to assessment year 2013-14.

In view of the above, I have reason to believe that income chargeable to tax has escaped assessment coming within the meaning of section 147 read with proviso thereto, by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment.

As the time limit for issue of notice as provided u/s 149(b)(iii) is expiring on 31/03/2020, Your Honour is requested to sanction permission u/s 151 read with proviso thereto to issue notice u/s 148 of the Income tax Act, 1961. Put up before Ld. Pr. C1T-4, Kolkata through Ld. JCIT, Range-12, Kolkata for kind perusal and necessary approval, if deemed fit”.

6. The assessee has filed the return in response to the notice under section 148. The ld. Assessing Officer has issued notice under section 143(2) and supplied the copy of the reasons to the assessee. Against these reasons, assessee has filed objections running into 28 pages. Such objections are placed at pages no. 32 to 60 of the paper book. A perusal of these objections would reveal that the assessee has submitted its submissions against reopening under eight different reasons. For example, under the first objection, it was contended that notice issued under section 148 of the Income Tax Act is defective and, therefore, *void ab initio*. The ld. Counsel for the assessee has highlighted those eight counts on

which the detailed objections have been filed by the assessee in his written submission and the main head reads as under:-

- (i) *The impugned notice issued u/ 148 of the Act is defective and therefore is void ab initio in as much as the same has been issued without striking off the inapplicable words and thus shows non application of mind*
- (ii) *The sanctioning authority u/s 151 of the Act is also a mechanical sanction as could be seen form the aforesaid fads. The reasons recorded by the AO for his sanction did not comply with the directions in SOP.*
- (iii) *The reasons have been recorded without following the SOP - Standard Operating Procedure for recording satisfaction u/s 147 of the Act be direction issued by CBDT on 10.01.2018.*
- (iv) *From the perusal of the reasons provided it is clear that formation of your reason to believe that our income has escaped assessment for the A.Y. 2013-14 is nothing but change of opinion.*
- (v) *There is no fresh tangible material coming to the possession of the Id. AO which could reasonably give rise to believe that our income has escaped assessment.*
- (vi) *The reasons recorded are vague, scanty and non-specific and there are not reasons to believe but reasons to suspect. Copy of full information was not supplied.*
- (vii) *The satisfaction recorded in the instant case is not the AO's own satisfaction but a borrowed satisfaction and without application of mind.*
- (viii) *There is no live link between the reasons recorded u/s 148 of the Act and belief of escapement of income as the facts recorded in the reasons are incorrect.*

7. The Id. Assessing Officer has not disposed of the objections separately in terms of the judgment of the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Limited -vs.- ITO & Others reported in [2003] 259 ITR 19 (SC), rather alleged to have dealt

during the assessment proceedings. The ld. Assessing Officer has gone through the record and thereafter made the addition of Rs.1,55,00,000/- on the ground that the account of the assessee has been credited with the above amount, which was received from these three companies and one M/s. Hitendra Commercial Pvt. Limited.

8. Dissatisfied with the upholding of reopening, the assessee carried the matter in appeal before the ld. CIT(Appeals). The impugned order of the ld. CIT(Appeals), though running into 15 pages but the ld. 1st Appellate Authority has specifically not dealt with analytically as to how reopening is made. The observation of ld. CIT(Appeals) *qua* reopening is available at page no. 11. The finding apart from the case law relied upon by the ld. CIT(Appeals) reads as under:-

“(f) Case was reopened u/s 147 of the Appellant as AO had reason to believe that sales of Rs.1,55,00,000/- are accommodation entries and not genuine. Thus, sales of Rs.1,55,00,000/- had escaped assessment as envisaged u/s 147 for AY-2013-14. Notice u/s 148 was issued on 20.03.2020, and served on Appellant. Thereafter, Statutory notices u/s 143(2) and 142(1) were issued to Appellant. Reasons recorded to reopen the case of Appellant u/s 147 were provided to Appellant. In response to the notices issued u/s 142(1) of the Act, the Appellant filed submissions alongwith bank statement, balance sheet and share transaction bill.

(g) It was further noticed that these are typical shell company and enlisted as a shell company in the departmental data base. The said companies have no physical existence at its registered address. The said company had no real business asset and also business of worth to justify such high value transaction. During the relevant financial year the said companies were not involved in any real revenue generated activity.

(h) Accordingly, the AO had sufficient reasons to believe that, the assessee company M/s. Anchita Properties Pvt. Ltd is one of such beneficiaries who had availed up the accommodation entry through layering of bank accounts of the aforementioned alleged shell entities.

(i) The AO has satisfied the statutory preconditions before re-opening of the assessment u/s 147 of the Act. The AO had a valid reason to re-open the assessment and the AO duly recorded the reasons for re-opening the assessment. There was tangible material on record in form of information from Directorate of Investigation Wing, Kolkata and the ITO, Ward-10(4), Kolkata to form a 'reason to believe' that income has escaped assessment. The reopening of the assessment was found to be valid as it satisfies the requirement of law that prior to re-opening of the assessment the AO has to apply his mind to the tangible material available and conclude that he has reason to believe that income has escaped assessment. Copy of reasons recorded was duly provided to the Appellant. The Action of AO in reopening assessment u/s 147 is supported by following judgments.

9. The ld. CIT(Appeals) thereafter made reference to nine judgments and he then confirmed the addition without specifically dealing with reopening separately and as to how the quantum addition is to be made separately.

10. Ld. Counsel for the assessee while impugning the orders of revenue authorities raised multiple submissions *qua* challenging the reopening of assessment. Before adverting to the reasons, he brought to our notice the judgment of the Hon'ble Delhi High Court in the case of Sabh Infrastructure Limited -vs.- ACIT reported in [2017] 398 ITR 198 (Del.). He submitted that Hon'ble Supreme Court has dismissed the SLP against this judgment. In this judgment, Hon'ble Delhi High Court has propounded the procedure, which ought to be followed by the revenue authorities

while reopening of the assessment. The paragraph no. 19 of this judgment deserves to be taken note of, which reads as under:-

“19. Before parting with the case, the court would like to observe that on a routine basis, a large number of writ petitions are filed challenging the reopening of assessments by the Revenue under sections 147 and 148 of the Act and despite numerous judgments on this issue, the same errors are repeated by the concerned Revenue authorities. In this background, the court would like the Revenue to adhere to the following guidelines in matters of reopening of assessments:

(i)while communicating the reasons for reopening the assessment, the copy of the standard form used by the Assessing Officer for obtaining the approval of the Superior Officer should itself be provided to the assessee. This would contain the comment or endorsement of the Superior Officer with his name, designation and date. In other words, merely stating the reasons in a letter addressed by the Assessing Officer to the assessee is to be avoided;

(ii)the reasons to believe ought to spell out all the reasons and grounds available with the Assessing Officer for reopening the assessment—especially in those cases where the first proviso to section 147 is attracted. The reasons to believe ought to also paraphrase any investigation report which may form the basis of the reasons and any enquiry conducted by the Assessing Officer on the same and if so, the conclusions thereof;

(iii)where the reasons make a reference to another document, whether as a letter or report, such document and/or relevant portions of such report should be enclosed along with the reasons;

(iv)the exercise of considering the assessee's objections to the reopening of assessment is not a mechanical ritual. It is a quasi-judicial function. The order disposing of the objections should deal with each objection and give proper reasons for the conclusion. No attempt should be made to add to the reasons for reopening of the assessment beyond what has already been disclosed”.

11. Ld. Counsel for the assessee further submitted that in compliance to the direction of this judgment, Central Board of Direct Taxes has laid down the guidelines, which are to be followed by the field staff and replace on record, copy of Standard Procedure for recording satisfaction under section 147 of the Income Tax Act along with a proforma drafted at the end of the Board, which was required to be followed by all the authorities. Though reproduction of this guidelines alongwith proforma would make this order a little bit lengthy, but this is a new school of thought propounded by the ld. Counsel for the assessee and we deem it appropriate to take note of these guidelines, which are mandatorily required to be followed by the field staff, which read as under:-

Subject; - Standard Procedure for recording satisfaction u/s 147 of the Income Tax Act, 1361 -reg.

Assessing Officers while recording satisfaction u/s 147 of the Income Tax Act, 1961 should follow the sequence as noted below:

(i)1st paragraph: Reasons recorded will include details of the assessee, nature of business activity, brief details of return of income filed earlier along with details of processing of return/ scrutiny assessment/ reassessment proceeding.

(ii)2^{na} paragraph: It will contain details of information and material received/ collected/found by the AO subsequent to processing of original/ reopened assessment proceedings along with time period/ date of collection or receipt of information. In the cases where information is received from the Investigation Wing or any other law enforcement agency, details of letter, brief summary of information along with relevant portion of such report and details of relied upon documents may be mentioned.

(iii)3rd paragraph: It will include analysis of information collected/received/found by the AO - details of parties involved,

nature and details of transactions, details of relied upon material/ document and prima facie conclusion.

(iv) 4th paragraph: It will contain enquiries made by the AO which must have a 'live link' with the information received/collected/found by the AO. The enquiries may include analysis of return of income, audited P&L A/c and balance sheet, assessment folder in cases where assessment have been made u/s 143(3)/ 147 of the Act, information as available on ITBA portal on ITS/ 360 degree profile, enquiry made from other agencies which may include scrutiny of the information available on MCA website, information as available on internet website and details of other enquiries made by the AO through issue of letter u/s 133(6)/ summon u/s 131 from assessee and other relevant parties.

(v) 5th paragraph: It will contain summary of findings of the AO on the basis of analysis of information received/collected/found by the AO and the result of follow up enquiries made by the AO.

(vi) 6th paragraph: It will include 'basis of reason to believe' along with nature and quantum of income escaping assessment. The AO will draw link between the findings and reasons to believe and will also give a categorical finding that reason to believe is based on his/her application of mind on the facts and information received/collected/found and it is not a case of change in opinion.

(vii)7th paragraph; It will give detail and instances along with corroborative material to prove that the assessee had not disclosed full and truly all material facts necessary for his assessment or that the facts of the case are covered by the Explanation 1 to section 147 of the Act. This paragraph shall be included only in the cases where scrutiny assessment has been made and four years from the end of the relevant year had expired.

(viii)8th paragraph: This paragraph is required in cases involving income in relation to any assets (including financial interest in any entity) located outside India which is chargeable to tax and has escaped assessment. This paragraph will include details of assets, nature of income earned in relation to the assets. The AO must highlight that since it is a case of escapement of income in relation to assets located outside India, first Proviso to the section will not apply”.

12. In this above background, ld. Counsel for the assessee drew our attention towards the reasons. He submitted that in response to the notice received under section 133(6), the assessee has made a categorical reply in paragraph no. 4. The copy of this reply is available at page 17 of the paper book. The assessee has submitted to the ld. Assessing Officer that Company has sold its investment to (i) M/s. Rudramukhi Builders (P) Ltd., (ii) M/s. Evershine Dealtrade Pvt. Ltd., (iii) M/s. Fantom Dealers Pvt. Ltd. It was further submitted that the case of the assessee was selected for scrutiny assessment and this sale of investment must have been construed as gone into. So according to the ld. Counsel for the assessee at the close of earlier year, credit in the books represents the investment/ in the shape of shares, which were sold by the assessee to these companies in this A.Y. He drew our attention towards page no. 125 of the paper book, where bill for sale of 26,000 equity shares of Vachan Dealers & Suppliers Pvt. Limited were sold @ Rs.250/- per share. Similar is the position with regard to the other three more companies from whom alleged amount was received by the assessee. He submitted that in the past, investment was be with the assessee, which was gone into by the Department. It has diluted the investment and received the money. In this background, he took us through the reasons and submitted that the first two lines of the reasons exhibit filing of the return and processing of a scrutiny assessment under section 143(3) of the Income Tax Act. In the second paragraph, ld. Assessing Officer has mentioned that a credible information was received from DDIT (Investigation), Unit-3(1), Kolkata vide his letter bearing No.

DDIT(Inv)/Unit-3(1)/KOL/2018-19/13701-981 dated 12.03.2019 in relation to the investigation proceeding in the case of M/s. Samrat Udyog, Prop. Sri Abhay Sultania and related beneficiaries that the assessee M/s. Anchita Properties Pvt. Limited has taken accommodation entry and brought back its unaccounted money into its regular books of accounts during the financial year 2012-13 through layering of bank accounts and thereafter names of these three companies have been mentioned. The first objection of the Id. Counsel for the assessee was, that as per the standard operating procedure propounded on 10.01.2018 in compliance of the judgment of the Hon'ble Delhi High Court, the Id. Assessing Officer was bound to supply the alleged credible information and how such information established a live link with M/s. Samrat Udyog, vis-à-vis with the assessee or alleged three vendees of the assessee with those concerns. According to him, this is a complete vague paragraph wherein he has loosely used the words 'accommodation entry' and bringing back of unaccounted income. The Id. Assessing Officer thereafter made reference of a letter written by ITO, Ward-10(4), Kolkata dated 11.03.2019, in which he made some reference in relation to the investigation proceeding in the case of M/s. Hintendra Commercial Pvt. Ltd and alleged that assessee has taken accommodation entry. The Id. Assessing Officer thereafter made reference under section 133(6) of the Act and other details. He took us through the objections of the assessee running into 28 pages under different heads. His emphasize was that this formation of belief that income has escaped assessment is without any basis and only on mere change

of opinion. Therefore, according to him, this reopening is not in consonance with proposition of law laid down in various judgments. He made reference to a large number of judgments and placed their copies on the record. We take note of such citations from the index of paper book:-

Sr. No.	Particulars
1.	<i>GKN Driveshafts (India) Ltd. vs. Income Tax Officer and Ors. [2003] 259 ITR 19 (SC)</i>
2.	<i>New Delhi Television Ltd. vs. Deputy Commissioner of Income Tax (03.04.2020 - SC) : [2020] 424 ITR 607 (SC)</i>
3.	<i>CIT v. Avadh Transformers (P.) Ltd. 51 Taxmann.com 369 (SC)</i>
4.	<i>Calcutta Discount Company Limited vs. Income Tax Officer, Companies District, I and Ors. [1961] 41 ITR 191 (SC).</i>
5.	<i>Commissioner of Income Tax, Delhi vs. Kelvinator of India Limited (18.01.2010 - SC) [2010] 320 ITR 561 (SC)</i>
6.	<i>Commissioner of Income Tax, Delhi-II vs. Kelvinator of India Ltd. (19.04.2002 - DELHC) reported in [2002] 256 ITR 1 (Delhi)</i>
7.	<i>Income Tax Officer Ward No. 16(2) vs. Tech Span India Private Ltd. and Ors. (24.04.2018 - SC) : [2018] 404 ITR 10 (SC),</i>
8.	<i>Sabh Infrastructure Ltd. vs. Asstt. Commissioner of Income Tax [[2017] 398 ITR 198 (Delhi)] - SLP dismissed</i>
9.	<i>Tata Capital Financial Services Limited vs AC IT [in WRIT PETITION NO. 546 OF 2022] reported in [2022] 443 ITR 127 (Bombay),</i>
10.	<i>Income Tax vs. Odeon Builders Pvt. Ltd. (21.08.2019-SC) [2019] 418 ITR 315 (SC),</i>
11.	<i>Andaman Timber Industries vs. Commissioner of Central Excise 2015 281 CTR 241 (SC),</i>
12.	<i>STL Extrusion (P) Ltd [2010 : 333 ITR 269</i>
13.	<i>CIT v. Gangeshwari Metal P. Ltd. [(2014) 361 ITR 10 (Delhi)],</i>
14.	<i>Orchid Industries Pvt. Ltd., reported in [2017] 397 ITR 136 (BOM)- SLP dismissed by SC</i>

15.	<i>Principal Commissioner of Income-tax v. Prakhar Developers (P.) Ltd [2024] 162 taxmann.com 48 (Madhya Pradesh)[01-04-2024]</i>
16.	<i>Westlife Development Ltd. v. PCIT [[2017] 88 taxmann.com 439 (Mumbai)/[2016] 49 ITR(T) 406 (Mumbai)[24-06-2016]]</i>
17	<i>Inder Kumar Bachani (HUF) v. ITO (2006) 101 TTJ 450 (ITA T Lucknow)</i>

13. Ld. CIT(DR), on the other hand, contended that ld. Assessing Officer has received credible information about the accommodation entries availed by the assessee from these paper companies. He has formed his belief that income has escaped assessment. The Investigation Wing has supplied the information to the ld. Assessing Officer about the antecedents of the alleged vendees of the assessee. Therefore, ld. Assessing Officer has rightly recorded the reasons for reopening. He relied upon the order of the ld. CIT(Appeals) more particularly pages no. 11 & 12 of the order. Putting emphasis on the judgment of the Hon'ble Supreme Court in the case of Raymonds Wollen Mills Limited -vs.- ITO & Others reported in 236 ITR 34, he contended that ld. Assessing Officer has to form a *prima facie* opinion. He was not required to record a categorical finding about the escapement of income. His formation of opinion is not to be judged with that angle. He further buttresses his contention with the number of judgments referred by the ld. CIT(Appeals) on pages no. 11 & 12 of the impugned order, namely Hon'ble Gujrat High Court in the case of Aradhana Estate Pvt. Limited -vs.- DCIT (2018) 91 taxmann.com 119 (Guj.), Hon'ble Punjab & Haryana High Court in the case of Rakesh Gupta -vs.- CIT (2018) 93 taxmann.com 271 (P&H); Hon'ble Supreme Court

judgment in the case of ACIT -vs.- Rajesh Jhaveri Stock Brokers Limited reported in 291 ITR 500 (SC); and others.

14. We have duly considered the rival contentions and gone through the record carefully. Original assessment in the present case was passed under section 143(3) on 16.12.2015. The assessment year involved herein is A.Y. 2013-14. The notice for reopening was issued to the assessee on 20.03.2020. In other words, it was issued after expiry of four years. Therefore, the assessee is protected by the proviso appended to section 147 of the Income Tax Act. Such proviso reads as under:-

“Provided that where an assessment under sub-section (3) of section-143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section-139 or in response to a notice issued under sub-section (1) of section-142 or section-148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year”.

15. A perusal of this proviso would indicate that interdiction provided in it puts an embargo upon the powers of the Id. Assessing Officer to reopen an assessment, in cases where scrutiny assessment was passed under section 143(3) and four years have expired. The Id. Assessing Officer could reopen such assessment only in the situation if assessee fails to disclose fully and truly all material facts necessary for his assessment for that assessment year. A perusal of the above reasons, Id. Assessing Officer has nowhere alleged which particular part was not

disclosed fully and truly by the assessee. It is pertinent to observe that the assessee has not received any share application money or share premium which was credited to the accounts of the assessee, rather it was holding certain assets in the shape of investment in shares. Those assets have been liquidated in this year. The reason for reopening is totally silent. Whether any asset was possessed by the assessee or not, if possessed when it was acquired, whether the investment made by the assessee in the scrips of certain companies, those were genuine or not in the year of investment. No such things were doubted. Scrutiny assessment has already taken place where all these aspects have been gone into. All such things are totally silent in the reasons recorded by the Id. Assessing Officer.

16. Now let us evaluate the other parts of the reasons recorded by the Id. Assessing Officer. Id. Assessing Officer has made reference to a credible information received from the DDIT (Investigation). He has not highlighted either in the reasons or in the assessment order, what is the nature of credible information inspite of the standard operating procedure laid down by the CBDT for supplying details of such information. Further perusal of this would reveal that while construing alleged credible information, only reference by the Id. Assessing Officer is that investigation was carried out on M/s. Samrat Udyog, Prop. Sri Abhay Sultania. His Permanent Account Number has been given with related beneficiaries. The Id. Assessing Officer thereafter observed that the assessee M/s. Anchita Properties Pvt. Limited has taken

accommodation entries and brought back its unaccounted money into its regular books of accounts during the financial year 2012-13 through layering of bank accounts and thereafter names of these three companies have been mentioned. What is the basis of reaching at this conclusion. There is no coherence in the first reference to M/s. Samrat Udyog, vis-à-vis accommodation entries of the assessee. How both these situations are interlinked. It could be appreciated if Id. Assessing Officer has observed that in the investigation in the case of Samrat Udyog, it revealed that certain concerns operated by him gave accommodation entries to the assessee, but that type of finding has not been recorded in this paragraph.

17. Similar is the position in the next paragraph with regard to M/s. Hitendra Commercial Pvt. Ltd. The Id. Assessing Officer thereafter made reference about the prior approval of Id. PCIT, Kolkata-4 for necessary inquiries by issuance of notice under section 133(6) of the Act. This notice was issued to the assessee or it was issued to the alleged vendees of the assessee also not discernable. The assessee received the notice and it has replied. He further observed that effort of finding out the creditworthiness of physical existence of those business entities, using the departmental instrument has also gone in vain. Again, it is not discernable whether Id. Assessing Officer has deputed any Inspector or is harping upon data base of the revenue. The Id. Assessing Officer in the next paragraph has observed that while examining the information disseminated by the Investigation

Wing, it is observed that the account of Smart Udyog was opened with Yes Bank Limited and funds were credited/debited in form of RTGS/Bank transfer, cash and NEFT etc. and most of the transactions in the account are internal fund transfer with no apparent economic/business justification. The entities with whom transactions are found recorded, did not file their return of income, therefore, identity and creditworthiness of those entities are remained unverified. Now this whole paragraph is in such a vague manner, which does not discern about which entity and which assessee he is talking off, which assessee has not filed the return. The ld. Assessing Officer thereafter observed that as per ROC data base, M/s. Fantom Dealers Pvt. Limited is found strike off. He has not pointed out as to when ROC has struck off this company because copy of acknowledgment of filing return for A.Y. 2013-14 dated 29.09.2013 has been placed on page no. 99 of the paper book by the assessee. Though at the time of hearing, ld. Counsel for the assessee made reference to a large number of decisions, whose citations we have taken note of. The ld. D.R. has also made reference to nine judgments referred by the ld. CIT(Appeals) on pages no. 11 & 12 of the impugned order. We do not deem it necessary to recite and recapitulate the propositions laid down in all the judgments, but it would be suffice to say that all the judgments are unanimous on the point that for reopening of an assessment, there should be a live-link between the information possessed by the ld. Assessing Officer, vis-à-vis formation of his belief exhibiting escapement of income.

18. A perusal of the above reasons recorded by the ld. Assessing Officer would reveal that there is no live-link between the information possessed by him, which has unable him to form a belief that income has escaped. It is pertinent to observe that ld. Assessing Officer has referred three circumstances, namely-

- (a) letter received from the DDIT(Investigation);
- (b) discovery of fact during the search proceeding at the premises of M/s. Samrat Udyog (proprietor Shri Abhay Sultania that assessee has taken accommodation entry.
- (c) Reference to departmental inquiry about non-existence of vendees of assessee's share.

On a conjoint reading of such reasons and these circumstances, it would reveal that there is no interweaving of circumstances, which can demonstrate a complete chain of events and such chain of circumstances would goad the ld. Assessing Officer to form a belief that income has escaped assessment. He has narrated all these circumstances vaguely and without interconnecting the circumstances with each other.

19. At the time of hearing, ld. D.R. has emphasized that ld. Assessing Officer was not required to establish conclusively while forming a *prima facie* opinion about escapement of income and his reasons cannot be judged by the Appellate Authority. We agree to

some extent that Id. Assessing Officer has to form a *prima facie* belief and not to prove conclusively about escapement of income, but it is always debatable before the Appellate Authority to demonstrate whether that *prima facie* belief is based on some tangible material. In other words, whether a man of prudent knowledge can believe on those circumstances that income has escaped assessment. A perusal of the reasons would indicate that no such circumstances have been highlighted, more so it is the Id. Assessing Officer, who has to establish which fact was not disclosed by the assessee during the scrutiny assessment proceedings. The assessee has disclosed that these are the sale of investment which has been credited in the books of account of the assessee. Where is failure? it was the duty of the Revenue to examine whether these sales were bogus. But this was to be done in the regular assessment proceedings carried out under section 143(3) for this assessment year. Therefore, we are of the view that Id. Assessing Officer has reopened the assessment only on the basis of change of opinion and he was not possessing any tangible material to form the belief. To buttress our finding, we rely upon the judgment of the Hon'ble Delhi High Court in the case of Sabh Infrastructure Limited -vs.- ACIT reported in [2017] 398 ITR 198 (Del.) against whose SLP has been dismissed. We also rely upon the judgment of the Hon'ble Bombay High Court in the case of Tata Capital Financial Services Limited (supra) as well as the judgment of the Hon'ble Supreme Court in the case of ITO -vs.- Odeon Builders Pvt. Limited (supra). We allow the first-fold of contentions raised by the assessee and quash the reopening of assessment.

Since we have quashed the reopening of assessment, therefore, we do not deem it necessary to examine the issue on merit.

20. Now we take **ITA No. 1067/KOL/2024**.

As observed earlier, this appeal is directed at the instance of assessee against the order of Id. Principal Commissioner of Income Tax, Kolkata-2 dated 30th March, 2024 passed under section 263 of the Income Tax Act in A.Y. 2013-14.

21. The copy of the show-cause notice for taking cognizance under section 263 is placed on page no. 128 of the paper book, which reads as under:-

*“Subject: Proceeding u/s 263 of the Income Tax Act, 1961- Notice
Please refer to the above.*

2. *On verification of the assessment records, it is observed that during the F.Y. 2012-13 relevant to A.Y. 2013-14 the assessee received total amount of Rs.4,09,00,000/- from the parties such as (i) Gangadham Suppliers Pvt Ltd.; (ii) Skyrise Vincom Pvt Ltd. (iii) Fastspeed Commosales Pvt Ltd., (iv) Leoline Commosales Pvt Ltd. (v) Galaxy Multicare Services Pvt Ltd. (vi) Fastspeed Sarees Pvt Ltd. (vii) Shivprivar Commercial Pvt Ltd (viii) Starpoint Dealmark Pvt Ltd & (ix) Devbhumi Mercantile Pvt Ltd. As the AO has not made addition of the aforesaid amount, this mistake made the assessment order erroneous as well as prejudicial to the interest of the revenue.*

3. *I, therefore, propose to revise the assessment order u/s. 143(3) on the above points. You are, therefore, requested to attend my office at the above-mentioned address either personally or through your A/R on 4.03.2024 at 1.30 p.m. at Room No. 6/4, 6th Floor, Aayakar Bhawan, P-7, Chowringhee Square, Kolkata-700069 either personally or through your Authorized Representative.*

4. *Please note that in case of your non-compliance, it shall be presumed that you have no objection whatsoever to the*

proposed revision and the matter may be decided ex-parte on merits as per material on record without any further reference to you”.

22. A perusal of the above show-cause notice would reveal that ld. PCIT sought to revise the assessment order passed under section 143(3). The reasons assigned by the ld. PCIT is that the assessee has received total amount of Rs.4,09,00,000/- from nine parties and the ld. Assessing Officer has failed to examine this issue in the impugned assessment order.

23. With the assistance of ld. Representatives, we have gone through the record carefully. The ld. Counsel for the assessee while impugning the order of ld. PCIT raised three-folds of submissions. In his first fold of submissions, he contended that an assessment order was passed by the ld. Assessing Officer on 16.12.2015. As per sub-section (2) of section 263, the revisional powers could be exercised within two years from the end of the financial year in which the order sought to be revised was passed. In other words, sub-clause (2) of section 263 puts an embargo on the powers of the ld. Commissioner to revise an order after expiry of two years from the end of the financial year in which the order sought to be revised was passed. He pointed out that in this case, in the show-cause notice, ld. Commissioner sought to revise the assessment order passed under section 143(3), which was passed on 16.12.2015, meaning thereby such step could have been taken by him upto 31st March, 2018 because the impugned assessment order was passed on 16.12.2015. The financial year will end on 31st March, 2016

and from there two years are to be counted as per sub-clause 2 of section 263. The impugned notice was issued on 22.02.2024 and the impugned order is passed on 30.03.2024. Therefore, in this order, action of the ld. Pr. Commissioner is time barred.

24. The ld. D.R., on the other hand, submitted that it could be a typographical error in the show-cause notice. The order, which sought to be revised by the ld. Commissioner is the re-assessment order passed by the ld. Assessing Officer on 28th September, 2021. The time limit to revise such an order was upto 31st March, 2024. Thus, action of the ld. PCIT is within the time limit.

25. In the next fold of submission, ld. Counsel for the assessee contended that ld. Assessing Officer has issued a notice under section 133(6) on 02.03.2020. Copy of this notice is available on pages no. 20 to 23 of the paper book. In this show-cause notice, ld. Assessing Officer has called for the information about nine parties, which was duly submitted by the assessee and copy of the reply is available on pages no. 22 to 23 of the paper book. The ld. Assessing Officer after receipt of that reply recorded the reasons for reopening. He has issued the notice for collection of information with the approval of ld. PCIT-4, Kolkata. He has got the approval of the reasons from the higher authority. Thus, there must be a constructive application of mind by the ld. Assessing Officer, vis-à-vis the higher sanctioning authority on the material possessed by the ld. Assessing Officer and if on a particular item on which information was collected, the Assessing Officer did not seek

sanction from the PCIT-4 to reopen the assessment, then, how action under section 263 is justifiable. He took us through page no. 20 of the paper book, wherein copy of the show-cause notice dated 02.03.2020 is placed. In the last line of this notice, ld. Assessing Officer has observed that above information is being sought with the prior approval of ld. PCIT-4, Kolkata. It means that it was within the knowledge of the ld. Assessing Officer but he did not deem it fit to reopen the assessment and, therefore, no 263 can be sustainable. In the last fold of submission, he contended that the revisional action u/s 263 is subject to the grounds of appeal in the quantum appeal, wherein reopening is being challenged.

26. We have duly considered the rival contentions and gone through the record carefully. We find that in the show-cause notice, ld. Commissioner has not specified that assessment order dated 28th September, 2021 passed under section 147 is being sought to be revised. He proposed to revise the assessment order under section 143(3). He has not mentioned the date of the order, which is being sought to be revised, which give rise to a vagueness in the show-cause notice. If original assessment order passed u/s 143(3) is being sought to be revised, then, action of the ld. Commissioner is beyond the time limit provided in sub-clause (2) of section 263. On that ground, this impugned order deserves to be quashed.

27. Assuming, that the ld. Commissioner sought to revise the reassessment order dated 28th September, 2021, but that

assessment order we have already quashed in ITA No. 637/KOL/2024, i.e. in the earlier part of this order. The very foundation to revise order has been extinguished and no action u/s 263 can be sustainable once the order, sought to be revised, has been declared invalid by a Higher Appellate Authority.

28. Apart from the above, it is pertinent to observe that the ld. Assessing Officer has collected information under section 133(6) vide notices dated 20.02.2020 and 02.03.2020. Both these show-cause notices issued under section 133(6) were issued after approval of the ld. PCIT-4, Kolkata. The ld. Assessing Officer has recorded the reasons on the basis of information available *qua* four parties, whose details were called for in the show-cause notice dated 20.02.2020. He has recorded the reasons and got approval from the Higher Authority for reopening of the assessment. This step would show that there was a constructive application of mind on all the information possessed by the ld. Assessing Officer and he thought it proper to reopen the assessment only *qua* information collected vide show-cause notice dated 20.02.2020. If an information has been possessed by the ld. Assessing Officer with the approval of ld. PCIT-4, Kolkata and non-inclusion of such information in the reasons for reopening would indicate that ld. Assessing Officer was satisfied that such information is not sufficient for reopening the assessment. This action of reopening has been approved by Higher Authority. It would suggest that ld. Assessing Officer as well as Sanctioning Authority for reopening have gone through all the information possessed by the ld.

Assessing Officer and only thereafter confined the reopening *qua* sale transactions of shares with four Companies, which have been discussed in the reassessment order.

29. A perusal of section 147 as was applicable prior to its amendment from 1st April, 2021 would indicate that this section authorizes to assess any other income, which came to the notice of Id. Assessing Officer during the reassessment proceeding. Had this information *qua* these nine parties was not in the knowledge of Id. Assessing Officer prior to reopening, then, it would have been construed that such information has come in the possession of the Id. Assessing Officer during reassessment proceeding. If Id. Assessing Officer failed to consider that probably Id. PCIT would be justified in taking action under section 263, but here is a case where the information whose non-consideration is being taken as a ground for exercising the powers under section 263 was already possessed by the Id. Assessing Officer before forming his *prima facie* opinion about escapement of income. In such a situation, it cannot be concluded by the Id. PCIT that assessment order is erroneous, which has caused prejudice to the revenue on account of non-consideration of an information for reopening. By this method, Id. PCIT is revising a second reopening on those very information. Therefore, otherwise on merit also, there is no ground to exercise powers under section 263.

30. Taking into consideration the cumulative setting of all the three circumstances, we are of the view that Id. PCIT has erred in

exercising the powers under section 263. His impugned order is quashed for all the three reasons stated above.

31. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open Court on 22/08/2024.

Sd/-

Sd/-

(Manish Borad)
Accountant Member

(Rajpal Yadav)
Vice-President (KZ)

Kolkata, the 22nd day of August, 2024

*Copies to :(1) Anchita Properties Pvt. Limited,
29, Collotola Street, Kolkata-700029*

*(2) Income Tax Officer,
Ward-12(1), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square, Kolkata-700069*

*(3) Principal Commissioner of Income Tax,
PCIT, Kolkata-2,
Office of the Income Tax Officer, Ward-12(1),
Aayakar Bhawan,
P-7, Chowringhee Square, Kolkata-700069*

(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.