

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, KOLKATA

**BEFORE DR. MANISH BORAD, AM
AND
SHRI SONJOY SARMA, JM**

**ITA No. 797/Kol/2024
(Assessment Year: 2013-14)**

**M/s Fancy Enterprises
2, Ganesh Chandra,
Avenue, Bentick Street,
Commerce House
West Bengal-700 013**

(Appellant)

**AO, Circle-2
Income Tax Office
Vs. 10B Middleton, Calcutta
West Bengal-700071**

(Respondent)

PAN No. AAFF5111B

Assessee by : Shri Sunil Surana, AR
Revenue by : Shri P.P. Barman, DR

Date of hearing: 09.07.2024
Date of pronouncement : 23.08.2024

ORDER

PER DR. MANISH BORAD, AM:

This appeal filed by the assessee is directed against the order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [Ld. CIT(A)] dated 13th March, 2024, for Assessment Year 2013-14, which is arising out of the assessment order dated 18th December, 2018, passed by the Asst. Commissioner of Income Tax, Circle -31, Kolkata (Ld. AO) under section 143 read with section 147 of the Income Tax Act, 1961 (the Act).

02. The assessee has raised following grounds of appeal:-

"1. For that the notice issued u/s 148 was invalid and bad in law since the same was unsigned and therefore the entire reassessment is liable to be quashed.

2. For that the Id. CIT(A) erred in confirming the action of the Ld AO reopening of the assessment simply on the basis of borrowed information without application of mind and verification of the information received.

3. For that the reopening of the assessment was bad in law having been initiated on the basis of incorrect information.

4. For that the assessment is bad in law since the proceedings- initiated u/s 147 were itself bad in law, there was neither any reason to believe nor the conditions to the proviso to sec 147 were satisfied, the original assessment having been completed u/s 143(3) for the relevant year.

5. For that the proceedings-initiated u/s 147 after expiry of four years from end of assessment year on change of opinion were bad in law.

6. For that the Ld. CIT(A) erred in confirming the action of the Ld AO making the addition of Rs. 70,70,117/- when full details of purchase were filed, the total purchase from the party Ridhi Siddhi named in the information were only to the extent of Rs. 9,37,427/- which was duly explained and the Ld AO failed to bring on record any evidence to show that the purchase was to the extent of Rs. 70,70,117/-.

7. For that the Ld. CIT(A) erred in confirming the addition of Rs. 70,70,117/- when the entire purchase made from the parties was duly sold at profit and such sale would not have been possible unless here was purchase, therefore the addition was not called for.”

03. On perusal of the grounds, we note that the assessee has also raised legal issue challenging the validity of reassessment proceedings and since the legal issue goes to the root cause of the matter, we will first deal with this legal issue.

04. Facts in brief are that the assessee is a partnership firm engaged in manufacturing business. Income of ₹42,26,460/-, declared in the return for A.Y. 2013-14, furnished on 28th September, 2013. Case picked up for regular scrutiny and after making certain additions, assessment was completed under Section 143(3) on 26th March, 2016, assessing income at ₹45,46,997/-. Subsequently, the learned Assessing Officer based on the information from the investigation wing about the alleged bogus purchase made by the assessee from various concerns, recorded the reasons for the alleged bogus purchase of ₹70,70,117/-, from three private limited companies alleged to be shell companies and initiated the reassessment proceedings by issuance of notice under Section 148 of the Act dated 18th May, 2018. In the reasons recorded placed at page no.5 to 7 of the paper book, the alleged transactions of bogus purchase of



₹70,70,117/- are from the following alleged shell companies:-

<i>Date of Transaction</i>	<i>Name of the Shell Company</i>	<i>Amount of Receipt (Rs.)</i>
05.02.2013	Ankshika Clothing Pvt. Ltd.	9,37,427/-
05.02.2013	Ridhisidhi clothing Pvt. Ltd.	9,37,427/-
04.06.2012	Shelja Fashions Pvt. Ltd.	5,04,695/-
10.12.2012	Shelja Fashions Pvt. Ltd.	7,87,984
22.12.2012	Shelja Fashions Pvt. Ltd.	7,77,443
17.01.2013	Shelja Fashions Pvt. Ltd.	5,10,068/-
01.02.2013	Shelja Fashions Pvt. Ltd.	16,00,073/-
22.02.2013	Shelja Fashions Pvt. Ltd.	10,15,000/-

05. Before us, the learned counsel for the assessee has challenged the validity of the reopening on the ground that the reopening has been carried out after the completion of 4 years from the end of relevant assessment year and that the assessee had already passed through regular assessment proceedings and all the details of purchases were furnished before the learned Assessing Officer and the same were examined and found to be correct. It is also submitted that the learned Assessing Officer has merely acted on borrowed satisfaction and has not applied his mind which is evident from the fact that out of 8 transactions mentioned in the above table, the assessee has only dealt with one party. The learned Counsel for the assessee referring to the judgment of the Hon'ble Apex Court in case of *ACIT Vs. CEAT Limited dated 10th October, 2022*, and also the decision of this Tribunal in case of *Samridhi Stocks Pvt. Ltd. Vs. ITO in ITA No. 75/Kol/2023 dated 13th July, 2023*, submitted that the reassessment proceedings are illegal and bad in law and thus deserves to be quashed.



06. On the other hand, the learned Departmental Representative vehemently argued supporting the orders of lower authorities and stated that the investigation wing have found that the assessee has entered into the transactions of accommodation entry by way of taking bogus purchase bills in order to reduce the tax liability.

07. We have heard the rival contentions and perused the records placed before us. Reopening proceedings are challenged by the assessee to be bad in law and illegal. We observe that the assessee which is a partnership firm has passed through the complete scrutiny proceedings under Section 143(3) of the Act vide order dated 26th March, 2016, and certain additions have also been made. On perusal of the assessment order under Section 143(3) of the Act placed at page no. 123 of the Paper Book reveals that all the information relating to business transactions carried out during the year were called for by the learned Assessing Officer to which necessary reply was filed along with supporting evidence and the same have been examined by the learned Assessing Officer along with the books of account. The transactions of purchases were also part of the questionnaire issued by the learned Assessing Officer to which necessary reply was filed. Now the reopening has been carried out after the completion of four years from the end of the assessment year in question.

08. Section 147 of the Act is meant for the reassessment proceedings and proviso to Section 147 of the Act provides that where an assessment under Section 143(3) of the Act

has been made for the relevant assessment year, no action shall be taken under this section after the expiry of 4 years from the end of relevant assessment year unless any income chargeable to tax has escaped assessment for such an assessment year by reason of the failure on the part of the assessee either in the return filed under Section 139 of the Act or in responding to the notice under Section 142(1) of the Act or Section 148 of the Act or to disclose fully and truly all material facts necessary for that assessment year. Now on perusal of the above section, we find that there should be failure on the part of the assessee to disclose fully and truly all material facts. Now in the instant case, the learned Assessing Officer has alleged that the assessee has taken accommodation entry in the form of bogus purchases of ₹70,70,117/- from three parties detailed as below:-

<i>Date of Transaction</i>	<i>Name of the Shell Company</i>	<i>Amount of Receipt (Rs.)</i>
05.02.2013	Ankshika Clothing Pvt. Ltd.	9,37,427/-
05.02.2013	Ridhisidhi clothing Pvt. Ltd.	9,37,427/-
04.06.2012	Shelja Fashions Pvt. Ltd.	5,04,695/-
10.12.2012	Shelja Fashions Pvt. Ltd.	7,87,984
22.12.2012	Shelja Fashions Pvt. Ltd.	7,77,443
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01.02.2013	Shelja Fashions Pvt. Ltd.	16,00,073/-
22.02.2013	Shelja Fashions Pvt. Ltd.	10,15,000/-

09. It has been argued before us that out of the total amount of ₹70,70,117/-, the transaction of ₹61,32,690/- never took place with the appellant and only one transaction of purchase of ₹9,37,427/- took place on 5th February, 2013, for the transactions with Ridhisidhhi Clothing Pvt. Ltd. Thus, out of 8 transactions referred above only one has taken place in the books of the

assessee and for the remaining there is no connection whatsoever with the assessee. It clearly indicates that the learned Assessing Officer has acted on borrowed satisfaction i.e., the information of the investigation wing and without making proper application of mind i.e., without examining the assessment records available with the learned Assessing Officer, had merely on a reason to suspect has initiated the reassessment proceedings. It has been held time and again that the reopening should be carried out on a reason to believe and not reason to suspect. The facts of the instant case clearly indicates that the reopening has been carried out after four years without having any concrete evidence about the allegation of suppression of material fact by the assessee. Hon'ble Apex Court in the case of *CEAT Limited (supra)* has held as under:-

"It is not in dispute that the assessment was sought to be re-opened beyond four years. Therefore, all the conditions under section 148 of the Income Tax Act for re-opening the assessment beyond four years are required to be satisfied. Having gone through the reasons recorded for re-opening, we are of the opinion that the conditions precedent for re-opening of the assessment beyond four years are not satisfied. The re-assessment was on change of opinion. There are no allegations of suppression of material fact. Under the circumstances, no error has been committed by the High Court in setting aside the re-opening notice under section 148 of the Income Tax Act. We are in complete agreement with

the view taken by the High Court. The Special Leave Petition stands dismissed."

010. Also, in the recent decision of this Tribunal in case of *Samridhi Stocks Pvt. Ltd. (supra)*, the findings of this Tribunal supports our view that reopening are bad if have been carried out based on borrowed satisfaction and without co-relating the same with the facts of the case, and the relevant finding of this Tribunal reads as under: -

"6. We find force in the contention raised by the Id. 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. In view of this, the reopening of the assessment is held as bad in law."

011. Respectfully following the above decision and considering the facts of the case, we are inclined to hold that the reopening proceedings are illegal and bad in law as the learned Assessing Officer has issued the notices under Section 148 of the Act merely on reason to suspect



based on the borrowed information from investigation wing and not making any application of mind by way of co-relating to the facts. Accordingly, reopening proceedings are held to be invalid, bad, illegal and not maintainable in law and are accordingly quashed. Since the reopening proceedings have been quashed, the impugned additions are deleted and therefore, dealing with the merits of the case will be academic in nature.

012. In the result, the appeal of the assessee is allowed as per terms indicated above.

Order pronounced in the open court on 23rd August, 2024.

Sd/-
(SONJOY SARMA)
(JUDICIAL MEMBER)

Sd/-
(DR. MANISH BORAD)
(ACCOUNTANT MEMBER)

Kolkata, Dated:23.08.2024

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Kolkata
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Kolkata