IN THE INCOME TAX APPELLATE TRIBUNAL
"GUWAHATI BENCH, GUWAHATI
VIRTUAL HEARING AT KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री मनीष बोरड, लेखा सदस्य के समक्ष

Before Shri Sanjay Garg, Judicial Member and Dr. Manish Borad, Accountant Member

I.T.A. No.83/GTY/2020
Assessment Year: 2011-12

ACIT, Circle-1, Guwahati ……..……....…..……....Appellant

vs.

M/s Capseal Vyapaar Pvt. Ltd.....…..…..... Respondent
32, Ezra Street, 9th Floor,
912B, Kolkata-1.
[PAN: AABCC4992M]

Appearances by:
Shri Kausik Ray, JCIT, appeared on behalf of the appellant.
Shri Kishore Jain, FCA, appeared on behalf of the Respondent.

Date of concluding the hearing : June 12, 2024
Date of pronouncing the order : September 03, 2024

आदेश / ORDER

Per Manish Borad, Accountant Member:

This appeal at the instance of the revenue is directed against the order of Commissioner of Income-tax (Appeals)-2, Guwahati ['ld. CIT(A)'] dated 06.11.2019, which is arising out of the assessment order under Section 147/143(3) of the Income-tax Act, 1961 ('the Act') dated 31.12.2018 for assessment year 2011-12.

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

> *"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing appeal of the assessee without appreciating the facts of the case.*
>
> *2. The Ld. CIT (A) has erred in Law and in facts in deleting the additions of Rs. 9,09,00,371/- made u/s 68 ignoring the fact that the case was reopened on the basis of the enquiry made by the Investigation Wing of the department which is an arm of the Department.*

3. That the Ld. CIT (A) was not justified in deleting the addition stating that the reason to believe in this case are based on 'borrowed satisfaction' ignoring the fact that the Investigation Wing is also an arm of the Department for conducting the enquiries.

4. The appellant craves the leave to add/modify/alter any of the ground during the course of hearing/pendency of appeal"

3. The brief facts are that the assessee is a limited company, engaged in the business of trading in shares and securities. The regular return of income for A.Y 2011-12 e-filed u/s 139(1) of the Act on 26.09.2011. The Return processed u/s 143(1) of the Act and subsequently was reopened beyond four years after taking necessary approval u/s 151 of the Act and notice u/s 148 of the Act duly issued and served upon the assessee. In response thereto, the assessee again e-filed the return on 20.04.2018 declaring nil income. Thereafter, the assessee sought the reasons recorded for reopening which were supplied and the ld. Assessing Officer has stated in the assessment order that the objections of the assessee were disposed of. Apart from issuance of notice for reopening, a search was carried out u/s 132 of the Act on the premises of the assessee on 22.11.2017. At the time of search and post-search investigation, it was found that Shri Anand Kumar Jain who is the key person of the assessee company became the director of another private limited company namely M/s Frankdeal Traders Pvt. Ltd. on 27.12.2010 and subsequently under the scheme of amalgamation approved by the Hon'ble High Court of Calcutta, M/s Frankdeal Traders Pvt. Ltd. was merged with the assessee company. Prior to the merger as on 31.03.2009, the total amount of share capital and security premium appearing in the audited balance sheet of M/s Frankdeal Traders Pvt. Ltd. amounted to Rs.20.13 crore. The ld. Assessing Officer thereafter has made certain observations about the merged company namely M/s Frankdeal Traders Pvt. Ltd. stating that M/s Frankdeal Traders Pvt. Ltd. is a paper/shell company managed by

entry operators and by taking over M/s Frankdeal Traders Pvt. Ltd., the assessee company has received funds by liquidating the investments appearing in the balance sheet of erstwhile M/s Frankdeal Traders Pvt. Ltd. prior to its merger. Since M/s Frankdeal Traders Pvt. Ltd. was merged with the assessee company during the F.Y 2010-11, there was credit of Rs.9,09,00,371/- in the bank account of M/s Frankdeal Traders Pvt. Ltd. on account of following:

Particulars	Amount
Interest on loan received	1,28,687
Loan received during the year	1,00,00,000
Repayment of loan advanced	76,65,184/-
Sale of stock	7,31,03,500
Cash deposit	13,000
Total	9,09,00,371

3.1 The ld. Assessing Officer observed that since M/s Frankdeal Traders Pvt. Ltd., a paper/shell company, the alleged sum received during the year are bogus transactions and the said sum deserves to be added in the hands of the assessee company as unexplained cash credit u/s 68 of the Act. Accordingly, the reassessment proceedings were concluded assessing income at Rs.9,10,81,340/-.

4. Aggrieved the assessee preferred appeal before the ld. CIT(A) and firstly raised the legal issue challenging the validity of reassessment proceedings which were carried out after four years without finding any failure on the part of the appellant to disclose truly and fairly all material facts. On merits, grounds raised stating that the addition u/s 68 of the Act is uncalled for because the alleged sum merely included the funds received from sale of stock, repayment of loans, advances in the preceding year. The ld. CIT(A) dealing with the legal issue examined

the reasons recorded and after a detailed discussion gave a finding that the reopening was carried out based on borrowed satisfaction and the Assessing Officer has not carried out any enquiry in order to record reasons to believe, which are *sine qua non* for issuance of notice u/s 148 of the Act. The ld. CIT(A) also dealt with the aspect of the approval given u/s 151 of the Act observing that it was merely a mechanical approval but there was not satisfaction of the ld. PCIT in explicit terms. Reliance also placed on plethora of decisions in support of the finding that reopening proceedings were bad in law/illegal, therefore, deserve to be quashed. Since the ld. CIT(A) allowed the assessee's appeal on legal grounds and deleted the impugned additions, grounds on merits were not dealt with.

5. Aggrieved, the revenue has now come in appeal before this Tribunal challenging the findings of the ld. CIT(A). The ld. Departmental Representative vehemently argued referring to the order of the Assessing Officer and also made the following written submissions:

> *"Search was conducted in the case of Shri Anand Kumar Jain on 22.11.2017 and the assessee company, Capseal Vyapaar Pvt. Ltd. happens to be one of the group companies. It may be noted that on the very date of search, i.e., 22.1i1.2017, a parallel operation was also conducted in the case of Shri Narendra Kumar Jain (Entry Operator) who was reported to be the assessee group. Statement of Sri Jain was also recorded on the said date, in which he admitted providing accommodation entries. Sri Anand Jain was confronted with the statement of the entry provider, which was admitted in the statement of Sri Anand Kumnar Jain also.*
>
> *In the assessment years 2011-12, 2012-13 & 2013-14, additions were made mainly on account of liquidation of investments, which were accommodation entries, whose vivid details where never furnished in the course of assessment proceedings.*
>
> *A brief detail of modus operandi is reproduced underneath for your ready reference:*
>
> *Entry Operators float companies which have no actual business and capital is raised through issuance of shares. The subscribers of these*

shares also happen to be dubious companies of identical nature. The transactions made by these companies generally have three limbs. The first limb is the creation of the shell companies with substantial share capital which is balanced with inventories in the form of shares in other shell companies. The second limb is the transfer of such shell companies to persons who desire to use such substantial share capital companies for converting their unaccounted money into accounted funds and use such shell companies to do legitimate business. The third limb is when the shell companies after being taken over, the assets in the form of inventories are encashed whereby the unaccounted monies are laundered and brought into the company for conducting the legitimate business. All these three limbs are not done in one assessment year but in different assessment years. In fact, in the present case the share capital has been introduced in the one assessment year, the management started the change in another the assessment year And the even the investments were redeemed in another year Thus it is not in one year the whole process is done and it is done over a period of more than two and sometimes three assessment years. At the first stage and at the third Stage, Le once at the point of creation of share capital and then again at the point of converting the inventories/investments/ loans and advances into funds for the legitimate business purpose. Liquidation of inventory of investments is the way of introducing one's own unaccounted funds in the guise of sale of unquoted investments.

Assessment Proceedings

As indicated above, the assessee had liquidated investments made as a result of bogus share capital raised in the assessment years2011-12, 2012-13 and 2013-14. When asked to furnish details of the same, nothing was produced.

Elaborate details are available in the assessment order and hence, not being quoted.

Ld. CIT(A) has relied on the order of Delhi High Court in the case of Kabul Chawla[2015 (9) TMI 80- Delhi High Court] wherein it is stated that the assessing officer while making assessment under section 153A of the Act make additions only on the basis of some incriminating material unearthed during the course search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment.

A brief detail of additions made in the quoted case of Kabul Chawla[2015 (9) TMI 80- Delhi High Court] is being reproduced underneath:

> *"Pursuant to the search a notice under Section 153A (1) of the Act was issued to the Assessee on 3rd September 2008. Pursuant to the said notice, the Assessee filed returns for the three AYs on 19th*

> *January 2009. For AY 2002-03, the Assessee declared a total income of Rs.12,42,740. The assessment was finally completed by the Assessing Officer (AO) on the total income of Rs.68,31,740 which, inter alia, included an addition of Rs. 50 lakhs on account of a gift received by the Assessee from Mrs. Gianna Fissore, Rs. 2 lakhs on account of low house withdrawals and Rs. 37,162 on account of deemed dividend under Section 2 (22) (e) of the Act. For AY 2005-06, the income was assessed at Rs. 82,51,126 which, inter alia, included an addition of Rs. 2 lakhs on account of low house withdrawals and Rs. 62,70,496 on account of deemed dividend under Section 2 (22) (e) of the Act corresponding to the additions made on protective basis in the hands of Business Park Overseas Pvt. Ltd. (BPOPL), Countrywide Promoters & Developers Pvt. Ltd. (CPDPL) and Poonam Promoters & Developers Pvt. Ltd. (PPDPL), in which companies the Assessee was a substantial shareholder. For the AY 2006-07, the income was assessed at Rs. 1,35,87,112 which, inter alia, included two additions of Rs. 12,77,193 and Rs. 90,26,389 on account of deemed dividend under Section 2 (22) (e) of the Act corresponding to the additions made on protective basis in the hands of Shalimar Town Planners Pvt. Ltd. (STTPL) and on a substantive basis in the hands of other companies of the BPTP Group in which the Assessee was a substantial shareholder."*

As apparent above, the addition in the quoted case was made mainly on account of deemed dividend as per provisions of section 2(22)\e) of the IT Act, 1961. in the order of Kabul Chawla[2015 (9) TMI 80- Delhi High Court), reference was made to the case of CIT v. Anil Kumar Bhatia (supra). The observations of the same are also being quoted underneath.

"Nevertheless there were some observations in CIT V. Anil Kumar Bhatia (supra), which would indicate that the AO would be able to reopen the assessments for those years for which the assessment already stood completed at the time of the search, only if some incriminating material was unearthed during the search."

The assessee stated that assessment under 143(3) was already completed through the AY 2012-13. In the quoted judgement, it was also stated:

"Completed assessments can be interfered with by the AO while making the assessment under Section 153A only on the basis of sone incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment."

Conclusion

The Ld. CIT(A) has failed to appreciate the fact that the facts and circumstances of the cases quoted are entirely different from the facts and circumstances in the present case. In the instant case, statements of entry operator, Narendra Kumar Jain was also recorded on the date of search and the director, Anand Kumar Jain was also confronted with the same. No details whatsoever in support of the credits in the form of sale of unquoted investments in form of sale of unquoted investments were ever produced at the time of search, post-search and in the course of assessment proceedings. Mere payment received through barking channels is no conclusive proof.

Secondly, in case of AY 2012-13 where order u/s 143(3) was already passed, it is stated in the judgment that no addition can be made in case of completed assessments unless and until some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment. It may be noted that on the day of search as stated in the background of the case, statements of both director and entry operator were recorded on the same day and the director/representative of the assessee company offers no explanation about the same as he was confronted with the statement of the entry operator on the very day of search. Hence, the property in the form of unquoted investments which was liquidated through entry operator was never known to the assessing officer in the course of assessment u/s 143(3) but emerged on the date of search, i.e., on 22.11.2017 and very much a part of incriminating material on record.

In view of the above, the onus was on the assessee to establish the credibility of the companies, whose stocks were held as stock-in-trade and subsequently, liquidated to other corporate entities of dubious authority, cannot be overlooked. As apparent from the order for the AY 2011-12, assessee's accounts were credited with payments received from MRS Commercial Pvt. Ltd. Desire Vintrade Pvt. Ltd., Arvid Pratishthan India Pvt. Ltd., Buniyad Trade links Pvt. Ltd. and Ever Youth Promoters Pvt. Ltd. which have already been declared as shell companies. Even the so-called investments were acquired as a result of merger of Frankdeal Traders Pvt. Ltd. (which is another entry operator, Narendra Jain created entity) with the assessee company. Some of the above like Buniyad Tradelinks Pvt. Desire Vintrade Pvt. Ltd. cease to exist, others have been amalgamated to hide identity. The financial credibility of the buyers of shares and what exactly they did with those shares needed to be explained as these shares are not listed shares and can be sold only in known circles.

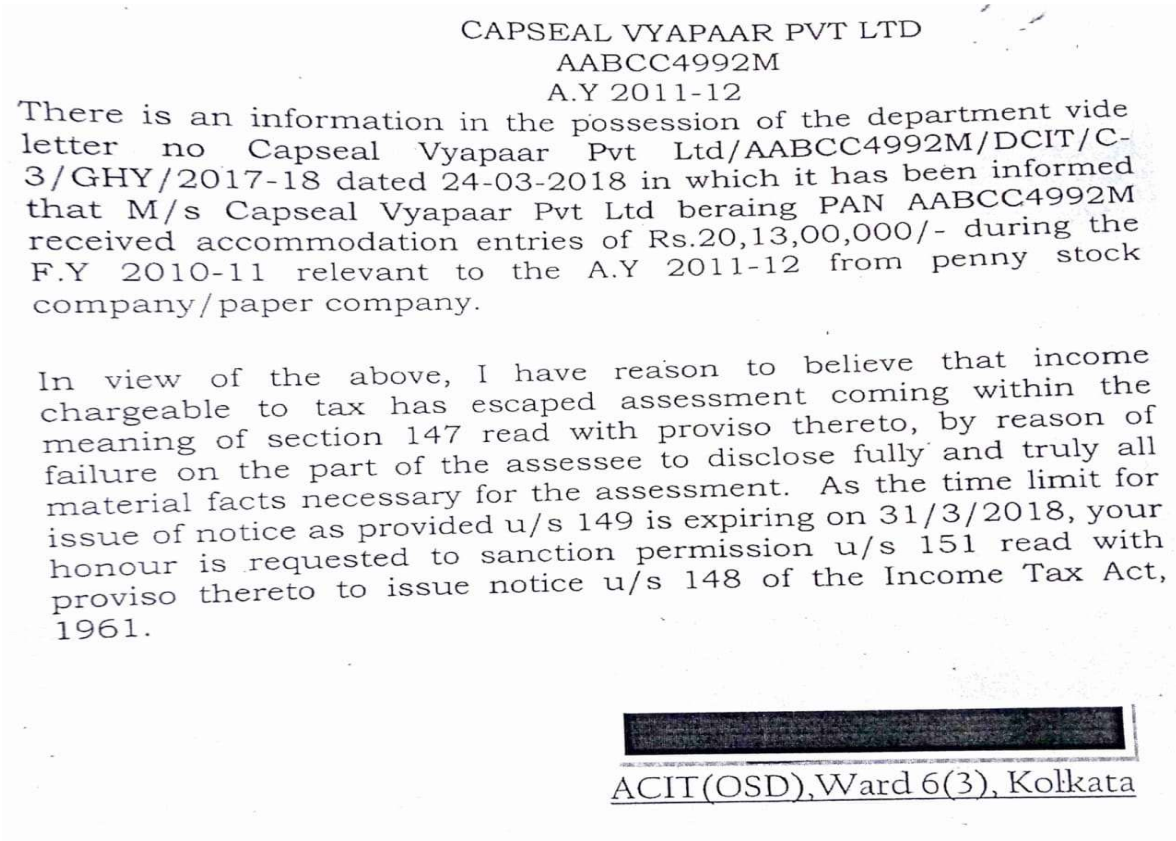
To sum up we can say that though admissions constitute a substantive piece of evidence under the income-tax laws and are relevant to the determination of liability to tax as they are quite relevant to the facts in

issue but, at the same time, are weak and not conclusive of the facts admitted. They can always be retracted by an assessee by producing more positive evidences. Of course, there are occasions where the retractions made by the assessees are not permitted by the revenue as the assessees fail to prove such retractions on sufficient grounds. Therefore, whenever there is a retraction of admission by an assessee, the burden of proving the admission as incorrect is always on the assessee who can discharge the same by producing more reliable and cogent evidence in support of his contention. The statement of entry operator on the very date of search was a part of incriminatory material against the assessee."

6. On the other hand, the ld. counsel for the assessee vehemently argued supporting the detailed findings of the ld. CIT(A) asserting that firstly there was no proper approval u/s 151 of the Act and secondly the Assessing Officer failed to make proper application of mind before recording the reasons to believe and therefore, such reopening based on improper approval u/s 151 of the Act and based on borrowed satisfaction and reasons to suspect has rightly been quashed by the ld. CIT(A).

7. We have heard the rival contentions and perused the records placed before us. The revenue is aggrieved with the findings of the ld. CIT(A) quashing the reassessment proceedings on the ground that there was mechanical approval u/s 151 of the Act and the reopening has been carried out beyond four years only on the borrowed satisfaction and that the reopening is merely on the basis of reasons to suspect without any enquiry to form the reasons to believe that the income has escaped from assessment for the failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment. We observe that the assessee company was subjected to search action u/s 132 of the Act on 22.11.2017. Prior to the search, the assessee company acquired another company namely M/s Frankdeal Traders Pvt. Ltd. from 01.04.2010 and the said scheme was duly approved by the Hon'ble High Court of Calcutta vide order dated 19.07.2011. Since

the company namely M/s Frankdeal Traders Pvt. Ltd. was amalgamated with the assessee company from 01.04.2010, the assets and liabilities of M/s Frankdeal Traders Pvt. Ltd. as on 31.03.2010 merged with the assets and liabilities of the assessee company as on 01.04.2010. It is not in dispute that the assessee company as well as M/s Frankdeal Traders Pvt. Ltd. filed the regular return of income for assessment year 2011-12 and have furnished their audited financial statement to the Income Tax Authorities as well as duly uploaded on the portal of Ministry of Corporate Affairs. Now, the Assessing Officer has recorded the following reasons for reopening the assessee's case for assessment year 2011-12:



CAPSEAL VYAPAAR PVT LTD
AABCC4992M
A.Y 2011-12

There is an information in the possession of the department vide letter no Capseal Vyapaar Pvt Ltd/AABCC4992M/DCIT/C-3/GHY/2017-18 dated 24-03-2018 in which it has been informed that M/s Capseal Vyapaar Pvt Ltd beraing PAN AABCC4992M received accommodation entries of Rs.20,13,00,000/- during the F.Y 2010-11 relevant to the A.Y 2011-12 from penny stock company/paper company.

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 is expiring on 31/3/2018, 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.

[redacted]
ACIT(OSD),Ward 6(3), Kolkata

7.1 Now, in the above reasons recorded, the assessee is stated to have received accommodation entries of Rs.20.13 crore during F.Y 2010-11 from penny stock company. Now, going through para 6 of the

assessment order, the Assessing Officer himself observed that prior to the merger of the assessee company as per the share holding position of M/s Frankdeal Traders Pvt. Ltd. as on 31.03.2009, there total share capital and security premium in M/s Frankdeal Traders Pvt. Ltd. stood at Rs.20.13 crore. The ld. Assessing Officer has himself admitted that the same and has referred in the reasons recorded that Rs.20.13 crore was received upto 31.03.2009 itself and that too by another company namely M/s Frankdeal Traders Pvt. Ltd., which was not merged with the assessee company upto 31.03.2009. The very basis of the allegation is that the assessee company has received accommodation entry of Rs.20.13 crore is factually incorrect. Further, we observe that in the assessment order, the Assessing Officer after observing that M/s Frankdeal Traders Pvt. Ltd. has received share capital and share premium of Rs.20.13 crore upto 31.03.2009 then changed the stand and then referred to the funds received by M/s Frankdeal Traders Pvt. Ltd. during F.Y 2010-11 and in the details of the funds received, the loan received during the year is only Rs.1 crore and the remaining amount are the amount received from repayment of loans/advances, interest received on loan, sale of stocks which were purchased in the preceding year. All these facts loudly speaks from themselves that prior to recording reasons for reopening the assessment of the assessee's case beyond four years, the Assessing Officer firstly merely acted on borrowed satisfaction and secondly failed to make any enquiry to reach to a point that he has reasons to believe that income has escaped assessment and thirdly failed to record satisfaction that there was a failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. We further note that all the above-mentioned facts have been duly taken into consideration by the ld. CIT(A) quashing the reassessment proceedings observing as under:

"Decision

I have gone through the above submissions of the Appellant and have considered the facts and evidences on record.

Decision on Ground No. 3

The above ground of appeal impugns the assessment order of the A0 on the ground that the reasons recorded by the Ld. Assessing Officer are itself erroneous and bad in law and, hence, the consequential reopening of assessment is bad in law and is liable to be quashed.

In this case, the following facts are conspicuous:

a. That, a return of income for the above assessment year was filed by the Appellant under Section 139 of the Act on 26.09.2011 showing NIL returned income.

b. That thereafter the said return of income was processed under Section 143(1) of the Act.

c. Admittedly in this case, no order under Section 143(3) of the Act was passed in the case of the Appellant with respect to the original return of income filed by the Appellant under Section 139 of the Act.

d. That on 22.11.2017, there was a search in the case of the Appellant and a number of other companies at the office premises at 560, G.S. Road, Christian Basti, Opp. VIP World Showroom, Near News Live, Guwahati - 781005. At the time of search and post search investigation, it was seen that Shri Anand Kumar Jain became the director of M/s. Frankdeal Traders Pvt. Ltd. on 27.12.2010 and M/s. Frakdeal Traders Pvt. Ltd. was merged with the Appellant (i.e. M/s. Capseal Vyapar Pvt. Ltd.) wherein Shri Anand Kumar Jain and his family members are directors.

e. That, on the day of the search and seizure operation on 22.11.2017, the statement of an entry operator based in Kolkata, Shri Narendra Kumar Jain was again recorded under Section 131 of the 1.T. Act. 1961 at the office of the Assistant Director of Income Tax (Inv.), Unit- 2(1), Kolkata. In the said statement also Sh. Narendra Kumar Jain has admitted that the share allottee companies of the said M/s. Frankdeal Traders Pvt. Ltd. belonged to him and his associates. The company was formed by him and had raised bogus share capital including premium which was later on sold to Shri Anand Jain Group so that the group could acquire unsecured loans/advance and share capital in the group concerns. Thereafter, on account of a purported search in the case of one Sh. Narender Kumar Jain, it was purportedly found by the Revenue that the said Sh. Narender Kumar Jain had admitted to be an entry operator.

*f. That, based on the above material, "**reasons to believe**" were recorded by the then AO i.e. ITO Ward 6(3), Kolkata.*

*g. That, accordingly, based on the "**reasons to believe**" recorded, a notice under Section 148 of the Act was issued on 29/03/2018 in the case of the Appellant.*

h. That, thereafter the case of the Appellant was transferred to the AO who had passed the order impugned in the present appeal.

Borrowed Satisfaction

In this case, the reasons recorded by the AO are being reproduced as under:

> ***"Date: 27/03/2018***
>
> ***There is an information in the possession of the department vide letter no Capseal Vyapaar Pvt. Ltd/AABCC4992 M/D CIT/C-3/GHY/2017-18 dated 24-03-2018 in which it has been informed that M/s Capseal Vyapaar Pvt. Ltd. bearing PAN AABCC4992M received accommodation entries of Rs.20,13,00,000/- during the F.Y 2010-11 relevant to the A. Y 2011-12 from penny stock company/paper company.***
>
> ***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 assessee to disclose full and truly all material facts necessary for the assessment. As the time limit for issue of notice as provided u/s 149 is expiring on 31/3/2018, your honour is requested to sanction permission u/s 151 read with proviso thereto to issue notice u/s 148 to the Income Tax Act, 1961."***
>
> *From a perusal of the assessment folder, it is seen that "reasons to believe" were recorded by the A0 on 27/03/2018. An image of the said "reasons to believe" recorded by the AO as extracted from the assessment folder is being reproduced as hereunder:*

CAPSEAL VYAPAAR PVT LTD
AABCC4992M
A.Y 2011-12

There is an information in the possession of the department vide letter no Capseal Vyapaar Pvt Ltd/AABCC4992M/DCIT/C-3/GHY/2017-18 dated 24-03-2018 in which it has been informed that M/s Capseal Vyapaar Pvt Ltd beraing PAN AABCC4992M received accommodation entries of Rs.20,13,00,000/- during the F.Y 2010-11 relevant to the A.Y 2011-12 from penny stock company/paper company.

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 is expiring on 31/3/2018, 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.

[redacted]
ACIT(OSD),Ward 6(3), Kolkata

i. That, from a perusal of the above "reasons to believe" recorded by the A0 (and as reproduced above), for issuance of notice under Section 148 of the Act, it is seen that the AO has completely relied on the sanctity of the investigation done by the Investigation Wing and on the information supplied by the Investigation Wing. In the aforesaid "reasons to believe" recorded by the AO and reproduced as above, it is clear that the A0 has categorically referred again and again only to the information supplied by the Investigation Wing. There is nothing on material to suggest that some independent home-work was done on the part of the AO or any limited enquiry was conducted by the A0 or any application of mind was made by the AO to come to the conclusion that income had indeed escaped assessment in the case of the Appellant. Thus, without any independent enquiries of his own, solely relying on the aforesaid information supplied by the Investigation Wing, the AO concluded that income had escaped assessment in the case of the Appellant.

From the above, it is also seen that the AO referred to/reproduced the gist of the actions taken by the DDIT (Investigation) or to the proceedings which took place before the DDIT (Investigation) in his "reasons to believe" recorded for issue of notice under Section 148 of the Act.

Thus, the satisfaction arrived at by the AO that income had escaped assessment in the case of the Appellant was not his own but was completely that of the Investigation Wing that income had escaped assessment in the case of the Appellant. In other words, the satisfaction arrived at by the AO that income had escaped assessment in the case of the Appellant was borrowed from the Investigation Wing. Any notice issued under Section 148 of the Act on the basis of borrowed satisfaction is bad in law and, consequentially, the ensuing proceedings are bad in law.

In support of my contentions above, I derive strength from the judicial pronouncements cited below.

In support of my conclusion, I derive strength from the judicial pronouncements given below.

In the case of Nokia India Private Ltd. vs. The Deputy Commissioner (CT)-IV [on 09.12.2014; W.P. Nos.22066 to 22072 of 2014 & connected MPs], it was averred/held, as follows, by the Hon'ble Madras High Court:

> ***"The assessing authority being a quasi-judicial authority should adjudicate the case independently with due application of mind. Therefore, to draw adverse inference on the ground that the petitioner did not disclose details to the audit team during inspection could hardly be a reasons to confirm the proposal in the pre-assessment notice. Thus, it is clear that the assessing authority abdicated his power and was purely guided by the opinion of the inspecting team, which obliviously were officers superior in rank to the assessing officer. Therefore, the Assessing Officer should redo the assessment with regards to the tax on sale of assets as the documents produced by the dealer have not been examined by the assessing officer. As such, the consideration is not manifest in the assessment order. The dealer is entitled to reasonable opportunity to produce all records in support of their claim. Therefore, the tax levied on the sale of assets is set aside and the matter is remanded for fresh consideration of the assessing officer after affording an opportunity of personal hearing to the petitioner/dealer."***

In the case of Calcutta Discount Co. Ltd. [(1961) 41 ITR 191 (SC)], the Hon'ble Supreme Court analysed the phrase "reason to believe" and observed as under:

> *"It is for him to decide what inferences of facts can be reasonably drawn and what legal inferences have ultimately to be drawn. It is not for somebody else to tell the assessing authority what inferences, whether of facts or law, should be drawn."*
>
> *In the case of CIT vs. Greenworld Corporation [(2009) 314 ITR 81 (SC)], it was held by the Hon'ble Supreme Court that the assessment order passed on the diktats of the higher authority, being wholly without jurisdiction, was a nullity."*

In the case of CIT vs. G & G Pharma India Limited [ITA 545/2015 dated 08.10.2015], the Hon'ble Delhi High Court, held as hereunder:

> ***The Assessee"s further appeal was allowed by the ITAT by the impugned order dated 9th January 2015. The ITAT set out in the impugned order the reasons recorded by the AO for the reopening of the assessment by the AO by the letter dated 15th September 2010, and came to the conclusion that, apart from making a mere reference to information received from the investigation wing, the AO mechanically issued notice under Section 148 of the Act, without coming to an independent conclusion that he has reason to believe that the income has escaped assessment during the AY in question.***

In the case of CIT vs. Kelvinator India Limited [2002 (4) TMI 37- Delhi High Court; other citation; [2002] 256 ITR 1, 174 CTR 617, 123 TAXMANN 433], the Hon'ble Delhi High Court, held as hereunder:

> ***19. What would constitute 'reason to believe' is no longer res integra.***
>
> ***20. In Calcutta Discount Co. Ltd. (supra) the Apex Court clearly held that once the primary facts are before the Assessing Authority he requires no further assistance by way of disclosure. It was observed by the Apex Court that:***
>
> ***"It is for him to decide what inferences of facts can be reasonably drawn and what legal inferences have ultimately to be drawn. It is not for somebody else - far less the assessed- to tell the assessing authority what inferences, whether of facts or law, should be drawn. Indeed, when it is remembered that people often differ as regards what inferences should be drawn from given facts, it will be meaningless to demand that the assessed must***

> ***disclose what inferences - whether of facts or law - he would draw from the primary facts."***

In the case of ***Piramal Enterprises Ltd. vs. DCIT*** *[Writ Petition No.2958 of 2016 dated 15.02.2017], the Hon'ble Bombay High Court, held as under:*

> ***"Mere receipt of information from any source would not by itself tantamount to reason to believe that income chargeable to tax has escaped assessment. In the present case, the Assessing Officer prima facie has not done the bare necessary/rudimentary enquiry into the material received before he concludes that income chargeable to tax has escaped assessment."***

In the case of ***ACIT, Circle II, Faridabad vs. Shri Devesh Kumar, Prop Dinesh Steels*** *[2014 (11) TMI 215 – ITAT DELHI], the* ***Hon'ble ITAT Delhi*** *held as under:*

> ***"19. In the light of aforesaid discussion, we are inclined to hold that in the extant case the AO proceeded to initiate proceedings u/s 147 of the Act and to issue notice u/s 148 of the Act on the basis of information received from Investigation Wing of the department in the form of a CD prepared by Shri Sanjay Shah and Shri Vishesh Prakash, ITOs of Unit V, New Delhi. Subsequently, the AO reproduced details gathered from the CD and without application of independent mind, held that the assessee was beneficiary of accommodation entries amounting to Rs.4,51,000. In the main part of reason to believe, there is no mentioning of nature of transaction to establish and fortify the fact that the impugned transactions were in the nature of accommodation ITA 2068/Del/2010 entries. We also observe that there is no mentioning of date therein and it can safely be presumed that the AO had not examined the assessment record of the assessee which was processed u/s 143(1)(a) of the Act on 15.3.2005 for forming a belief that the income of the assessee had escaped assessment.***
>
> ***20. Under these facts and circumstances, we are in agreement with the observation and conclusion of the CIT(A) that there was no material on record to show that the AO had applied her independent mind in forming a belief which may result in the required reason to believe as per provisions of section 147 and 148 of the Act. We also held that the CIT(A) was right in following the ratio of the decision of apex court in the case of CIT vs Sun Engineering Works Pvt. Ltd. and the decision of Hon'ble Jurisdictional High Court of Vipin Khanna vs CIT (supra), Amrinder Singh***

Dheeman vs ITO (supra) which have been fully re- elucidated and affirmed by subsequent decision of Delhi High Court in the case of Jai Bharati Maruti Ltd. Vs CIT (supra). In this situation, the CIT(A) was justified and reasonable in quashing the notice u/s 148 of the Act and entire reassessment proceedings conducted thereunder. Accordingly, ground no. 1 and 2 of the revenue being devoid of merits are dismissed."

Decision on the Additional Ground of Appeal

MECHANICAL APPROVAL OF THE "REASONS TO BELIEVE" BY THE APPROVING AUTHORITY

Vide additional ground of appeal duly admitted per reasons detailed supra, the Appellant had challenged the reassessment proceedings for the want of approval/sanction of the approving/sanctioning authority being mechanical. However, no submissions were filed by the Appellant with regards to the additional ground of appeal.

However, since the Appellant has raised a challenge to the Sanction for issue of Notice, it would be pertinent to refer to the provisions of section 151 of the Act. As per Section 151, no notice shall be issued under Section 148 by an Assessing Officer, after the expiry of a period of four years from the end of the relevant assessment year, unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice. And in any other case no notice shall be issued under Section 148 by an Assessing Officer, who is below the rank of Joint Commissioner, unless the Joint Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.

For the sake of reference, the provisions of Section 151 are re-produced hereunder:

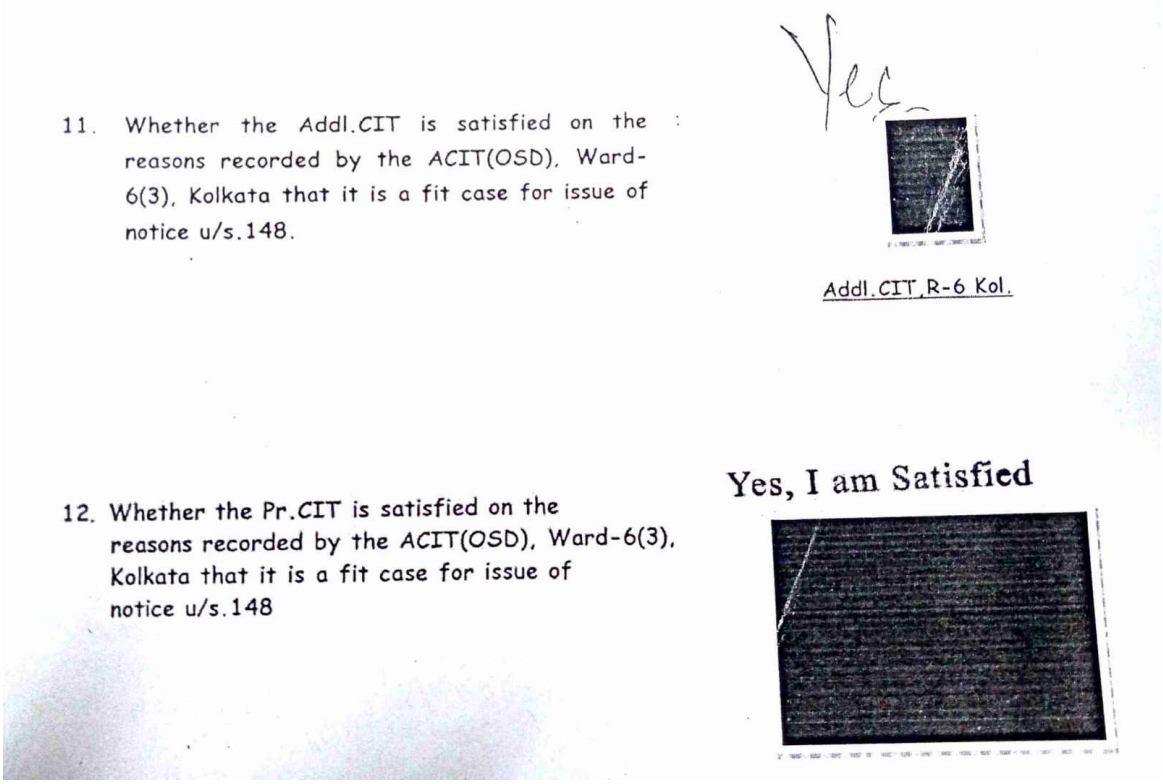
"Sanction for issue of notice

151 (1) No notice shall be issued under section 148 by an Assessing Officer, after the expiry of a period of four years from the end of the relevant assessment year, unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice.

(2) In a case other than a case falling under sub-section (1), no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of Joint Commissioner, unless the Joint Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.

(3) For the purposes of sub-section (1) and sub-section (2), the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner or the Joint Commissioner, as the case may be, being satisfied on the reasons recorded by the Assessing Officer about fitness of a case for the issue of notice under section 148, need not issue such notice himself."

In this regard, an image of the relevant portion of the "Form for recording the reasons for initiating proceedings under sec. 148 and for obtaining the approval of the C.I.T./ Addl. C.I.T., as available in the assessment folder is reproduced hereunder for reference:



From a perusal of the aforesaid relevant portion of the "Form for recording the reasons for initiating proceedings under sec. 148 and for obtaining

the approval of the C.I.T./ Addl. C.I.T., as available in the assessment folder, the following facts are vivid:

1. In response to query in Column No. 11 of the prescribed proforma i.e. "Whether the Addl. CIT is satisfied on the reasons recorded by the ACIT(OSD), Ward-6(3), Kolkata that it is a fit case for issue of notice u/s. 148", the Addl. CIT has written "Yes".

2. Further, in response to the query in Column No. 12 of the aforesaid prescribed proforma i.e. "Whether the Pr. CIT is satisfied on the reasons recorded by the ACIT (OSD), Ward 6(3), Kolkata that it is a fit case for issue of notice u/s. 148", the Hon'ble Pr. CIT-2, Kolkata has affixed a rubber stamp inscribing "Yes, I am satisfied".

Since, for the above assessment year, the requisite sanction was required to be given by the then Hon'ble Pr. CIT, in view of Section 151(1), it is clear from the above discussion that there was no "satisfaction" of the then Hon'ble Pr. CIT which was required to be in explicit terms. Furthermore, if at all it is construed that the then Hon'ble Pr. CIT had indeed accorded his sanction, it is vivid and clear that for the above assessment year, the satisfaction was required to be recorded by the then Hon'ble Pr. CIT and not the Addl. CIT. It is also submitted with utmost reverence to the then Hon'ble Pr. CIT that apparently, from the approval recorded and words used by way of rubber stamp affixed that "Yes, Lam satisfied.", it seems that his sanction was merely mechanical and the then Hon'ble Pr. CIT did not apply his independent mind while according sanction since no reasons have been cited by the then Hon'ble Pr. CIT for his being satisfied to accord the sanction to initiate the reopening of assessment in the case of the Appellant under Section 148 of the Act. Since, no proper satisfaction of the then Hon'ble Pr. CIT is seen from a perusal of the proforma, the issuance of notice, under Section 148 of the Act, by the AO, in the instant case, cannot be said to be based on application of mind by the Hon'ble Pr. CIT and, hence, cannot be sustained. Only because the Appellant has raised an additional ground of appeal on this issue, the undersigned has made the aforesaid legal comments on the issue at hand and it may be re-iterated that, the undersigned has great reverence for the then Hon'ble Pr. CIT and does not, in any way, wish to comment upon the acumen or wisdom of the then Hon'ble Pr. CIT.

Here it would be pertinent to refer to the ratio of the judgments cited below, wherein the Hon'ble Courts have held that a mere mechanical satisfaction by the sanctioning authority by usage of words like "yes", "satisfied", "Yes, I am satisfied" etc. do not connote an independent recording of satisfaction and thus the consequential reassessment proceedings are bad in law.

The Hon'ble Supreme Court in the case of CIT vs. S. Goyanka Lime & Chemical Ltd. reported in [(2015) 64 taxmann.com 313 (SC)] in the Head Notes has held that

> *"Section 151, read with section 148 of Income Tax Act, 1961 – Income escaping assessment - Sanction for issue of notice (Recording of satisfaction) - High Court by impugned order held that where Joint Commissioner recorded satisfaction in mechanical manner and without application of mind to accord sanction for issuing notice under section 148, reopening of assessment was invalid - Whether Special Leave Petition filed against impugned order was to be dismissed-Held, Yes (in favour of the Assessee)."*
>
> *In the case of The Central India Electric Supply Co. Ltd vs. ITO, [333 ITR 237 (2011)], it was held/averred, as follows, by the Hon'ble Delhi High Court:*
>
> > *"Where a mere stamp is affixed and signed by a Under Secretary underneath a stamped "Yes" against the column which queried as to whether the approval of the Board had been taken. Rubber stamping of underlying material is hardly a process which can get the imprimatur of this Court as it suggests that the decision has been taken in a mechanical manner. Even if the reasoning set out by the ITO was to be agreed upon, the least, which is expected, is that an appropriate endorsement is made in this behalf setting out brief reasons. Reasons are the link between the material placed on record and the conclusion reached by an authority in respect of an issue, since they help in discerning the manner in which conclusion is reached by the concerned authority. Thus, we find force in the contention of learned counsel for the appellant that there has not been proper application of mind by the Board."*
>
> *In the case of Pr. Commissioner of Income Tax-06 vs M/s N.C Cables Ltd. ITA 335/2015 dated 11/01/2017), it was held/averred, as follows, by the Hon'ble Delhi Pradesh High Court:*
>
> > *"11. Section 151 of the Act clearly stipulates that the CIT (A), who is the competent authority to authorize the reassessment notice, has to apply his mind and form an opinion. The mere appending of the expression 'approved' says nothing. It is not as if the CIT (A) has to record elaborate reasons for agreeing with the noting put up. At the same time, satisfaction has to be recorded of the given case which can be reflected in the briefest possible manner. In the present case, the exercise appears to have been ritualistic and formal rather than meaningful, which is the rationale for the safeguard of an approval by a higher ranking officer. For*

> *these reasons, the Court is satisfied that the findings by the ITAT cannot be disturbed.*
>
> *12. The substantial questions of law framed are answered in favour of the assessee and against the Revenue. The appeal is dismissed."*

7.2 We further note that the Coordinate Bench of this Tribunal in the case of 'M/s Shankar Logistics (P) Ltd vs. DCIT' passed in I.T.A. No.829/Kol/2023 dated July 08, 2024 while relying upon the various decisions of higher Courts and even of the hon'ble Supreme Court has held that since the assessment has been reopened after four years of the end of relevant assessment year, therefore, the reopening of the assessment is bad in law and also discussed the true sense of applicability of 'reason to believe' for escapement of income to reopen an assessment by an Assessing Officer. The relevant part of the order of the Tribunal is reproduced as under:

> *"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."

7.3 Now, going through the decisions of the various Hon'ble Courts referred supra and also of the Tribunal in the case of 'M/s Shankar Logistics (P) Ltd vs. DCIT' *(supra)* and taking into consideration the facts of the instant case, we are of the considered view that the reopening proceedings in the case of the assessee has been carried out on poor reasons that too based on borrowed satisfaction and clearly there is no application of mind by the Assessing Officer who was duty bound to first carry out an enquiry by way of examining Income Tax

Return of the assessee company as well as M/s Frankdeal Traders Pvt. Ltd. of the present year and past years and then to look at the information provided in the audited balance sheet and then if any material fact which was necessary for the assessment or such material fact which gives rise to prove that there is escapement of income and that the assessee has failed to disclose fully and truly all material facts necessary for the assessment, then he/she could have formed reasons to believe for issuing notice to reopen the assessment beyond four years. Also, the facts remain undisputed that the ld. Assessing Officer has alleging that the assessee company have received accommodation entry of Rs.20.13 crore during F.Y 2010-11 is totally wrong and misleading because the Assessing Officer has himself observed in the assessment order that the alleged accommodation entry of Rs.20.13 crore was actually received by M/s Frankdeal Traders Pvt. Ltd. upto F.Y 2008-09. Both these facts indicate that there is a complete contradiction of information mentioned by the Assessing Officer in the reasons recorded. Therefore, the reasons recorded are merely on borrowed satisfaction and reasons to suspect and therefore, we fail to find any infirmity in the detailed findings of the ld. CIT(A) quashing the reassessment proceedings on holding this to be illegal and bad in law. All the grounds raised by the Revenue are hereby dismissed.

8. In the result, the appeal of the Revenue is dismissed.

Kolkata, the 3rd September, 2024.

Sd/-	Sd/-
[संजय गर्ग /Sanjay Garg]	**[डॉक्टर मनीष बोरड /Dr. Manish Borad]**
न्यायिक सदस्य /**Judicial Member**	लेखा सदस्य /**Accountant Member**

Dated:03.09.2024.
RS

Copy of the order forwarded to:
1. ACIT, Circle-1, Guwahati
2. M/s Capseal Vyapaar Pvt. Ltd
3.CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches