

**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA**

**Shri Manish Borad, Judicial Member  
Shri Sonjoy Sarma, Accountant Member**

**I.T.A. No. 155/Kol/2023  
Assessment Year: 2008-09**

**M/s Krishna Nirman Private Limited,  
27 1A, N.S.C. Bose Road,  
2<sup>nd</sup> (Floor), Flat – 2A,  
Kolkata 700047**

**[PAN: AADCK0922B] .....Appellant**

**vs.**

**Income Tax Officer**

**Ward 7(3), Kolkata- 700069 ..... Respondent**

**Appearances by:**

Assessee represented by : Shri Rites Goel, Advocate

Department represented by : Shri G. Ajay Robin Singh, JCIT, Sr. DR

Date of concluding the hearing : June 12, 2024

Date of pronouncing the order : August 27,2024

**ORDER**

**Per Sonjoy Sarma, Judicial Member:**

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2008-09 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by the National Faceless Appeal Centre (NFAC), Delhi, dated 26.12.2022 arising out of Assessment Order dated 03.03.2016, passed under Section 147/143(3) of the Act.

2. The Assessee has raised the following grounds of appeal:

*"1. That the order of the Commissioner of Income-tax (Appeals) (hereinafter referred to as CIT(A) is opposed to law and facts of the case.*

*That the Ld. CIT(A) was wrong in passing order without stating anything about the notice which was issued by the learned AO under section 148 which is without jurisdiction illegal and void ab initio since it is based on mere information from the investigation wing that the assessee company has received share application with premium during the Asst Year 2008-09 and that no incrementing evidence has been found against the Assessee Company so as to assume jurisdiction to reassess income of assessee.*

*2 That the Ld. CIT(A) was wrong in confirming the addition of a sum of Rs.93,50,000/- u/s. 68 of the Act being the share capital and share premium money received during the year from the group company share applicants without appreciating the fact that the details and documents provided to him and none of the share applicants were found to be bogus. Further, all the share applicants are assessed to income tax and the entire share application money was received through proper banking channels. Thus, addition made by Ld. AO and confirmed by Ld. CIT(A) is unjustified and needs to be deleted.*

*3 That on the facts and circumstances of the case, Ld. CIT(A) has not provided the reasonable opportunity of being heard which is contrary to the principles of natural justice.*

*4 That the appellant humbly craves leave to add, amend, alter, withdraw, delete or substitute all or any of the ground(s) of appeal at the time of hearing. Total Tax Effect."*

3. Brief facts of the case are that the assessee is a company, filed its original return of income for the AY 2008-09 by declaring total income of Rs. 75,600/- which was processed u/s 143(1) of the Act. The case of the assessee was reopened u/s 147 of the Act by issuing notice u/s 148 of the Act on the ground that the assessee has received share at premium during financial year in question from M/s Damini Polymers Pvt. Ltd. and M/s Saket Traders Pvt. Ltd. and from Abhishek Kothari respectively. The total share were allotted to above stated parties of 1,10,000 number of shares at (Rs. 10/- per share along with premium of Rs. 90/- per share. Thereafter, the assessee company had allotted total amount of share amounting to Rs. 1,10,000/- out of which Rs. 99,00,000/- was value of premium of shares.

Accordingly, statutory notices were duly served on the assessee. In compliance to the notices assessee furnished various details before the AO in order to prove its case. The Ld. AO also issued notice u/s 133(6) of the Act and summons issued u/s 131 of the Act to all the allottees companies. In compliance to the notice u/s 133(6) of the Act it transaction had duly verified by the AO and kept on record, further in compliance to the summon u/s 131 of the Act, director of the above companies were also present before the AO. However, the Ld. AO after considering the reply of the assessee along with the evidence furnished came to conclusion that Rs. 93,50,000/- received by the assessee through subscription of equity shares was unexplained cash credit on account of share applications share premium money and added the total sum as unexplained cash credit u/s 68 of the Act in respect of the following companies:

<i>Name of the subscriber company</i>	<i>No. of share</i>	<i>Face Value</i>	<i>Premium per share</i>	<i>Total</i>	<i>Remarks</i>
<i>M/s Damani Polymers Pvt. Ltd.</i>	<i>38500</i>	<i>10/-</i>	<i>90/-</i>	<i>38500</i>	<i>Due to absence of creditworthiness of the subscriber</i>
<i>M/s Saket Traders Pvt. Ltd</i>	<i>55000</i>	<i>10/-</i>	<i>90/-</i>	<i>55,00,000/-</i>	<i>-do-</i>
				<i>93,50,000/-</i>	

4. Aggrieved with the above order, the assessee went in appeal. However, appeal of the assessee was dismissed without looking into merit of the case, where the assessee had challenged the validity of reopening of assessment u/s 147 of the Act by the AO. However, this issue was never addressed by CIT(A) in his order.

5. Dissatisfied with the above order, the assessee is in appeal before this Tribunal raising multiple grounds. However, the main grievance of the assessee is that the reasons have been recorded by the AO without any application of mind and the information received has not legally valid with

the information available by the AO. He stated that hat the Ld. AO has recorded the reasons in a belief absent state of mind or without application of mind to the information received and therefore, reopening of the issue by the AO is not legally sustainable in law, the Ld. AR content notes is that the reopening of the assessment u/s 147 of the Act by issuing notice u/s 148 on the basis of information received from Director of Investigation is invalid on the ground that the AO has not recorded independent inquiry at the conclusion that he has recorded reasons to belief that income has escaped assessment during the year under consideration. In order to substantiate the claim, the Ld. AR relied upon on the decision of the Hon'ble Delhi High Court in the case of PCIT Vs. G & G Pharma India Ltd. in ITA No. 545/2018, Hon'ble High Court has held that reopening of assessment u/s 147 of the Act by issuing notice u/s 148 of the Act on the basis of information received from Director (Inv.) is invalid on the ground that AO has not recorded independent to conclusion that he has reason to belief that income has been escaped during the year. On the other hand, the Ld. DR supported the decision of the authority below.

6. We after hearing the rival submission of the parties perusing the material available on record. We find that the Ld. AO has recorded the reasons in a belief absent state of mind or without application of mind the information received. Therefore, reopening of the assessment is not legally sustainable in law. In our opinion, the reasons recorded by the AO are vague, non specified and non-essential to form the belief that income has escaped assessment. In our opinion, before reopening of the assessment, the Ld.AO has to satisfied about the escapement of income, it is not permissible under the Act to reopening the assessment u/s 147 of the Act by issuing notice u/s 148 of the Act without application of mind and without confirmed the reasonable belief that the income has escaped assessment. The Hon'ble

Delhi High Court has in the case of PCIT Vs. G & G Pharma, ITA No. 545/2015 held that where the reopening of the assessment u/s 147 of the Act by issuing notice u/s 148 of the Act on the decision of the information received from the Director of Investigation is invalid on the ground that the AO has not recorded independent conclusion that he has reason to believe that income has escaped assessment during the year. The Hon'ble High Court held that there was specific conclusion regarding the name of entry provider the date on which entry was taken the cheque details as well as the amount credited to the accounts of the assessee. However, without forming the prima facie opinion on the basis of such material, the AO simply concluded that it is evident that the assessee company has introduced its own unaccounted money in its bank account by way of accommodation entries. The Hon'ble High Court has held as under:

*"Once the date on which the so called accommodation entries were provided is known, it would not have been difficult for the AO, if he had in fact undertaken the exercise, to make a reference to the manner in which those very entries were provided in the accounts of the Assessee, which must have been tendered along with the return, which was filed on 14th November 2004 and was processed under Section 143(3) of the Act. Without forming a prima facie opinion, on the basis of such material, it was not possible for the AO to have simply concluded "it is evident that the assessee company has introduced its own unaccounted money in its bank by way of accommodation entries" In the considered view of the Court, in light of the law explained with sufficient clarity by the Supreme Court in the decisions discussed hereinbefore, the basic requirement that the AO must apply his mind to the materials in order to have reasons to believe that the income of the Assessee escaped assessment is missing in the present case."*

7. Similarly in the case of PCIT vs. Shodiman Investments (P) Ltd. [2018] 93 taxmann.com 153 (Bombay) it has been held that the reasons as made available to assessee for reopening assessment merely indicated information received from Director (Investigation) about a particular entity, entering into suspicious transactions and that material was not further linked by any reasons to come to conclusion that assessee had indulged in any activity which could give rise to reasons to believe on part of AO that income

chargeable to tax had escaped assessment. In that context, the Hon'ble Court has held as under:

*"12. The re-opening of an Assessment is an exercise of extra-ordinary power on the part of the Assessing Officer as it leads to unsettling the settled issue/assessments. Therefore, the reasons to believe have to be necessarily recorded in terms of Section 148 of the Act, before re-opening notice, is issued. These reasons, must indicate the material (whatever reasons) which form the basis of re-opening Assessment and its reasons which would evidence the linkage/nexus to the conclusion that income chargeable to tax has escaped Assessment. This is a settled position as observed by the Supreme Court in S. Narayanappa v. CIT [1967] 63 ITR 219, that it is open to examine whether the reason to believe has rational connection with the formation of the belief. To the same effect, the Apex Court in ITO v. Lakhmani Merwal Don (19761 19) ITR 437 had laid down that the reasons to believe must have rational connection wuh or relevant bearing on the formation of belief Le there must be a live link between material coming the notice of the Assessing Officer and the formation of belief regarding escapement of income. If the aforesaid requirement are not met, the Assessee is entitled to challenge the very act of re-opening of Assessment and assuming jurisdiction on the part of the Assessing Officer.*

*13. In this case, the reasons as made available to the Respondent Assessee as produced before the Tribunal merely indicates information received from the DIT (Investigation) about a particular entity, entering into suspicious transactions. However, that material is not further linked by any reason to come to the conclusion that the Respondent-Assessee has indulged in any activity which could give rise to reason to believe on the part of the Assessing Officer that income chargeable to tax has escaped Assessment. It is for this reason that the recorded reasons even does not indicate the amount which according to the Assessing Officer, has escaped Assessment. This is an evidence of a fishing enquiry and not a reasonable belief that income chargeable to tax has escaped assessment.*

*14. Further, the reasons clearly shows that the Assessing Officer has not applied his mind to the information received by him from the DDIT (Inv.). The Assessing Officer has merely issued a re-opening notice on the basis of intimation regarding re-opening notice from the DDIT (Inv.) This is clearly in breach of the settled position in law that re- opening notice has to be issued by the Assessing Office on his own satisfaction and not on borrowed satisfaction."*

8. We after considering the facts on the record find that the AO has merely issued the reopening notice on the basis of intimation regarding the reopening notice from the DDIT (Inv.). This is clearly in breach of settled position of law that reopening notice has to be issued by the AO on his own satisfaction and not on borrowed satisfaction. Therefore, set aside the order passed by the Ld. CIT(A) and direct the AO to delete the addition as made in the case of the assessee even on merit has proved the identity,

creditworthiness and genuineness of the transaction is also proved by the assessee as assessee has before us placing the details of income tax return, MCA Master data, MCA Signatory Details, Balance Sheet for the year 2008-09 and Form 2 (Return of Allotment) of the subscriptions before us in order prove its case. The director of the assessee company even had appeared before the AO in compliance to summon u/s 131 of the Act and AO has duly stated in his assessment order. Considering the above facts of the case on record and the considering the submission made before us, we find that the alleged addition made by the AO has no merit. Accordingly, we set aside the order passed by the Ld. CIT(A) and directed the AO to delete the addition as made in the case of assessee. In terms of the above, appeal of the assessee is allowed.

In the result, appeal of the assessee is allowed.

***Kolkata, the 27<sup>th</sup> August, 2024.***

***Sd/-***  
**[Manish Borad]**  
**Accountant Member**

***Sd/-***  
**[Sonjoy Sarma]**  
**Judicial Member**

Dated: 27.08.2024.  
*AK, PS*

*Copy of the order forwarded to:*

- 1 M/s Krishna Nirman Private Limited
2. Income Tax Officer Ward 7(3), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches