

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, KOLKATA
[Before Shri Rajesh Kumar, AM & Shri Pradip Kumar Choubey, JM]

I.T.A. No. 405/Kol/2024
Assessment Year: 2018-19

Seema Singh C-40, Vivekananda Nagar Colony, Bahadurpur, Asansol-713362. (PAN: CABPS3805E)	Vs.	Income Tax Officer, Ward-1(1), Kolkata.
Appellant		Respondent

Date of conclusion of Hearing	01.08.2024
Date of Pronouncement	12.09.2024
For the Assessee	Shri Sunil Surana, AR
For the Respondent	Shri P. P. Barman, Addl. CIT, Sr. DR

ORDER

Per Shri Rajesh Kumar, AM

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi dated 28.01.2024 for AY 2018-19.

2. At the time of hearing Ld. Counsel for the assessee pressed on the legal issue challenging the order passed u/s. 147 read with section 144 of the Act dated 09.01.2023 which has been wrongly affirmed by Ld. CIT(A).

3. Ld. Counsel for the assessee submitted before the Bench that notice u/s. 148A(b) dated 12.03.2022 was issued by ITO, Ward-1(1), Asansol. Ld. AR submitted that in the said notice the AO noted that as per information received from Insight portal of the Department assessee has not filed her return of income for AY 2018-19 despite the assessee receiving following payments:

Information Description	Amount Description	Amount (Rs.)
Sale by any person of immovable property	Transaction amount related to the person	1,48,50,000/-
Purchase by any person of immovable property	Transaction amount related to the person	38,38,00,000/-

and accordingly, called upon the assessee to submit the documents in connection with the aforesaid payments received by the assessee. The above notice has not been replied by the assessee. Thereafter, the Ld. AO issued notice u/s. 148A(d) dated 24.03.2022 wherein the same facts were narrated in para 5 and in para 7 it was stated that assessee was having taxable income as per the details available on record and since the assessee has not been

filed any return of income, therefore, the income chargeable to tax has escaped to the tune of Rs.39,86,50,000/- and he has reasons to believe that it is a fit case for issuance of notice u/s. 148 of the Act and the order u/s. 148A(d) is being passed with the prior approval of the Ld. Pr. CIT, Asansol. The Ld. AR submitted that finally the notice u/s. 148 was issued on 24.03.2022 and pursuant to the said notice and proceeding which followed thereafter the addition of Rs.38,38,000/- u/s. 69 and addition of Rs.49,50,000/- u/s. 50C was made to the income of the assessee vide order dated 09.01.2023. The Ld. AR, therefore, vehemently argued that there was gross mismatch in the facts mentioned in notice u/s. 148(d) and order passed u/s. 148A(d) as in the final assessment an addition of Rs.38,38,000/- was made u/s. 69 and one more addition u/s. 50C of Rs.49,50,000/- was made on the basis of facts available with the AO. Ld. AR submitted that this is a case of non-application of mind and borrowed satisfaction by the AO and, therefore, the reopening made by the AO on the basis of borrowed satisfaction is not sustainable in the eyes of law and, therefore be kindly quashed being invalid. In defense of his argument, the Ld. AR relied on the decision in the case of PCIT Vs. Meenakshi Overseas Pvt. Ltd. [2017] 395 ITR 0677, M/s. Insecticides (India) Ltd. Vs. CIT in ITA No. 608 of 2012 dated 20.05.2013, CIT Vs. SFIL Stock Broking Ltd. [2010] 325 ITR 0285 (Del.). The Ld. AR, therefore, prayed that the reopening of assessment on the basis of borrowed satisfaction where there is no application of mind by the AO independently to the facts on record then the reassessment proceedings are invalid and has to be quashed.

4. The Ld. DR, on the other hand, strongly opposed that the assessee did not appear either before the AO or before the Ld. CIT and, therefore, for the first time wrecking this legal issue of borrowed satisfaction and non-application of mind by the AO to the facts on record which should not be allowed and the matter may be restored to the AO or Ld. CIT(A) for necessary verification of facts.

5. Ld. AR in the rebuttal submitted that assessee is free to raise legal issue at any appellate stage and does not *sine qua non* restore the same to the lower authorities for the reason that the issue was not before them or was not adjudicated during the course of proceedings before them. The Ld. AR, therefore, submitted that the legal issue can be raised by the assessee at any stage and the appellate authority has to decide the same and the same should not be relegated to the AO or the Ld. CIT(A). The Ld. AR in defense of

his argument relied on the decision of Hon'ble Bombay High Court in the case of Kansai Nerolac Paints Ltd. Vs. DCIT 364 ITR 632 (Bom.).

6. After hearing the rival contentions and perusing the material placed before us, we find that the undisputed facts as presented before us and are culled from the records are that the notice u/s. 148A(b) dated 12.03.2022 was issued wherein the AO stated that the assessee received certain payments as stated hereinabove are despite that the assessee has not filed any return of income. Thereafter, the order u/s. 148(d) dated 24.03.2022 was passed by the AO by holding that the income chargeable to tax has escaped to the tune of Rs.39,86,50,000/- and accordingly, notice u/s. 148 was issued on 24.03.2022. There is no dispute as to the facts that the facts mentioned by the AO in all its notices were incorrect and finally the addition was made only to the tune of Rs.38.38 lacs u/s. 69 and Rs.49,50,000/- u/s. 50C of the Act. Apparently, the AO has merely acted on the basis of information available on the Insight portal and there was no application of mind by the AO. Thus, in our opinion, it is a case of gross non-application of mind and borrowed satisfaction which is not permissible under the Act. In our opinion, the tax authorities have to be extra vigilant while reopening the cases by due application of mind as by way of reopening already settled assessment are thrown upon to the scrutiny by the department and in case the reopening passed on such incorrect facts are allowed to be made then the very purpose of safeguard provided to the assessee against the wrong invocation of jurisdiction which is not otherwise authorized under the Act would be defeated per se in our opinion, the first reopening made by the AO in the instant case is bad in law. The case of the assessee finds support from the aforesaid decision passed by the various judicial forums namely, Meenakshi Overseas Pvt. Ltd., M/s. Insecticides (India) Ltd., CIT Vs. SFIL Stock Broking Ltd. and Kansai Nerolac Paints Ltd. (supra). Therefore, we are inclined to set aside the order of Ld. CIT(A) by quashing the reassessment proceedings.

7 In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 12th September, 2024

Sd/-
(Pradip Kumar Choubey)
Judicial Member

Sd/-
(Rajesh Kumar)
Accountant Member

Dated: 12th September, 2024

JD, Sr. PS

Copy of the order forwarded to:

1. Appellant–
2. Respondent .
3. CIT(A), NFAC, Delhi
4. ITO, Ward-1(1), Asansol
5. DR, ITAT, Kolkata,
True Copy

By Order

Assistant Registrar
ITAT, Kolkata Bench, Kolkata