

आयकर अपीलीय अधिकरण, कोलकाता पीठ “ए”, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
श्री राजपाल यादव, उपाध्यक्ष एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष
[Before Shri Rajpal Yadav, Vice-President & Shri Rajesh Kumar, Accountant Member]

I.T.A. No. 820/Kol/2023
Assessment Year: 2012-13

Sri Utpal Das (PAN: ACTPD 5025 B)	Vs.	ITO, Ward-1(3), Burdwan
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	07.08.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	08.10.2024
For the Appellant/ निर्धारिती की ओर से	Shri Soumitra Choudhury, Advocate
For the Respondent/ राजस्व की ओर से	Shri Manoj Kumar Pati, Addl. CIT

ORDER / आदेश

Per Rajesh Kumar, AM:

This is the appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)”) dated 19.04.2023 for AY 2012-13.

2. At the outset, we note that there is a delay of 53 days in filing the appeal. After hearing both the parties on the issue of condonation of delay, we note that the delay in filing the appeal is attributable to the fact that the elder brother of the counsel of the assessee Shri Sitaram Khandelwal was admitted in R.N. Tagore Hospital for operation and the Shri Khandelwal was busy for attending his brother in the hospital. Thereafter, in the first week of August, new counsel was appointed and he filed the appeal immediately on 10.08.2023 with the delay of 50 days. Considering the above facts and

circumstances, we are of the view that the delay in filing the appeal is not attributable to the assessee in any manner whatsoever and moreover there was a sufficient cause for delayed filing of appeal. Accordingly, we condone the delay and admit the appeal for adjudication.

3. At the time of hearing, the assessee raised the legal issue that the reopening of assessment u/s 147 of the Act was merely on borrowed satisfaction without independent application of mind and therefore the same is invalid and may be quashed.

4. Facts in brief are that the assessee filed return of income on 28.09.2012 declaring total income of Rs. 2,50,250/-. During the impugned year, the assessee is running a medical shop of medicine and was deriving income from the business of dealing in medicines. The AO, after receipt of verification report in respect of Smt. Meera Indra for FY 2011-12 relevant to AY 2012-13 Income Tax Officer (Intelligence & Investigation), Durgapur, observed that the assessee Shri Utpal Das was beneficiary of the cash deposits of Rs. 70,50,000/- in the bank account of Smt. Mira Indra. The AO noted that Sri Utpal Das was the introducer while opening the bank account of the assessee and accordingly, notice u/s 148 was issued to the assessee after recording the reasons as mandated u/s 148(2) of the Act which are available at page 53 of PB. In the said reasons, the AO noted and referred to the letter dated 28.03.2017 received from Income Tax Officer (Intelligence & Investigation), Durgapur dated 14.03.2017 regarding cash deposits of Rs. 70,50,000/- in the account of Smt. Mira Indra's saving bank account No. 0259104000045599 with IDBI Bank, M. B. Apartment, 35, G.T. Road, Burdwan-7131013 during the FY 2011-12 relevant to AY 2012-13. It was also noted by the AO the Investigation Wing found that Shri Utpal Das was the direct beneficiary of the cash deposited by Smt. Mira Indra and noted that the notice also issued u/s 148 to Smt Mira Indra. In para 3 the AO noted that the bank transactions do not reflect any business transactions and the cash deposited was the income of the assessee as he was the beneficiary of the cash deposited in the bank account. Finally the AO noted that the income has escaped assessment and the case is being reopened on protective basis. The AO during the course of assessment proceedings after calling for

the necessary information/details from the assessee came to the conclusion that the assessee was the direct beneficiary of the said amount and accordingly treated the said cash deposits as undisclosed income and added the same to the income of the assessee thereby assessing the income at Rs. 3,50,252/- vide order dated 28.12.2017 passed u/s 147 read with Section 143(3) of the Act.

5. In the appellate proceedings, the Ld. CIT(A) confirmed the order of AO by observing that the assessee has not controverted the facts on record by bringing any substantive evidences on record nor did he demanded any cross-examination of Smt. Mira Indra and thus justified the addition made by the AO.

6. The Ld. A.R vehemently submitted before us that the case of assessee has been invalidly reopened u/s 147 by issuing notice u/s 148 of the Act on borrowed satisfaction that too without independent application of mind. The Ld. A.R stated that the AO has received a letter from Income Tax Officer (Intelligence & Investigation), Durgapur on 14.03.2017 which states that Smt. Mira Indra has opened a bank account with IDBI Bank, M. B. Apartment, 35, G.T. Road, Burdwan-713103 in which she deposited Rs. 70,50,000/- and while opening the bank account, the assessee was the introducer of the said bank account which has been observed by the AO on the basis of documents received from the bank. The ld. A.R also referred to the bank statement of the impugned bank which is filed at page no. 70 of PB. The Ld. A.R while referring to the said statement submitted that the cash was deposited on different dates whereas the withdrawals were only made to the tune of Rs. 9,00,000/- thereby leaving closing balance of Rs. 63,15,836/-. The Ld. A.R contended that the AO has acted merely on the borrowed satisfaction without carrying out any independent verification of the issue. The assessee has no role in the deposits of the said cash which is apparent from the facts that there were deposits only in the bank account of Smt. Mira Indra and withdrawal was only a meagre amount thereby leaving a bank balance of Rs. 63,15,836/- in the said bank account. The Ld. A.R submitted that the AO has failed to establish any live link between the information received and recording of reasons and formation of belief. The Ld. A.R stated that the AO has failed to carry out any mindful enquiry into the issue

at the time of recording of reasons and simply noted that the assessee is a beneficiary of the said account and the said cash which is contrary to the facts on record. The Ld. A.R further argued that though Smt. Mira Indra has denied to have any role to deposit the said cash and also stated that it is not her money but the AO has not carried out any further investigation as to how the money deposited in the bank account of Smt. Mira Indra, belonged to the assessee when the assessee has categorically denied the money to be belonged to him. The Ld. A.R also argued that the AO in the reasons recorded has in the last para concluded that the assessment is being reopened as protective basis whereas as a matter of fact the assessment has been framed on substantive basis whereas in Smt. Mira Indra the assessment was framed on protective basis without giving any reasons. In defense of argument the Ld. A.R relied on the series of decisions namely PCIT v. Meenakshi Overseas Pvt. Ltd. in [2017] 395 ITR 677 (Del-HC) and ACIT vs. Nupower Renewables Pvt. Ltd. [2019] 111 taxmann.com 149 (SC). The ld. A.R therefore submitted that the reopening of assessment may kindly be quashed by allowing the appeal of the assessee on legal issue.

7. The Ld. D.R on the other hand relied on the order of authorities below by submitting that the assessee has not been co-operative either before the AO or before the Ld. CIT(A) and therefore the correct facts could not be ascertained and whatever was available on record was considered and the issue was decided accordingly. The Ld. D.R submitted that on the basis of statement of Smt. Mira Indra recorded and also dealt with by the AO in the assessment order at page 3 on 15.12.2017, the AO noted that the assessee was beneficiary of the said money. The AO has reproduced the statement recorded u/s 131 of Smt. Mira Indra at page 3 in which she denied to have any knowledge of the cash deposited into her bank account and also denied to have any business transactions with the assessee and stated that he was just friend of her son Shri Sanjit Indra. It was also stated that she only filed return of income and the Ld. D.R referred to question no.6 in which a specific query was asked from her regarding the deposits of cash on various dates and withdrawal by cheque in the name of Shri Utpal Das on different dates and Smt. Mira Indra replied that she did not have any knowledge

of the amount deposited and the total money belonged to Shri Utpal Das and he is the beneficiary of the said money. Therefore, the department has sufficient material to make the addition. The Ld. D.R finally relied on the authorities below.

8. After hearing the rival contentions including the orders of authorities below and the decisions cited before us, the undisputed facts are that the AO received letter from Income Tax Officer (Intelligence & Investigation), Durgapur that there was huge deposits of Rs. 70,50,000/- in the account of Smt. Mira Indra deposited on various dates, beneficiary of which was the assessee who withdrew through cheques from the said bank account. The AO based upon the said letter recorded the reasons u/s 148(2) of the Act a copy of which is available at page no. 53 of PB in para 1. The AO noted the fact of having received letter dated 14.03.2020 from Income Tax Officer (Intelligence & Investigation), Durgapur on 20.03.2020 which stated that the cash deposited in savings bank account of Smt. Mira Indra during the impugned financial year 2011-12. In the second para the AO noted further that from the letter, it was found that Shri Utpal Das, was the direct beneficiary of the said cash deposited by Smt. Mira Indra and the notice was issued u/s 148 for AY 2012-13 to Mira Indra as well. Thereafter in para 3 the AO noted that the bank transactions did not reflect any business transactions and entire cash deposits of Rs. 70,50,000/- was the income of the assessee as Shri Utpal Das was the beneficiary of cash deposit. Thereafter the AO recorded that the assessee has filed return of income declaring total income of Rs. 2,50,250/- without offering Rs. 70,50,000/- to tax and in the final para the AO recorded his reasons to believe that income has escaped assessment and it is a fit case for reopening of assessment beside mentioning the fact that the proceedings against Smt. Mira Indra were already initiated and the instant case being reopened on protective basis. A perusal of the above reasons reveal that nowhere the AO has applied his mind independently as to how the cash deposited in the account of Smt. Mira Indra has to be treated as income of the assessee who did not offer it to income tax in the return of income. The AO has merely revisited the facts stated in above letter received from Income Tax Officer (Intelligence & Investigation), Durgapur. In the said letter, we note that the copy of said letter dated 14.03.2017 is filed at page 62

and 63 of PB wherein it was stated that notice u/s 133(6) issued to transacting party at Mithapukur Lane, Rajbati, Burdwan as per the bank record and the postal authority has returned the letter unserved. Thereafter the banking authorities are asked to provide the opening form and KYC details in which it was found that Shri Utpal Das was the introducer of the transacting party Smt. Mira Indra. It was also noted that the cash transaction were made in account and RTGS were made from her bank account . Thereafter it was mentioned by Income Tax Officer (Intelligence & Investigation), Durgapur that the transaction has been found there that Shri Utpal Das withdraws huge amount and thereafter the investigation wing noted that the AO has to proceed to reopen the case of the assessee on protective basis. Thus, there has not been any application of mind by the AO and it is a patent case of borrowed satisfaction. We have perused the bank statement a copy of which is available at page 70 wherein the deposit of Rs. 70,50,000/- were made. There was withdrawals of only Rs. 9 lacks whereas the AO states that there have been huge withdrawals of cash of which the assessee was the beneficiary. Therefore, this is the case where the AO has failed to carry out any enquiry before issuing notice u/s 148 of the Act and re-opened the assessment on borrowed satisfaction which is not permissible under the Act. Moreover, we note that the case was reopened for making the protective addition in the hands of assessee whereas the addition was made on substantive basis.

9. The case of the assessee was simply dismissed by the Ld. CIT(A) by referring to notice u/s 148 and the statement of Smt. Mira Indra recorded by her AO. The case of the assessee finds support from the decision of Hon'ble Delhi High Court in the case of PCIT vs. Meenakshi Overseas Pvt. Ltd. (supra) wherein the Hon'ble Court has held that the case has reopened without any independent application of mind and the reasons recorded failed to demonstrate the live link between the tangible material and the formation of the reasons to believe that income has escaped assessment, then there is no error of tribunal concluding that initiation of proceedings u/s 147/148 of the Act to reopen the assessments for the AY in question does not satisfy the requirement of law and accordingly, the question framed is answered in the negative in favour of the

assessee and against the revenue. Similar ratio has been laid down by the Hon'ble Supreme Court in the case of ACIT vs. Nupower Renewables Pvt. Ltd. (supra) wherein the Hon'ble Court has held that where the AO reopens the assessment based on the information supplied by the Investigation wing to investigate the source of genuineness and creditworthiness of the investor company which is just a fishing enquiry and not permissible in law. Therefore, the notice was set aside for the said reason. The operative part is reproduced as under:

"14. However, whether the Assessing Officer had any such information at his command and the manner in which, the Assessing Officer processed such additional information(s) to form a belief that, income chargeable to tax has escaped assessment, shall have to be gathered from reasons recorded by him for issuing the notice. In this context, we may peruse the reasons more minutely and analyze the contents thereof. The core of the reasons recorded by the Assessing Officer is found in paragraph 2 thereof. In paragraph 2, the Assessing Officer has recorded that, he has received information from the Investigation Wing under a letter dated 15th March, 2018, stating that, the assessee had received an amount of Rs.49.90 Crores from First land a Mauritius based company towards subscription for 4,99,048 compulsorily convertible cumulative preference shares. The Assessing Officer does not refer to any further information received from the Investigation Wing. In short, according to the Assessing Officer, the information received from the Investigation Wing, was confined to the fact that, the assessee had received share application money to the tune of Rs.49.99 Crores from First land.

15. This information is not something new to the Assessing Officer. The fact that the assessee had received such share application money from First land was part of the assessee's return. It is not as if the Assessing Officer did not notice this information during scrutiny assessment. As noted above through series of correspondence between the assessee and the Assessing Officer, this information was highlighted time and again. The channel of movement of the fund, the source of the fund, purpose of investment and the ultimate destination of the fund, were all part of the record during the assessment proceedings. There is nothing in the reasons recorded by the Assessing Officer to suggest that, such investment is bogus.

16. The rest of the reasons recorded merely refer to the Assessing Officer's observations in the context of the income chargeable to tax which had escaped assessment and the reasons why he believed that, reopening of an assessment even beyond a period of four years, in the present case, was permissible. In the entire reasons, from paragraph 3 onwards, there is no reference to any additional information which was brought to the notice of the Assessing Officer in this respect.

17 To summarize, the reasons only refer to a simple piece of information supplied to the Assessing Officer by the Investigation Wing, stating that the assessee company had received share application money of Rs.49.99 Crores from First land. To reiterate, this information is nothing which the Assessing Officer did not have at his command when the Assessment was framed. The reasons do not specify that the information supplied to the Assessing Officer by the Investigation Wing, suggested that such investment was nongenuine. In this context, Assessing Officer refers to the requirement of verifying the genuineness of investor and requirement of further investigation. These observations in para 3 of the reasons, would not

further the case of the Revenue, these being no information with the Assessing Officer, prima facie, indicating that the investments were not genuine. The investigation into the source of genuineness and creditworthiness of the investor company would fall within the realm of fishing enquiries, which is wholly impermissible in law in the context of the reopening of the assessment. For such reasons, impugned notice is set aside."

Considering the facts of the case in the light of ratio laid down in the aforesaid decisions, we are inclined to quash the reassessment proceedings and also the consequent order passed by the AO for having failed to satisfy the condition for reopening of assessment u/s 147/148 of the Act.

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

Order is pronounced in the open court on 8th October, 2024

Sd/-

Sd/-

(Rajpal Yadav /राजपाल यादव)
 Vice-President/उपाध्यक्ष

(Rajesh Kumar/राजेश कुमार)
 Accountant Member/लेखा सदस्य

Dated: 8th October, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Sri Utpal Das, Ramkrisham Medical Hall, 1st Floor, Municipal Complex, Kalyani Market, Burdwan-731101
2. Respondent – ITO, Ward-1(3), Burdwan
3. Ld. CIT(A)-NFAC, Delhi
4. Ld. PCIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
 ITAT, Kolkata Benches, Kolkata