

**आयकर अपीलीय अधिकरण, कोलकाता पीठ, कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA**

**Before Shri Sanjay Garg, Judicial Member and Shri Rakesh Mishra, Accountant Member**

**I.T.A. No.792/Kol/2024**  
Assessment Year: 2011-12

**Quadeye Securities Pvt. Ltd.....Appellant**

184, Harish Mukherjee Road,  
1<sup>st</sup> Floor, Kolkata-700026.  
**[PAN: AABCE7790H]**

vs.

**DCIT, Circle-11(1), Kolkata..... Respondent**

**Appearances by:**

Shri A. K. Tibrewal, FCA, appeared on behalf of the assessee.

Shri Vineet Kumar, Addl. CIT- Sr. DR, appeared on behalf of the Revenue.

Date of concluding the hearing : July 08, 2024

Date of pronouncing the order : October 07, 2024

**आदेश / ORDER**

**संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:**

The present appeal has been preferred by the assessee against the order dated 29.02.2024 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee in this appeal is aggrieved by the action of the Id. CIT(A) in confirming the addition made by the Assessing Officer on account of disallowance of loss of Rs.2,47,48,393/- incurred by the assessee in commodities dealing in National Multi Commodity Exchange of India Limited ('NMCE') platform and further making addition of Rs.4,92,263/- u/s 69C of the Act on account of alleged commission that might have been paid by the assessee in booking the aforesaid bogus loss in commodity trading.

3. The assessee in this appeal has contested the aforesaid additions not only on the legal ground relating to the validity of the reopening of the assessment u/s 147 of the Act but also on merits.

4. At the outset, the ld. counsel for the assessee has brought our attention to the copy of the reasons recorded for reopening of the assessment and further to the opening para of the assessment order, a perusal of which, reveals that the assessment was reopened in the case of the assessee on the basis of following information received by the Assessing Officer from the Investigation Wing:

“From ADIT (Inv.), Unit-2(1) & ADIT (Inv.), Unit-2(2), Kolkata

*During F.Y. 2010-11M/s Quadeye Securities Pvt. Ltd. (previously known as M/s Elephanta Share Trading Pvt. Ltd.) had received accommodation entries from alleged shell company M/s Inter Globe Finance Ltd. amounting to R. 2,90,00,000/-*

From ADIT (Inv.), Unit-2(1), Kolkata

*During F.Y. 2010-11M/s Quadeye Securities Pvt. Ltd. (previously known as M/s Elephanta Share Trading Pvt. Ltd.) had received accommodation entries from alleged shell company M/s Deepak Pens & Plastic Pvt. Ltd. amounting to Rs.3,25,00,000/-*

From ADIT (Inv.), Unit-3(1), Kolkata

*During F.Y. 2010-11M/s Quadeye Securities Pvt. Ltd (previously known as M/s Elephanta Share Trading Pvt. Ltd.) had incurred huge bogus commodity loss in the NMCE platform, which was adjusted with total income of assessee.”*

4.1 The ld. counsel for the assessee has submitted that so far as the reopening on account of accommodation entries by the assessee from shell companies i.e. M/s Inter Globe Finance Ltd. and M/s Deepak Pens & Plastic Pvt. Ltd. was concerned, no addition has been made by the Assessing Officer in that respect in the consequential assessment proceedings. So far as the reopening in respect of the third reason that the assessee had incurred huge bogus commodity loss is concerned, the

ld. AR of the assessee has brought our attention to the reasons recorded by the Assessing Officer to submit that the only reason mentioned by the Assessing Officer in this respect in the reasons recorded is in the last lines of the said letter which reads as under:

*“Apart from the above information has been received from credible source that the assessee has booked loss/profit by misusing the platform of NMCE (National Multi Commodity Exchange) during the financial year 2010-11.”*

4.2 The ld. counsel in this respect has submitted that the aforesaid reason mentioned by the Assessing Officer was a vague reason and would not fall within the scope of “reasons to believe of escapement of income” of the assessee. The ld. counsel has further invited our attention to reasons recorded to submit that in the said 7 pages document, the Assessing Officer has based his reasoning solely on the ground that he has received information from Investigation Wing that the assessee has received accommodation entries in the shape of bank deposits amounting to Rs.3,25,00,000/-, which income has escaped assessment. Only in the last 2-3 lines, it was added that ‘apart from the above information, the information was received from the credible sources that the assessee has booked loss/profit by misusing the platform of NMCE’. The Assessing Officer, without correlating the said information with the accounts of the assessee, reopened the assessment, which was based on borrowed satisfaction from the Investigation Wing. He, therefore, has submitted that reopening of assessment in this case was bad in law.

4.3 The ld. counsel, in this respect, has relied upon the following case laws:

1. Hindustan Lever Ltd. -vs- R.B. Wadkar - [2004] 137 Taxman 479 (Bombay) / [2004] 268 ITR 332 (Bombay) / [2004] 190 CTR 166 (Bombay)

2. PCIT -vs- Meenakshi Overseas (P.) Ltd [2017] 82 taxmann.com 300 (Delhi) / [2017] 395 ITR677 (Delhi)
3. PCIT -Vs- G &G Pharma India Ltd [2017] 81 taxmann.com 109 (Delhi) / (2016] 384 ITR 147 (Delhi)
4. PCIT -vs- Shodiman Investments (P.) Ltd [2018] 93 taxmann.com 153 (Bombay) / [2020] 422 ITR 337 (Bombay)
5. Balaji Mines and Minerals (P.) Ltd -vs- ACIT - [2024] 163 taxmann. com 37 (Bombay)
6. Reynolds Shirting Ltd -vs- ACIT - 135 taxmann.com 78 (Bombay) / [2022] 285 Taxman 554 (Bombay)
7. PCIT -vs- Eastern Coalfields Ltd. - ITAT/98/2018, judgment dated 04.01.2022 (Cal HC)
8. PCIT -vs- Sambuddha Tracon Pvt. Ltd. - ITAT/90/2022, judgment dated 15.11.2022 (Cal HC)
- 9 Champalal Omprakash -vs- ITO [2024] 159 taxmann.com 1397 (Kolkata - Trib.)
10. PKC Securities -vs- ITO - ITA No.2399/Kol/2019, judgment dated 10.02.2021 (Kol ITAT)
11. Gopal Prasad Agarwal -vs- ITO - ITA No.1771/Kol/2019, judgment dated 17.01.2020 (Kol ITAT)
12. Proficient Commodities Pvt. Ltd -vs- DCIT - ITA Nos.2307 & 2308/Kol/2017, judgment dated 02.11.2018 (Kol ITAT)
13. ACIT -vs- GRD Commodities Ltd. - IT(SS)A Nos.120 to 123/Ko/2018, judgment dated 04.12.2020 (Kol ITAT)
14. PCIT -vs- GRD Commodities Ltd - [2023] 149 taxmann.com 223 (Calcutta)

15. Gangeshwari Metals Pvt. Ltd -vs- ITO - ITA No.9343/Del./2019, judgment dated 22.10.2020 (Kol ITAT)

16. PCIT -vs- BLB Cables & Conductors Pvt Ltd - ITAT No.78 of 2017, judgment dated 19.06.20 18 (Cal HC)”

5. The ld. DR, on the other hand, has relied upon the findings of the lower authorities.

6. We have considered the rival contentions and gone through the record. We note that 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 the reasons to believe regarding the escapement of the income should be based on certain tangible material and it should not be mere pretence of the Assessing Officer. The reasons to believe does not mean reasons to suspect. Reopening of the assessment is not permitted for making fishing and roving enquiries. The Assessing Officer, after receipt of alleged information received from the Investigation Wing was supposed to correlate the same with the records and other facts of the case and thereafter should have satisfied himself of escapement of income. Reopening is not permissible on the basis of borrowed satisfaction of the Assessing Officer. 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". 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 notice u/s 148 of the Act was not valid. In this case, a perusal of the assessment order would reveal that the Assessing Officer has not discussed a word about the bogus accommodation entries in the assessment order, therefore, it is apparent that the information of the Investigation Wing in relation to the accommodation entries received by the Assessing Officer was not correct, so far as the case of the assessee was concerned. As observed above, the information that the assessee had booked loss/profit by misusing the platform of NMCE is concerned, the said information, in itself, is a vague information. Even, the said information does not suggest as to whether the assessee has booked bogus loss or bogus profit, what to say of the quantum of such loss or profit booked by the assessee. There is no mention of the name of the parties, no details of the transactions etc. in the reasons recorded and no amount has been mentioned. The reopening on the basis of such a vague information and even without knowing whether the assessee has booked bogus loss or bogus profit, cannot be said to be an information for forming the belief that the income of the assessee has escaped assessment. Therefore, the reasons pointed out by the Assessing Officer cannot be said to be the reasons “to form the belief” that income of the assessee had escaped assessment. The Hon'ble Delhi High Court in the case of PCIT -vs- Meenakshi Overseas (P.) Ltd. (supra) has held that where reassessment was resorted to on basis of information from DIT(Investigation) that assessee had received accommodation entry but and there was no independent application of

mind by Assessing Officer to tangible material and reasons failed to demonstrate link between tangible material and formation of reason to believe that income had escaped assessment, reassessment was not justified. Similarly, the Hon'ble Delhi High Court in the case of PCIT - Vs- G & G Pharma India Ltd. (supra) has held that where the Assessing Officer after receiving of information from the Investigation Wing that the assessee has received accommodation entries and the Assessing Officer without describing those materials and without applying his mind to the alleged materials and therefore, without forming a prima facie opinion, reopens the assessment, the same was not sustainable. In view of the above discussion, the reopening in this case is held as bad in law and, therefore, the consequential assessment framed u/s 147 is not sustainable and the same is hereby quashed.

7. Even, on merits, a perusal of the assessment order would reveal that the Assessing Officer has simply relying to the modus operandi adopted by certain entry providers and without pointing out any defect or infirmity in the transactions done by the assessee, has made the impugned additions, which, otherwise are not sustainable on merits also. In view of this, the impugned additions are ordered to be deleted on merits also.

8. In the result, the appeal of the assessee stands allowed.

***Kolkata, the 7<sup>th</sup> October, 2024.***

Sd/-

**[Rakesh Mishra]**

लेखा सदस्य/Accountant Member

Sd/-

**[Sanjay Garg]**

न्यायिक सदस्य/Judicial Member

Dated: 07.10.2024.

RS

*Copy of the order forwarded to:*

1. Quadeye Securities Pvt. Ltd
2. DCIT, Circle-11(1), Kolkata
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches