

आयकर अपीलीय अधिकरण, कोलकाता पीठ "सी", कोलकाता

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

श्री राजेश कुमार, लेखा सटस्य एवं श्री प्रदीप कुमार चौबे, न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Pradip Kumar Choubey, Judicial Member]

I.T.A. No. 834/Kol/2024
Assessment Year: 2013-14

Omkara Vincom Pvt. Ltd. (PAN: AABCO 1176 D)	Vs.	ITO, Ward-12(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	26.09.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	09.10.2024
For the Appellant/ निर्धारिती की ओर से	Shri Ritu Kamal Kishore, A.R
For the Respondent/ राजस्व की ओर से	Smt. Ranu Biswas, Addl. CI, Sr. DR

ORDER / आदेश

Per Rajesh Kumar, AM:

This is an 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 29.02.2024 for the AY 2013-14.

2. Issue raised in ground no.1 in the assessee's appeal is against the order of Ld. CIT(A) upholding the order of AO wherein the reopening of assessment has been made u/s 147 read with Section 148 of the Act after expiry of four years from the end of relevant assessment year 2013-14 without satisfying the conditions as provided in first proviso to Section 147 of the Act without there being any failure on the part of the assessee to disclose fully and truly all material necessary assessment of income which culminated in assessment order u/s 143(3) of the Act.

3. Facts in brief are that the assessee filed return of income on 27.09.2013 declaring total income of Rs. 1,67,850/- which was selected for scrutiny. The assessment was framed u/s 143(3) vide order dated 09.2015 accepting the returned income. Thereafter the AO received information from DDIT(Inv), Unit-2(1), Kolkata dated 05.03.2019 stating that the assessee is beneficiary of accommodation entry taken from M/s Ontrust Agro Food Pvt. Ltd. to the tune of Rs. 1,51,00,000/-. Accordingly, reassessment proceedings were initiated u/s 147 of the Act by issuing notice u/s 148 of the Act on 20.03.2020 after recording a reasons to believe as mandated by Section 148(2) of the Act, a copy of which is filed at page nos. 28-32 of PB. The assessee complied with the said notice vide letter dated 16.04.2020 stating therein that the return filed u/s 139(1) of the Act may be treated as filed u/s 148 of the Act. The AO thereafter issued statutory notices which were duly served on the assessee along with questionnaire and also filed submissions along with evidences before the AO. Finally, the AO brushed aside the contention put forward by the assessee and added the sum of Rs. 1,51,00,000/- u/s 68 of the Act as unexplained cash credit. Pertinent to state that the said amount represented the sales consideration received by the assessee upon sale of shares from M/s Jagabandhu Traders Pvt. Ltd. The assessee stated that in the letter dated 16.04.2020 that the assessee has fully disclosed all its information and facts in the return filed u/s 139(1) and has not concealed anything. However, the said contention was overlooked by the AO.

4. In the appellate proceedings, the Ld. CIT(A) dismissed the legal issued raised by the assessee by observing and holding as under:

“In this ground the appellant has challenged the issuance of notice on the ground that notice cannot be issued after expiry of four years from the end of the relevant assessment year in a case of where assessment u/s 143(3) of the Act was made unless there was failure on the part of Assessee to disclose fully and truly all the material facts. The appellant relied various case laws. I find that the appellant had not disclosed the true facts of the case. It came to the notice of the department later on that the entry of Rs. 1,51,00,000/- in the name of sale of shares M/s Jagabandhu Traders Pvt. Ltd. was an accommodation entry from M/s Ontrust Agro Food Pvt. Ltd. which was a company involved in giving accommodation entries. Thus the appellant had not disclosed the true facts of the case and therefore, the case laws cited by it or also not applicable. Therefore, the ground of appeal is not tenable and is dismissed.”

5. The Ld. A.R vehemently submitted before us that the reopening of assessment made u/s 147 of the Act read with Section 148 of the Act on 20.03.2020 is void ab-initio and bad in law for the reason that in this case the assessment was framed u/s 143(3) of the Act vide order dated 08.09.2015 a copy of which is filed at page 12-15 of PB and the reopening was wrongly made after a period of four years from the end of relevant assessment year which has to be in accordance with the conditions as enumerated in first proviso to Section 147 of the Act. In other words, the reopening of assessment can only be made if the escapement of income is attributable to the failure of the assessee to fully and truly disclose the material facts qua the said income during the said assessment or in the return of income. The Ld. AR stated that in the instant case the facts are totally different. The asse has fully disclosed facts and evidences in the return of income which was scrutinized u/s 143(3) of the Act and order u/s 143(3) of the Act was passed on 08.09.2015. All the details and evidences as called for by the AO were furnished. Therefore, the assessee cannot be attributed to have not disclosed fully and truly facts either in the return of income or during the course of assessment proceedings. The Ld. A.R therefore, prayed that mere statement by the AO in the reasons recorded that the reopening is beyond the four years by reason of failure on the part of the assessee to disclose fully and truly the facts necessary for assessment of income is devoid of any merit. The ld AR argued that the AO has failed to specifically/ mention the failure on the part of the assessee and mere statement as made by the AO without any corroborative material brought on record and without making a clear-cut and

specific finding would render the reopening of assessment as invalid and nullity. The Ld. A.R relied on the decision of Hon'ble Apex Court in the case of ACIT vs. CEAT Ltd. in [2023] 146 taxmann.com 108(SC). Secondly The Ld. A.R, while referring to the approval granted u/s 151 a copy of which is available at page 16-19 of PB, submitted that the approval has been granted in a mechanical and standard format stating in the approval details and in the column of remarks of approving authority, it is stated as ***“on the basis of reasons recorded by the AO, I am satisfied that this is a fit case for issue of notice u/s 148 of the Act”*** which is a pure mechanical approval granted without application of mind by approving authority. Therefore, the reopening is invalid on this score as well. In defense of argument the Ld. A.R relied on the order of Hon'ble Delhi High Court in the case of Principal Commissioner of Income Tax v. Pioneer Town Planners Pvt. Ltd. in (2024) 465 ITR 356 (Del).The Ld. A.R therefore prayed that the reopening of assessment is invalid and void ab-initio and therefore the same may kindly be quashed by allowing the appeal of the assessee.

6. The Ld. D.R on the other hand relied heavily on the order of authorities below by submitting that the reopening has been made by the AO on the basis of information received from DDIT(Inv), Unit-2(1), Kolkata and therefore the legal issue raised by the assessee may kindly be dismissed.

7. After hearing the rival contentions and perusing the material on record, we note that in this case the assessment was framed u/s 143(3) vide order dated 08.09.2015. The reopening was made u/s 147 of the Act by issuing notice u/s 148 of the Act on 20.03.2020 after the AO received information from DDIT(Inv), Unit-2(1), Kolkata vide letter dated 05.03.2019 that the assessee is a beneficiary of accommodation entry to the tune of Rs. 1,51,00,000/- from M/s Ontrust Agro Food Pvt. Ltd. who is trader/broker in food grain items. Apparently reopening has been made after a period of four years from the end of relevant assessment year. Therefore, the reopening can only be made subject to the satisfaction of the conditions as provided in first proviso to section 147 of the Act which state that where the assessment has been framed u/s 143(3) of the Act, reopening

after a period of four years can only be made if the escapement of income is attributed to the failure on the part of assessee to disclose material facts either in the return of income or during the course of assessment proceedings. However, this is not the facts in the present case. We note that the assessee has fully disclosed all the facts in the return of income filed u/s 139(1) of the Act by disclosing the said money received of Rs. 1,51,00,000/- in the books of account and also reflecting in the return of income and the case was also selected for scrutiny and assessment was framed vide order dated 08.09.2013 passed u/s 143(3) of the Act. Therefore, mere observation on the part of the AO that the reopening beyond four years is made u/s 147 of the Act because of the failure on the part of the assessee to disclose fully and truly all the material facts which is necessary for assessment. In our opinion, the assessee cannot be attributed with the failure responsible for the said escapement of income as the assessee has made full disclosure in the return of income qua the said money received. Therefore, in our considered opinion the reopening of assessment has been made by the AO without recording a concrete and clear-cut findings as to the failure of the assessee is bad in law and cannot be sustained. The case of the assessee finds support from the decision of Hon'ble Apex Court in the case of ACIT vs. CEAT Ltd. in [2023] 146 taxmann.com 108(SC). Besides, we have examined the approval granted by the PCIT u/s 151 a copy of which is filed at page 16 and 17 of PB and it was simply stated as approved in the approval status and in the remarks column the PCIT has remarked that on the basis of reasons recorded by the AO, I am satisfied that this is a fit case for issue of notice u/s 148 of the Act which in our opinion, is a mechanical approval granted without any application of mind and recording a reasons for granting such approval which is bad in law. The case of the assessee finds support from the decision of Hon'ble Delhi High Court in the case of Principal Commissioner of Income Tax v. Pioneer Town Planners Pvt. Ltd.; (2024) 465 ITR 356 (Del). In view of the above facts and circumstances and ratio laid down by the Hon'ble Apex Court and Delhi High Court, we are inclined to quash the reopening proceedings as well as the assessment framed by allowing the appeal of the assessee on legal issue.

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

Order is pronounced in the open court on 9th October, 2024

Sd/-

Sd/-

(Pradip Kumar Choubey /प्रदीप कुमार चौबे)
Judicial Member/न्यायिक सदस्य

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

Dated: 9th October, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Omkaara Vincom Pvt. Ltd., 15, India Exchange Pvt. Ltd., 1st Floor, Kolkata-700001.
2. Respondent – ITO, Ward-12(1), Kolkata
3. Ld. CIT(A)- NFAC, Delhi
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata