

आयकर अपीलीय अधिकरण, कोलकाता पीठ “एसएमसी”, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” 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. 1414/Kol/2024
Assessment Year: 2013-14

Rahul Premier India Agency Pvt. Ltd. (PAN: AABCR 2687 L)	Vs.	DCIT, Circle-4(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	08.08.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	09.10.2024
For the Appellant/ निर्धारिती की ओर से	Shri S.M. Surana, Advocate
For the Respondent/ राजस्व की ओर से	Shri Supriya Pal, Addl. CIT (D.R)

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 07.06.2024 for the AY 2013-14.

- Issue raised in ground no. 1 is not pressed and there is dismissed as not pressed.

3. Issue raised in ground no. 2 is against the confirmation of reopening of assessment by the Ld. CIT(A) even when the pre-conditions as laid down u/s 147 of the Act were not satisfied.

4. Facts in brief are that the assessee filed return of income on 26.09.2013 declaring a loss of Rs. 7,04,798/-. The case of the assessee was reopened u/s 147 of the Act after recording a reasons to believe u/s 148(2) of the Act. The AO noted that the assessee has taken unsecured loan from M/s Nikhil Holding Pvt. Ltd. which is a shell company as accepted by the director of the company Mr. Murlidhar Lahoti in his statement recorded u/s 132(4) of the Act on 17.08.2017 during the course of search proceeding on him. The AO noted that the unsecured loan was nothing but an accommodation entry and it was intended only to disguise its own black money. The AO issued notice u/s 148 of the Act after taking approval from the competent authority and the assessee complied with the said notice by filing return of income on 31.07.2020. Thereafter, a statutory notices were duly issued and served on the assessee. During the course of assessment proceedings, the assessee furnished before the AO the details/documents as called for from time to time and finally the assessment was framed by the AO by brushing aside the reply of the assessee by making the addition of Rs. 40,00,000/- u/s 68 of the Act.

5. The said order was challenged before the Ld. CIT(A) , however, the Ld. CIT(A) dismissed the appeal of the assessee on legal issue as well as on merit by observing and holding as under:

“4.1 Considered the material evidence and the records as well as the satisfaction recorded in the PCIT’s Approval u/s 151, the above judicial decisions. From the above discussion it is evident that the information available with the AO was sufficient and specific in its nature and the same was duly analyzed by the AO with the statement of accounts of the appellant and records available with the Assessing Officer. Vide Para 5 of the Annexure to the Approval u/s 151 and in the light of transaction details of the appellant with M/s Nikhil Holdings Pvt. Ltd. (NHPL, in short), it has been validly established that M/s NHPL is a bogus/shell company which is carries on transaction only on paper for the purpose of providing accommodation entries in various forms in lieu of commission. The same has also been corroborated from statement given by Shri Murari Dhar Lahoti, Director in NHPL in his reply to various query including question no. 9,11,15 & 19 in course of statement u/s 132(4) dated 17.08.2017. The contention of the appellant that the case was reopened on vague and intangible material is therefore devoid of merits and unsustainable. Thus, ground no. 1 of the appellant is disposed and accordingly dismissed.”

6. After hearing the rival contentions and perusing the material on record, we note that the case of the assessee was reopened 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 and after obtaining approval from the competent authority. The reasons as recorded u/s 148(2) of the Act for reopening of assessment are extracted below for the sake of ready reference:

ANNEXURE	
1	<p>NAME OF THE ASSESSEE M/s. Rahul Premier India Agency Pvt. Ltd.</p>
2	<p>ADDRESS OF THE ASSESSEE FMC Fortuna, 234/3A, A.J.C. Bose Road, Suit No.A4, Kolkata-700020.</p>
3	<p>PAN AABCR2687L</p>
4	<p>ASSESSMENT YEAR 2013-14</p>
5	<p>DETAILS OF ASSESSING OFFICER HAVING JURISDICTION OVER THE CASE ITO, Ward-4(1), Kolkata</p>
<p>REASONS FOR REOPENING OF ASSESSMENT IN THE CASE OF M/S. RAHUL PREMIER INDIA AGENCY PVT LTD, AY : 2013-14, U/S 147 OF THE IT ACT, 1961</p>	
1	<p>BREIF DETAILS OF THE ASSESSEE The assessee-company filed its return of income for A.Y. 2013-14 on 26/09/2013 in the prescribed Form, ITR-6 declaring total Current year Loss of (-) Rs.7,04,798/-. The nature of business declared in Tax Audit Report Contractors, Commission Agents and Trading No scrutiny assessment was made during the under consideration.</p>
2	<p>BRIEF DETAILS OF INFORMATION COLLECTED /RECEIVED BY THE AO Information has been received from the DCIT, Central Circle-2(2), Kolkata as the assessee-company M/s. Rahul Premier India Agency Pvt. Ltd. received fund of Rs.50,00,000/- from M/s. Nikhil Holdings Pvt. Ltd. during the F.Y. 2012-13 relevant to A.Y. 2013-14.</p> <p><u>Assessment proceedings u/s. 153A for the A.Y. 2012-</u></p>

13 to 2018-19 in the case of M/s. Nikhil Holdings Pvt. Ltd belonging to East India Group in the month of December, 2019. The director of M/s. Nikhil Holdings Pvt. Ltd, Murali Dhar Lahoti in his reply to question no 11 of statement recorded on 17/08/2017 u/s.132(4) of the I.T. Act during the course of Search & Seizure proceedings conducted in the case of M/s. Nikhil Holdings Pvt. Ltd accepted that M/s. Nikhil Holdings Pvt. Ltd. is a bogus/shell company which carries on transactions only on paper for the purpose of providing accommodation entries in various forms in lieu of commission. He further accepted that "he used to receive cash from interested beneficiary parties and after layering the amount through various companies in form of share capital/premium, the amount is given as advance to those very beneficiary parties who had given cash at the very first instance". Further, in reply to the question no.15 of statement recorded under oath u/s.131 before the Income Tax Department regarding list of beneficiaries to whom accommodation entry was provided. On perusal of the list, it is seen that the assessee-company has received Rs.50,00,000/- in form of loan and advances which is nothing but an accommodation entry.

3 ANALYSIS OF
 INFORMATION
 COLLECTED/RECEIVED

The information were analysed with the statement of accounts of the assessee-company and records available, it is seen the assessee-company shown bogus unsecured loan from M/s. Nikhil Holdings Pvt. Ltd of Rs.50,00,000/- during the year under consideration.

4 ENQUARIES MADE BY THE AO 360 degree profiling did not reveal the transaction.
 AS SEQUEL TO
 INFORMATION COLLECTED
 RECEIVED /COLLECTED

5 FINDINGS OF THE AO

Perusal of statement recorded of Sri Murali Dhar Lahoti in question no.15, it is clear that the alleged fund so received from M/s. Nikhil Holdings Pvt. Ltd is

nothing but an accommodation entry. Therefore, in the light of definite and specific information, the alleged fund of Rs.50,00,000/- credited into the bank account of the assessee in the guise of unsecured loan is treated as unexplained cash credit in the hands of the assessee-company.

6 **BASIS OF FORMING
 REASON TO BELIEVE
 AND DETAILS OF
 ESCAPEMENT OF
 INCOME**

In the instant case, the assessee company had transacted with M/s. Nikhil Holdings Pvt. Ltd who had no real business activity at all. The identity, genuineness and creditworthiness of the party from whom the assessee-company received fund not to be treated as genuine transaction. Therefore, there was prima facie reason to believe that the source of Rs.50,00,000/- which have been credited into the assessee's bank account from M/s. Nikhil Holdings Pvt. Ltd remained unexplained. The modus operandi was to plough back its own unaccounted money into its bank account through banking channel with the help of entry providers to give colourful devices in the guise of unsecured loans.

In view of the above stated facts and circumstances, I have reason to believe that the sum of **Rs.50,00,000/-** has escaped assessment within the meaning of section 147 of the I.T. Act.

7 **ESCAPEMENT OF INCOME None
 CHARGEABLE TO TAX IN
 RELATION TO ANY ASSETS
 (INCLUDING FINANCIAL
 INTERET IN ANY ENTITY
)LOCATED OUTSIDE INDIA**

8 **APPLICABILITY OF
 PROVISIONS OF
 SECTION 147/151 TO
 THE FACTS OF THE
 CASE**

In this case, a return of income was filed for the year consideration but no scrutiny assessment u/s 143(3) of the Act was made. Accordingly, in this case, the only requirement to initiate proceedings u/s 147 is the reason to believe which has been recorded in para 6.

It is pertinent to mention here that in this case, the assessee-company has filed return of income but no

assessment as stipulated u/s 2(40) of the IT Act, 1961 was made and the return was only processed u/s 143(1) of the Act . In view of the above , provisions of clause (b) of explanation 2 to section 147 are applicable to the facts of the case and the assessment under consideration is deemed to a case where income chargeable to tax amounting to Rs.50,00,000/- has escaped assessment.

In this case , more than four years have elapsed from the end of assessment year under consideration. Hence, necessary sanction to issue notice u/s 148 has been obtained separately from the Principal Commissioner of Income tax as per provisions of section 151 of the IT Act, 1961 .

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refer Digital Signature at the bottom of the page)

6.1. A perusal of the above reasons reveal that the AO had received information from DCIT, Central Circle-2, Kolkata that the assessee company has received Rs. 50,00,000/- from M/s Nikhil Holding Pvt. Ltd. during FY 2012-13 relevant to AY 2013-14. It was also noted that the assessment proceedings u/s 153A for AY 2012-13 to 2018-19 in the case of M/s Nikhil Holding Pvt. Ltd., which belonged to East India Group, were initiated and conducted after search action u/s 132(1) of the Act and director of M/s Nikhil Holding Pvt. Ltd. Mr. Murali Dhar Lahoti in his reply to question no. 11 of the

statement recorded on 17.08.2017 u/s 132(4) of the Act accepted that M/s Nikhil Holding Pvt. Ltd. was a shell bogus company which was engaged in providing accommodation entries. The AO has also referred to the list of beneficiaries to whom the accommodation entries were provided in which the name of the assessee appeared. The AO noted that upon perusal of the said list it was observed that the assessee company had received Rs. 50,00,000/- in the form of loan and advances which was nothing but accommodation entry. Then in para 6 of the reasons recorded, the AO affirmed his belief wherein he stated that the lender company M/s Nikhil Holding Pvt. Ltd. was not having real estate business at all and therefore identity, genuineness and creditworthiness of the parties were not genuine. Therefore, there was prima facie reasons to believe that the source of Rs. 50,00,000/- remained unexplained and in view of the above he had reasons to believe that Rs. 50,00,000/- has escaped assessment. We also note that the assessments in the case of M/s Nikhil Holding Pvt. Ltd. were framed u/s 143(3) read with Section 153A of the Act in all the assessment years consequent to search and it was accepted that the said company was genuine. Further even the loan confirmation was filed by the assessee. We even observe that the AO straightaway re-opened the assessment which is clear from the fact that the loan received was of Rs. 40.00 lacs and not Rs. 50.00 as noted by the AO in the reasons recorded and therefore there was no independent application of mind by the AO. In our opinion the AO is duty bound to first enquire into the issue after receiving information otherwise the re-opening can not be sustained. The case of the assessee is squarely covered by a series of decisions namely SFIL Stock Broking 325 ITR 285 (Del), and Signature Hotel Pvt Ltd VS ITO 338 ITR 51 (Del). In both the above decisions, the Hon'ble court has held that the AO has to apply his mind to the information received and independently arrive at a belief that income has escaped. In the case of CIT Vs Insecticide India Ltd. 357 ITR 330(Del) the Hon'ble Court has held that the re-opening can not be made on the reasons which did not mention the details of transaction which have escaped assessment and is vague and uncertain. We therefore respectfully following the above decisions, quash the re-opening of assessment as well as the consequent order. Accordingly, ground raised by the assessee is allowed.

7. 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- Rahul Premier India Agency Pvt. Ltd., 234/3A, FMC Fortuna, A.J.C. Bose Road, Suite No. 4A, 5th Floor, Kolkata-700020
2. Respondent – DCIT, Circle-4(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