

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. 1386/Kol/2024
Assessment Year: 2013-14

Ganeshvani Tradelink Pvt. Ltd. (PAN: AAECG 0399 R)	Vs.	ITO, Ward-13(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 Giridhar Dhelia, A.R
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 25.04.2024 for the AY 2013-14.

2. The assessee has raised a legal issue before us challenging the assessment order framed u/s 147 read with Section 144B of the Act dated 30.03.2022 after a period of

four years from the end of relevant assessment year without satisfying the conditions as enumerated in first proviso to section 147 of the Act and accordingly the reopening of assessment is non-est and invalid and may be quashed.

3. Facts in brief are that the assessee filed return of income on 24.09.2013 declaring total income of Rs. 9,010/-. The case of the assessee was selected for scrutiny and assessment order framed u/s 143(3) vide order dated 12.11.2015 assessing the total income at Rs. 40,416/- by making an addition of Rs. 31,406/-. Subsequently, the AO received information from DDIT(Inv), Unit-4(2), Kolkata on 18.06.2018 stating that the assessee had made transactions with M/s Karnimata Commodal Pvt. Ltd. which is relating to M/s KCA Allied Services Pvt. Ltd. it was further stated that the suspicious transactions of large amounts were conducted through the bank account of the assessee. The AO further noted that the assessee received Rs. 10,78,000/- from shell companies of Rajesh Kumar Bhutoria and Lalit Kumar Perwal. Finally, the assessment was reopened u/s 147 by issuing notice u/s 148 of the Act on 29.04.2020 requiring the assessee to file return of income on or before 28.05.2020 which was not complied with. Finally the assessee vide letter dated 08.02.2021 stated that the return of income which was filed on 24.09.2013 may be treated as filed in response to notice issued u/s 148 of the Act. The AO after calling for necessary information /details from the assessee added a sum of RS. 10,78,000/- to the income of the assessee received as share premium by treating the same as unexplained cash credit vide assessment order dated 30.03.2022 passed u/s 147 of the Act.

4. In the appellate proceedings, the Ld. CIT(A) simply affirm the order on legal issue.

5. After hearing the rival contentions and perusing the material on record including the reasons record u/s 148(2) of the Act copies of which is placed at page no. 33 & 34 of the PB, we note that in this case the assessment was framed u/s 143(3) of the Act vide order dated 12.11.2015. We note that during the original course of proceedings, the issue of share capital/ share premium from different parties was examined and even

summons u/s 131 of the Act were issued to the parties for verification of the genuineness and replies received from them which were duly placed on record. We note that Shri Gaurav Kumar Jhawar, director of M/s Karnimata Commodeal Pvt. Ltd. appeared on 05.10.2015 before the AO and filed necessary documents and accordingly the assessment was framed without making any addition. Thereafter the AO received information from DDIT(Inv), Unit-4(2), Kolkata that the assessee is beneficiary of accommodation entry amounting to Rs. 10,78,000/- from the above said party and accordingly the case of the assessee was reopened u/s 147 of the Act. The reasons recorded are available at page 33-34 of the PB. Apparently the case of the assessee was reopened after a period of four years from the end of relevant year, therefore, the reopening could have been made by the AO in consonance with the first proviso to section 147 of the Act which provides that the reopening only be made by the AO beyond the four years under first proviso if the escapement of income is attributed to the failure of the assessee to disclose fully and truly all the material facts qua the said income. However, a perusal of the reasons recorded reveal that the AO has in the last para has noted that the four years have relapsed from the end of relevant assessment year 2013-14 and income chargeable to tax as escaped from more than Rs. 1 lakhs and has no whisper even as to how the income has escaped assessment because of failure of the assessee to fully and truly disclose the material facts qua the said income during the assessment proceedings. Therefore, the reopening of assessment is not in consonance with first proviso to Section 147 of the Act and is accordingly void ab-initio and cannot be sustained. The case of the assessee finds support from the decision of Hon'ble Supreme Court in the case of ACIT vs. CEAT Ltd. (2022) 449 ITR 171(SC) wherein the Hon'ble Court has held that the AO has first to demonstrate the failure on the part of assessee failing which the reopening is bad in law. Accordingly, we quash the reassessment proceedings as well as assessment order framed by the AO.

6. 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- Ganeshvani Tradelink Pvt. Ltd., 6th Floor, 7, Tara Chand Dutta Street, Burrabazar-700073.
2. Respondent – ITO, Ward-13(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