

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, KOLKATA

[Before Shri Rajesh Kumar, AM& Shri Pradip Kumar Choubey, JM]

I.T.A. No. 333/Kol/2024
Assessment Year: 2015-16

M/s. Royal Touch Fablon Pvt. Ltd. 44, Synagogue Street, Kolkata-700001. (PAN: AABCR5842F)	Vs.	Deputy Commissioner of Income Tax, Circle-4(1), Kolkata.
Appellant		Respondent

Date of conclusion of Hearing	18.09.2024
Date of Pronouncement	15.10.2024
For the Assessee	Shri Sunil Surana, AR
For the Respondent	Shri Sallong Yaden, Addl. CIT, DR

ORDER

Per Shri Rajesh Kumar, AM

This appeal filed by the assessee is against the order of Ld. CIT(A), NFAC, Delhi dated 05.02.2024 for AY 2015-16 arising out of assessment order passed u/s. 147 r.w.s. 144B of the Income Tax Act, 1961 (hereinafter referred to as the “Act”) by Assessing Officer, Income Tax Department, National Faceless Assessment Centre, Delhi dated 27.03.2022.

2. The issue raised in ground nos. 1 and 2 is against the initiation of reassessment proceeding without fulfilling the condition as enumerated u/s. 147 of the Act and without independent application of mind. The assessee has also raised another legal issue challenging the order of Ld. CIT(A) confirming the action of the AO while the assessment is bad in law in view because of notice u/s. 143(2) not being issued within the time allowed under the Act.

3. The facts in brief are that the assessee filed return of income on 30.09.2015 for AY 2015-16 declaring total income of Rs.4,94,23,820/- which was processed u/s. 143(1) of the Act on 02.12.2015. Thereafter, AO received information regarding coordinated and premeditated trading on the Bombay Stock Exchange yielding non-genuine business loss/gains to various parties/entities. The information received also mention that the present

assessee is also beneficiary of the same manipulation. The case of the assessee was reopened u/s. 147 of the Act by issuing notice u/s. 148 of the Act on 27.03.2021, which was complied with by the assessee vide letter dated 30.03.2021 stating that original return of income may kindly be treated as returned filed in response to notice issued u/s. 148 of the Act. Thereafter, notice u/s. 142(1) of the Act was issued to the assessee along with questionnaires calling upon the assessee to furnish the information/details as mentioned therein. Pertinent to mention that notice u/s. 143(2) of the Act along with reasons for reopening was sent to the assessee on 18.01.2022. The assessee furnished before the AO the information/details as were called for. Finally, the addition was made of Rs.3,53,93,269/- which was calculated by subtracting profit shown by the assessee of Rs.4,45,03,881/- from the total consideration of Rs.7,98,97,150/- and thus added to the income u/s. 68 read with section 115BBE of the Act in the assessment framed vide order dated 27.03.2022 passed u/s. 147 read with section 144B of the Act.

4. The assessee challenged the said order before Ld. CIT(A) on legal issue against the reopening of assessment that too without satisfying the conditions as enumerated u/s. 147 of the Act and also on the ground that the notice u/s. 143(2) of the Act was issued beyond time as provided under the Act. However, the contentions/submissions of the assessee did not find favour with the first appellate authority and the appeal of the assessee was dismissed on the legal issue by the Ld. CIT(A).

5. The Ld. AR vehemently pointed out before us by referring to the paper book page nos. 14 to 22 that the said notice was issued on 18.01.2022 whereas the said notice should have been issued under the Act till 30.09.2021. The Ld. AR referred to the e-proceedings response acknowledgment dated 25.12.2021 wherein it has been mentioned in the remark column that assessee has already filed a letter through e-mail on 30.03.2021 at Kolkata.dcit4.1@incometax.gov.in in response to the notice u/s. 148 and, therefore, filing of income tax return u/s. 148 through letter is sufficient compliance under the Act. The assessee also stated that there is no requirement to file another return electronically u/s. 148 as original return has to be treated as return filed in response to sec. 148. The assessee also referred to the decision of Hon'ble Rajasthan High Court in the case of Kanhaiya Lal & Ors.

154 ITR 109 and the decision of Hon'ble Allahabad High Court in the case of Anand Kumar Sharma 198 ITR 121. Thus, the Ld. AR submitted that this communication to the department by just a reiteration of already sent e-mail to the department to the effect that original return filed u/s. 139(1) be treated as filed response to sec. 148. Ld. AR, therefore, submitted that the notice u/s. 143(2) is barred by limitation thereby rendering the assessment framed consequentially as non est, invalid and nullity in the eyes of law. In defense of his arguments, Ld. AR relied on the decision of Coordinate Bench in the case of Alma Assets Consultancy Ltd. in ITA No. 1092/Kol/2023 dated 20.05.2024 wherein the identical issue has been decided in favour of the assessee by the Coordinate Bench after referring to various High Court decisions. The second plea taken by the counsel for the assessee was that the assessment has been reopened without application of mind by the AO because the reasons recorded were full of infirmities and mistakes. The Ld. AR while referring to the reasons recorded u/s. 148(2), a copy of which is filed at page 5 to 13 of the paper book, stated at most of the places that assessee has incurred huge fictitious losses in trading of derivatives. The Ld. AR referred to page 6 para 3, page 7 para 5 and at so many other places that assessee incurred loss in derivative trading. However, on page 13 the AO has mentioned about the profit made by the assessee from such derivative trading to the tune of Rs.4,45,17,500/- which according to the AO is a non-genuine profit resulting into escapement of income. The Ld. AR vehemently submitted that the reasons recorded without application of mind and in a mechanical manner which itself rendered the reopening of assessment bad in law. The Ld. AR stated that the AO has not made any addition of Rs.4,45,17,500/- being alleged non-genuine profit resulting from derivative trading in the assessment framed u/s. 147 of the Act read with sec. 144B dated 27.03.2022 and the addition was made in respect of part of the consideration amounting to Rs.3,53,93,269/-. Pertinent to mention that the gross trades executed were to the tune of Rs.7,98,97,150/- which according to the AO, should be treated as unexplained cash credit u/s. 68 of the Act in the account of the assessee but profit shown by the assessee suo motto of Rs.4,45,17,500/- in the return of income, therefore according to the AO the remaining amount of Rs. 3,53,93,269/- needed to added and was accordingly added. The Ld. AR submitted that once the addition is not made in respect of the item of income which was

subject matter of the reasons recorded by the AO then no other addition could be made to the income of the assessee. The Ld. AR relied on the decision of Hon'ble jurisdictional High Court decision in the case of CIT Vs. M/s. Infinity Infotech Parks Ltd. in GA No. 1736 of 2014 dated 15.11.2022 and the decision of Coordinate Bench in the case of Ganesh Steel & Alloys in ITA No. 929/Kol/2023 dated 11.06.2024. The Ld. AR, therefore, prayed that the reopening of assessment may kindly be quashed on two counts one the statutory notice u/s. 143(2) is barred by limitation and second that no addition was made for the reasons recorded in the assessment framed and also recording of reasons due to non-application of mind by the AO.

6. On the Other hand, Ld. DR relied on the orders of the lower authorities.

7. After hearing the rival contentions and perusing the material on record, we find that the case was reopened by the AO u/s. 147 of the Act by issuing notice u/s. 148 of the Act on 27.03.2021. We note that the assessee vide e-mail to the department on 30.03.2021 stated that the return filed originally may be treated as return filed in response to notice u/s. 148 of the Act. We also note that notice u/s. 143(2) was issued on 18.01.2022. Now, the issue before us whether the additions made by the AO were without jurisdiction for the reason that no addition was made in respect of the item of income referred to in the reasons recorded which according to the AO has escaped assessment. We have considered the facts carefully as placed before us and find that in this case the AO has mentioned in the reasons recorded that assessee has made a non-genuine profits of Rs.4,45,17,500/- by trading in derivatives on BSE which has resulted into the escapement of income whereas no addition was made in respect of that profits because the assessee has suo moto disclosed the entire profit in the return of income. However, the AO added Rs.3,53,93,269/- which was calculated by reducing profits on the derivatives of Rs.4,45,03,881/- from the total value of derivative credits of Rs.7,98,97,150/-. It is pertinent to note that there is no consideration while trading in derivatives as the net amount of profit and gain are only shown in the assessee's accounts. Thus, it is clear from the above that no addition has been made in respect of the profits made on account of derivative trading on BSE platform. Therefore, in our opinion, no other addition could be made. The case of the assessee finds support from

the decision of Hon'ble jurisdictional High Court in the case of M/s. Infinity Infotech Parks Ltd. (supra) wherein the Hon'ble Calcutta High Court has held by following the decision of Hon'ble Bombay High Court in the case of CIT Vs. Jet Airways (I) Ltd. [2011] 331 ITR 236 and also Hon'ble Delhi High Court decision in the case of Ranbaxy Laboratories Vs. CIT 336 ITR 136 (Del.) that where the income the escapement of which was the foundation for recording of reasons to believe, is not assessed or reassessed in the order u/s. 147, then it is not mere opened to the AO to independently assess any other income, which comes to his notice subsequently during the course of re-assessment proceedings. The similar ratio has been laid down by the Coordinate Bench in Ganesh Steel & Alloys (supra) after following the decision of the Hon'ble Bombay High Court and, therefore, we are inclined to quash the reopening proceeding as well as the consequent order framed by the AO. Since we have allowed the appeal of the assessee on legal issue the other grounds raised on merit and legal issues are not being adjudicated at this stage and the same are being left open to be decided if the need arises.

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

Order is pronounced in the open court on 15th October, 2024

Sd/-
(Pradip Kumar Choubey)
Judicial Member

Sd/-
(Rajesh Kumar)
Accountant Member

Dated: 15th October, 2024

JD, Sr. PS

Copy of the order forwarded to:

1. Appellant–M/s. Royal Touch Fablon Pvt. Ltd.
2. Respondent – DCIT, Circle-4(1), Kolkata.
3. CIT(A), NFAC, Delhi
4. Pr. CIT
5. DR, ITAT, Kolkata,
True Copy

By Order

Assistant Registrar
ITAT, Kolkata Bench, Kolkata