

**IN THE INCOME TAX APPELLATE TRIBUNAL "PATNA" BENCH: PATNA
VIRTUAL HEARING AT KOLKATA**

[Before Shri Rajesh Kumar, Accountant Member & Shri Pradip Kumar Choubey, Judicial Member]

**I.T.A. No. 263/PAT/2023
Assessment Year: 2012-13**

M/s Ganesh Ram Dokania (PAN: AADFG 1795 P)	Vs.	ACIT, Central Circle-2, Patna
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	31.07.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	15.10.2024
For the Appellant/ निर्धारिती की ओर से	Manish Rastogi, Advocate
For the Respondent/ राजस्व की ओर से	Rinku Singh, CITDR

ORDER / आदेश

Per Rajesh Kumar, AM:

This is the appeal preferred by the assessee against the order of the Ld. Ld. Commissioner of Income Tax (Appeal)-NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)"] dated 03.07.2023 for the AY 2012-13.

2. At the time of hearing, the assessee has pressed only the legal issue which is against the order of Ld. CIT(A) confirming the action of AO in initiating the

reassessment proceedings u/s 148 of the Act which is wrong, invalid, illegal and unjustified in the facts and circumstances of the case.

3. Facts in brief are that the premises of the assessee were searched u/s 132 of the Act on 01.08.2024 which finally culminated in passing of assessment order u/s 153A read with Section 144 of the Act dated 27.12.2016. During the above search assessment proceedings, the counsel of the assessee appeared before the AO from time to time and furnished the details as called for including the details in respect of loans raised by the assessee during the assessment year in response to query by the AO. Thereafter the assessment was reopened u/s 147 of the Act by issuing notice u/s 148 of the Act dated 28.03.2018 after recording a reasons to believe u/s 148(2) of the Act that the assessee was beneficiary of accommodation entries to the tune of Rs. 3,20,00,000/-. The assessment was framed u/s 147 of the Act vide order dated 24.12.2018 making the addition of Rs. 3,20,00,000/- u/s 68 of the Act to the income of the assessee in respect of loan raised from M/s Manali Commotrade Pvt. Ltd. .

4. The assessment order framed u/s 147 of the Act was assailed before the Ld. CIT(A) but was confirmed by ld CIT(A) on legal issue by holding that the assessment was validly re- opened as there was a clear linkage with the information available with the AO and formation of belief that income chargeable to tax has escaped assessment and thus justified the reopening of assessment.

5. The Ld. A.R vehemently submitted before us that the assessment has been reopened by the AO u/s 147 of the Act by issuing notice u/s 148 on 28.03.2018 after recording a reasons to believe u/s 148(2) of the Act a copy of which is filed at page 3 of PB. The Ld. A.R., while referring to the reasons recorded by the AO , submitted that the assessee had not raised Rs. 3,20,00,000/- from M/s Manali Commotrade Pvt. Ltd. but in fact raised Rs. 50,00,000/- in aggregate on two dates each namely on 12.04.2011 Rs. 25,00,000/- and on 13.04.2011 Rs. 25,00,000/-. The Ld. A.R submitted that the information received by the AO from the investigation wing has been acted upon by the AO without doing any enquiry or exercise at his end which is

just a borrowed satisfaction as the same was believed as it was received without any independent application of mind. Thus this is just a borrowed satisfaction on the part of the AO for reopening the already settled assessment in which the issue of loans raised by the assessee has duly been examined by the AO after calling for details/information qua the loans and also calling for details from the loan creditors u/s 133(6) of the Act. The Ld. A.R also referred to page 28 and 29 of PB which is a remand report called for by the Ld. CIT(A) from the AO during the appellate proceedings in the first round of proceedings before the appellate authority which was submitted by the AO on 04.05.2017 in which the AO had clearly stated that during assessment proceedings u/s 153A of the Act the books of accounts, audited report, acknowledgments by third parties, bank statements, confirmation of loans from various parties were furnished by the assessee and notices were issued to various parties and replies were also received u/s 133(6) of the Act with no adverse remarks. The Ld. A.R also stated that in the notice issued u/s 142(1) dated 11.11.2016 wherein the specific query was asked vide para 22 which was duly replied and details were furnished before the authorities below in the assessment proceedings u/s 153A. The Ld. A.R therefore prayed that the reopening of assessment by the AO is invalid and void-ab-initio on the ground of being on borrowed satisfaction and also sans any independent application of mind to the information received from the Investigation Wing. The ld AR argued that once the reasons are recorded and notice issued pursuant thereto, then thereafter no addition or deletion or substitution in the said is allowed and they have to be read as they are recorded. The ld AR therefore prayed that the reopening of assessment may kindly be quashed. In defense of argument the Ld. A.R relied on the following decisions namely M/S Hindusthan Lever Ltd. R. B. Wadkar, ACIT in [2004] 268 ITR 332 (Bom), PCIT Vs Meenakshi Overseas Pvt Ltd (2017) 82 taxmann.com 300 (Del), CIT vs. SFIL Stock Broking Ltd. in [2010] 325 ITR 285 (Del), PCIT Vs Shodiman Investment Pvt Ltd (2018) 93 taxmann.com 153 (Bom) and Sarthak Securities Co Pvt Ltd. Vs ITO (2010) 329 ITR 110 (Del).

6. The Ld. D.R on the other hand submitted that while reopening the assessment only information is required to be there in the possession of the AO which is the only requirement and is a valid ground for reopening u/s 147 of the Act and therefore the action u/s 147 of the Act was validly initiated by the AO. The ld DR further submitted that the assessee did not appear before the AO and therefore the issue may be restored to the file of AO for examination afresh and consequently may be decided as per the facts and law.

7. After hearing the rival contentions and perusing the material on record, we find that the assessment has originally been framed u/s 153A of the Act by the AO following search action u/s 132 of the Act on the assessee. We note that in the said assessment proceedings, the issue of loans raised by the assessee was examined by the AO as is abundantly clear from the facts before us. We note that thereafter the case was reopened u/s 147 of the Act by issuing notice u/s 148 on 28.03.2018 by recording a reasons to believe u/s 148(2) of the Act after the AO received information from the investigation wing which are extracted below:

GANESH RAM DOKANIA (PAN : AADFGI795P)

AY : 2012-13

Reason for selection

Information has been received from ADIT (Investigation), Unit 6, Kolkata that the company M/s Manali Commotrade Pvt Ltd was engaged in routing of funds during FY 2011-12 and the funds received by the company was immediately transferred to other concerns bank accounts for finally providing entries to beneficiaries by crediting its accounts with the routed funds. The trail of funds is as below:

particulars	Bank	Date	Amount
Ambika Trading co	DCB	11-4-2011	900000(cash)
P P enterprises	DCB	12-4-2011	900000 (trf)
Manali Commotrade	DCB	12-4-2011	1800000 (trf)
RTGS: Neogrowth Vyapaar		12-4-2011	2500000 (rtgs)
M/s Ganesh Ram Dokania		13-04-2011	70,00,000 (beneficiary)

particulars	Bank	Date	Amount
Ambika Trading co	DCB	12-4-2011	500000(cash)
Saraswati and Co	DCB	13-4-2011	500000 (trf)
Manali Commotrade	DCB	13-4-2011	2500000 (trf)
RTGS: Neogrowth Vyapaar		13-4-2011	2500000 (rtgs)
M/s Ganesh Ram Dokania		18-04-2011	2,50,00,000 (beneficiary)

M/s Ganesh Ram Dokania received funds to the tune of Rs 3,20,00,000 /- by way of routing materialized by Manali Commotrade Pvt Ltd during the FY 2011-12 relevant to the AY 2012-13. /-

8. We find from the perusal of above reasons that the AO has wrongly noted that assessee had received an aggregate of Rs. 3,20,00,000/- from M/s Manali Commotrade Pvt. Ltd. on two dates namely Rs. 70,00,000/- on 13.04.2011 and 2,50,00,000/- on 18.04.2011 whereas as a matter of fact the assessee had received only Rs. 50,00,000/- in aggregate on two dates from M/s Neogrowth vyapaar Pvt. Ltd. i.e. on 12.04.2011 Rs. 25,00,000/- and on 13.04.2011 Rs. 25,00,000/- meaning thereby the no money had been raised from M/s Manali Commotrade Pvt. Ltd. as is apparent from the above reasons recorded by the AO and therefore there has been complete non-application of mind by the AO and is also a clear-cut case of borrowed satisfaction as information received from the Investigation Wing had been believed as it was without doing any verification to the facts and record available before him. In our opinion, the reopening of assessment based on borrowed satisfaction and also in case where there was non-application of mind to the facts available before the AO is invalid and void-ab-initio. In the instant case, as against the loan of Rs. 50,00,000/- the AO has wrongly noted Rs. 3,20,00,000/- meaning thereby that the AO has not applied his mind to the information received from the Investigation Wing. Under the facts and circumstances of the case we are not in a position to confirm the order of Ld. CIT(A) on this issue which appear to be contrary to the provisions of the Act. The case of the assessee finds support from the following decisions The case of the assessee finds support from the decisions of Hon'ble Delhi High Court in the case of CIT vs. SFIL Stock Broking Ltd. in [2010] 325 ITR 285 (Del) and in the case of *ACIT vs Meenakshi Overseas Pvt. Ltd.* [2017] 82 taxmann.com 300 (Del), wherein it was held that the AO has to apply his mind to the information and independently arrived at a belief that income had escaped assessment otherwise the reopening of assessment cannot be sustained. The Hon'ble Delhi High Court

has held that *where the reasons to believe contain not the reasons but the conclusions of the AO one after the other and there was no independent application of mind by the AO to the tangible material which forms the basis of the reasons to believe that income has escaped assessment.* The Hon'ble High Court has held that *the conclusions of the AO are at best a reproduction of the conclusion in the investigation report. Indeed it is a borrowed satisfaction.* In our opinion, the reasons have to be read as were recorded by the AO and no substitution or addition or deletion are allowed at a later stage for the reasons that the AO by reopening the assessment is unsettling the already settled assessment of the assessee. In our opinion the AO is supposed to exercise utmost care and caution in the matter of exercising the jurisdiction us u/s 147 of the Act. We are fortified in our conclusion by the decision of Hon'ble Bombay High Court in the case of Hindusthan Lever Ltd. R. B. Wadkar, ACIT in [2004] 268 ITR 332 (Bom). The relevant para is extracted as below:

“20. The reasons recorded by the Assessing Officer nowhere state that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment of that assessment year. It is needless to mention that the reasons are required to be read as they were recorded by the Assessing Officer. No substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn based on reasons not recorded. It is for the Assessing Officer to disclose and open his mind through reasons recorded by him. He has to speak through his reasons. It is for the Assessing Officer to reach to the conclusion as to whether there was failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the concerned assessment year. It is for the Assessing Officer to form his opinion. It is for him to put his opinion on record in black and white. The reasons recorded should be clear and unambiguous and should not suffer from any vagueness. The reasons recorded must disclose his mind. Reasons are the manifestation of mind of the Assessing Officer. The reasons recorded should be self-explanatory and should not keep the assessee guessing for the reasons. Reasons provide link between conclusion and evidence. The reasons recorded must be based on evidence. The Assessing Officer, in the event of challenge to the reasons, must be able to justify the same based on material available on record. He must disclose in the reasons as to which fact or material was not disclosed by the assessee fully and truly necessary for assessment of that assessment year, so as to establish vital link between the reasons and evidence. That vital link is the safeguard against arbitrary reopening of the concluded assessment. The reasons recorded by the Assessing Officer cannot be supplemented by filing affidavit or making oral

submission, otherwise, the reasons which were lacking in the material particulars would get supplemented, by the time the matter reaches to the Court, on the strength of affidavit or oral submissions advanced.”

8.1. Similar ratio has been laid down by the other High Courts also in the above decisions cited before us. Considering the facts of the case in the light of the ratio laid down in the above decisions , we find that the AO has re-opened the assessment absolutely without application of mind and without making any further enquiries on the information received from the investigation wing. In our view the re-opening has been made just on borrowed satisfaction of ADIT which cannot be a basis of re-opening of assessment u/s 147 of the Act. Therefore , we quash the re-opening of assessment u/s 147 of the as well as the assessment framed pursuant thereto.

9. In the result, the appeal of the assessee is allowed on legal issue.

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

Sd/-

(Pradip Kumar Choubey /प्रदीप कुमार चौबे)

Judicial Member/न्यायिक सदस्य

SM, Sr. PS

Sd/-

(Rajesh Kumar/राजेश कुमार)

Accountant Member/लेखा सदस्य

Dated: 15th October, 2024

Copy of the order forwarded to:

1. Appellant- M/s Ganesh Ram Dokania, Flat No. 203, Basudeo Vihar Apartment, Parmananda Path, Nageswar Colony, Boring Road, Patna-800001.
2. Respondent – ACIT, Central Circle-2, Patna
3. Ld. CIT(A)-NFAC, Delhi
4. Pr. CIT- , Patna
5. DR, Patna Bench, Patna

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata