

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"C" BENCH, MUMBAI**

**BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER**

**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No. 3240/MUM/2024**

**(Assessment Year : 2012-13)**

**International Transmission Ltd.**

501, 5<sup>th</sup> Floor, Vasudeo Chambers,  
Mulund Goregaon Link Road,  
Bhandup (W),  
Mumbai - 400078  
PAN: AAACI0975M

..... Appellant

v/s

**DCIT,**

Circle-15(1)(2),  
Mumbai

..... Respondent

Assessee by : Shri V.G. Ginde, Adv.

Shri Kumar Kale, Adv.

Revenue by : Shri Virabhadra S. Mahajan, Sr.DR

Date of Hearing - 03/10/2024

Date of Order - 16/10/2024

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

1. The present appeal has been filed by the assessee challenging the impugned order dated 03/06/2024 passed under section 250 of the Income Tax Act, 1960 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2012-13.

2. In this appeal, the assessee has raised the following grounds: –

*"Being aggrieved by the order dated 03.06.2024 passed by the learned Commissioner of Income Tax (Appeals), Income Tax Department, National Faceless Appeal Centre, Delhi ["Ld. CIT(A)"] u/s. 250 of the Income-tax Act, 1961 ("Act"), your appellant prefers this appeal, among others, on the following grounds of appeal, each of which is without prejudice to, and independent of, the other:*

*1. On the facts and in the circumstances of the case, and in law, the Ld. CIT(A) erred in upholding legal validity of the reassessment proceedings under section 147 of the Act. Your appellant submits that the Ld. CIT(A) failed to appreciate, and ought to have held, that the reassessment proceedings is bad in law because –*

*(a) the Ld. AO had no jurisdiction to issue a notice u/s.148 of the Act beyond 4 years from the end of the relevant assessment year since the conditions of the first proviso to Section 147 were not satisfied in the appellant's case. The Ld.AO did not even allege that there was any failure on the part of the appellant to fully and truly disclose all material facts necessary for its assessment;*

*(b) the Ld. AO's belief that income chargeable to tax has escaped assessment in the appellant's case is based on wrong facts;*

*(c) there is no live nexus or link between the reasons recorded and the Ld. AO's belief that income chargeable to tax has escaped assessment in the appellant's case;*

*(d) the assessment has been reopened by the Ld. AO merely on borrowed satisfaction' without making any independent inquiry and applying his mind; and*

*(e) the Ld. Pr. CIT granted sanction u/s.151 of the Act in a mechanical manner, without due application mind, and therefore, it is no sanction as contemplated in law.*

*Your Appellant, therefore, prays that the assessment order u/s.143(3) r/w Section 147 of the Act dated 28.12.2019 be quashed.*

*2. On the facts and in the circumstances of the case, and in law, the Ld. CIT(A) erred in confirming the addition of Rs.50,00,000/- made u/s.68 of the Act by the Ld. AO. Your Appellant, therefore, prays that the addition of Rs.50,00,000/ - made u/s.68 be deleted.*

*3. Your appellant craves leave to alter, modify, amend or delete any of the above grounds of appeal, or to add one or more new ground(s), as may be necessary."*

3. In the present case, the assessee has challenged the validity of the reopening of the assessment under section 147 of the Act on various

grounds and has also challenged the addition made by the AO under section 68 of the Act. Since the grounds challenging the reopening of assessment under section 147 of the Act have raised jurisdictional issues, therefore the same are considered at the outset.

4. As far as the issue relating to the validity of reopening under section 147 of the Act, the brief facts are that the assessee is engaged in the business of manufacturing various types of transmission line tower hardware, accessories and allied products used in power transmission systems. For the year under consideration, the assessee filed its original return of income on 28/09/2012 declaring a total income of Rs. 2,36,47,520. The return filed by the assessee was selected for scrutiny and statutory notices under section 143(2) and section 142(1) of the Act along with a questionnaire were issued and served on the assessee. The Assessing Officer ("AO") vide order dated 13/11/2014 passed under section 143(3) of the Act assessed the total income of the assessee at Rs. 2,39,19,410, after making certain disallowances.

5. Subsequently, after the expiry of 4 years from the end of the relevant assessment year, notice under section 148 of the Act was issued on 30/03/2019 on the basis of the information received from DDIT (Investigation), Unit-4 (2), Kolkata that the assessee is a beneficiary of accommodation entries amounting to Rs. 50 lakh through the companies in the form of bogus share capital/share premium/unsecured loans, etc. thereby resulting in escapement of income chargeable to tax. In response to the aforesaid notice, the assessee filed its return of income on 03/04/2019.

After receiving the reasons recorded by the AO for reopening the assessment, the assessee filed detailed objections against the initiation of reassessment proceedings for the assessment year 2012-13, which were disposed of by the AO vide order dated 29/08/2019. The AO vide order dated 28/12/2019 passed under section 143(3) r/w section 147 of the Act assessed the total income of the assessee at Rs. 2,89,19,410 after making an addition of Rs. 50 lakh.

6. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee by observing as follows: -

*"4.3The appellant has not denied that they were in receipt of loan from M/s.Wattkins Commerce Pvt. Ltd. It was claimed that loan confirmation letter was submitted during the original assessment proceedings. This transaction was later detected by the Investigation Directorate that these companies were involved in providing accommodation entries. As the appellant themselves admitted the receipt of money from M/s. Wattkins Commerce Pvt. Ltd. and that company had received the fund from M/s. Truthful Suppliers Pvt. Ltd. through M/s. Frontier Tradecom Pvt. Ltd. through layering, the addition made by the AO is upheld. The grounds taken are dismissed."*

Being aggrieved, the assessee is in appeal before us.

7. During the hearing, the learned Authorised Representative ("learned AR"), at the outset, inter-alia, submitted that there is no allegation in the reasons recorded for initiating the reassessment proceedings that income has escaped assessment due to failure of the assessee to disclose fully and truly all material facts.

8. On the other hand, the learned Departmental Representative vehemently relied upon the orders passed by the lower authorities and

submitted that proceedings under section 147 of the Act had correctly been initiated by the AO in the present case.

9. We have considered the submissions of both sides and perused the material available on record. In the present case, the return of income filed by the assessee was selected for scrutiny and assessment was concluded vide order passed under section 143(3) of the Act. However, after the expiry of 4 years from the end of the relevant assessment year, notice under section 148 of the Act was issued to the assessee. While initiating the reassessment proceedings, the AO recorded the following reasons for reopening the assessment: -

*"Reasons for the belief that income has escaped assessment*

- 1. Return of income for A.Y. 2012-13 was filed by the assessee on 28.09.2012 declaring total income of Rs. 2,36,47,520/- under normal provisions. Assessment u/s. 143(3) of the I.T.Act was completed on 13.11.2014 determining the total income at Rs. 2,39,19,410/- under normal provisions.*
- 2. In this case Information has been received from Dy. Director of Income Tax (Investigation) Unit-4(2), Kolkata on 11.03.2019, regarding Entry Operator Shri Pravin Agarwal Director of M/s. Truthful Suppliers Private Limited. During the statement of Shri Pravin Agarwal has admitted under oath that he is engaged in the business of providing accommodation entries through the web of companies in the form of bogus share capital/share premium, pre-arranged bogus LTCG/STCL and unsecured loans etc. to various beneficiaries /parties in lieu of commission.*
- 3. In view of the above facts, the beneficiaries companies/entities/individuals have brought back their unaccounted income their regular books of account of bogus share/share premium, unsecured loans etc.*
- 4. As per information M/s. International Transmission Limited (PAN: AAACI0975M) has been taken accommodation entries amounting to Rs.50,00,000/- from M/s. Truthful Suppliers Private Limited. The above company involved in providing accommodation entries in the form of sale of bogus investment/unsecured loans/share premium etc to the beneficiary concerns, thereby assisting in tax evasion on a large scale. On perusal of ITR and Financial statement of the assessee company available on system has*

*been verified and match with information provided by the Investigation Wing.*

*5. Therefore, in view of these, I have reason to believe that income chargeable to tax of Rs.50,00,000/- has escaped assessment within the meaning of provision of section 147. Therefore, your approval to issue notice u/s. 148 is required within the meaning of section 151(2) of the I.T. Act. Notice u/s.148 will be issued after obtaining necessary approval."*

10. As per the assessee, in the aforesaid reasons recorded by the AO there is no allegation of any failure on the part of the assessee to disclose truly and fully all material facts, which is a paramount condition for invoking reassessment proceedings under section 147 of the Act, after expiry of 4 years from the end of the relevant assessment year, in case where an assessment under section 143(3) of the Act has been made.

11. At this stage, it is relevant to analyse the provisions of the first proviso to section 147 of the Act, as it stood prior to its substitution by Finance Act 2021, which reads as follows: -

*"Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year."*

12. Thus, as per the first proviso to section 147 of the Act, in a case where the assessment was completed under section 143(3), reassessment under section 147 can be done after the expiry of 4 years from the end of the relevant assessment year, only if income has escaped assessment (i) due to failure on the part of the assessee to make a return under section 139 or in

response to the notice issued under section 142(1) or section 148; or (ii) due to failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment. In the present case, from the facts, it is evident that assessment was completed in the case of the assessee under section 143(3) of the Act. Further, notice under section 148 of the Act was issued on 30/03/2019 i.e. beyond a period of 4 years from the end of the relevant assessment year i.e. 2012-13. Therefore, it needs to be examined whether the conditions prescribed in the first proviso to section 147 of the Act are satisfied in the present case. There is no dispute that return of income was filed by the assessee under section 139(1) of the Act. Further, from the perusal of the reasons recorded for reopening the assessment, as noted above, we find that there is not even an allegation by the AO that income chargeable to tax has escaped assessment due to failure on the part of the assessee to disclose fully and truly all material facts.

13. In this regard, it is relevant to note the following observations of Hon'ble Jurisdictional High Court in Hindustan Lever Ltd vs R.B.Wadkar: [2004] 268 ITR 332 (Bom.): -

*"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."*

14. Therefore, respectfully following the aforesaid decision of the Hon'ble Jurisdictional High Court, we are of the considered view that reassessment proceedings initiated by the AO are not in conformity with the provisions of the first proviso to section 147 of the Act, and thus, are bad in law. Therefore, the same is quashed. Consequently, the assessment order passed under section 143(3) read with section 147 of the Act is also quashed.

15. Since the relief has been granted to the assessee on the aforesaid jurisdictional aspect, the other grounds raised by the assessee in the present appeal on merits as well as on jurisdiction are rendered academic and therefore are left open.

16. In the result, the appeal by the assessee is allowed.

Order pronounced in the open Court on 16/10/2024

**Sd/-**  
**(OM PRAKASH KANT)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(SANDEEP SINGH KARHAIL)**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 16/10/2024**  
Prabhat

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar  
ITAT, Mumbai