

आयकर अपीलीय अधिकरण  
कोलकाता 'बी' पीठ, कोलकाता में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'B' BENCH, KOLKATA**

श्री संजय गर्ग, न्यायिक सदस्य  
एवं  
श्री संजय अवस्थी, लेखा सदस्य  
के समक्ष  
Before

**SRI SANJAY GARG, JUDICIAL MEMBER  
&  
SRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No.: 1485/KOL/2024  
Assessment Year: 2013-14**

***Glasseye Traders Pvt. Ltd.....Appellant  
[PAN: AAACH 7696 C]***

**Vs.**

***ITO, Ward-1(1), Kolkata.....Respondent***

**Appearances:**

***Assessee represented by: Miraj D. Shah, AR.***

***Department represented by: A. Kundu, CIT DR.***

Date of concluding the hearing : September 26<sup>th</sup>, 2024

Date of pronouncing the order : November 18<sup>th</sup>, 2024

**ORDER**

**Per Sanjay Awasthi, Accountant Member:**

In this case, the assessee filed the return of income originally on 28.09.2013 at 'NIL' income, showing a loss of Rs. 1,932/-. Thereafter, proceedings u/s 147 of the Income Tax Act, 1961 (in short the 'Act') were initiated and notice u/s 148 of the Act was issued in response to which the appellant filed the same return of income as originally done so. It is recorded that the Assessing Officer (hereinafter referred to as ld. 'AO') received information from the Investigation Wing, Kolkata pertaining to 67 accounts with Industrial Development Bank of India, Bidhannagar, Kolkata. Needless to say, these accounts were held to be suspicious and information was passed on to various AOs, including the ld. AO under consideration. It is seen that

while analysing the entries in the said accounts and considering the response from the assessee, the ld. AO noticed that there were no transactions pertaining to M/s. MPS Greenery Developers Ltd. Since transaction with M/s. MPS Greenery Developers Ltd. was what was recorded in the reasons to believe hence, the ld. AO deemed it fit to effectively drop proceedings with this entity and proceed on the basis of further information regarding the following entities:

- a) Labheshwari Commercial Pvt. Ltd.
- b) Square Trades & Holdings Pvt. Ltd.
- c) Motorex Finance Pvt. Ltd.
- d) Kingston Vincom Pvt. Ltd.
- e) Wise Dealmark Pvt. Ltd.
- f) Lifetime Agency Pvt. Ltd.
- g) Skylark Vanijya Pvt. Ltd.

The total transactions from these entities amounting to Rs. 3,98,48,500/- were eventually added u/s 69A of the Act. Admittedly, this amount was substituted for an amount of Rs. 5,57,91,000/- which was part of the reasons recorded before issuance of notice u/s 148 of the Act, as transaction from M/s. MPS Greenery Developers Ltd.

1.1. Aggrieved with this action, the appellant approached the ld. CIT(A) and one of the grounds raised before him was the validity of proceedings when the entry recorded in the original reasons to believe and the amount thereon were both changed to a different amount and different entities for considering the impugned addition. It is seen that the ld. CIT(A) has recorded in the impugned order (especially para 4.3 & 6.1) that it was only during the course of reassessment proceedings that the facts regarding different entities was brought to light and the ld. AO was right in bringing the amounts standing against them to tax. The ld. CIT(A) is seen to have relied on a number of authorities in support of his conviction while upholding the action of ld. AO.

2. Since the appellant was unsuccessful before the Id. CIT(A), he has approached the ITAT with the following grounds of appeal and also two additional grounds of appeal as under:

Grounds of appeal:

*“1. That the Order passed u/s 250 is bad in law as well as on facts of the case.*

*2. That the Hon’ble Commissioner of Income Tax (A) erred in law as well as on facts of the case in not appreciating the fact that the case of the appellant was barred by limitation under the amended provisions of section 148 w.e.f. 01.04.2021.*

*3. That the Hon’ble Commissioner of Income Tax (A) erred in law as well as on facts of the case by confirming the addition made by the Ld. Assessing Officer of treating the transaction entered into with various entities as accommodation entry and adding Rs.3,98,48,500/- as unexplained money under section 69A of the Income tax Act 1961.*

*4. That the appellant craves to leave, add, amend or adduce any of the grounds of appeal during the course of appellate proceedings.”*

Additional grounds of appeal:

*“1) The Assessing Officer made no additions on the issue for which the case was reopened. Therefore, the reopening itself is bad in law, and it is prayed that the reopening be quashed.*

*2) As the Assessing Officer did not make any additions on the grounds for reopening, he could not make any other additions. Hence, the reopening is bad in law.”*

2.1. Right at the outset, the Id. A/R assailed the action of the Id. AO and took us through the provisions of Section 147 (Explanation 3) of the Act, as amended by the Finance Act, 2009. Through this amendment, the scope of proceedings u/s 147 of the Act were enhanced to include assessment of income on the basis of any issue which comes to the notice of the Id. AO, subsequent to the reopening even though they were not part of the reasons recorded for the said reopening. It has been averred that what was not permissible even after the said amendment was that the subsequent item of addition would not have any legs to stand on in case the original item as per the reasons recorded was not considered for any addition. He relied on the case of *CIT(E) vs. B.P. Poddar Foundation for Education* reported in [2022] 448

ITR 695 (Cal.)(HC). The ld. A/R requested that this legal issue needs to be dealt with before coming to the merits of the case, if at all.

2.2. The ld. D/R relied on the orders of the authorities below and also relied on Explanation 3 to Section 147 of the Act to canvas the point that the ld. AO was at liberty to consider all or any item of income in reassessment proceedings, which are noticed by him during the course of such proceedings.

3. We have carefully considered the orders of the ld. AO/ld. CIT(A) and the averments of the ld. AR/DR. It is seen that the Explanation 3 to Section 147 of the Act which purportedly enhances the scope of making additions u/s 147/143(3) of the Act has been judicially interpreted and it is now more or less settled that in case the original item of alleged escapement of income, which prompted the reassessment proceedings, is not found to be feasible then any other addition made on the basis of information brought to the notice of ld. AO during the course of such proceedings, would not hold ground. In this regard, we draw strength from the case of *CIT vs. Jet Airways (I) Ltd.* reported in [2011] 331 ITR 236 (Bombay), whereby the Hon'ble High Court has held as under:

*“The effect of section 147, as it now stands after the amendment of 2009, can, therefore, be summarised as follows : (i) the Assessing Officer must have reason to believe that any income chargeable to tax has escaped assessment for any assessment year; (ii) upon the formation of that belief and before he proceeds to make an assessment, reassessment or recomputation, the Assessing Officer has to serve a notice on the assessee under sub-section (1) of section 148; (iii) the Assessing Officer may assess or reassess such income, which he has reason to believe, has escaped assessment and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the section; and (iv) though the notice under section 148(2) does not include a particular issue with respect to which income has escaped assessment, yet he may nonetheless, assess or reassess the income in respect of any issue which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the section. [Para 9]*

*Interpreting the provision as it stands without adding or deducting from the words used by the Parliament, it is clear that upon formation of a reason to believe under section 147 and following the issuance of a notice under section 148, the Assessing Officer has the power to assess or reassess the*

*income which he has reason to believe had escaped assessment and also any other income chargeable to tax. The words 'and also' cannot be ignored. The interpretation which the Court places on the provision should not result in diluting the effect of these words or rendering any part of the language used by the Parliament otiose. The Parliament having used the words "assess or reassess such income and also any other income chargeable to tax which has escaped assessment", the words 'and also' cannot be read as being in the alternative. On the contrary, the correct interpretation would be to regard these words as being conjunctive and cumulative. It is of some significance that the Parliament has not used the word 'or'. The Legislature did not rest content by merely using the word 'and'. The words 'and' as well as 'also' have been used together and in conjunction. Evidently, therefore, what the Parliament intends by use of the words 'and also' is that the Assessing Officer, upon the formation of a reason to believe under section 147 and the issuance of a notice under section 148(2), must assess or reassess: (i) 'such income'; and also (ii) any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the section. The words 'such income' refer to the income chargeable to tax which has escaped assessment and in respect of which the Assessing Officer has formed a reason to believe that it has escaped assessment. Hence, the language used by the Parliament is indicative of the position that the assessment or reassessment must be in respect of the income in respect of which he has formed a reason to believe that it has escaped assessment and also in respect of any other income which comes to his notice subsequently during the course of the proceedings as having escaped assessment. If the income, the escapement of which was the basis of the formation of the reason to believe, is not assessed or reassessed, it would not be open to the Assessing Officer to independently assess only that income which comes to his notice subsequently in the course of the proceedings under the section as having escaped assessment. If upon the issuance of a notice under section 148(2), the Assessing Officer accepts the objections of the assessee and does not assess or reassess the income which was the basis of the notice, it would not be open to him to assess income under some other issue independently. The Parliament, when it enacted the provisions of section 147 with effect from 1-4-1989, clearly stipulated that the Assessing Officer has to assess or reassess the income which he had reason to believe had escaped assessment and also any other income chargeable to tax which came to his notice during the proceedings. In the absence of the assessment or reassessment of the former, he cannot independently assess the latter. [Para 11]"*

3.1. Furthermore, in a recent judgment by the Hon'ble Delhi High Court in the case of *ATS Infrastructure Ltd. vs. ACIT* reported in [2024] 166 *taxmann.com* 61 (Delhi) it has been held in para 25 that "Once assessment itself is reopened, it would not be confined to those subjects only ; this would, however, be subject only to one additional rider and that if, in course of

*reassessment, Assessing Officer ultimately comes to conclude that no additions or modifications are warranted under these heads, it would not be entitled to make any additions in respect of other items forming part of original return."*

3.2. Considering the authorities mentioned (*supra*), it is held that once the item of income pertaining to M/s. MPS Greenery Developers Ltd. was not found valid for the assessment under consideration then the subsequent action of the Id. AO in terms of making the impugned addition on account of 7 entities mentioned (*supra*), cannot be sustained on this legal principle. In light of this, the addition made is directed to be deleted. Since the appellant gets relief on the legal issue, hence, the merit of the addition is not adjudicated at present.

4. In the result, the appeal filed by the assessee is allowed.

**Order pronounced in the open Court on 18<sup>th</sup> November, 2024.**

Sd/-  
**[Sanjay Garg]**  
Judicial Member

Sd/-  
**[Sanjay Awasthi]**  
Accountant Member

Dated: 18.11.2024

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

- 1. Glasseye Traders Pvt. Ltd., 1A, Grant Lane, Kolkata, West Bengal, 700012.**
- 2. ITO, Ward-1(1), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

*//True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata