

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, KOLKATA

**BEFORE SHRI RAJPAL YADAV, VP
AND
SHRI RAJESH KUMAR, AM**

**ITA No. 93/KOL/2024
(Assessment Year: 2016-17)**

Ms. Regency AIMS Private
Limited
6, Hunger Ford Street,
Kolkata-700017

(Appellant)

National Faceless Appeal
Centre, Delhi

Vs.

(Respondent)

PAN No. AAHCM4986F

Assessee by : Shri Soumitra Choudhury,
Shri Pranabesh Sarkar, ARs
Revenue by : Shri Pradip Kumar Biswas, DR

Date of hearing: 22.10.2024

Date of pronouncement : 25.11.2024

ORDER

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the National Faceless Appeal Centre, Delhi (hereinafter referred to as the "Ld. CIT(A)") dated 18.10.2023 for the AY 2016-17.

02. At the time of hearing, the Id. Counsel for the assessee pressed the ground no.2 raised in the memorandum of grounds which is extracted below-

"2. For that on the facts and in circumstances of the case and in law reopening of assessment under borrowed satisfaction is bad in law and should be set aside."

03. The facts in brief are that the assessee filed the return of income during the year on 28.09.2016, declaring nil income. Thereafter, the

- Id. AO received the information vide letter dated 26.02.2019, from DDIT(Inv),U-1(3),Kol. vide No. DDIT(Inv.)/U-1(3)/Kol/Banka/information/2018-19/7957, which revealed that transaction worth ₹41,00,211/- has been credited in the bank account of the assessee through RTGS from layering of different entities as found during examination in the bank statements of M/s Banka Group and the Paper/shell companies controlled and managed by Sri Mukesh Banka. The case of the assessee was reopened u/s 147 of the Act by issue notice u/s 148 of the Act on 17.03.2020. The assessee replied the notice issued by the Id. AO from time to time during the assessment proceedings and finally, the Id. AO treated the money received as accommodation entry and added the same u/s 68 of the Act to the income of the assessee in the assessment framed u/s 147 read with section 144B of the Act dated 29.09.2021.
04. In the appellate proceedings, the Id. CIT (A) simply dismissed the appeal in limine upholding the assessment order by noting that the assessee did not file any information/ replies to the notices issued on various dates for furnishing the information/details.
05. After hearing the rival contentions and perusing the materials available on record, we find that the Id. AO has simply reopened the assessment based on the report of the DDIT (Inv.) without doing any investigation on the information received and without any application of mind. The AO has just stated in the para 3 of the assessment order that on the basis of the information received from the DDIT (Inv.) Wing, it is noted that there was transaction of ₹41,00,211/- in the account of the assessee credited through RTGS from layering of different entities as found during examination in the bank statement of M/s Banka Group and the Paper/shell companies controlled and managed by Sri Mukesh Banka and thereafter, reopened the

assessment. In our opinion, the settled and finalized assessment is not allowed to reopen on borrowed satisfaction and without any application of mind to the information/material received. In this case, the Id. AO has simply relied on the report of the DDIT (Inv.) that assessee has taken accommodation entries without doing any further investigation or verification. Therefore, this is a case of borrowed satisfaction with no application of mind. The case of the assessee is squarely covered by the decisions of Hon'ble Delhi High Court in case of *PCIT Vs. Meenakshi Overseas (P.) Ltd. [2017] 395 ITR 677 (Delhi)*, *ACIT vs. Nupower Renewables (P.) Ltd. [2019] 111 taxmann.com 149 (SC)*, *CIT Vs. Multiplex Trading & Industrial Co. Ltd. in ITA No.356/2013 dated 22.09.2015*. In the case of *Meenakshi Overseas (P.) Ltd. (supra)*, it has been held that re-opening of assessment u/s 147 of the Act is a potent power not to be lightly exercised and it certainly cannot be invoked casually or mechanically. The heart of the provision is the formation of belief by the Assessing Officer that income has escaped assessment. It was further held that the reasons so recorded have to be based on some tangible material and that should be evident from reading the reasons. The Id. court noted that the reasons to belief contain not a reason but the conclusion of the Id. AO whether one after the other and there was no independent application of mind by the Assessing Officer to the tangible material which forms the basis of the reasons to believe that income has escaped assessment. The conclusions of the Assessing Officer are at best a reproduction of the conclusion in the investigation report. Indeed it is a 'borrowed satisfaction' and thus, the reasons fail to demonstrate the link between tangible material and the formation of the reason to believe that income had escaped assessment. Thus, upheld the order of ITAT concluding that all proceedings to reopen the assessment does not satisfy the requirement of law. Considering the

said decision vis a vis the facts in record, we are inclined to quash the reopening of assessment being based on 'borrowed satisfaction'.

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

Order pronounced in the open court on 25.11.2024.

Sd/-
(RAJPAL YADAV)
(VICE PRESIDENT)

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 25.11.2024

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Kolkata