

**THE INCOME TAX APPELLATE TRIBUNAL,  
'B' BENCH, KOLKATA**

**Before Shri Rajesh Kumar, Accountant Member  
&  
Shri Sonjoy Sarma, Judicial Member**

**I.T.A. No. 1912/KOL/2024  
Assessment Year: 2015-2016**

***Madhu Devi Jajodia,.....Appellant  
Room No. 406, Swaika Center,  
4A, Pollock Street,  
Kolkata-700001  
[PAN:ACUPJ1236H]***

**-Vs.-**

***Income Tax Officer,.....Respondent  
Ward-36(1), Kolkata,  
Aayakar Bhawan,  
P-7, Chowringhee Square,  
Kolkata-700069***

**Appearances by:**

*Shri Sunil Surana, A.R., appeared on behalf of the  
assessee*

*Shri Pradip Biswas, Addl. CIT, Sr. D.R., appeared on  
behalf of the Revenue*

**Date of concluding the hearing : October 30, 2024  
Date of pronouncing the order : November 28, 2024**

**O R D E R**

**Per Rajesh Kumar, Accountant Member:-**

The present appeal is directed at the instance of assessee against the order of Id. Commissioner of Income Tax (Appeals),

National Faceless Appeal Centre (NFAC), Delhi dated 28<sup>th</sup> August, 2024 passed for Assessment Year 2015-16.

2. The assessee has pressed only one issue at the time of hearing, which is against the order of Id. CIT(Appeals) upholding the assessment order passed under section 147 read with section 144B of the Act dated 24<sup>th</sup> March, 2022 while ignoring the fact that the reopening was made in violation of 1<sup>st</sup> proviso to section 147 of the Act.

3. The facts in brief are that the assessee filed the return of income on 16.03.2016 declaring total income of Rs.17,05,420/-. The case of the assessee was selected for scrutiny and accordingly the assessment was framed under section 143(3) vide order dated 22.12.2017 accepting the returned income. Thereafter the Id. Assessing Officer reopened the assessment under section 147 by issuance of notice under section 148 of the Act on 31.03.2021 after receiving information from the DDIT(Inv), Unit-4(1), Kolkata to the effect that the assessee was beneficiary of accommodation entries from the account maintained in HDFC Bank in the name of Patwari Marketing Company. Accordingly, the statutory notice was duly issued and served upon the assessee, which was also complied with and finally the assessment was framed by making an addition of Rs.5,15,00,000/- in the assessment framed under section 147 read with section 144 of the Act dated 24.03.2022.

4. The Id. CIT(Appeals) dismissed the appeal of the assessee on legal issues where the appeal was partly allowed on merit.

5. The ld. Counsel for the assessee vehemently submitted before us that the order passed by the ld. CIT(Appeals) upholding the reopening of assessment under section 147 read with section 148 of the Act is invalid and nullity. The ld. A.R. submitted that the impugned notice was issued on 31.03.2021, copy of which is furnished at page no. 1 of the paper book and the said notice was served on the assessee on 01.04.2021 at 12:28 a.m., as is evident from the copy of forwarded message extracted from G-mail of the assessee. The ld. A.R., therefore, submitted that when such notice is barred by limitation, any assessment framed on the said notice is also invalid. To support of his argument, ld. A.R. relied on the judgments of Hon'ble Calcutta High Court dated 12<sup>th</sup> May, 2023 in the case of Osian Stock Broking Pvt. Limited in ITA No. 375/KOL/2022, ACIT -vs.- Radhakrishna Bimalkumar Pvt. Limited in GA/1/2023, GA/2/2023 dated 26<sup>th</sup> September, 2023.

6. The second plea taken by the assessee against the invalid reassessment is that the case of the assessee was reopened after a period of four years from the end of the relevant assessment year. The ld. A.R. submitted that the assessment was framed under section 143(3) vide order dated 22.12.2017, which was also stated by the ld. Assessing Officer in paragraph no. 1 of the impugned assessment order. The ld. A.R. stated that the reopening in the instant case could only be made subject to the satisfaction of the condition as enumerated in the 1<sup>st</sup> proviso to section 147 of the Act, which provides that where the assessment has been framed under section 143(3) and a period of four years had elapsed from

the end of the relevant assessment year, then reopening of assessment could only be made if income is escaped for such assessment year by reason of the failure on the part of assessee to make a return or to disclose fully and truly all material facts necessary for assessment of income. The ld. A.R. also contended that ld. Assessing Officer has not mention any reason as to how the escapement of income is attributed to the failure of the assessee to disclose truly and materially the particulars of income, which were stated to have escaped. The ld. A.R., therefore, prayed before us that the reopening of assessment is invalid and liable to be quashed. In other words, the reopening of assessment can only be made if the escapement of income is attributable to the failure of the assessee to fully and truly disclose the material facts qua the said income during the said assessment or in the return of income. The ld AR argued that the AO has failed to specifically/ mention the failure on the part of the assessee and mere statement as made by the AO without any corroborative material brought on record and without making a clear-cut and specific finding would render the reopening of assessment as invalid and nullity. The Ld. A.R relied on the decision of Hon'ble Apex Court in the case of ACIT vs. CEAT Ltd. in [2023] 146 taxmann.com 108(SC). The Ld. A.R therefore prayed that the reopening of assessment is invalid and void ab-initio and therefore the same may kindly be quashed by allowing the appeal of the assessee.

7. The Ld. D.R on the other hand relied heavily on the order of authorities below by submitting that the reopening has been made by the AO on the basis of information received from DDIT(Inv),

Unit-2(1), Kolkata and therefore the legal issue raised by the assessee may kindly be dismissed.

8. After hearing the rival contentions and perusing the material on record, we note that in this case the assessment was framed u/s 143(3) vide order dated 22.12.2017. The reopening was made u/s 147 of the Act by issuing notice u/s 148 of the Act on 31.03.2021 after the AO received information from DDIT(Inv), Unit-4(1), Kolkata .Therefore, the reopening can only be made subject to the satisfaction of the conditions as provided in first proviso to section 147 of the Act which state that where the assessment has been framed u/s 143(3) of the Act, reopening after a period of four years can only be made if the escapement of income is attributed to the failure on the part of assessee to disclose material facts either in the return of income or during the course of assessment proceedings. However, this is not the facts in the present case. We note that the assessee has fully disclosed all the facts in the return of income filed u/s 139(1) of the Act and the case was also selected for scrutiny and assessment was framed vide order dated 22.12.2017 passed u/s 143(3) of the Act. Therefore, non-mentioning on the part of the AO that the reopening beyond four years is made u/s 147 of the Act because of the failure on the part of the assessee to disclose fully and truly all the material facts which is necessary for assessment renders the re-assessment proceedings nullity. Therefore, in our considered opinion the reopening of assessment has been made by the AO without recording a concrete and clear-cut findings about the failure of the assessee is bad in law and cannot be sustained. The case of the assessee finds support from the decision of Hon'ble

Apex Court in the case of ACIT vs. CEAT Ltd. in [2023] 146 taxmann.com 108(SC) wherein the Hon'ble Apex Court has held that re-opening u/s 147 of the Act beyond 4 years from the end of the relevant assessment year can only be made if the AO has recorded a finding in the reasons that the escapement is attributable to the failure of the assessee to fully and truly the material facts qua the impugned income and not otherwise. In view of the above facts and circumstances and ratio laid down by the Hon'ble Apex Court, we are inclined to quash the reopening proceedings as well as the consequent assessment framed by allowing the appeal of the assessee on legal issue.

**9. In the result, the appeal of the assessee is allowed.**

Order pronounced in the open Court on 28/11/2024.

Sd/-

**(Sonjoy Sarma)**  
**Judicial Member**

Sd/-

**(Rajesh Kumar)**  
**Accountant Member**

***Kolkata, the 28<sup>th</sup> day of November, 2024***

*Copies to :(1) Madhu Devi Jajodia,  
Room No. 406, Swaika Center,  
4A, Pollock Street, Kolkata-700001*

*(2) Income Tax Officer,  
Ward-36(1), Kolkata,  
Aayakar Bhawan,  
P-7, Chowringhee Square, Kolkata-700069*

*(3) Commissioner of Income Tax (Appeals),  
National Faceless Appeal Centre (NFAC),  
Delhi;*

(4) CIT - , Kolkata;

(5) The Departmental Representative;

(6) Guard File

TRUE COPY

*By order*

*Assistant Registrar,  
Income Tax Appellate Tribunal,  
Kolkata Benches, Kolkata*

***Laha/Sr. P.S.***