

आयकर अपीलीय अधिकरण, कोलकाता पीठ “ए”, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. Nos. 643 & 644/Kol/2024
Assessment Years: 2010-11 & 2013-14

Sunny Trexim Pvt. Ltd. (PAN: AADCS 6026 Q)	Vs.	DCIT, Circle-5(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	18.11.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	09.12.2024
For the Appellant/ निर्धारिती की ओर से	Shri Sunil Surana, FCA
For the Respondent/ राजस्व की ओर से	Shri Pradip Kumar Biswas, Addl. CIT

ORDER / आदेश

Per Rajesh Kumar, AM:

These are the appeals preferred by the assessee against the separate orders of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)”) dated 15.03.2024 for the AY 2010-11 & 2013-14. Since the issue involved in both the appeal is common and therefore these are being disposed off by this common order for the sake of brevity and convenience. First of all, we would like to adjudicate in ITA No. 644/Kol/2024 for AY 2013-14. The assessee has taken an additional ground of appeal which is which stated to be ground no. 5 which is as under:

“5. For that the reopening of the assessment is bad in law when the original assessment was completed u/s 143(3), reopening has been made after four years from the end of the assessment year all the facts were disclosed to the AO and further there is no whisper or discussion in the reasons recorded that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment.”

2. We note that by virtue of the above additional ground , the assessee moved an additional ground challenging the reopening of assessment u/s 147 of the Act beyond the period of four years from the end of relevant assessment years without satisfying the condition as enumerated in 1st proviso to Section 147 of the Act as the assessment in this case has been framed u/s 143(3) and AO nowhere in the reasons recorded stated that the assessment has escaped income because of failure of the assessee to truly and materially disclose all the facts qua the said income.

3. After hearing the rival contentions and perusing the material on record, we find that issue raised in additional grounds of appeal no. 5 is purely a legal issue arising out of the assessment file and all the facts qua the said legal issue are available in the record and no further verification of facts are required to be done whatsoever from any quarter. Accordingly, we are inclined to admit the same for adjudication by relying on the decision of Hon’ble Apex Court in the case of Jute Corporation of India Ltd. Vs CIT in 187 ITR 688 and National Thermal Power Co. Ltd v. CIT [1998] 229 ITR 383 wherein the Hon’ble Apex Court has held that the assessee is free to raise the legal issue at any appellate stage. We note that it is further held by the Hon’ble Bombay High Court that where the assessee raised a legal issue for the first time before the appellate authority ,then the authority has to decide the same without restoring it to the file of the lower authorities for adjudication. Considering the above facts and ratio laid down in the various grounds, we are inclined to admit the ground for adjudication.

4. Facts in brief are that the assessment has been framed in the instant case u/s 143(3) read with Section 92CA of the Act vide order dated 21.12.2016 a copy of which is filed at page 1to 3 of the PB. Thereafter, the case of the assessee was reopened u/s 147 of the Act on the basis of information in the possession of the department that

during FY 2012-13 relevant to AY 2013-14, the assessee has booked bogus loss to the tune of Rs. 77,44,658/- with Shri Sachet Saraf through MCX Stock exchange. Accordingly, reasons to believe were recorded u/s 148(2) of the Act and after obtaining the approval from the competent authority the assessment was reopened u/s 147 of the Act by issuing notice u/s 148 of the Act on 19.03.2019. The said notice was complied with by the assessee by filing the return of income on 26.03.2019 declaring the same income at Rs. 1,19,01,800/- as filed in the original return of income on 30.11.2013. Thereafter a statutory notices were duly issued and served on the assessee. The AO ,after doing enquiries / investigation of the records as filed by the assessee in compliance to various notices and questionnaires, made an addition of Rs. 58,08,354/- to the income of the assessee on the ground of arranged bogus loss vide order dated 18.12.2019 passed u/s 143(3) / 147 of the Act.

5. The said order was challenged before the appellate authority and the Ld. CIT(A) dismissed the appeal of the assessee on merit.

6. After hearing the rival contentions and perusing the material on record, we observe that the assessment was framed u/s 143(3) vide order dated 21.12.2016 passed u/s 143(3) read with Section 92CA. Thereafter the case was reopened apparently after expiry of four years from the end of relevant assessment year by issuing notice u/s 148 of the Act on 19.03.2019 after recording a reasons u/s 148(2) and after obtaining an approval from the competent authority. In our opinion, since the reopening is after a period of four years from the end of relevant assessment year and assessment was made u/s 143(3) of the Act in the instant assessment year as stated hereinabove. Therefore reopening of assessment can only be made u/s 147 of the Act only in accordance with the first proviso to Section 147 of the Act which provides that where an 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 attributable to the assessee by reason of failure to disclose any information truly and materially either in the return of income or during the assessment proceedings. In the present case, the reasons have been recorded by the

AO wherein no where it is mentioned that the escapement of income is attributable to the assessee who has not disclosed the information qua the said income truly and materially during the assessment proceedings. For the sake of convenience, the reasons are recorded as under:

Reason to believe

M/s. Sunny Trexim Pvt Ltd.
PAN: AADCS6026Q
A.Y. 2013-14

A Search and Seizure operation u/s. 132 of IT Act, 1961 was conducted at the business premise of M/s. Mari Gold Vanijya Pvt. Ltd., Kolkata on 22.03.2013. M/s. Mari Gold Vanijya Pvt. Ltd. is company registered as a commodity broker and is listed with MCX. One Sri Sachet Saraf is the director and the main person of the group. The allegation was that Sri Sachet Saraf was providing entries of bogus loss in currency derivatives to various beneficiaries, mostly of Kolkata. During the course of search entire books of accounts with details of bogus entries provided was found and seized. In the statement recorded under section 132(4) of the IT Act, 1961 Sri Sachet Saraf admitted that he was providing bogus entries of loss in currency derivative by taking cheque and returning cash to the beneficiaries. The modus operandi adopted is as under.

The party wanting entry of bogus loss approaches the broker for entry of bogus loss. The broker registers him or his company in which he wants loss by taking the KYC details. Then the broker buys currency on his behalf on a particular date. Normally the broker is supposed to have taken some margin money before buying on his behalf. This is compulsory as per MCX rules. However, you will find that in these transactions for loss no margin was taken by the broker. The brokers also send report of margin to the exchange. Therefore, the exchange will also certify that no margin has been taken in these loss transactions. Further, if the beneficiary wants a loss of say 30 lakhs. then entire loss will not be incurred in one transaction. One transaction consists of one buy and one sell. You will find that it has been incurred in three or four transactions and in the first transaction loss of 10 lakhs is incurred. Then normally no broker would buy further on behalf of the client without getting a cheque of 10 lakhs from the client. However, in this case you will find that the broker continues to buy and sell without getting payment from the client. Further, after the pre-fixed amount of loss has been incurred and contract note of loss has been to the client by the broker, the payment would not be received by the broker. Invariably, you will find that payment is much later mostly after the end of the F.Y. which is again possible in a genuine transaction. Besides, the broker has given the statement under section 132(4) of the IT Act, 1961 that the entries given by him are of bogus loss, which also has evidentiary value.

It has been observed that M/s Sunny Trexim Pvt Ltd (PAN : AADCS6026Q) has booked such bogus loss during AY 2013-14 to the tune of Rs. 77,44,658/-. Hence, I have reason to believe that income has been escaped by the assessee to the tune of Rs.77,44,658/- for AY 2013-14. This may be treated as a fit case for reopening for AY 2013-14 invoking the provision of section 147 of the IT Act'1961.

CERTIFIED TO BE TRUE COPY

भोला राम देवासी, भा.रा.से.
BHOLA RAM DEWASI, I.R.S.
संयुक्त आयकर अधिकारी (वि.का.अधि.) इकाई-5(1), कोलकाता
Joint Commissioner of Income Tax
(OSD) Circle-5(1), Kolkata



Abhishek Kumar
DCIT, Circle 5(1), Kolkata



6.1. A perusal of the above reasons showed that the AO has not made any whisper about the failure on the part of the assessee which led to escapement of income and therefore reasons recorded are invalid and cannot be allowed to form the basis for reopening of assessment. The case of the assessee finds support from the decision of Hon'ble Apex Court in the case of ACIT vs. CEAT Ltd. (2023) 146 taxmann.com 108(SC) wherein the Hon'ble Apex Court is held as under:

"We have heard Mr. Balbir Singh, Learned ASG appearing on behalf of the petitioners.

It is not in dispute that the assessment was sought to be reopened beyond four years. Therefore, all the conditions under Section 148 of the Income Tax Act for reopening the assessment beyond four years are required to be satisfied. Having gone through the reasons recorded for reopening, we are of the opinion that conditions precedent for reopening of the assessment beyond four years are not satisfied. The reassessment was on change of opinion. There are no allegation of suppression of material fact. Under the circumstances, no error has been committed by the High Court in setting aside the reopening notice under section 148 of the Income Tax Act. We are in complete agreement with the view taken by the High Court. The Special Leave Petition stands dismissed.

Pending applications(s), if any, shall stand disposed of."

Considering the above facts and in the light of the above decision, we are of the view that the reopening of assessment is invalid and bad in law and accordingly, the same cannot be sustained. The reopening as well as the consequent order u/s 143(3) read with Section 147 of the Act are quashed.

7. Now we shall adjudicate in ITA No. 643/Kol/2024 for AY 2010-11 .

The issue raised in the appeal is similar to one as decided by us in ITA No. 644/Kol/2024 for AY 2013-14. Therefore, our decision in 644/Kol/2024 for AY 2013-14 would mutatis mutandis, apply to this appeal as well. Accordingly, the appeal of the assessee is allowed.

8. In the result, both the appeals of the assessee are allowed.

Order is pronounced in the open court on 9th December, 2024

Sd/-
(Sonjoy Sarma /संजय शर्मा)
Judicial Member/न्यायिक सदस्य

Sd/-
(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 9th December, 2024

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Sunny Trexim Pvt. Ltd., C/o, Shri Jitendra Kaushik, Advocate, 19D, Muktaram Babu Street, Kolkata-700007.
2. Respondent – DCIT, Circle-5(1), Kolkata
3. Ld. CIT(A)- NFAC, Delhi
4. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata