

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'C', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA

**Before Shri Sanjay Garg, Judicial Member and
Shri Rakesh Mishra, Accountant Member**

**I.T.A. No.1166/Kol/2023
Assessment Year: 2011-12**

M/s. Novelty Commotrade Private Ltd. Appellant
C/o Salarpuria Jajodia & Co.,
7, C. R. Avenue, 3rd Floor, Kolkata-700072.
(PAN: AADCM5617R)

vs.

ITO, Ward-15(3), Kolkata Respondent

Appearances by:

Shri S. Jhajharia, AR appeared on behalf of the Appellant
Shri Sailen Samadder, Addl. CIT, Sr. DR appeared on behalf of the Respondent

Date of concluding the hearing: 05/12/2024
Date of pronouncing the order: 17/12/2024

आदेश / ORDER

Per Sanjay Garg, Judicial Member :

The captioned appeal has been preferred by the assessee against the order dated 22.09.2023 for Assessment Year 2011-12 of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) [hereinafter referred to as the "Ld. CIT(A)"] passed u/s. 250 of the Income-tax Act, 1961 (hereinafter referred to as the "Act").

2. The assessee in this appeal is aggrieved by the action of the Ld. CIT(A) in confirming the addition made by the AO of Rs. 50 lakh u/s. 68 of the Act treating the sale of shares by the assessee as bogus. In this case, the impugned addition was made by the AO in an assessment carried out u/s. 147/148 of the Act by way of reopening of the assessment.

3. The assessee in this appeal has challenged the impugned addition not only on merits but also on the legal ground that the reopening of the assessment in this case u/s. 147/148 of the Act was bad in law.

4. At the outset, the Ld. Counsel for the assessee has invited our attention to the opening lines of the assessment order dated 29.12.2017 passed u/s. 143(3)/147 of the Act, wherein the AO has mentioned that the original return filed by the assessee on 03.09.2011 was processed on 24.01.2012. Thereafter, the assessment was reopened by issuing notice u/s. 148 of the Act on 31.03.2017. He has further invited our attention to the reasons recorded for reopening of the assessment, copy of which has been placed at page 18 of the paper book, the contents of which, for the sake of ready reference, are reproduced as under:

“In the case of M/s. Novelty Commotrade Pvt. Ltd., the assessee is assessed to tax vide PAN: AADCM5617 and filed return under this charge regularly. An information has been received from ITO (Inv.), Unit-4, Kolkata that the assessee company being the beneficiary company, has brought into its books unaccounted money to the tune of Rs.50,00,000/- received accommodation entry through layering of bank transactions relating to financial year 2010-11 relevant for the assessment years 2011-12. Since the assessee's returned income only Rs.5,57,225/-, the high value of such transaction in the respective bank account is to be examined by initiating proceedings u/s.147 after getting approval from your end for issuance of notice u/s.148 of the I.T. Act, 1961.”

5. The Ld. Counsel, inviting our attention to the afore-reproduced reasons for reopening of the assessment, has submitted that the aforesaid reasons were vague. That the AO did not apply his mind at all to the alleged information received from the Investigation Wing. That the satisfaction of the AO regarding escapement of the income of the assessee was a borrowed satisfaction.

6. The Ld. DR, on the other hand, has relied on the orders of the lower authorities.

7. We have considered the rival contentions and gone through the record. A perusal of the reasons recorded for reopening of the assessment would reveal that in this case, the only information received by the AO was that the assessee company was beneficiary of Rs. 50,00,000/- received as accommodation entry through layering of bank transactions in the Financial Year 2010-11. This information is a vague information. The AO did not co-relate and verify this information from the accounts of the assessee. There is no mention in the said reasons recorded as to from whom, assessee had received the aforesaid amount of Rs. 50,00,000/-. What was the nature of the transaction and as to whether the assessee had received the aforesaid sum of Rs. 50,00,000/- as share application money or as loan or on account of sale of penny stocks. There is no name mentioned of the parties, who allegedly passed on the amount in question to the assessee. The aforesaid information, therefore, was not sufficient to form the belief that the income of the assessee has escaped assessment without co-relating the same with the accounts of the assessee or without verifying the correctness of the said information from any other sources. The reasons to believe of the AO in this case, were based on borrowed satisfaction of the Investigation Wing without application of mind. It has been held time and again that the reasons to believe regarding the escapement of the income should be based on certain tangible material or information coming to the possession of the Assessing Officer. Reopening of the assessment is not permitted for making fishing and roving enquiries. The Assessing Officer, after receipt of alleged information from the Investigation Wing was supposed to correlate the same with the records and other facts of the case and thereafter should have satisfied himself of escapement of income. Reopening is not permissible on the basis of borrowed satisfaction of the Assessing Officer. It does not mean a purely subjective satisfaction of the assessing authority. Such reason should be held in good faith and cannot merely be a pretence. The reasons to believe

must have a rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Assessing Officer and the formation of belief regarding escapement of income. The powers of Assessing Officer to reopen an assessment, though wide, are not plenary. The words of the statute are "reason to believe" and not "reason to suspect". The entire law as to what would constitute "reason to believe" has been summed up by the hon'ble Supreme Court in the case of "Income Tax Officer v Lakhmani Mewaldas" (1976) 103 ITR 437. Reliance in this respect can also be placed on the decision of the Hon'ble Punjab & Haryana High Court in the case of 'CIT vs Paramjit Kaur' (2008) 311 ITR 38 (P&H), wherein, making identical observations, the Hon'ble High Court has held that in the absence of sufficient material to form satisfaction of the Assessing Officer that income of the assessee had escaped assessment, the issuance of notice u/s 148 of the Act was not valid. Reliance in this respect can also be placed on the decision of the Hon'ble Delhi High Court in the case of PCIT Vs. Meenakshi Overseas Ltd. 395 ITR 677 (Del.) and of the Hon'ble Bombay High Court in the case of Hindusthan Lever Ltd. Vs. R. B. Wadkar, Asst. CIT reported in 268 ITR 332. In the case in hand, the only information available to the Assessing Officer was that the assessee had done transaction of Rs.50,00,000/-. Such information does not in any manner is sufficient to form the belief that the income of the assessee has escaped assessment. In view of the above discussion, the reasons pointed out by the Assessing Officer cannot be said to be the reasons "to form the belief" that income of the assessee had escaped assessment. Therefore, the reopening of assessment was bad in law and consequential assessment order is not sustainable and the same is accordingly quashed. The assessee, therefore, succeeds on legal ground. Therefore, the impugned assessment is hereby quashed.

Consequently, the impugned addition stands deleted. The appeal of the assessee stands allowed.

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

Order is pronounced in the open court on 17.12.2024.

Sd/-

[Rakesh Mishra]
लेखा सदस्य/Accountant Member

Sd/-

[Sanjay Garg]
न्यायिक सदस्य/Judicial Member

Dated: 17.12.2024.

JD Sr. P.S

Copy of the order forwarded to:

1. **Appellant – M/s. Novelty Commotrade Private Ltd.**
2. **Respondent – ITO, Ward-15(3), Kolkata**
3. **CIT(A), NFAC, Delhi**
4. **Pr. CIT**
5. **CIT(DR),**

True Copy

By Order

Assistant Registrar, ITAT, Kolkata