

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

**BEFORE SHRI RAJESH KUMAR, AM
AND
SHRI PRADIP KUMAR CHOUBEY, JM**

**ITA Nos.1698 & 1699/KOL/2024
(Assessment Years:2013-14 & 2015-16)**

DCIT
Aaykar Bhavan, 110, Shanti
Pally, Kolkata-700107,
West Bengal

(Appellant)

Vs.

**Lakhotia Transport Co.
Private Limited**
26, Tarachand Dutta Street,
Ground Floor, Kolkata-
700073, West Bengal

(Respondent)

PAN No. AAACL8147J

**CO Nos. 24 & 25/KOL/2024
(Assessment Years:2013-14 & 2015-16)**

**Lakhotia Transport Co.
Private Limited**
26, Tarachand Dutta Street,
Ground Floor, Kolkata-
700073, West Bengal

(Appellant)

Vs.

DCIT
Aaykar Bhavan, 110, Shanti
Pally, Kolkata-700107,
West Bengal

(Respondent)

Assessee by : Shri Sunil Surana, AR
Revenue by : Shri Sailen Samadder, DR

Date of hearing: 16.12.2024
Date of pronouncement : 20.12.2024

ORDER

Per Rajesh Kumar, AM:

These are appeals preferred by the Revenue and Cross objection by the assessee are against the order of the Commissioner of Income-tax (Appeals), Kolkata-28 (hereinafter referred to as the "Ld. CIT(A)"] even dated 04.03.2022 for the AYs2013-14 & 2015-16 respectively. Since the appeals and cross objections are relating to the same assessee, therefore



these are being decided and disposed off by this common order for the sake of convenience. First of all we shall take up for adjudication cross objection of assessee and revenue appeal for A.Y. 2015-16.

CO No. 25/KOL/2024 & ITA No. 1699/KOL/2024

02. The cross-objection filed by the assessee in CO No. 25/KOL/2024 arising in ITA No. 1699/KOL/2024 for A.Y. 2015-16. The assessee has challenged by way of cross objection the validity of proceedings u/s 147 read with section 148 of the Act, on the ground that sanctioned was taken from Pr. Commissioner of Income-tax, Kolkata-5 (PCIT), instead of Joint Commissioner of income-tax (JCIT), in terms of Section 151(2) of the Income-tax Act, 1961 (the Act).

03. The facts in brief are that the return of income was filed on 24.09.2015, declaring total income at ₹1,87,85,430/-, which was processed u/s 143(1) of the Act, on 22.12.2017. Thereafter, the case of the assessee was selected for scrutiny and the assessment was accordingly completed u/s 143(3) of the Act vide order 22.12.2017, assessing the total income at ₹1,96,81,110/-. Thereafter, the assessment was reopened u/s 147 of the Act by issuing notice u/s 148 of the Act on 31st March, 2021, which was issued after obtaining the approval of Pr. Commissioner of Income Tax, Kolkata-5 (Id. PCIT). The said notice was complied with by the assessee by filing the return of income on 16.11.2021, declaring income at ₹1,87,85,430/-. Thereafter, the statutory notices were issued along with questionnaires and duly served upon the assessee. Finally, the addition of ₹20,00,000/- was made by the Id. AO in respect of loan raised from M/s Sarvottam Finvest Limited on the ground of being unexplained u/s 68 of the Act in the assessment framed u/s 143(3) / 147 of the Act dated 04.03.2022. Aggrieved, assessee preferred the appeal before the Id. CIT (A).



04. In the appellate proceedings, the Id. CIT (A) allowed the appeal of the assessee by directing the Id. AO to delete the addition by holding that the assessee has explained all the ingredients of Section 68 of the Act and the said addition is not sustainable. The Id. AR vehemently submitted before us that the reopening of assessment u/s 147 read with section 148 of the Act has been made invalidly without obtaining valid approval from the competent authority and further, submitted that in the instant case, the competent authority was Jt. Commissioner of income Tax (Id. JCIT), in terms of Provisions of Section 151(2) of the Act as was applicable at the relevant point of time. The Id. AR elaborated the provisions of Section 151(1) of the Act that no notice shall be issued u/s 148 of the Act by the Id. AO after expiry of period of four years from the end of the relevant assessment year unless the Id. PCCIT /PCIT/ CIT is satisfied on the reasons recorded by the Id. Assessing Officer. The Id. AR further referred to the provisions of Section 151(2) of the Act, which provides that in case other than those filing in sub section 1 above , no notice shall be issued u/s 148 of the Act by the Id. AO who is below the rank of JCIT unless the JCIT is satisfied with the reasons recorded by the Id. AO that it is a fit case for issue of such notice. The Id. AR contended that the case of the assessee is covered u/s 151(2) of the Act as referred to above as in this case the notice was issued within the period of 4 years from the end of the relevant assessment year. The Id. AR submitted that the notice u/s 148 of the Act was issued under the old regime which has been mentioned by the Id. AO himself in the assessment order a copy of which is attached at page no. 1-6 of the paper book. The Id. AR further referred to the decision of the Hon'ble Apex Court in the case of Union of India Vs. Rajeev Bansal in Civil appeal No. 8629 of 2024 vide order dated 03.10.2024, wherein the Hon'ble court has held that in case of Section 151 of the Act, the old regime, if time limit of four years from the end of the assessment year falls between 24.03.2020



and 31.03.2021, then the specified authority u/s 151(2) of the Act has extended the time till 31.03.2021, to grant the approval. The Id. AR therefore, prayed that since the approval has not been granted by the JCIT, therefore, the very foundation of reopening u/s 147 read with section 148 of the Act is invalid and therefore, consequent order passed u/s 147 read with section 143(3) of the Act is bad in law and may be quashed.

05. The Id. DR on the other hand relied on the order of Id. CIT (A) and the Id. AO so far as the legal issue is concerned.

06. After hearing the rival contentions and perusing the materials available on record, we find that the impugned assessment year is A.Y. 2015-16 and four years from the end of the relevant assessment order expires on 31.03.2020. In this case, the impugned notice u/s 148 of the Act was issued on 31.03.2021, after obtaining the approval of PCIT. We have carefully perused the decision passed by the Hon'ble Apex court in the case *Rajeev Banal (supra)*, wherein Hon'ble court in Para 114 has concluded as under:-

"114. In view of the above discussion, we conclude that:

a. to d

e. In the case of Section 151 of the old regime, the test is: if the time limit of four years from the end of an assessment year falls between 20 March 2020 and 31 March, 2021, then the special authority u/s 151(2) has extended time till 31 March, 2021 to grant approval;"

07. In other words, the Hon'ble Court has held that in case of Section 151 of old regime if the time limit of four years from the end of assessment years falls between 20.03.2020, and 31.03.2021, then the specified authority u/s 151(2) of the Act has extended the time till 31.03.2021 to grant the approval. In the present case, the four years from the end of the relevant assessment years expires on 31.03.2020, which falls between the dates as mentioned by the Hon'ble Apex Court in Para 114 (e). Therefore,



specified authority u/s 151(2) of the Act which is JCIT which has to accord the approval for reopening the case as it falls within the Section 151(2) of the Act. Therefore, we find merit in the contention of the Id. AR that the approval of the competent authority has not been obtained. Consequently, we are inclined to hold that the reopening of assessment u/s 147 read with section 148 of the Act has been made invalidly and is hereby quashed as being nullity and non-est in the eyes of law. The cross-objection filed by the assessee is allowed.

08. The appeal of the Revenue in ITA No.1699/KOL/2024, has become infructuous, as we have already quashed the assessment order in the cross objections no.25/KOL/2024 arising in ITA No. 1699/KOL/2024 filed by the assessee. Besides needless to say, that the Revenue involved in the impugned appeal is only ₹6,06,000/-, which is apparently below the threshold limit of ₹60,00,000/- in terms of CBDT Instruction bearing No. 9 of 2024 issued on 17th September, 2024 issued by CBDT and therefore, the appeal is not also maintainable under the said circular and is liable to be dismissed as non-maintainable as it is not cover in any of the exceptions provided in that Circular. Accordingly, the appeal of the Revenue is dismissed as infructuous.

CO No. 24/KOL/2024 and ITA No. 1698/KOL/2024

09. In the Cross Objection No. 24/KOL/2024 arising in ITA No. 1698/KOL/2024, the assessee has challenged the validity of proceeding u/s 147 of the Act, which were upheld by the Id. CIT (A).

010. The facts in brief are that the assessee filed the return of income u/s 139(1) of the Act on 29.09.2013, declaring the income of ₹94,61,950/-, which was processed u/s 143(1) of the Act on 10/02/2015. The case of the assessee was selected for scrutiny and assessment was accordingly framed



u/s 143(3) of the Act, assessing the total income at ₹1,04,30,970/- vide order dated 30.03.2016. Thereafter, the case of the assessee was reopened u/s 147 of the Act, by issuing notice u/s 148 of the Act on 16.03.2021, after obtaining the approval of PCIT, Kolkata-5 and the statutory and other notices were duly served along with questionnaire to the assessee and were also replied from time to time. Finally, the Id. AO made the addition of ₹2,55,00,000/- on account of bogus unsecured loans received from four parties namely; (i) Zevlin Agencies Pvt Ltd of ₹Rs.60,00,000/- (ii) Jhunjhunu Commerce Pvt Ltd Rs.1,10,00,000/- (iii) Manikrit Tie-up Pvt Ltd Rs.65,00,000/- and (iv) Rashidhan Traders Pvt Ltd Rs.20,00,000/-, which according to the Id. AO has remained unexplained, in the assessment framed u/s 143(3) / 147 of the Act vide order dated 04.02.2023.

011. In the appellate proceedings, the Id. CIT (A) has dismissed the appeal of the assessee on legal issue on the validity of reopening of assessment u/s 147 of the Act, however, the relief was allowed to the assessee on merit. The Id. CIT (A) by allowing the relief on merit held that the assessee has discharged its onus by furnishing all the documents before the Id. AO and the Id. AO has not brought on record any substantive material while conducting the necessary enquiries in the matter.

012. The Id. AR vehemently submitted before us that in this case the assessment was framed u/s 143(3) of the Act vide order dated 30.03.2016. During the course of original assessment proceedings, the assessee has furnished all the documents comprising names, addresses, confirmations, bank statements, audited annuals, MCA data, etc. before the Id. AO and even notice issued u/s 133(6) of the Act were issued to all the share subscribers. The Id. AR stated that the notice to one subscriber u/s 133(6) of the Act could not be served because of change of name from Zevlin Agencies Pvt Ltd. to SNRK Creation private Limited as evidence by the data



of Ministry of Corporate Affairs, copy of which is available at page nos.25 and 26 of the Paper Book whereas the notice to three other parties were duly served out of which two parties had responded to the notice. The Id. AR submitted that the loans were repaid during the subsequent years. The assessee even provided interest of these loans after deduction of tax at source. The Id. AR therefore, prayed that in the original assessment proceedings, these loans were accepted and no additions were made to the income of the assessee. The Id. AR further contended that since, the reopening of assessment is made in the present case vide notice dated 16.03.2021, issued u/s 148 of the Act therefore, reopening is apparently after period of four years from the end of the relevant assessment years and therefore, there is no specific failure noted by the AO in the reasons recorded on the part of the assessee to disclose fully and truly all material facts necessary for that assessment year. The Id. AR therefore, prayed that in view of the decisions of Hon'ble Apex Court in the case of *ACIT v. CEAT Ltd. (2022)449 ITR 171 (SC)*, the reopening of assessment is invalid and liable to be quashed. Even on merit, the Id. AR contended that the assessee has discharged its onus by furnishing all the details / evidences before the Id. AO in the original assessment proceedings as well as in the reopening proceedings, which have been correctly appreciated by the Id. CIT (A) and the additions made by the Id. AO were rightly ordered to be deleted.

013. The Id. DR on the other hand, relied on the order of Id. AO by submitting that it is enough if the Id. AO has referred to the failure of the assessee to disclose any material fact truly and material necessary for his assessment for that assessment year and no specific mention of failure of the assessee is required to be made in the reasons recorded.

014. After hearing the rival contentions and perusing the materials available on record, we find that in this case, assessment was framed u/s



143(3) of the Act vide order dated 30.03.2016. During the course of original assessment proceedings all the evidences/ information/ details were placed before the Id. AO and even the notices issued u/s 133(6) of the Act, were duly served except one and responded by two lenders while on one the notice could not be served due to change of name and the fourth one did not respond. The loans were repaid in the subsequent year and these loans were accepted during the original assessment proceedings and no addition was made. Thereafter the case of the assessee was reopened u/s 147 of the Act by issuing notice u/s 148 of the Act dated 16.03.2021, which is apparently after period of 4 years from the end of the relevant assessment year. The reopening would only to be made in terms of first proviso to Section 147 of the Act which provides that the reopening beyond four years can only made if there is a failure on the part of the assessee to disclose any information truly and materially during the assessment proceedings or in the return of income which led to escapement of income in that particular assessment year. In the present case, though the Id. AO mentioned that there was failure on the part of the assessee but no specific failure was pointed out. We note that in the original assessment proceedings, as well as in this reopening of assessment proceedings all the documents were placed before the Id. Assessing Officer. In the original assessment proceedings, these transactions were accepted. However, in the reopening of assessment, these were added as unexplained cash credit by the Id. AO, which were also deleted by the Id. CIT (A) by holding that while assessee has fully discharged its onus by filing all the documents qua the said lenders and the Id. AO has not brought any material on record, to the contrary. In our considered opinion , the Id. AO has to point out specific failure of the assessee to disclose any information materially and truly failing which would vitiate the reopening of assessment as the same is against the decision of Hon'ble Apex Court in case of *CEAT Ltd. (supra)*



accordingly. Therefore , we are inclined to hold that reopening of assessment as invalidly made and so the assessment framed and are accordingly quashed.

015. The appeal of the Revenue in ITA No.1698/KOL/2024, has become infructuous, as we have already quashed the assessment order in the cross objections no.24/KOL/2024 arising in ITA No. 1698/KOL/2024 filed by the assessee. Accordingly, the appeal of the Revenue is dismissed as infructuous.

016. In the result, both the appeals of the Revenue are dismissed and the Cross Objections of the assessee are allowed.

Order pronounced in the open court on 20.12.2024.

Sd/-
(PRADIP KUMAR CHOUBEY)
(JUDICIAL MEMBER)

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 20.12.2024

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