

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

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

**ITA No.1370/KOL/2024
(Assessment Year:2013-14)**

Begraj Agarwal & Ors. HUF
Diamond Heritage, Unit No.609,
Strand Road, Kolkata-700001
West Bengal

(Appellant)

ITO, Ward 34(1), Kolkata
Aaykar Bhavan Poorva, 110,
Shantipally, Kolkata-700107,
West Bengal

(Respondent)

PAN No. AABHB8295F

Assessee by : Shri S.M. Surana, AR
Revenue by : Shri Amuldeep Kaur, DR

Date of hearing: 19.12.2024
Date of pronouncement : 15.01.2025

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 06.05.2024 for the AY 2013-14.

02. The issue raised in ground no.1, is against the order of Id. CIT (A) confirming the additions in the assessment order passed u/s 147 read with section 144B of the Act by ignoring the fact that the entire assessment proceeding u/s 147 of the Act were invalid and bad in law.
03. The facts in brief are that the assessee filed the return of income on 29.07.2013, declaring total income at ₹8,71,380/- under the head



income from other sources, after claiming deduction under Chapter VIA amounting to ₹1,04,768/-. The return was processed u/s 143(1) of the Act. Thereafter the Id. AO received the information from Pr. DIT (Investigation), Kolkata, vide letter dated 27.04.2015, that assessee had taken accommodation entries from M/S Sulabha Engg Ltd of bogus Long Term Capital Gain to the tune of ₹92,54,491/- and Short Term Capital Gain of ₹1,79,400/- on the transactions of shares through Sulbha Engineering. The Id. AO noted as the assessee failed to disclose the Long Term Capital Gain / Short Term Capital Gain while filing the return of income for the impugned assessment year. Therefore, he had reason to believe that the total income under the head capital gain to the tune of ₹94,38,891/- has escaped assessment within the meaning of Section 147 of the Act and accordingly, notice u/s 148 of the Act was issued on 31.03.2001, after obtaining the prior approval of the competent authority. The assessee filed the return of income in compliance on 30.04.2021, declaring the same income as was returned in the original return filed u/s 139(1) of the Act. Thereafter the statutory notices were duly issued and served upon the assessee along with questionnaire. In compliance vide letter dated 11.03.2022 and 16.03.2022, the assessee furnished the copies of assessment order for A.Y. 2015-16 and tax paid u/s VSVS in form no.4 and form no.5 of the order under VSVS Rules, 2020. The assessee stated that it had purchased 3,000/- shares of Sulbha Engineering and Ors. amounting to ₹1,80,208/-. The Long-Term Capital Gain earned on the said shares during the A.Y. 2015-16, had been assessed and added back to the taxable income of the assessee in the assessment framed u/s 143(3) of the Act by ITO, Ward-31, Kolkata. However, in order to avoid litigation the assessee opted for



VSVS 2020 and paid the necessary taxes thereon. Therefore, the Id. Counsel for the assessee stated that assessee had already offered the income on sale of shares of Sulbha Engineering and Ors. during A.Y. 2015-16 and therefore proceeding u/s 147 read with section 148 of the Act may be dropped. However, the Id. AO after discussing the reply of the assessee noted that the assessee has furnished purchase bill dated 28.03.2013, along with 3,000/- shares of Sulbha Engineering and Ors. However he failed to furnish the details of Long Term Capital Gain/ Short Term Capital Gain filed during the A.Y. 2013-14. The Id. AO further stated that on perusal of the return of income filed for A.Y. 2013-14, the assessee has claimed an amount of ₹37,94,884/- as exempt being Long Term Capital Gain from transaction of shares, however, furnished no substantive evidences for the same. Thereafter, issue a show cause notice which was replied by the assessee vide letter dated 09.03.2022, stating that the reasons recorded for reopening are based on suspicions and surmises and therefore, bad in law. Therefore, the Long Term Capital Gain of ₹94,38,891/- was bogus and not matching with Long Term Capital Gain filed during the A.Y. 2013-14 and accordingly, the same was treated as unexplained cash credit u/s 68 of the Act. The Id. AO finally added the amount of Long Term Capital Gain of ₹94,38,891/- to the income of the assessee in the assessment framed u/s 147 read with section 144B of the Act dated 30.03.2022.

04. In the appellate proceedings, the Id. CIT (A) also passed a very cryptic order stating all facts therein qua A.Y. 2015-16 and thereafter concluded that no interference is called for within the assessment framed by the Id. AO and thus, dismissed the appeal of the assessee. Thus there was total non application of mind by the Id CIT(A).



05. The Id. AR vehemently submitted before us that the reopening of assessment u/s 147 read with section 148 of the Act is bad in law and is invalid as the reopening has been made on the wrong premises that Long Term Capital Gain of ₹94,38,891/- on sale of shares of Sulbha Engineering was not returned by the assessee during the year nor any money was credited qua the shares of Sulbha Engineering. Therefore, very basis of the reopening was wrong. The Id. Authorized Representative stated that the AO Ward 34(1) issued notice u/s 133(6) of the Act on 21.09.2015 calling for the details of LTGC & STCG . Thereafter again AO Ward- 34(1) issued notice u/s 133(6) on 6.3.2020, calling for the same information . The copies of these notices are available at page no. 24 & 25 and 1 & 2 of the Paper Book. The first said notice was replied on 05.10.2015, informing that assessee had earned Long Term Capital Gain on sale of shares of Paridhi Properties Limited during the impugned assessment year and all the necessary documents in the form of contract notes for purchase and sale of shares, details of application, Demat statement, etc., were filed in support thereto. The copies where all are available at page no.27 to 32 of the Paper Book. The second notice was replied vide letter dated 11.03.2020. stating therein that assessee has earned Long Term Capital Gain on sale of shares of Paridhi Properties Ltd. along with all evidences again copies whereof are available from page no 3 to 23 of the paper book and thereafter no action was taken u/s 148 of the Act apparently after the Id. AO was satisfied. The Id. Authorized Representative further argued thereafter on the basis of information received by the Id. AO from Pr. DIT (Investigation), Kolkata that assessee has received Long Term Capital Gain on sale of shares of Sulbha Engineering, the case was reopened u/s 147 of the



Act by issuing notice u/s 148 of the Act on 15.02.2022 after recording reasons to belief the copy whereof is available at page no.41 and 42. The reasons recorded stated that assessment was reopened on the ground that the assessee has earned Long Term Capital Gain and short term capital gain of ₹94,38,891/- on sale of Sulbha Engineering. The Id. AO thereafter acted on the said information and proceeded to reopen the assessment without any verification despite the fact that the replies of the assessee to the notices issued u/s 133(6) of the Act on two occasions were already available on record. The Id. Authorized Representative while referring to the copy of bank statement and profit and loss account stated that there was no sale of equity shares of Sulbha Engineering amounting to ₹94,38,890/- in the instant assessment year but the assessee had earned Long Term Capital Gain of ₹37,94,884/- on sale of shares of Paridhi Properties Ltd which was duly shown in the return of income. The Id. Authorized Representative submitted that the reopening of proceedings u/s 147 read with section 148 of the Act were bad in law as the Id. AO after receiving information did not make any enquiry or independent application of mind on the information available on the assessment record. In defence of his argument the Id. Authorized Representative relied on the following decisions:

- i. *CIT vs. Smt Paramji Kaur (2009) 311 ITR 38 (Punjab and Haryana)*
- ii. *CIT vs. Sfil Stock Broking Ltd. (2010) 325 ITR 285 (Delhi)*
- iii. *ITO Vs. Sarthak Securities (P.) Ld. (2010) 329 ITR 110 (Delhi)*
- iv. *Signature Hotels P. Ld. Vs. ITO Another (2011) 338 IT 51 (supra) 338 ITR 51*
- v. *Akshar Builders and Developers Vs. ACIT WP No. 14490 of 2018 (Bombay)*
- vi. *Ankita A. Choksey Vs. ITO (Bombay) WP No. 3344 of 2018*



06. The Id. Authorized Representative therefore prayed that in view of the ratio laid down in the above decisions, wherein the Id. AO has reopened the assessment on the basis of information received without any enquiry or independent application of mind, the reopening of proceeding u/s 147 as well as the consequent order are to be quashed.
07. The Id. DR on the other hand relied on the order of the lower authorities.
08. After hearing the rival contentions and perusing the materials available on record, we find that the case of the assessee was reopened u/s 147 of the Act by issuing notice u/s 148 of the Act on 31.03.2021. We note that in the reasons recorded, the copies of which is available at page no.41 and 42, the Id. AO noted that the assessee has earned Long Term Capital Gain/Short term capital gain of ₹94,38,891/- on sale of shares of Sulbha Engineering, whereas as a matter of fact the assessee has not made any transactions of sale of shares of Sulbha Engineering. Even the matter was brought to the notice of the ITO, Ward 34(1) on two occasions when notices u/s 133(6) of the Act was issued on two occasions i.e. first on 21.03.2015 and second, on 06.03.2020. The assessee filed all the details comprising contract notes, balance sheet, profit and loss account, Demat Account, etc. and submitted that assessee has earned income by way of Long-Term Capital Gain on sale of shares of Paridhi Properties Ltd. Amounting to ₹37,94,883/- which has been shown in the Profit and Loss account and was also claimed as exempt. We note that during the instant assessment year the assessee has purchased 3,000/- shares of Sulbha Engineering and there was no sale of shares



of Sulbha Engineering during the impugned year. Considering the facts and circumstances in the instant case, we are of the considered opinion that the case of the assessee was reopened invalidly without doing any enquiry or verification or without any independent application of mind despite the fact that the assessee had responded to the notices u/s 133(6) of the Act issued prior to the reopening of assessment by ITO ward 34(1) and all the details/ information were available with the AO. Therefore, we are quashing the reopening of assessment as well as the assessment framed u/s 147 read with section 144B of the Act. The case of the assessee find support from the decision of Hon'ble Punjab and Haryana High Court in case of **Smt Paramji Kaur (supra)**, wherein Hon'ble Court has held that the Id. AO has not examined and corroborated the information received from survey circle before recording his own satisfaction on escaped income and initiated the reopening proceeding going on the basis of suspicion and therefore, it could not be said that same was based on belief that income chargeable to tax had escaped assessment. The court held that the Id. AO has to act on the reason to belief and not on the reason to suspect. The Hon'ble court upheld the order of the Tribunal, wherein the Tribunal concluded that the Id AO had failed to incorporate the material and his satisfaction for reopening of the assessment and therefore, reopening of the assessment is invalid. Similarly in the case of **Sfil Stock Broking Ltd. (supra)**, Hon'ble court held that where on the basis of information received from DIT(Investigation), the Id. AO reopened the assessment and from very so-called reasons it was not at all discernible whether the Id. AO had applied his mind independently to the information and independently arrived at a belief that on the basis of material available before him,



income has escaped assessment, the reopening is not justified. The Hon'ble Jurisdictional High Court in the case of **Signature Hotels P. Ld. Vs. ITO Another(supra)** has held that the Id. AO has acted on the report of investigation only and initiated the reopening proceeding by issuing of notice u/s 148 of the Act, the assessment was invalid. Therefore, considering the facts of the assessee in the light of aforesaid decisions, we are inclined to quash the reopening of assessment as well as the consequent order passed by the Id. Assessing Officer.

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

Order pronounced in the open court on 15.01.2025.

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

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 15.01.2025

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