

**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, KOLKATA**

**BEFORE SHRI RAJESH KUMAR, AM  
AND  
SHRI SONJOY SARMA, JM**

**ITA No. 2294/KOL/2024  
(Assessment Year:2010-11)**

**Pankaj Mukherjee**  
1/9 Debinagar, Beniachity,  
Kolkata-713213, West Bengal

**Vs.**

**DCIT, Circle-1,**  
Aaykar Bhavan, Aykar Bithi,  
City Centre, Durgapur,  
West Bengal 713216

**(Appellant)**

**(Respondent)**

**PAN No. AJOPM7641Q**

**Assessee by** : Shri Sunil Surana, AR

**Revenue by** : Shri Rajat Datta, DR

**Date of hearing:** 27.01.2025

**Date of pronouncement :** 31.01.2025

**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 14.02.2024 for the AY 2010-11.

02. At the outset, we note that there is a delay in filing the appeal by 278 days, for which the assessee has filed an affidavit of Shri Amit Kumar son of Sri Balmukund Pathak stating that he was looking after the tax matters of Pankaj Mukherjee. He further stated that he was handed over the copy of the appellate order for the A.Y. 2010-11 on 25.02.204 for filing the appeal. However, the same was misplaced by him as it was placed in the wrong file. On 25.10.2024, the assessee asked the said counsel about the status of the appeal and then he



came to know that the appeal has not been filed. The appellate order was finally located in some other file and the appeal was filed with a delay by 278 days. The said counsel also stated that the delay in filing the appeal was purely on account of inadvertence without any malafide intention and therefore, the same was bonafide and genuine reasons.

03. The Id. DR on the other hands strongly opposed the condonation of delay.
04. After hearing the rival contentions and perusing the materials available on record, we find that the appeal filed by the assessee was late by 278 days which appears to be for genuine and sufficient reasons. Therefore, the same is condoned and appeal is admitted for adjudication.
05. The only issue raised by the assessee is against the order of Id. CIT (A) upholding the reopening of assessment when the necessary conditions as specified u/s 147, were not satisfied.
06. The facts in brief are that the assessee filed the return of income on 29.03.2011 declaring total income of ₹13,06,876/-. The case of the assessee was reopened u/s 147 of the Act by issuing notice u/s 148 of the Act on 31.03.2017. The case was reopened after recording the reasons to belief and after obtaining the approval of the competent authority. As per the reasons recorded, the assessee has received interest of ₹13,935/- on which TDS of ₹3394/- was deducted, whereas the assessee has declared the income from interest as nil and also has not claimed any TDS deducted at source. Further, the reasons stated that as per AIR information, the assessee has deposited cash of ₹58,76,000/- in saving bank with Axis Bank Ltd. However, at schedule

AIR the assessee has declared cash deposit to be nil and hence, income of ₹59,09,935/- has escaped assessment. Accordingly, the statutory notices were issued along with questionnaire which were duly replied in the assessment proceedings. Finally, the Id. AO made four additions to the income of the assessee; (i) The disallowance u/s 40A(3) of ₹1,29,320/- (ii) unexplained cash credit u/s 68 of the Act of ₹16,98,126/- (iii) unsecured loan u/s 68 of the Act of ₹23,62,500/- and (iv) advance against sale of land u/s 68 of the Act of ₹57,59,481/- thereby, making aggregating addition of ₹99,49,427/- to the assessment framed u/s 143(3) read with section 147 of the Act dated 30.12.2017. Pertinent to state that the only addition made in in the assessment order which was subject matter of the reasons recorded was in respect of unexplained cash credit u/s 68 of the Act of ₹16,98,126/-, for which the Id. AO has noted in the reasons recorded that the assessee has deposited ₹58,76,000/- in cash in the saving bank account.

07. In the appellate proceedings, the Id. CIT (A) deleted all the additions except the unsecured loan u/s 68 of the Act of ₹23,62,500/-. In other words, the Id. CIT (A) deleted the additions of disallowance u/s 40A(3) of the Act of ₹1,29,320/-, unexplained cash credit u/s 68 of the Act Rws. 16,98,126/- and advance against sale of land u/s 68 Rs. 57,59,481/-. Thus, the Id. CIT (A) deleted the addition which was subject matter of the reasons recorded.
08. Now, aggrieved assessee has challenged the reopening of assessment to be bad in law and invalid for the reason that the very basis for reopening has gone as the addition made by the Id. AO for the reasons recorded u/s 148(2) of the Act was fully deleted by the Id. CIT (A) and therefore, the reopening of assessment has to be go. We find

merit in the contention of the Id. AR that once the very basis of reopening is demolished by the appellate authority by deleting the addition which was subject matter of the reasons recorded, then the other additions made by the Id. AO are invalid and has to be deleted. The case of the assessee find force from the decision of Sanju Jalan vs. ITO in ITA No. 634/KOL/2017 for A.Y. 2013-14 vide order dated 10.01.2018, where the co-ordinate Bench held as under:-

*"19. We have considered the submission of the learned counsel for the Assessee in the light of the judgment of the Hon'ble Bombay in the case of Jet Airways (I) Ltd. (Supra). We are of the view that on the facts and in the circumstances of the present case the ratio laid down by the Hon'ble Bombay High Court in the case of Jet Airways India Ltd. (supra) is squarely applicable. As we have already seen that the assessment was reopened for the reason that the jewellery purchased by the Assessee was from undisclosed sources and the purchases were bogus. That addition has not been sustained now. The Assessing Officer however, proceeded to make an addition on account of Long Term Capital Gain (LTCG) on sale of shares. This was clearly beyond the scope of the proceedings under section 148 of the Act. The Assessing Officer, therefore, could not have proceeded to make the impugned addition of bogus LTCG. Similar view has been expressed by the Hon'ble Delhi High Court in the case of Ranbaxy Laboratories vs. CIT, ITA 148 of 2008 dated 3/6/2011. The Hon'ble Delhi High Court followed the decision of the Hon'ble Bombay High Court in the case of Jet Airways (supra). In that view of the matter we hold that the addition by treating the LTCG as bogus cannot be sustained as it was beyond the scope of the proceedings under section 147 of the Act. We therefore delete the said addition also and allow Ground No..6 to 8. .*

*20.. In view of the above conclusions we are of the view that the issue with regard to the validity of initiation of re-assessment proceedings u/s 147 of the Act does not require any consideration.*

*21. In the result, the appeal is allowed."*

09. Similarly, in case of Ganesh Steel & Alloys Ltd. Vs. DCIT in ITA No. 929/KOL/2023 for A.Y. 2012-13 vide order dated 11.06.2024, wherein the coordinate bench has decided the case in favour of the assessee. We therefore, respectfully following the co-ordinate Bench decision direct the Id. AO to delete the addition as beyond the scope of the proceeding u/s 147 of the Act. The appeal of the assessee is allowed.



The issue raised on merit is left open to be decided at the later stage if the need arise for the same.

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

Order pronounced in the open court on 31.01.2025.

Sd/-  
(SONJOY SARMA)  
(JUDICIAL MEMBER)

Sd/-  
(RAJESH KUMAR)  
(ACCOUNTANT MEMBER)

Kolkata, Dated:31.01.2025

*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