

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, KOLKATA
Before
SRI SANJAY GARG, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER

I.T.A. No.: 747/KOL/2024
Assessment Year: 2018-19

ACIT, Circle-32, Kolkata **Appellant**

Vs.

Om Prakash Jalan **Respondent**
3rd Floor, 20 O C Ganguly Sarani,
Formerly Lee Road, Kolkata-700020.
(PAN: ACFPJ8572R)

&

C.O. No. 17/Kol/2024
In I.T.A. No.: 747/KOL/2024
Assessment Year: 2018-19

Om Prakash Jalan **Cross Objector**

Vs.

ACIT, Circle-32, Kolkata **Respondent**

Appearances:

Assessee represented by: *Shri S. Jhajharia, Advocate*
Revenue represented by: *Shri S. Datta, CIT, DR*

Date of concluding the hearing : 02.01.2025

Date of pronouncing the order : 31.01.2025

ORDER

Per Sanjay Garg, Judicial Member:

The captioned appeal has been preferred by the revenue and the corresponding Cross Objections by the assessee against the order dated 12.02.2024 of the Ld. Commissioner of Income Tax (Appeal), National Faceless Appeal Centre, Delhi [hereinafter referred to as Ld. ‘CIT(A)’] u/s. 250 of the Income Tax Act, 1961 (hereinafter referred to as the “Act”) for Assessment Year (AY) 2018-19.

2. The revenue in this appeal has taken following grounds of appeal:

"1. For that Ld. CIT(A) has erred in not considering the fact that the AO was justified in making addition of the unaccounted cash loan received by appellant [Rs.11,05,00,000/-] as no satisfactory explanation for the same was provided during assessment.

2. That the Ld. CIT(A) has erred in not considering the fact that the broker who facilitated "Rukka" transaction had himself confessed under oath the genuineness of transaction.

3. That the Ld. CIT(A) has erred in not considering the fact that the "Rukka" being unaccounted cash transaction document cannot be expected to bear name, signature of parties and admission by involved broker is of sufficient evidence.

4, Ld. CIT(A) has erred in not considering the fact that allowing cross examination of witness to 'a' was not a mandatory requirement, in a situation where the independent witness was also the broker who had provided services to the appellant.

5. That the appellant craves leave to add, alter and delete any of the grounds of appeal during the appellate proceedings."

Whereas the assessee has taken the following cross objections:

"1. For that in view of the facts and in the circumstances Ld. CIT(A) erred in not adjudicating on the legal ground that the impugned proceedings vide issue of notice u/s 148 and the consequent order u/s 147 was pursuant to the alleged search u/s 132 on the person stated therein in the .Impugned order u/s 147 and as such the impugned proceedings u/s 147 is illegal since the proceedings should have been u/s 153C and in view of the facts and in the circumstances impugned order u/s 148A(b), order u/s 148A(d), notice u/s 148 and consequent order u/s 147 is bad in law and it may be held accordingly.

2. Without prejudice to Ground No. 1 above, Hon'ble Rajasthan High Court in Tirupati Construction Company v. ITOI CDBT [Civil Writ Petition No 176511 2022 and Civil Writ Petition No 1752312022 dt 21.3.2024] [Also Shyam Sunder Khandelwal v. ACIT- D.B. Civil WP No 18363 /2019 dt. 19.3.2024] has held that in these circumstances only proceedings u/s 153C can be taken up and not u/s 147 and in view of the facts and in the circumstances it may be held accordingly.

3. Without prejudice to Grounds No.1 & 2 above, order u/s 148 was issued by ACIT, Circle -32, Kolkata (J.A.O.) whereas in terms of sec. 151A of Income-tax Act, 1961 such notice u/s 148 could have been issued by AO, NFAC only and who failed to issue the impugned notice u/s 148 and in terms of judgment of Hon'ble Bombay High Court in Hexaware Technologies Limited [W.P. No 1778 of 2023 dt. 3.5.2024] the impugned notice u/s 148 and consequential proceedings is bad in law and it may be held accordingly.

4. Without prejudice to Grounds No.1 to 3 above, order u/s 148A(d) and approval by the prescribed authority for issue of notice u/s 148 by J.A.O. has

been given much prior to notice u/s 148A(b) itself which has made entire proceeding u/s 148A(b), consequential notice u/s 148 and subsequent proceedings and order u/s 147 bad in law and it may be held accordingly.

5. Without prejudice to validity of impugned notice u/s 148 and consequent order u/s 147 Ld. AO, NFAC's action in entire addition is bad in law since impugned sum of Rs.11,05,00,000/- is not covered as unexplained investment u/s 69A and such sum cannot be added in hands of appellant and Ld. CIT(A) rightly deleted such addition.

6. Without prejudice to validity of impugned notice u/s 148 and consequent order u/s 147 Ld. AO, NFAC's action in entire addition is bad in law since Ld. AO, NFAC didn't conduct any enquiry himself on alleged loan creditors and hence assumption of loan transaction itself without verification has no legal sanctity and Ld. CIT(A) rightly deleted such addition and it may be held accordingly.

7. Without prejudice to validity of impugned notice u/s 148 and consequent order u/s 147 Ld. AO, NFAC's action in entire addition is bad in law since Ld. AO, NFAC didn't have any corroborative evidence towards such alleged loan transaction and hence entire addition is bad in law and Ld. CIT(A) rightly deleted such addition on such premises and it may be held accordingly.

8. For that your petitioner craves the right to put additional grounds and/or to alter/amend/modify the present grounds at the time of hearing.”

3. Since the cross objections taken by the assessee hit at the very validity of the reopening of the assessment made by the Assessing Officer u/s. 147 of the Act, therefore, the same are taken first for adjudication.

4. At the outset, the Ld. Counsel for the assessee has invited our attention to the relevant para 3.1 of the assessment order, wherein, the Assessing Officer has given the brief description of the facts and issue involved, contents of which, for the sake of ready reference, are reproduced as under:

“3.1. Complete description of the issue:

In this instant case, the DDIT (Inv.), Unit-2(4), Kolkata vide letter dated 21.02.2022 has provided an information to the concerned Jurisdictional Assessing Officer that Credible information has been received from the statement of Sri Jai Bhagawan Agarwal before the Investigation Wing that the assessee is engaged in a cash transaction and received cash loan to the tune of Rs. 11.05 crore through the broker namely Sri Jai Bhagawan Agarwal.

Thereafter, the concerned jurisdictional officer, after following due procedure as provided by Section 148A of the Act, found it a fit case for issuance of notice u/s.148 of the Act and a notice u/s 148 of the Act dated 29.03.2022 for the A.Y. 2018-19 was issued and served upon the assessee. The assessee has filed

return in compliance to the notice u/s 148 on 22.04.2022 and accordingly a notice u/s 143(2) has been issued on 04.11.2022.”

5. Inviting our attention to the above reproduced contents of the assessment order, the Ld. Counsel has submitted that it is apparent from record that in this case, the Assessing Officer has reopened the assessment solely on the basis of report of the Investigation Wing and without any application of mind. The contents of the aforesaid para of the assessment order clearly shows that the reopening has been done on the basis of borrowed satisfaction from the Investigation Wing. That the Assessing Officer, on receipt of information from Investigation Wing, did not co-relate and cross verified the facts with the accounts of the assessee and even did not bother to make any preliminary enquiries to check the veracity of the said information and to form his opinion/belief regarding the escapement of the income of the assessee for the year under consideration. The Ld. Counsel for the assessee, therefore has contended that the reopening of the assessment in this case was bad in law. The Ld. Counsel for the assessee has further invited our attention to pages 149 and 150 of the paper book, which is a copy of the notice issued under clause (b) of sec. 148A of the Act along with annexure, wherein, the reasons recorded for reopening of the assessment have been given, the contents of which, for the sake of ready reference, are reproduced as under:

“ANNEXURE

Credible information has been received from the statement of Sri Jai Bhagwan Agarwal before the Investigation Wing that the assessee is engaged in a cash transaction and received cash loan to the tune of rs.11.05 crore through the broker namely Sri Jai Bhagwan Agarwal. Therefore, the amount of cash loan of Rs.11.05 crore has escaped assessment.”

6. A perusal of the above reasons recorded would show that the Assessing Officer had received information that the assessee had received cash loan to the tune of Rs.11.05 crore through broker namely, Shri Jai Bhagwan Agarwal. This information in itself is not sufficient to form the belief by the Assessing Officer regarding escapement of income of the assessee. The Assessing Officer has only the information that the assessee had received loan and the amount received as loan in no circumstances can be said to be the income of the

recipient. Moreover, if the allegation is to be treated as that the said loan was a sham transaction and that the same was the own income of the assessee routed through the said broker Shri Jai Bhagwan Agrawal (though there is no such averment made in the reasons recorded, even then, such an information may be treated a trigger point for making further investigations but that information alone cannot be said to be sufficient information for reopening of the assessment. The Assessing Officer in this case, blindly acted on the information received from Investigation Wing and reopened the assessment, even though in the said information it has been mentioned that the assessee had received loan and there is no allegation that the said loan was a sham transaction to route the undisclosed income of the assessee.

7. The assessee in this case has categorically stated that he neither knows any person named Shri Jai Bhagwan Agrawal and nor he has received any alleged cash loan of Rs.11.05 crore. The assessee having denied of receipt of any cash loan as alleged by the Assessing Officer, the burden shifted on the Assessing Officer to confront the assessee with any such evidence showing that the assessee had entered into any such transaction. Admittedly, in this case, no such cash was found from the possession of the assessee. There is no name mentioned by the Assessing Officer of any lender, who allegedly gave loan to the assessee, only the name of the broker has been mentioned, that in itself is totally a vague allegation without any corroborating evidence.

8. The Ld. Counsel for the assessee has invited our attention to the impugned assessment order to show that the Ld. Assessing Officer has just repeated the contents of the information received from the Investigation Wing and has not pointed out any evidence on the file to show that the assessee has actually received any such loan amount through broker. Moreover, the Assessing Officer has made the addition u/s. 69A of the Act whereas as per the provisions of section 69A of the Act, the assessee must be found to be owner of any money, bullion or jewellery or any other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account

maintained by him and the assessee fails to offer the source of acquisition of the same to the satisfaction of the Assessing Officer, then the value of such money and value of the bullion, jewellery or article may be deemed as income of the assessee for that financial year. However, in this case, neither the assessee has been found to be owner of any money, bullion, jewellery or valuable article nor any such money, bullion, jewellery or valuable article has been found in possession of the assessee nor there is any such allegation even in the reasons recorded for reopening of the assessment. Therefore, the impugned assessment is liable to be quashed on this score also. The Ld. CIT(A), therefore, on merits also has rightly deleted the additions made by the Assessing Officer. In view of our above observation, there is no merit in the appeal of the revenue, the same is hereby dismissed.

9. Since, we have decided the appeal of the assessee on merits, therefore, the legal issue relating to the validity of reopening of the assessment is not adjudicated and the same is kept open, to be adjudicated at appropriate stage, if need be.

10. In the result, the appeal of the revenue is hereby dismissed whereas the Cross Objection of the assessee stand allowed.

Order pronounced in the open Court on 31st January, 2025.

Sd/-

[Rakesh Mishra]
Accountant Member

Sd/-

[Sanjay Garg]
Judicial Member

Dated: 31.01.2025

J.Dey (Sr. P.S.)

Copy of the order forwarded to:

1. **Assessee : Shri Om Prakash Jalan**
2. **Revenue : ACIT, Circle-32, Kolkata**
3. **CIT(A)-NFAC, Kolkata.**
4. **CIT**
5. DR, ITAT, Kolkata
6. Guard File.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata