



IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCHES "SMC", KOLKATA

BEFORE DR.MANISH BORAD, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.1951/KOL/2024
Assessment Year : 2010-11

M/s. Shroff Properties Pvt. Ltd., Block-B, 2 nd Floor, Flat No.2E, Ideal Height, 302, APC Road, Raja Ram Mohan Sarani, Kolkata – 700 009 West Bengal PAN : AANCS3422Q	V/s	ITO, Ward-1(1), Kolkata
Appellant		Respondent

Assessee by	:	Shri Abhishek Bansal, AR
Revenue by	:	Shri Kapil Mondal, Addl. CIT
Date of hearing	:	26.11.2024
Date of pronouncement	:	04.02.2025

आदेश / ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The captioned appeal pertaining to Assessment Year 2010-11 at the instance of assessee is directed against the order dated 29.07.2024 passed by National Faceless Appeal Centre, Delhi u/s.250 of the Income-tax Act, 1961 (in short 'the Act') which in turn is arising out of Assessment Order dated 11.12.2017 passed u/s. 143(3)/147 of the Act.

2. The assessee has raised various grounds of appeal. The grievance of the assessee is twofold, firstly on the legal issue challenging the validity of reopening proceedings contending them to be bad in law and based on borrowed satisfaction without establishing any tangible nexus between the



information received and belief formed, secondly, on the merits of the case that the sum of Rs.10.00 lakh received during the year was through banking channel and the same was utilised for purchasing Equity Shares and thus the transaction is genuine and addition made as unexplained cash credit u/s.68 of the Act is uncalled for.

3. Facts of the case in brief are that the assessee is a Private Limited company engaged in the business for the A.Y. 2010-11. Ld. AO received information through Investigation Wing wherein about some accommodation entry received by the assessee from M/s. Canary Tradecom Pvt. Ltd. which is alleged to be a Jama Kharchi Company. The reassessment proceedings were carried out after issuance of notice u/s.148 of the Act and after validly serving of notices u/s.143(2)/142(1) of the Act. During the course of reassessment proceedings, assessee stated that the alleged sum received from M/s. Canary Tradecom Pvt. Ltd. had already been returned on the very same day for purchasing Equity Shares. Evidence and support thereof was also furnished. Ld. AO was not satisfied and concluded the assessment making addition u/s.68 of the Act at Rs.10.00 lakh and assessed the income at Rs.10.00 lakh.

4. Aggrieved assessee preferred appeal before the Id.CIT(A) but failed to succeed. Now the assessee is in appeal before the Tribunal.

5. Ld. Counsel for the assessee submitted that the reopening is bad in law because the reasons recorded are vague and that they are merely reasons to suspect and not reason to believe. Ld. AO has proceeded only on the basis of information of Investigation Wing but he has not mentioned any detail about



the company giving alleged sum to the assessee and any verification of the Assessing Officer prior to issuance of notice u/s.148 of the Act.

6. On the other hand, ld. Departmental Representative vehemently argued supporting the orders of the lower authorities.

7. I have heard the rival submissions made by the parties and perused the record placed before me. The assessee has raised the legal issue challenging the validity of re-assessment proceedings. The reasons recorded for reopening the assessee's case u/s.148 of the Act read as under :

“Reason of Re-opening u/s. 148 of the I.T.Act 1961 in the case of Shroff Properties (Pvt.) Ltd. for Asstt. Yr. 2010-11 (PAN: AANCS3422Q).

An information received from Credible sources that 31 bank accounts were opened with Indusind bank, stock Exchange Branch kolkata in the Individual, proprietorship, firm and Private limited wherein it was observed that the huge cash were being deposited in these accounts followed by immediate transfer in other bank accounts and the transaction parties were companies unusually large with abnormal pattern and carried no business rational, During the investigation it as found that huge cash was deposited in various accounts of business concerns and in many other bank accounts in Indusind Bank stock exchange Branch, kokata followed by immediate transfer to other bank accounts of various Pvt. Ltd. companies As per database available with department most of these companies are jamakharchi companies (Paper company) the above-mentioned company Assessee) and is also one of them and as per deposits is Rs. 10 Lakhs or more during the Financial year 200910.

In view of the above it is reason to believe that the assessee has escaped income to the tune of Rs 10,00,000/- or more for the A.Yr. 2010-11 and this is a fit case for re-opening u/s. 147 of the I.T. Act 1961.

Accordingly proposal for initiating proceeding u/s. 147 of the I.T.act is being processed.”

8. On perusal of the above reasons, I notice that ld. AO has not mentioned the name of the company through which the



assessee has received the alleged sum but merely based on the information received from Investigation Wing about some individuals, proprietary firms and Private Limited Companies where huge cash was deposited and immediately thereafter transferred to other bank accounts which in generally large with abnormal pattern and having no business rationale. Along with general observations, ld. AO has observed that in the reasons recorded that most of these companies are Jama Kharchi companies (paper companies) and that the assessee is also one of them. Ld. AO had not made efforts to give that detail of the companies through which the assessee has received the alleged sum, the nature of transaction whether such transaction has already been declared in the audited balance sheet filed by the assessee. There is also no proper reason to believe which could show that the income has escaped assessment to the tune of Rs.10.00 lakh. It is a clear case of borrowed satisfaction and the reopening is carried out without any tangible material in the possession of the AO. The case of the assessee has been opened after four years and there is no observation of the AO that the assessee had failed to disclose the relevant material information in its regular return of income. It is also noticed that the assessee has filed the detail of the company through which it received the alleged Share Application money and the same has been returned on the same day for entering into another transaction. Detail of these transactions were filed by the assessee but no enquiry whatsoever has been carried out. Under these facts and circumstances, I hold that the notice issued u/s.148 of the Act and reopening of the assessment is illegal and bad in law and therefore reassessment proceedings in question are quashed.



9. My view is supported by the decision of Hon'ble Bombay High Court in the case of *South Yarra Holdings Vs. ITO & Another in Writ Petition No.3398/2018, dated. 01.03.2019* as well as the decision of Tribunal in the case of *Tanuj Properties Pvt. Ltd. Vs. ITO in ITA No.1045/Kol/2023, dated 19.02.2024*. Hon'ble Bombay High Court decided the Writ Petition in favour of the assessee by holding that the notice issued was bad in law and it has not been issued by the AO on a satisfaction that there is reason to believe and that income chargeable to tax has escaped assessment observing as follows :

"5. On receipt of above reasons on 9.8.2018, the petitioner filed its objections to the reasons in support of the impugned notice and in particular pointed out that the assessee had dealt with a company called "S.V.Electricals Ltd" and not with M/s Nivyah Infrastructure & Telecom Services Ltd. The name of company "S.V.Electricals Ltd" had subsequently changed on 14.2.2012 to M/s Nivyah Infrastructure and Telecom Ltd. It had also pointed out in its objection that during the regular assessment proceedings, details of the petitioner's dealing in scrip namely "S.V.Electricals Ltd" had been submitted during the regular assessment proceedings. The objections primarily proceeds on the basis, that the reasons as recorded, display total non-application of mind while forming reason to believe, this as during the relevant time, there was no company by the name "M/s Nivyah Infrastructure and Telecom Services Ltd" in which the petitioner could have dealt. The petitioner's objections were rejected by the Assessing Officer by passing an order on 28.9.2018. The order on objections, does not deal with the petitioner's primary contentions that the petitioner had not dealt with any company by name "M/s Nivyah Infrastructure and Telecom Services Ltd" during the period relevant to the subject assessment. This order dated 28.9.2018 disposing of the objections is completely silent on the above objections while RNG 5/7 5-up3398.18 rejecting the petitioner's objections.

6. The respondent's Assessing Officer has filed an affidavit-in reply dated 5.2.2019 of the Assessing Officer. However, the reply does not deal with this objection taken in the petition. Nevertheless, Mr.Suresh Kumar the learned counsel for the revenue submits that all these issues will be subject of consideration during the re-assessment proceedings. Thus, this Court should not interfere at this stage.

7. It is a settled position in law that re-opening of an assessment has to be done by an Assessing Officer on his own satisfaction. It is not open to an Assessing Officer issue a reopening notice at the dictate and/or satisfaction of some other authority. Therefore, on receipt of any information which suggests escapement of income, the Assessing



Officer must examine the information in the context of the facts of the case and only on satisfaction leading to a reasonable belief that income chargeable to tax has escaped assessment, that re-opening notice is to be issued.

8. From the reasons, it is evident that the impugned notice has been issued on the basis of information received from the Deputy Collector RNG 6/7 5-wp3398.18 Income Tax (Investigation) alleging that M/s Nivyah Infrastructure & Telecom Services Ltd is a penny stock listed on the Bombay Stock Exchange and that the petitioner had dealt with the same leading to escapement of income. On receipt of information, the least that is expected of the Assessing Officer is to examine the same in the context of the facts of this case and satisfy himself whether the information received does prima facie lead to a reasonable belief that income chargeable to tax has escaped assessment. In this case, the reasons indicate that the Assessing Officer has not carried out such exercise and accepted the report of the Deputy Collector of Income Tax (Investigation) Mumbai to conclude that the petitioner had dealt with Nivyah Infrastructure and Telecom Services Ltd during the previous year relevant to the assessment year 2011-12. Admittedly, there was no company by name "M/s Nivyah Infrastructure & Telecom Services Ltd" in existence during that year for consideration. This clearly shows that the Assessing Officer acted on the satisfaction of the Deputy Collector of Income Tax (Investigation) that income chargeable to tax has escaped assessment. It must also be borne in mind that the impugned notice is issued beyond the period of four years from the end of the relevant assessment year in a case, where the assessment was completed under section 143 (3) of the Act. Therefore, RNG 7/7 5-wp3398.18 the Assessing Officer would have to examine the information received in the context of the facts on record. If such an exercise were to be done, it is likely that the Assessing Officer would have come to the conclusion that there was no failure to disclose truly and fully all material facts necessary for assessment. Thus, hit by the proviso to section 147 of the Act. However, the Assessing Officer has not applied his mind to the information received in the context of the facts on record. The impugned notice is bad-in-law, as it has not been issued by the Assessing Officer on his satisfaction that there is reason to believe, that income chargeable to tax has escaped assessment.

9. In the above circumstances, the impugned notice is un-sustainable in law and therefore, is quashed and set aside.

10. Respectfully following the judgment of Hon'ble Bombay High Court in the case of *South Yarra Holdings (supra)* and the consistent view adopted by this Tribunal, I am of the considered opinion that the re-assessment proceedings carried out in the instant case by the AO are without any tangible material and



without independent application of mind even when all the details of the alleged transaction were duly explained by the assessee.

11. Since I have held the legal issue in favour of the assessee and quashed the reassessment proceedings, no addition survives and therefore, the grounds raised by the assessee on merits became merely academic in nature.

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

Order pronounced on this 04th day of February, 2025.

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

पुणे/Pune; दिनांक / Dated : 04th February, 2025
Satish

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “(SMC)” बेंच, Kolkata/ DR, ITAT, “(SMC)” Bench, Kolkata.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Assistant Registrar,
ITAT, Kolkata