

**IN THE INCOME TAX APPELLATE TRIBUNAL "DB" BENCH: PATNA  
VIRTUAL HEARING IN KOLKATA**

श्री राजेश कुमार, लेखा सटस्य एवं श्री प्रदीप कुमार चौबे, न्यायिक सदस्य के समक्ष  
[Before Shri Rajesh Kumar, Accountant Member & Shri Pradip Kumar Choubey, Judicial Member]

**I.T.A. No. 285/PAT/2023  
Assessment Year: 2013-14**

Prerna Agency Pvt. Ltd.  (PAN: AAFCP 3486 K)	Vs.	ITO, Ward-2(1), Patna
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	05.03.2025
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	26.03.2025
For the assessee / निर्धारिती की ओर से	Shri Miraj D Shah, A.R
For the revenue / राजस्व की ओर से	Sh. Ashwani Kr. Singal, JCIT

**ORDER / आदेश**

**Per Pradip Kumar Choubey, JM:**

This is the appeal preferred by the assessee against the order of Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the Ld. PCIT] dated 27.07.2023 for AY 2013-14.

2. It appears from the appeal that the appeal has been filed by the assessee after a delay of 2 days. The Ld. Counsel of the assessee by placing his condonation petition submitted that in fact order passed by the Ld. CIT(A) was served on 27.07.2023 but the

appeal which ought to be filed on 25.09.2023 had been filed on 27.09.2023 because of the reason is that the director of the assessee was having been suffered from viral fever for the last 4 days and he was not available in the office. The Ld. Counsel submits that the delay as occurred was Bonafide and not intentional hence it may be condoned.

3. The Ld. D.R did not raise objection in condoning the delay. On perusal of the condonation petition the delay is hereby condoned.

4. Brief facts of the case of the assessee are that the assessee M/s Prerna Agency pvt. Ltd. derived income from share trading, filed its return of income for AY 2013-14, and assessment u/s 143(3) of the Act was completed on 29.02.2016. Subsequently on an information received from investigation wing that M/s Prerna Agency Pvt. Ltd. was found one of the beneficiaries of the accommodation entry conducted through shell companies and received an amount aggregating to Rs. 90,00,000/- during the FY 2012-13 from one of the shell companies M/s Rashidhan Traders Pvt. Ltd. On receipt of information, details available on the record has been examined that reveals escapement of income, accordingly, after recording proper reason and after obtaining approval from competent authority, proceedings u/s 147 was initiated and notice u/s 148 of the Act dated 31.03.2021 was issued. In response to the notice the assessee has uploaded its return of income declaring net total income of Rs. 33,91,930/-. Notice u/s 143(2) was issued to the assessee on 06.07.2021 and on request of the assessee copy of the reason recorded for reopening along with Section 151 of the Act was provided to the assessee. The assessee filed objection and also filed copy of financial statement, ledger copy of Rashidhan Traders Pvt. Ltd., copy of MCA details, copy of HDFC bank statement and copy of tax audit. AO after considering the objection as well as document held that an amount of Rs. 80,00,000/- received by the assessee in its bank account during the relevant financial year is not natural and only a bogus arranged accommodation entry to bring his own unaccounted money through banking channel with the help of shell companies, and accordingly the said amount has been added in the total income of the assessee.

5. Aggrieved by the said order, the assessee has preferred an appeal before the Ld. CIT(A) wherein the appeal of the assessee has been dismissed.

Being aggrieved and dissatisfied the assessee preferred an appeal before us.

6. The Id. A.R challenges the very impugned order **on legal ground i.e. validity of reopening and also on the merit of the case.** The Id. Counsel submits that in the present case the assessee filed its return of income on 30.09.2023 which was assessed on 28.03.2016 and the case was reopened by issuing notice u/s 148 of the Act on 31.03.2021. The Id. Counsel further submits that the original return had already been assessed u/s 143(3) of the Act, reasons as supplied are vague and there is no connection or link between the reasons and escapement of income. His further submission is that there is no explanation as to how Tapan Ghoria or his associated entities are linked with Rashidhan Traders Pvt. Ltd., The Ld. Counsel further submits that there is no recording that what was the failure of the assessee when it is a fact that reopening was beyond four years and there is no reference to the specific materials in the reason recorded. It has further been submitted that amount mentioned in the reason recorded for reopening and assessment is also incorrect showing it is a case of non-application of mind by the AO. The Ld. Counsel further submits that the assessee has received a loan an amount of Rs. 60,00,000/- from Rashidhan Traders Pvt. Ltd. and Rs. 20,00,000/- from Riddhi Siddhi Commodities Pvt. Ltd. by account payee cheques and refunded the same. He has cited the following decisions:

- i) Sheo Nath Singh vs. AACIT (1971) 82 ITR 147 (SC)
- ii) ITO vs. Lakhmani Mewal Das [1976] 103 ITR 437 (SC)
- iii) New Delhi Television Ltd. vs. DCIT [2020] 424 ITR 607 (SC)
- iv) CIT vs. Kamdhenu Steels & Alloys Ltd. [2014]361 ITR 220(Delhi)

7. Contrary to that the Ld. D.R supports the impugned order.

8. Upon hearing the submission of the counsel of the respective parties, we have perused the facts of the case and order passed by the lower authorities. The first contention of the ld. Counsel of the assessee with regard to reopening of assessment. According to him, reasons as supplied are vague and there is no connection or link between the reasons or escapement of income. It is not in dispute that the reopening of assessment was based on the allegation that the assessee had received a loan of Rs. 90,00,000/- from Rashidhan traders Pvt. Ltd. The AO has suspected the loan transaction to be an accommodation entry. The reasons recorded has been supplied to the assessee and the assessee objected the same by filing petition, relevant portion as recorded in the reasons are as follows:

*“It was noted that Mr. Tapan Ghorai (PAN: AMZPG 3610 M) is a non-filer and his proprietorship concern namely M/s Cosmos Computech & Mahalaxmi Enterprises are non-existent entities. It was further found that the fund transferred in the bank account no. 401420110001094 held in the name of M/s Agility Vincom Pvt. Ltd. were further transferred to an array of companies. It has been noted that all the companies to whom funds were transferred from M/s agility vincom Pvt. Ltd. are Shell/Jamakharchi Companies as per database maintained by the Investigation Directorate Kolkata. These companies are managed and controlled by various entry operators / dummy directors who in their statement recorded at different stage of time have affirmed that they floated companies for facilitating accommodation entries to beneficiaries in lieu of commission.*

*It is noted that M/s Rashidhan Traders Pvt. Ltd. is one of the established shell companies from which the assessee company M/s Prerna Agency Pvt. Ltd. has received fund amounting to Rs. 90,00,000/- during the FY 2012-13 relevant to AY 2013-14.”*

9. In the present case, reopening was initiated on 31.03.2021 for AY 2012-13 i.e beyond four years. The original return had already been assessed u/s 143(3) of the Act. It is pertinent to mention herein that reassessment proceedings u/s 147 can only be initiated if income chargeable to tax has escaped assessment due to the assessee's failure to fully and truly disclose all the material facts necessary for the reassessment. As per the assessment order the AO issued notice u/s 142(1) of the Act seeking details of loan transaction and assessee submitted all the relevant documents to establish identity, creditworthiness and genuineness of the transaction. Compliance to the notice has been duly recorded by AO which is as here under-

*“10. In response to the above said notice the assessee has replied on 31.01.2022 along with copy of financial statement, ledger copy of Rashidhan ledgers, copy of Rashidhan MCA details, copy of HDFC bank account statement and copy of Tax Audit. The content of the assessee’s reply are as under:*

- 1. With respect to point no. 1, the details tax audit report and Financials for FY 2012-13, relevant to Ay 2013-14 are hereby attached for our honours kind attentions and records.*
- 2. With respect to point 2 and 3, the company, during the relevant year, was only maintaining account with HDFC bank, the statement of which is hereby annexed for the period FY 2012-13 and FY 2013-14.*
- 3. With respect to point no. 4 and 5, we would humbly like to submit that the Directors of the said company were professionally acquainted and apart from the said loan taken, we had no other relationships with the said company.*
- 4. With respect to point no. 6, we would humbly like to submit that since we were no directly associated with the said company other than the loan taken, we are unaware about the financial activities of the said company.*
- 5. With respect to point no. 7, we would humbly like to submit that the assessee has taken a loan for FY 2012-13, in the ordinary course of business needs, which was duly repaid over the years along with interest, the details of which are annexed herewith for your kind perusal and records.*

*With respect to your honours contentions regarding the information from the Investigation Wing and that the assessee being beneficiary of the credit entries, we would humbly like to submit that the assessee cannot be treated as the beneficiary in the instant case as the entire sum has been repaid in due course along with applicable market rate of interest and thus, no benefit has ultimately flown to the assessee in terms of any permanent or enduring benefit.”*

10. The above reply clearly reveals that the assessee has taken loan for FY 2012-13 in the ordinary course of business which were duly repaid over the years along with interest. We further find that discrepancy regarding whether loan from Rashidhan Traders Pvt. Ltd. was Rs. 60,00,000/- or 80,00,000/-. Learned CIT(A) in its order has discussed this fact vide its paragraph no. 9 and 9.1 which is essential to reproduce herein below:

*“9. With these observations as made above, the actual facts of these cases are to be examined. The assessee has received funds/ monies totalling to Rs. 80,00,000/- as unsecured loan from a company which is managed and controlled by group of Kolkata based accommodation entry operators.*

*9.1 Undoubtedly, the legal existence of the creditor company is not in doubt. The assessee had produced sufficient evidences about its existence. However, the appellant is completely silent*

*regarding the financial details of any of the companies from whom the impugned funds have been received. Not even an iota of evidence in the form of balance sheet, profit and loss account for acknowledgement of ITR filed have been produced by the appellant leave apart the copy of bank account*

11. It is further important to mention here that as per the case of the assessee, the assessee received two loan one amounting to Rs. 60,00,000/- from Rashidhan Traders Pvt. Ltd. and other of Rs. 20,00,000/- from Riddhi Siddhi Commodities Pvt. Ltd. both entities belonging to the same group. The loan of Rs. 20,00,000/- disbursed by Riddhi Siddhi Commodities Pvt. Ltd. was sourced from the bank account of Rashidhan Traders Pvt. Ltd. on their instruction, as they maintained a running account between themselves. The loans were duly repaid to the respective lenders along with interest and after a deduction of TDS.

12. Going over the above discussion, we find that reasons cited in notice are entirely unsubstantiated, the lacking any logical nexus or relevance to the facts of the case. There is no explanation as to how Tapan Ghorai or associated entities are linked to Rashidhan Traders Pvt. Ltd, like wise no rational has been provided to establish link between Agility Vincom Pvt. Ltd. and Rashidhan Trading pvt. Ltd. or to demonstrate any co-relation between these entities and the assessee. There is no evidence to establish any connection between these individuals and Rashidhan Traders pvt. Ltd. There was no recording of what was the failure of the assessee when it is a fact that in the present case reopening was beyond four years and the assessment was completed u/s 143(3) of the Act.

13. Now look at the cited judgment of the assessee and find that in a case of Sheo Nath Singh (supra), Supreme Court has held that:

*“..... There can be no manner of doubt that the words ‘ reasons to believe ’ suggests that the belief must be that of an honest and reasonable person based upon reasonable grounds that the Income tax Officer may act on direct or in the circumstantial evidence but not on mere suspicion, gossip or remour. The Income Tax Officer would be acting without jurisdiction if the reason for his belief that the conditions are satisfied does not exist or is not material or relevant to the belief required by the section. The court can always examine this aspect though the declaration or sufficiency of reasons for the belief cannot be investigated by the Court.”*

20. *The Apex Court in the case of Income Tax Officer, I Ward, Distt.VI, Calcutta and Ors. v. Lakhmani Mewal Das [1976] 103 ITR 437 (SC) has held as follows:*

*the reasons for the formation of the belief must have a rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Income-tax Officer and the formation of his belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. It is not doubt true that the court cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the Income-tax Officer on the point as to whether action should be initiated for reopening assessment. At the same time we have to bear in mind that it is not any and every material, howsoever vague and indefinite or distant, remote and far-fetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment..*

21. *It is a well-settled principle of law that when examining the recorded reasons for reopening an assessment, such reasons must be considered strictly as they stand, without any modifications, additions, or omissions. No inference can be drawn from facts or grounds that have not been explicitly recorded. The Assessing Officer (AO) is required to articulate his reasoning with clarity, ensuring that his conclusions are fully disclosed within the recorded reasons. He must express his findings explicitly ,without leaving room for speculation or assumption. It is the Assessing Officer's duty to establish, based on the recorded reasons alone, whether the assessee failed to fully and truly disclose all material facts necessary for the assessment of the relevant assessment year. year. Such reasons must be evident on the record in clear and unequivocal terms. They must be free from ambiguity and should not suffer from vagueness or generality. The recorded reasons are a direct reflection of the Assessing Officer's application of mind, and they must be self-explanatory, leaving no scope for conjecture or uncertainty on the part of the assessee. In this regard we rely on the decision of the Bombay High Court in HindustanLever v/s. R. B. Wadkar 268 ITR 332 wherein this Court has held as under:-*

*The reasons recorded by the Assessing Officer nowhere state that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment of that assessment year. It is needless to mention that the reasons are required to be read as they were recorded by the Assessing Officer. No substitution or declaration is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn based on reasons not recorded. It is for the Assessing Officer to disclose and open his mind through reasons recorded by him. He has to speak through his reasons. It is for the Assessing Officer to reach the conclusions as to whether there was failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the concerned assessment year. It is for the record in black and white. The reasons recorded should be clear and unambiguous and should not suffer from any vagueness. The reasons recorded must disclose his mind. The reasons are the manifestation of the mind of the Assessing Officer The reasons recorded should be self-explanatory and should not keep the assessee guessing for the reasons. Reasons provide the link between conclusion and evidence. The reasons recorded must be based on evidence. The Assessing Officer, in the event of challenge to the reasons, must be able to justify the same based on material available on record. He must disclose in the reasons as to which fact or material was not disclosed by the assessee fully and truly necessary for assessment of that assessment year, so as to establish the vital link between the reasons and evidence. That vital link is the safe-guard against arbitrary reopening of the concluded assessment. The reasons recorded by the Assessing Officer cannot be supplemented by filing an affidavit or making an oral submission, otherwise, the reasons which were lacking in the*

*material particulars would get supplemented, by the time the matter reaches the court, on the strength of the affidavit or oral submissions advanced."*

22. Similar view was held by the Hon'ble Supreme Court in the case of *New Delhi Television Ltd. v. DCIT (2020) 424 ITR 607 (SC)* wherein it was held as under:

*"43. If the revenue is to rely upon the second proviso and wanted to urge that the limitation of 16 years would apply, then in our opinion in the notice or at least in the reasons in support of the notice, the assessee should have been put to notice that the revenue relies upon the second proviso. The assessee could not be taken by surprise at the stage of rejection of its objections or at the stage of proceedings before the High Court that the notice is to be treated as a notice*

*invoking provisions of the second proviso of section 147 of the Act. Accordingly, we answer the third question by holding that the notice issued to the assessee and the supporting reasons did not invoke provisions of the second proviso of section 147 of the Act and therefore at this stage the revenue cannot be permitted to take benefit of the second proviso."*

14. Keeping in view the discussion made above and going over the facts of the case and there is no doubt that loan taken by the assessee through account payee cheque had already been repaid for the similar manner. The loan confirmation TDS certification, audited accounts of the creditors, IT return of the creditors, bank statement are all goes to support to the case of the assessee and all the above documents had already been produced by the assessee before the AO at the time of original assessment proceedings. So we are in this view that the assessee has fully established the identity, creditworthiness and genuineness of the transaction. Accordingly, we find merit in the case of assessee and the order passed by the both lower authorities are hereby set aside and the appeal of the assessee is allowed on legal ground as well as on merit also.

In the result, the appeal filed by the assessee is allowed.

Order is pronounced in the open court on 26<sup>th</sup> March, 2025

Sd/-

Sd/-

(Rajesh Kumar/राजेश कुमार)

(Pradip Kumar Choubey /प्रदीप कुमार चौबे)

Accountant Member/लेखा सदस्य

Judicial Member/न्यायिक सदस्य

Dated: 26<sup>th</sup> March, 2025

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Prerna Agency Pvt. Ltd., 46, Flat No. 102, 1<sup>st</sup> Floor, Durgapore Lane, Kolkata-700027
2. Respondent – ITO, Ward-2(1), Patna
3. Ld. CIT(A)-NFAC, Delhi
4. Ld. Pr. CIT- , Patna
5. DR, Patna Bench, Patna

True Copy

By Order

Sr.Ps/Assistant Registrar  
ITAT, Patna Bench, Patna