

आयकर अपीलीय अधिकरण, कोलकाता पीठ, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA

Before Shri Rajesh Kumar, Accountant Member and Shri Sonjoy Sarma, Judicial Member

I.T.A. No.1555/Kol/2024
Assessment Year: 2012-13

R D Tea Limited.....Appellant
Dhandhanian House, 2nd Floor,
4, Middleton Street,
Kolkata – 700071.
[PAN: AABCR3010M]

vs.

ACIT, Circle-4(1), Kolkata.....Respondent

Appearances by:

Shri A. K. Tibrewal, AR, appeared on behalf of the appellant.
Shri Rajat Datta, Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : January 28, 2025
Date of pronouncing the order : April 22, 2025

ORDER

Per Sonjoy Sarma, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 14.06.2024 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. Brief facts of the case are that the assessee is company filed its original return of income for the assessment year 2012-13 on 30.09.2012 by declaring a total income of Rs.67,34,990/-. The case of the assessee was assessed u/s 143(3) of the Act vide order dated 19.03.2015 by assessing total income of Rs.86,23,780/- which was subsequently rectified u/s 154 of the Act on 27.04.2015 by assessing total income of Rs.83,90,960/-. Thereafter, the case of the assessee was reopened u/s 147 of the Act by issuing a notice u/s 148 of the Act on 27.03.2019 after obtaining approval from the competent authority. In response to such notice, the assessee filed its return of income again declaring the same income as earlier i.e. Rs.67,34,990/-. During the

assessment proceedings, notices u/s 143(2) and 142(1) of the Act were issued calling for explanations. The reasons recorded indicated that the assessee has allegedly received unsecured loan of Rs.45,00,000/- from M/s Oven Commercial Pvt. Ltd. which was considered as unexplained u/s 68 of the Act as per reports received from the Investigation Wings. In this connection, a show-cause notice was issued dated 17.12.2019. However, the assessee has failed to comply to the notice issued by the Assessing Officer, accordingly, the Assessing Officer made an addition of Rs.45,00,000/- u/s 68 of the Act treating the loan as unexplained cash credit.

3. Aggrieved by the order of the Assessing Officer, the assessee filed an appeal before the ld. CIT(A) where the ld. CIT(A) dismissed the appeal of the assessee without properly adjudicating primary legal issue regarding limitation and validity of the reopening.

4. Dissatisfied with the above order, the assessee is in appeal before this Tribunal raising various grounds. However, the primary contention of the ld. counsel is that the reassessment proceedings initiated u/s 148 are barred by limitation and the notice u/s 148 was issued beyond the four years from the end of the relevant assessment year without proper satisfaction and recording mandatory requirement under the Proviso to section 147 of the Act. The contention of the ld. AR is that the Assessing Officer failed to record any findings that there was a failure on the part of the assessee to fully and truly disclose all material facts necessary to the assessment in the notice issued u/s 148 of the Act dated 27.03.2019. He, therefore, stated that the entire proceedings and the assessment made u/s 147 of the Act was illegal and barred by limitation. The ld. AR stated that the original assessment order u/s 143(3) of the Act was completed on 19.03.2015. The time limit for four years from the end of the relevant assessment year i.e. 2012-13 expired on 31.03.2017. The notice in the present case u/s 148 of the Act was issued on 27.03.2019

which was after the expiry of four years. In such a case, as per Proviso to section 147 of the Act, any reassessment can be initiated only if there was failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. While recording the reasons, the Assessing Officer did not allege or suspect such failure on the part of the assessee, hence, the reassessment is invalid and bad in law. In this regard, the ld. AR placed reliance on the decision of the Hon'ble Bombay High Court in the case of Hindustan Lever Ltd. vs. R B Wadkar reported in [2004] 137 taxman 479 (Bom) wherein it was held that if reasons had not specifically stated on assessee's failure to disclose material fact, the reopening is invalid. Further, he stated that the Assessing Officer merely relied upon the information from Investigation Wing without application of independent mind or enquiry which is impermissible under settled principle of law.

5. On the other hand, the ld. DR stated that the information from the Investigation Wing formed the basis for reopening. Based on this information, the Assessing Officer had reasons to believe that the income of the assessee had escaped assessment. Notice u/s 148 of the Act was issued after due approval from the competent authority. As the assessee had failed to respond to the notices, therefore, the addition was made by the Assessing Officer.

6. After considering the rival submissions of the parties and perusing the materials available on record, we find that it is undisputed fact that the original assessment was completed u/s 143(3) of the Act and the reassessment was initiated after the expiry of four years from the end of the relevant assessment year. The 1st Proviso to section 147 of the Act clearly stipulated that in such a case, the reassessment can only be made if there is any failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment. A perusal of the reasons recorded by the Assessing Officer for the reopening of the

assessment reveals that there is no allegation or finding indicating any failure on the part of the assessee to disclose fully and truly all material facts necessary for the original assessment. The reasons recorded is extracted for ready reference as under:



**GOVERNMENT OF INDIA
 MINISTRY OF FINANCE
 INCOME TAX DEPARTMENT
 OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME TAX
 CIRCLE 4(2), KOLKATA**

Mohit
file

To, R D TEA LIMITED 2ND FLOOR DHANDHANIA HOUSE,4, MIDDLETON STREET JEEVAN DEEP KOLKATA 700071, West Bengal India			
PAN: AABCR3010M	Assessment Year: 2012-13	Dated: 10/04/2019	Letter No : ITBA/AST/F/17/2019-20/1015702342(1)

Sir/ Madam/ M/s,

Subject: Please find enclosed the reason for initiating reopening proceeding u/s 148 for the A.Y. 2012-13.

The assessee company submitted return for A.Y. 2012-13 on 30.09.2012 declaring an income of Rs. 67,34,990/-. Assessment u/s 143(3) was completed on 19.03.2015 at a total income of Rs. 86,23,780/-

The information is received from ACIT, CC-3(4), Kolkata in respect of M/s R D Tea Pvt. Ltd in connection with search & seizure operation conducted in the case of Subhas Chandra Bhartia (D.O.S.- 03.01.2018) vide his letter F. No. ACIT/CC-3(4)/Kol/2018-19/1055 dated 05-03-2019.

Shri Subhas Chandra Bhartia is an entry operator of Kolkata. A search and seizure operation u/s 132 of the I T Act , 1961 was conducted in his residence and survey operation u/s 133A of the I T Act were also conducted in the various premises of Shri Subhas Chandra Bhartia was recorded on oath and vide the said statement, he admitted to be involved in the said activities of providing accommodation entries in the guise of share application money, unsecured loan etc. On verification of seized /irnpounded documents, it has been found that M/s R D Tea Pvt. Ltd. is one of the beneficiaries who had been facilitated by Shri Subhas Chandra Bhartia.

Details of the benefit received by M/s R D Tea Pvt. Ltd., beneficiary company is as below:

F.Y.	Date of Transaction	Name of the Group Company of Subhas Chandra Bhartia through which benefit provided	Amount of Benefit (Rs.)	Transaction Type
2011-12	23-08-2011	M/s Oven Commercial Pvt.	45,00,000/-	Unsecured Loan

Note: If digitally signed, the date of digital signature may be taken as date of document.
 AAYAKAR BHAWAN, P-7, CHOWRINGHEE SQUARE,, KOLKATA, KOLKATA, West Bengal, 700069
 Email: KOLKATA.DCIT4.2@INCOMETAX.GOV.IN

6.1 We note that in the present case, the Assessing Officer has solely relied on the information from the Investigation Wing without demonstrating independent application of mind or further enquiry. The

Hon'ble Bombay High Court in the case of Hindustan Lever Ltd. vs. R B Wadkar (supra) has categorically held that unless the Assessing Officer recorded specific failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment of the assessment year and in the absence of any such specific reason after the expiry of the four years, the assessment is invalid. The relevant part of the order of the Hon'ble Bombay High Court is as under:

“19. Reading of the proviso to [Section 147](#) makes it clear that if the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of [Sections 148](#) to [153](#), assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under [Section 147](#), or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the concerned assessment year. However, where an assessment under Sub-section (3) of [Section 143](#) has been made for the relevant assessment year, no action can be taken under [Section 147](#) after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to disclose all material facts necessary for his assessment for that assessment year.

20. In the case in hand it is not in dispute that the assessment year involved is 1996-97. The last date of the said assessment year was March 31, 1997, and from that date if four years are counted, the period of four years expired on March 31, 2001. The notice issued is dated November 5, 2002, and received by the assessee on November 7, 2002. Under these circumstances, the notice is clearly beyond the period of four years.

21. 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 deletion 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 conclusion 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 Assessing Officer to form his opinion. It is for him to put his opinion on 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 safeguard 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. Having recorded our finding that the impugned notice itself is beyond the period of four years from the end of the assessment year 1996-97 and does not comply with the requirements of the proviso to [Section 147](#) of the Act, the Assessing Officer had no jurisdiction to reopen the assessment proceedings which were concluded on the basis of assessment under [Section 143\(3\)](#) of the Act. On this short count alone the impugned notice is liable to be quashed and set aside.

23. Since we are setting aside the impugned notice only on the first ground of challenge, in our opinion, it is not necessary to go to the other question and record our findings in that behalf.”

6.2 Following the above binding precedent, we hold that the reassessment in the present case of the assessee is bad in law and void ab initio. Therefore, the reopening of the assessment u/s 147 of the Act is quashed and consequently, the addition of Rs.45,00,000/- made u/s 68 of the Act is hereby deleted.

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

Kolkata, the 22nd April, 2025.

Sd/-

[Rajesh Kumar]

लेखा सदस्य/Accountant Member

Sd/-

[Sonjoy Sarma]

न्यायिक सदस्य/Judicial Member

Dated: 22.04.2025.

RS

Copy of the order forwarded to:

1. R D Tea Limited
2. ACIT, Circle-4(1), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches