

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, KOLKATA

**BEFORE SHRI RAJESH KUMAR, AM
AND
SHRI PRADIP KUMAR CHOUBEY, JM**

**ITA No. 113/KOL/2025
(Assessment Year: 2011-12)**

**M/s. Samaksh Holdings Pvt.
Ltd.**
16, Strand Road, Diamond
Heritage, 14th Floor,
Room No- 1402, Kolkata, West
Bengal, 700001

(Appellant)

PAN No. AADCK2106P

Vs.

ACIT, CIRCLE-1(1)
Aayakar Bhawan, 7th Floor, P-7,
Chowringhee Square, Kolkata,
West Bengal

700069

(Respondent)

Assessee by : Shri Abhishak Bansal, AR
Revenue by : Shri Sailen Samadder, DR

Date of hearing: 27.03.2025
Date of pronouncement : 06.05.2025

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 13.12.2024 for the AY 2011-12.

02. The legal issue raised by the assessee is against the order of Id. CIT (A) upholding the reopening of assessment u/s 147 of the Act, which is invalid as assessee has not been provided the copy of reasons recorded u/s 148(2) of the Income-tax Act, 1961 (the Act) during the assessment proceedings despite being requested repeatedly by the assessee.

03. The facts in brief are that the Id. AO received information from investigation Wing, Kolkata to the effect that the assessee is beneficiary of Long Term Capital Gain (LTCG) on sale of shares from various companies which according to the Revenue were shell companies. Accordingly, the case of the assessee was reopened u/s 147 by issuing notice u/s 148 of the Act on 29.03.2018, which was complied with by the assessee by filing the return of income on 04.04.2018, disclosing the total loss of ₹12,18,839/-. Thereafter, the statutory notices along with questionnaire was duly issued and served upon the assessee which was replied by the assessee during the assessment proceedings. The Id. AO observed on perusal of the said information/ submission that the assessee has received ₹89,80,000/- from certain entities. It was submitted before the Id. AO that the said money was received as sale proceeds from sale of shares which were purchased in earlier years and were duly disclosed in the balance sheet of the assessee company. The assessee requested the Id. AO during the course of assessment proceedings to supply the reasons recorded u/s 148(2) of the Act on 04.04.2018, 23.10.2018 and 13.12.2018 however, the Id. AO did not supply the reasons despite being repeated requested by the assessee and ultimately framed the assessment vide order passed u/s 143(3) read with section 147 of the Act dated 23.12.2018 making an addition of ₹89,80,000/- to the income of the assessee.

04. In the appellate proceedings, the appeal of the assessee was dismissed by the appellate authority by observing and holding as under:-

"6. Decision: I have considered the facts of the case, written submission and case laws relied upon by the appellant as against the observations and findings of the AO. in the assessment order. The submissions and contentions of the appellant are discussed and decided as under.

6.1 Grounds No.1 to 6: In these grounds the appellant has challenged the addition worth Rs.89,80,000/- on account of bogus KTCG brought back by the appellant. The appellant had received these entries from various parties. The AO has received information from Investigation Wing at Kolkata that these parties are involved in giving accommodation entries in the garb of bogus Long Term Capital Gain. The appellant has challenged the issue of notice u/s. 148 of the Income Tax Act. The AO had issued notice u/s.148 of the Act after receiving information from the investigation wing that these parties are giving bogus LTCCG and these parties are only paper companies. Hence, the AO has rightly assumed the jurisdiction and hence the assumption of the jurisdiction is fully correct.

6.1.1 Before me in the appellate proceedings, the appellant has filed written submission and has stated that the entries are genuine and it has done transaction with these parties M/s. Faruk Enterprises, M/s. Nano Traders, M/s. Star Mark Trade Links and M/s. Rose Valley Trade Links. The AO has clearly made out the case that all these four companies are paper companies and are giving bogus LTCCG /credits in garb of cash. The AO pointed out that Shri Ashok Gupta proprietor of M/s. Nano Traders is a non-filler and even PAN was not available on the Database. Regarding other three parties, the AO has also made out the case that these are shell companies. Reliance is made here on the judgment of Hon. Kolkata High Court in the case of Smt. Swati Bajaj vs. PCIT on the identical issue of bogus LTCCG. This judgment of Hon. Kolkata High Court has been confirmed by Hon. Supreme Court. Hence, addition of the AO is confirmed and appeal of the appellant is dismissed."

05. After hearing the rival contentions and perusing the materials available on record, we find that the case of the assessee was reopened u/s 147 of the Act and notice u/s 148 of the Act was issued on 29.03.2018, which was complied with by the assessee by filing the return of income on 04.04.2018. Thereafter the assessee requested to the AO on several occasions to supply the copy of the reasons recorded for re-opening the assessment, however, the Id. AO failed to supply the reasons recorded u/s 148(2) of the Act to the assessee. The copies of these letters/reminders addressed to the AO are available at page no.13, 15-16 and 20-21 of the Paper Book. The Id. CIT (A) passed a very cryptic order as extracted above by justifying the reopening of assessment on basis the information received from the investigation wing. We observed that undisputedly, the reasons were not supplied to the assessee despite being requested by the assessee time and again as noted above.

Therefore, we find merit in the contention of the Id. AR that the assessment framed without supplying the reasons to the assessee is bad in law and has to be quashed. The case of the assessee find support from the decision of Hon'ble Apex Court in the case of PCIT vs. V. Ramaiah (2019) 103 taxmann.com 2020 (SC), wherein Hon'ble Apex Court dismissed the SLP against the decision of the Hon'ble High Court. The Hon'ble High Court of Karnataka in the case of PCIT Vs. V. Ramaiah (2019) 103 taxmann.com 201 (Karnatak) has upheld that the order passed by the Tribunal holding that non-communication of reasons recorded for reassessment to assessee did not amount to a mere procedural lapse and thus, upholding the order of Tribunal wherein the reassessment order was quashed on the ground that the reasons recorded by the Id. AO for reopening of assessment were never communicated to the assessee though the same were produced before the Tribunal for perusal during appellate proceedings. Similar ratio has been laid down by the Hon'ble Bombay High Court in case of Agarwal Metals and Alloys Vs. ACIT (2012) 27 taxmann.com 139 (Bombay), wherein the Hon'ble Bombay High Court has held that the reopening of assessment without communicating the reasons for reopening and without furnishing to the assessee an opportunity of filing its objections is not valid. Similarly, Hon'ble Bombay High Court in case of Commissioner of Income-tax vs. Videsh Sanchar Nigam Ltd. [2012] 21 taxmann.com 53 (Bombay)/[2012] 340 ITR 66 (Bombay)[20-07-2011] has held that where the reasons recorded for reopening of assessment, though repeatedly asked by the assessee, were only furnished after completion of assessment, reassessment could not be upheld. In the present case also, since the assessee has repeatedly requested the Id. AO to supply the copy of reasons recorded u/s 148(2) of the Act which

were never communicated to the assessee during the assessment proceedings. The said fact could not be controverted by the Id. DR. Therefore, we are inclined to quash the assessment order passed u/s 143(3) read with section 147 of the Act by following the ratio laid down in the above decisions. The appeal of the assessee is allowed on legal issue.

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

Order pronounced in the open court on 06.05.2025.

Sd/-
(PRADIP KUMAR CHOUBEY)
(JUDICIAL MEMBER)

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 06.05.2025

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