

आयकर अपीलीय अधिकरण, "एस.एम.सी" न्यायपीठ, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, KOLKATA

श्री जार्ज माथन, न्यायिक सदस्य के समक्ष ।

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER

ITA No.1748/KOL/2024

(निर्धारण वर्ष /Assessment Year : 2013-2014)

Gouri Shankar Goyal C/o Omprakash Agarwal(Goyal) Agrasen Road, Khalpara, Siliguri-734005	Vs	ACIT, Circle-1, Siliguri
PAN No. :ADGPG 0529 B		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri Girdhar Dhelia, Advocate
राजस्व की ओर से /Revenue by	:	Shri S.B.Chakraborty, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	30/06/2025
घोषणा की तारीख/ Date of Pronouncement	:	03/07/2025

आदेश / ORDER

This is an appeal filed by the assessee against the order of Id.Addl./JCIT(A)-9, Mumbai, dated 28.12.2023 passed for Assessment Year 2013-2014.

2. The appeal of the assessee is barred by 175 days. In this regard, the assessee has filed condonation of application stating therein sufficient reasons which are plausible and not found to be false. Ld.Sr. DR did not raise any serious objection. Accordingly, the delay of 175 days in filing the present appeal is condoned and the appeal is admitted for hearing.

3. At the time of hearing, the Id. AR has raised the additional grounds challenging the reopening as follows :-

Additional Grounds:

1. *For that the Reasons Recorded in this case is mechanical and without any information suggesting escapement of income, hence such re-opening is bad in law*

2. For that the approval granted on 11/12/2018 by Ld. PCIT, Siliguri for issuing Notice under section 148 of the Act with only remarks that "Yes, I am satisfied" is mechanical one, and therefore bad in law, hence reopening based on the said approval is void-ab-initio. Therefore, Assessment Order passed to be quashed.
3. For that the communication dated 29/11/2018 issued from the office of Ld. PCIT, Siliguri does not contain Document Identification No. (DIN) on its face, therefore fails the mandatory requirement in terms of CBDT Circular 19/2019 dated 14th August, 2019 therefore, re-opening based on such approval is void-ab-initio. Therefore, Assessment Order passed to be quashed.
4. That on the facts and in the circumstances of the case and in law, the Ld. AO erred in assuming jurisdiction over the re-assessment proceedings which was beyond his pecuniary jurisdiction as per CBDT's circulars/instructions binding on him, and hence the impugned notice under section 148 of the Act dated 11/12/2018 is without jurisdiction, void ab initio and the Assessment Order passed pursuant to the same deserves to be quashed.

4. In regard to the first additional ground, it was the submission that the reason recorded are mechanical. The Id. AR drew the attention of the Bench to page 1 of the paper book filed which is a reason recorded mentioned as follows :-



OFFICE OF THE ASST. COMMISSIONER OF INCOME TAX, CIRCLE-1
1st FLOOR, AAYKAR BHAWAN, PARIBAHAN NAGAR, MATIGARA, SILIGURI-734010

No: ACIT/Cir-1/Sig/148/2018-19/61 7 6

Dated: 04.02.2019

To,
Shri Gouri Shankar Goyal
C/o Omprakash Agarwal (Goyal)
Agrasen Road, Khalpara
Siliguri.-734005

Sir,

Sub: Reasons for initiating the proceedings u/s 148 of the I T Act 1961 for Asst. Year 2013-14.-reg.
Ref: Your communication dated 29th Jan 2019

Kindly refer to the above.

- 1) The reason for re-opening is appended below:

.....On perusal of the audited balance Sheet and capital account of the assessee, it is observed that the assessee has made an addition of Rs 12, 05,000/- in his capital account, since the source of such addition has not been disclosed in the ITR, the books of accounts of the assessee require in-depth verification.....

of

(Azhar Kabir)
Asst. Commissioner of Income Tax,
Circle-1, Siliguri

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5. Other than mentioning that the reasons are mechanical, no further arguments have been placed by the Id. AR.
6. In reply, Id. Sr. DR submitted that the issue has been brought out for the first time before the Tribunal and the assessee has been non-cooperative before the AO and Id.CIT(A).
7. I have considered the rival submissions. A perusal of the reasons recorded shows that the Assessing Officer has placed reliance on the audited balance sheet. Here it is worthwhile to extract the Explanation 1 to Section 147 of the Act as was available during the relevant assessment year, which reads as under :-

[Income escaping assessment.

147. xxxxxxxxxxxxxxxx

Explanation 1.—Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.

8. The said explanation clearly shows that even the production before the Assessing Officer of the books and accounts and other evidence from which material evidences could have been discovered by the Assessing Officer within the meaning of the earlier proviso to Section 147 of the Act. Admittedly, the reason recorded clearly shows that the Assessing Officer has relied upon the audited balance sheet and capital account of the assessee. It is worthwhile to mention here that there has been absolutely non-cooperation by the assessee before the Assessing Officer and Id. CIT(A). The assessee could very well had brought this issue and the

explanation thereto to do all what has been expected to be done. Just waiting for time barring and raising the technical issue is an afterthought. This being so, ground No.1 of the additional ground as raised by the assessee stands rejected.

9. In regard to ground No.2, it was submitted by the Id. AR that the issue was in regard to approval granted by the Id. Pr.CIT. Id. AR placed reliance on the decision of the coordinate Delhi Bench of the Tribunal in the case of Sandeep Bajaj passed in ITA No.2993/Del/2023, dated 29.05.2024. No further submissions have been made by the Id.AR.

10. One of the primary requirement while challenging the said approval is that the copy of the said approval be placed before the authorities. It is also one of the primary requirement under Rule 10 of the ITAT Rules, 1963 that necessary affidavit be raised. Rule 10 of the ITAT Rules, 1963 reads as follows:-

10. Filing of affidavits - *Where a fact which cannot be borne out by, or is contrary to, the record is alleged, it shall be stated clearly and concisely and supported by a duly sworn affidavit.*

11. In the present case, admittedly, the said affidavit is not there. Neither has the assessee produced the same before approval which has specifically been granted by the Id.CIT(A). The approval is being granted by the Id.Pr.CIT is clearly an administrative act and the same is done after thorough application of his mind and verification of the records. Opportunity before granting approval is not required under the rule provided to the assessee. True, it is very much required that the approval must be clear and the reasons for giving approval must be available or deciphered from

the approval granted. In the present case, nothing has been brought out by the Id.AR on behalf of the assessee to show that the approval has been given in a mechanical manner or on account of non-application of mind. Just because the Id. Pr.CIT has made a noting "Yest I am satisfied" that does not mean that Id. Pr.CIT has not applied his mind. This being so, as nothing has been brought on record to show that the approval granted by the Id. Pr.CIT is without application of mind or mechanical one, being approval, no defect in approval is found. Thus, the approval granted by the Id. Pr.CIT is upheld. Consequently, the decision of the coordinate bench of the Tribunal relied on by the Id. AR in the case of Sandeep Bajaj, referred to supra, does not apply to the present facts of the case.

12. Next ground raised by the Id. AR is that there is no DIN in the said approval. The issue of DIN is now pending before the Hon'ble Supreme Court. This being so, the issue is restored to the file of Id.AO with a direction to wait for the final outcome of the Hon'ble Apex Court in regard to the issue of DIN and the principle to be laid down by the Hon'ble Supreme Court in this regard.

13. In regard to the fourth ground, the submission of the Id.AR that the reopening done by the DCIT, Circle-1, Siliguri does not have jurisdiction over the assessee. Here, the challenge to the jurisdiction is also affected by the provision of Section 124(3) of the Act. The assessee is to call in question the jurisdiction of the Assessing Officer within one month from the issuance of notice. Here as mentioned earlier, the assessee chose to remain silent. The assessee having chosen to remain silent, cannot now raise the ground challenging the jurisdiction as the said challenge is barred

by the provisions of Section 124(3) of the Act. Here it is also worthwhile to refer to Explanation to Section 120(1) of the Act. There are multiple circulars issued by the CBDT which have directed that the senior authorities have the powers to exercise the duties of subordinate authorities. Here, repeatedly notices have been issued by the Id. Pr.CIT where the assessee desires to be issued by the ITAT. As the ground itself is hit by the provision of Section 124(3) of the Act, the said ground stands dismissed.

14. Coming to the merit of the case, the Id. AR submitted that admittedly the order of the Assessing Officer and Id.CIT(A) are ex-parte orders. Here it is relevant to mention that on merits, the issues may be restored to the file of Assessing Officer for readjudication.

15. Ld. Sr. DR did not raise any serious objection in restoring this issue to the file of Id. Assessing Officer.

16. As it is noticed that the assessee has been non-compliant before the Assessing Officer and the Id. CIT(A), insofar as evidences have not been produced before the Assessing Officer and the evidences have been produced before the Id.CIT(A) and the Id.CIT(A) has not admitted the evidence, insofar as there has been violation of Rule 46A, in the interest of justice, so as to grant another opportunity to the assessee to substantiate his case before the Id. Assessing Officer, this issue on merits is restored to the file of Assessing Officer for readjudication after granting the assessee adequate opportunity of being heard.

17. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 03.07.2025.

Sd/-
(जार्ज माथन)
(GEORGE MATHAN)
न्यायिक सदस्य / JUDICIAL MEMBER

कोलकाता Kolkata; दिनांक Dated 03.07.2025

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR,
ITAT, Kolkata
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)
Income Tax Appellate Tribunal, Kolkata