

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

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**आयकर अपील सं/ITA No.1388 & 1389/KOL/2024
(निर्धारण वर्ष / Assessment Year : 2011-2012)**

Rita Das, C/o S.N.Ghosh & Associates, Advocates, 2, Garstin Place, 2 nd Floor, Suite No.203, Off Hare Street, Kolkata, WB-700001	Vs	ACIT, CC-23 (1), Hooghly
PAN No. :ARHPD 6149 D		

(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
--------------------------------	----	----------------------------------

निर्धारिती की ओर से / Assessee by	:	Shri Somnath Ghosh, Advocate
राजस्व की ओर से / Revenue by	:	Shri Altaf Hussain, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	29/01/2026
घोषणा की तारीख / Date of Pronouncement	:	29/01/2026

आदेश / ORDER

Per George Mathan, AM:

These two appeals are filed by the assessee against the order of the Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, both dated 27.10.2023 & 11.12.2023 for the assessment year 2011-2012. ITA No.1388/Kol/2024 is the quantum appeal and ITA No.1389/Kol/2024 is the penalty appeal.

2. With regard to quantum appeal in ITA No.1389/Kol/2024, it was submitted by the Ld.AR that the AO had received information from the ADIT (Investigation) Unit-Durgapur, which reads as follows:-



OFFICE OF THE ASSISTANT DIRECTOR OF INCOME TAX (INVESTIGATION), UNIT- DURGAPUR,
MEAV-48, BENGAL AMBUJA, CITY CENTRE, DURGAPUR-713216
EMAIL ID: kalpesh.soni@incometax.gov.in MOB NO- 9769732242

No. ADIT(Inv.)/DGP/Transfer/444

Dated: 09-03-2018

To

The Income Tax Officer,
Ward-23(1), Jharghly
Income Tax Office, Aayakar Bhawan

PAN - ARHPD6149D

G.T. Road, Khakha More
Po - Chin Sura Dist - Jharghly 712101.

Sub: Forwarding of information in the case of RITA DAS, PAN-
ARHPD6149D, At - Vill-Shiali (Uttar), P.O. Amarpur, P.S. Jamalpur,
Dist-Burdwan -reg.

The undersigned is in possession of credible information that Smt. Rita Das maintained an account bearing no 0110010110668 with United Bank of India, Lohapatty Branch, Kolkata in which a huge amount was deposited from different accounts of same branch of the bank and the amount were immediately withdrawn by cash leaving a minimum balance. There was a high turnover during the period from 04/06/2010 to 08/06/2011 amounting to Rs. 1.92 Crore, each debit and credit. The person in question is a trader of potato.

Summons u/s 131 of the I.T. Act 1961 were issued to the bank and to the assessee. As per submission of the assessee, cash deposits in the bank accounts are cash sales and bank account were disclosed in the return of income for the A.Y.2011-12, and she had shown sales of Rs. 35,87,754/-. The assessee submitted that the total amount deposited in bank account was Rs. 1,60,45,060/-for the A.Y. 2011-12. It was explained the she received commission in the trading of potato as well as income from sales of potato. The assessee has shown sales of potato in the A.Y. 2012-13 of Rs. 1,73,40,788/-. The G.P. rate shown in the A.Y. 2012-12 is 3.58%. The cash withdrawal were utilized for the purchase of goods and in respect of cash sales, name and address of parties have not been submitted. Therefore manipulation in the GP rate cannot be ruled out.

Therefore, the above information in the case of RITA DAS is being sent to you for taking necessary action at your end for A.Y. 2011-12. If the case does not pertain to your jurisdiction, it is required to send the same to the concerned Assessing Officer.

This letter is issued after getting prior approval of Pr. DIT(Inv.), Kolkata.

(Kalpesh Soni)

ADIT (Inv.), Unit-Durgapur
Dated: 09-03-2018

No. ADIT(Inv.)/DGP/Transfer/

Copy to,



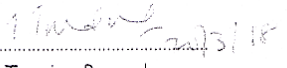
1. JDIT(Inv.), U-1, Kolkata, for kind information.
2. JCIT, Range-13, Jharghly for kind information and necessary action.

(Kalpesh Soni)
ADIT (Inv.), Unit-Durgapur

3. It was submission that without doing any further investigation recorded his reasons and has sent it for approval which reads as follows:-

FORM FOR RECORDING THE REASONS FOR INITIATION OF PROCEEDINGS
U/S 148 AND FOR OBTAINING THE APPROVAL OF
PR. COMMISSIONER OF INCOME TAX/ADDL/JOINT COMMISSIONER OF INCOME TAX.

1.	Name & Address of the Assessee	Smt Rita Das. Vill Shiali (Uttar), P.O. Amarpur, P.S. Jamalpur Tarakeswar, Dist Hooghly, West Bengal. 712410
2.	PAN of the assessee	ARHPD6149D
3.	Status	Individual.
4.	Circle/Ward.	ITO Ward 23(1), Hooghly.
5.	Assessment year in respect of which it is proposed to issue Notice u/s 148 of the Income tax Act.	2011-12.
6.	The quantum of income which has escaped Assessment.	Rs 1.92 Crores.
7.	Whether the provisions of Sec 147(a)/147(b) applicable or Both the Sections are applicable.	Sec 147(b)
8.	Whether the Assessment is proposed to be made first Time, If the reply is in affirmative, Please Note.	First Time.
9.	(i) Whether any voluntary return had already been filed and ; (ii) If so, the date of filing the said Return.	Yes. 23.12.2011
10.	If the answer to item 8 is in negative, please state :- (i) The income originally assessed. (ii) Whether it is a case of under-assessment at too low rate, Assessment which has been made the subject of excessive relief or allowing of excessive loss or depreciation.	Not applicable.
11.	Whether the provisions of Sec. 150(1) are applicable. If no. the reply is in affirmative, the relevant facts may be stated against Item no. 11 and it may also be brought out that the provisions of Sec 150(2) would not stand in the way of initiation of proceedings u/s 147 of the Income tax Act.	No.
12.	Reasons for the belief that income has escaped Assessment.	As per information received from ADIT(Investigation), Unit Durgapur, vide letter No. ADIT(Inv)/U-Durgapur/No. DGP/Transfer/444 , dated 09.03.2018, that the assessee maintained an account bearing No. 0110010110668 with United Bank of India, Lohapatty Branch, Kol. in which a huge amount was deposited from different accounts same branch of the bank and the amount were immediately withdrawn by cash leaving a minimum balance. There was a high turnover during the period from 04.06.2010 to 08.06.2011 amount to Rs 1.92 Crores. As per submission with response to summons u/s 131 of the I T Act, the assessee

		<p>stated that the said cash deposit in the bank account are cash sales and bank account were disclosed in the return of income for the A.Y. 2011-12. The assessee submitted that the total amount deposited in bank account was Rs 1.60 Crores for the Asstt Year 2011-12. The assessee received commission in the trading of potato as well as income from sales of potato.</p> <p>In view of the above, I have reason to believe that the income of the assessee had escaped assessment for the A.Y.2011-12, per the provision of Sec 147.</p>
13.	Date :	<p></p> <p>Signature of Officer. Name : Avijit Mondal. Designation : ITO Ward 23(1), Hooghly.</p>
14.	Whether Addl/Jt. Commissioner is satisfied on the reasons recorded by I T O that it is a fit case for issue of a Notice u/s 148 of the Income tax Act.	<p>Yes</p> <p></p> <p>Name : Bikash Chandra Biswas. Designation : JCIT Range-23, Hooghly.</p>
15.	Whether the Pr. Commissioner is satisfied on the reasons Recorded by A.O. that it is a fit case for issue of a Notice u/s 148 of the Income tax Act.	<p>Fit case.</p> <p></p> <p>Name : Smt T. Tansing Prasad. Designation : Pr. CIT-8, Kolkata.</p>

4. It was submission that there was clearly non-application of mind and non-verification of the information which has been provided to the Assessing Officer, insofar as reasons recorded by the AO in his communication sent for the approval for the reopening was in verbatim to the information provided by the investigation wing. Ld. AR to support his

contentions, relied on the decision of the Hon'ble Delhi High Court in the case of Meenakshi Overseas Private Limited, reported in (2014)395 ITR 677 (Delhi), wherein para 22 & 23, the Hon'ble Delhi High Court as held as follows:-

22. As rightly pointed out by the ITAT, the 'reasons to believe' are not in fact reasons but only conclusions, one after the other. The expression 'accommodation entry' is used to describe the information set out without explaining the basis for arriving at such a conclusion. The statement that the said entry was given to the Assessee on his paying "unaccounted cash" is another conclusion the basis for which is not disclosed. Who is the accommodation entry giver is not mentioned. How he can be said to be "a known entry operator" is even more mysterious. Clearly the source for all these conclusions, one after the other, is the Investigation report of the DIT. Nothing from that report is set out to enable the reader to appreciate how the conclusions flow therefrom.

23. Thus, the crucial link between the information made available to the AO and the formation of belief is absent. The reasons must be self evident, they must speak for themselves. The tangible material which forms the basis for the belief that income has escaped assessment must be evident from a reading of the reasons. The entire material need not be set out. However, something therein which is critical to the formation of the belief must be referred to. Otherwise the link goes missing.

5. The AO has not recorded his reasons but has only recorded his conclusions and there is no link between the information made available to the AO and the formation of believe by the Assessing Officer. The reasons recorded and the consequential reopening is liable to be quashed. The Ld.AR further drew our attention to the approval granted by the Ld. PCIT wherein it is mentioned that "Fit case". It was submission that the Hon'ble Jurisdictional High Court of Calcutta in the case of M/s Sambuddha Tracon Pvt. Ltd. in ITAT90/2022, IA NO.GA/2/22, dated 15/11/2022 has held as follows:-

We have heard Mr. Soumen Bhattacharjee, learned standing counsel appearing for the appellant/revenue and Mr. J. P. Khaitan, learned senior counsel assisted by Mr. Soumya Kejriwal, learned Advocate for the respondent/assessee and carefully perused the materials placed on record.

On going through the following paragraphs of the order passed by the Tribunal, we find that the learned Tribunal was fully justified in granting relief to the assessee by dismissing the appeal of the revenue.

The relevant paragraphs are paras 14, 15 and 16 which are set out below :-

"14. Both on 17.03.2017 and on 27.03.2017, the AO sends separate proposals to the JCIT requesting for approval for re-opening of the assessment. The JCIT, Range-5, Kolkata vide his letter dated 29.03.2017 rejected the proposals dated 17.03.2017 and 28.03.2017 of re-opening of assessment. He also directed the AO to consider the reply of the assessee. He directed the AO not to send two separate proposals. Vide this letter dated 27.03.2017 by the ITO to the PCIT-2 bearing reference No. Ward- 5(2)/Kolkata/147/2016-17/2667 speaks of approval by both, the JCIT, Range-5, Kolkata as well as the PCIT-2, Kolkata. These discrepancies could not be explained by the Id. DR.

15. Be it as it may it is absolutely clear that the objections raised by the assessee to the reasons recorded for re-opening and the re-opening itself vide its letter dated 22.11.2017 and 24.11.2017 were not disposed off by the AO. Thus the completion of assessment without disposal of these objections, makes the assessment bad in law as held in the case of Rabo India Finance Ltd. vs. DCIT (2012) 346 ITR 528 (Bombay) and in the case of Vishwanath Engineers vs. ACIT (2013) 352 ITR 549 (Gujarat). Thus this finding of the Id. CIT(A) has to be upheld.

16. Even otherwise Section 151 of the Act mandates recording of satisfaction by the approving authority. In this case the satisfaction was mechanical and in fact a rubber stamp was used to state "Yes I am satisfied".

The revenue could not and cannot controvert the above factual finding recorded by the Tribunal. It is clear from the finding recorded by the Tribunal that the assessing officer abdicated the statutory responsibility in not disposing of the two objections raised by the assessee for the re-opening proceedings.

6. It was submission that the approval is a mechanical approval and the same is liable to be quashed.

7. In reply, the Ld.Sr DR submitted that the reasons are validly recorded and the satisfaction of the PCIT has also be obtained. It was submission that the reopening is liable to be upheld.

8. In reply to the specific query as to why the date is not available against the Assessing Officer's signature in the form sent for approval, it was submitted by the Ld.Sr.DR that the records need to be verified.

9. We have considered the rival submissions. A perusal of the approval granted by the Ld.PCIT in the form clearly shows that there was no application of mind, insofar as what is recorded only "Fit case". This, in fact, flies in the face of the decision of the Hon'ble Supreme Court in the case of ACIT Vs. Serjauddin & Co., reported in [2024] 163 taxmann.com 118 (SC), which arose out of the decision of the Hon'ble High Court of Orissa in the case of Serjauddin & Co. [2023] 150 taxmann.com 146/292 Taxman 566/454 ITR 312 (Orissa). Similarly it also stands hit by the decision of the Hon'ble jurisdictional High Court in the case of M/s Sambuddha Tracon Pvt. Ltd., referred to supra, on this ground, the reopening is found to be invalid and stands quashed.

10. Coming to the issue of the reasons recorded it is noticed that the AO has not done any verification in respect of the information made available to him by the ADIT Investigation Durgapur. The reasons sent for approval are in verbatim to the information provided by the investigation wing to the Assessing Officer. Thus, it is clear that there is no link between information made available to the AO and the formation of belief by the AO. This being so, in view of principle laid down by the Hon'ble Delhi High Court in the

case of Meenakshi Overseas Private Limited, referred to supra, the reasons for reopening is unsustainable and the same stands quashed. Consequently, the consequential assessment order also stands quashed. Thus, the appeal of the assessee in ITA No.1388/Kol/2024 is allowed.

11. With regard to appeal of the assessee in ITA No.1389/Kol/2024 which is filed against the confirmation of penalty levied u/s.271(1)(c) of the Act, as we have already quashed the quantum assessment on account of invalidity of reopening, the very legs for levy of penalty u/s.271(1)(c) of the Act no more survives and consequently the penalty as levied by the AO and as confirmed by the Ld.CIT(A) stands deleted. Thus, the appeal of the assessee in ITA No.1389/Kol/2024 is allowed.

12. In the result, both the appeals of the assessee are allowed.

Order dictated and pronounced in the open court on 29/01/2026.

**Sd/-
(RAJESH KUMAR)**

लेखा सदस्य/ ACCOUNTANT MEMBER

**Sd/-
(GEORGE MATHAN)**

न्यायिक सदस्य / JUDICIAL MEMBER

कोलकाता Kolkata; दिनांक Dated 29/01/2026

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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

(Assistant Registrar)
Income Tax Appellate Tribunal, Kolkata