

आयकर अपीलीय अधिकरण  
कोलकाता 'सी' पीठ, कोलकाता में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'C' BENCH, KOLKATA**

श्री राजपाल यादव, उपाध्यक्ष (कोलकाता क्षेत्र)  
एवं  
श्री राजेश कुमार, लेखा सदस्य  
के समक्ष

**Before  
SRI RAJPAL YADAV, VICE PRESIDENT  
&  
SRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**I.T.A. Nos.: 733 & 741/KOL/2023  
Assessment Years: 2009-10 & 2010-11**

***Ujjala Suppliers Pvt. Ltd. (Presently known as Anubhav  
Hardware Pvt. Ltd.).....Appellant  
[PAN: AABCU 0256 C]***

**Vs.**

***ITO, Ward-2(1), Siliguri.....Respondent***

**Appearances:**

***Assessee represented by*** – Sh. Soumitra Choudhury, Adv. & Sh.  
Pranabesh Sarkar, Adv.

***Department represented by*** – Loviesh Shelley, JCIT, D/R.

Date of concluding the hearing : October 9<sup>th</sup>, 2023

Date of pronouncing the order : December 7<sup>th</sup>, 2023

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

Both these appeals preferred by the assessee are against separate orders passed by Learned Commissioner of Income-tax (Appeals)-NFAC, Delhi [hereinafter referred to as Ld. 'CIT(A)'] dated 22.05.2023 for the Assessment Years (in short 'AY') 2009-10 &

2010-11. First, we will take **ITA No. 741/KOL/2023** for AY 2010-11 for adjudication.

2. In ITA No. 741/Kol/2023, the assessee has challenged the order of Ld. CIT(A) on legal issues as well as on merit. In ground no. 4, the assessee has challenged the reopening of assessment u/s 147 of the Act on the ground that the same is on borrowed satisfaction without application of mind and hence, the reopening is bad in law and may be quashed.

3. The facts in brief are that the assessee filed the return of income for the instant assessment year on 11.10.2010 declaring NIL income. On 03.03.2015 an information was received from ITO(Inv.), Unit-3, Kolkata that funds aggregating to Rs. 4,32,69,500/- have been transferred to M/s. Ujjala Suppliers Pvt. Ltd. out of cash deposits made in six bank accounts of five parties and that the unaccounted cash has been transferred to the account of the assessee by rotation of funds. Accordingly, the Assessing Officer (in short ld. 'AO') by recording the reasons to belief u/s 148(2) of the Act after obtaining the approval of the competent authority i.e. Addl. CIT, Range-1, Kolkata reopened the case u/s 147 of the Act by issuing notice u/s 148 of the Act on 20.03.2015. The assessee did not file any return of income in response to notice u/s 148 of the Act, nonetheless moved a request on 16.04.2015 requesting the AO to supply a certified copy of the reasons recorded for reopening of the assessment. During the course of assessment proceedings, the AO found that numerous bank accounts were opened in the name of fake

concerns and cash deposited in these accounts were eventually transferred to the account of the beneficiary companies and the assessee is one of the beneficiaries for Rs. 4,32,69,500/- transferred from the five concerns which were not traceable. However, when the assessee was supplied the copy of the reasons recorded, the assessee disputed the reasons for reopening the case on the ground that the reasons were not proper and recorded without application of mind. The AO disposed off the reasons vide order dated 14.01.2016. The AO obtained the bank statements of those banks which were mentioned in the enquiry report by ITO(Inv.), Unit-3, Kolkata u/s 133(6) of the Act from ICICI Bank, Mukherjee Road, Kolkata and found that Rs. 4,41,44,500/- was transferred. The AO also issued notices u/s 133(6) of the Act to all the account holders. However, the same were returned unserved. Finally, the income was assessed at Rs. 2,23,83,621/- by making three additions namely (a) peak credit in the undisclosed account of Rs. 61,69,907/-, (b) undisclosed commission income of Rs. 17,13,714/- & (c) unexplained cash credit of Rs. 1.45 Crore. The order was challenged before Ld. CIT(A). Ld. CIT(A) dismissed the appeal of the assessee.

4. Ld. A/R vehemently submitted before us by drawing our attention to the reasons recorded, a copy of which is placed at page 91 of the paperbook that the AO has reopened the assessment without application of mind to the information received from ITO(Inv.), Unit-3, Kolkata. Ld. A/R contended that the AO has not recorded his own objective satisfaction and merely relied on the borrowed satisfaction as recorded by ITO(Inv.), Unit-

3, Kolkata. Ld. A/R while referring to the reasons recorded submitted that the AO has not done any independent verification of the facts received and simply by relying on the information supplied reopened the case of the assessee which is not permissible under the Act. Ld. A/R submitted that after receiving information, the AO has to apply his mind and satisfy himself as to how the income has escaped the assessment. However, the same was missing in this case. Ld. A/R argued that the assessment framed by the AO is not in consonance with the provisions of the Act and may kindly be quashed. Ld. A/R relied in defence of his arguments on the decisions of Hon'ble Delhi High Court in the case of *ACIT vs. Meenakshi Overseas Pvt. Ltd.* [2017] 82 taxmann.com 300 (Del), *CIT vs. SFIL Stock Broking Ltd.* in [2010] 325 ITR 285 (Del) and Hon'ble Kolkata ITAT in the case of *DCIT vs. Great Wall Marketing Pvt. Ltd.* in ITA No. 660/KOL/2011 for AY 2002-03 order dated 03.02.2016.

5. Ld. D/R on the other hand, contended that the AO reopened the assessment after receiving information from ITO(Inv.), Unit-3, Kolkata that the assessee has fixed deposits in his bank account which was transferred from the bank accounts of five parties who were not traceable and therefore, the case was rightly reopened and the ground raised by the assessee may kindly be dismissed.

6. We have heard rival contentions and perused materials on record. From the reasons recorded u/s 148(2) of the Act, we observe that the AO has merely stated in the reasons recorded the contents of the letter received from ITO(Inv.), Unit-3, Kolkata and

thereafter simply stated in para 3 that on the basis of above the income of the assessee has escaped assessment which is not the spirit of the Act. The law mandates that the AO has to apply his mind to the information received and record objective satisfaction and only then the reopening of assessment can be made which is missing in the present case. In our opinion, the AO has acted on the borrowed satisfaction without recording his own reasons. The reasons recorded are extracted below for ready reference:

*“In this case the assessee company filed its return of income for the assessment year 2010-11 on 11.10.2010 showing total income at ‘Nil’. The return was processed u/s 143(1) of the I.T. Act, 1961 vide order dated 02.05.2011.*

*Subsequently information was received from the office of ITO(Inw), Unit-3, Kolkata vide No. ITO (Inw)/U-3/KOL/STR/2014-15/481 dated 02.03.2015, that a total sum of Rs. 4,32,69,500/- has been transferred to this assessee company during the year ended on 31.03.2010, relevant to the Assessment Year 2010-11. This amount has been transferred out to this assessee, out of cash deposits made in different bank accounts of concerns who are untraceable. It is reported that the unaccounted cash of this assessee was transferred to its account through rotation of funds, it is reported that the genuineness of such transactions is not substantiated.*

*For the reasons stated above, there is reason to believe that income of the assessee company for the year ended on 31.03.2010, to the extent of Rs. 4,32,69,500/- has escaped assessment.*

*I, therefore, request you to kindly accord necessary approval to initiate proceedings u/s 147 & to issue notice u/s 148 of the I.T. Act, 1961 in this case for the Assessment Year 2010-11.”*

6.1. Even the amounts which were stated to be deposited in the bank account of the assessee was not added to the income of the assessee and there is a little incoherence between the reasons

recorded and the reasons made to the income of the assessee. The case of the assessee finds support from a series of decisions namely *ACIT vs Meenakshi Overseas Pvt. Ltd. (supra)*, *CIT vs. SFIL Stock Broking Ltd. (supra)* and *DCIT vs Great Wall Marketing Pvt. Ltd.(supra)*. In view of the above facts and the decisions cited, we are inclined to quash the re-opening of assessment u/s 147 of the Act and the consequent order passed by the AO. The issue raised on merit are not being adjudicated as we have already decided in favour of the assessee on legal issue.

7. In the result, the appeal filed by the assessee in ITA No. 741/KOL/2023 is allowed.

Now, we will take **ITA No. 733/KOL/2023** for AY 2009-10.

8. The legal issue raised in this appeal is similar to one as decided by us in ITA No. 741/KOL/2023 in which we have quashed the assessment allowing the appeal of the assessee. Our decision in the above appeal would, *mutatis mutandis*, apply to the legal issue in this appeal as well. Accordingly, the appeal filed by the assessee is allowed.

9. In the result, both the appeals filed by the assessee in ITA Nos. 733 & 741/KOL/2023 are allowed.

***Kolkata, the 7<sup>th</sup> December, 2023.***

Sd/-

**[Rajpal Yadav]**  
Vice-President

Dated: 07.12.2023

Sd/-

**[Rajesh Kumar]**  
Accountant Member

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

- 1. Ujjala Suppliers Pvt. Ltd. (Presently known as Anubhav Hardware Pvt. Ltd.), D-203, Club Town, 2.5 Mile, Sevoke Road, Siliguri, Darjeeling, West Bengal-734 001.**
- 2. ITO, Ward-2(1), Siliguri.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

*// True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata