

OD-2

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITAT/58/2025
IA NO: GA/1/2025, GA/2/2025,

PRINCIPAL COMMISSIONER OF INCOME TAX-2, KOLKATA
VS.
EVENT DEVELOPERS PVT. LTD.

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
AND

THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)

Dated : 19TH MAY, 2025.

Appearance:
Mr. Amit Sharma, Adv.
...for Appellant

THE COURT: We have heard Mr. Amit Sharma, learned standing counsel appearing for the appellant/department.

In terms of the order passed on 20th March, 2025, the notice was attempted to be served on the assessee by the Inspector of Income Tax Department. However, the assessee was not found and therefore, notice was served by affixation and communication in this regard has been given by the Officer which is taken on record.

There is a delay of 100 days in filing the appeal. Since delay has been properly explained, the same is condoned. The application being IA NO: GA/1/2025, is allowed.

This appeal has been filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) challenging the order dated May 3, 2024 passed by the Income Tax Appellate Tribunal “A” Bench, Kolkata (Tribunal) in ITA No. 574/Kol/2022, for the assessment year 2010-11.

The revenue has raised the following substantial questions of law for consideration :

- “i) *Whether on the facts and in the circumstances of the case, the Learned Tribunal erred in holding that objective satisfaction has not been recorded by the assessing officer as to how the income has escaped assessment while ignoring the ratio laid by the Hon’ble Supreme Court in Raymond Woollen Mills Vs ITO 236 ITA 34(SC)?*
- ii) *Whether on the facts and in the circumstances of the case, the Learned Tribunal was justified in holding that the assessing officer reopened the case on very vague reasons while ignoring the specific information available and recorded in the case?*
- iii) *Whether on the facts and in the circumstances of the case, the Learned Tribunal was justified in quashing the assessment order when sufficiency for forming the belief is not open for question but existence of belief can be challenged as held by the Hon’ble Supreme Court in the case of Phool Chand Bajranglal Vs ITO 203 ITR 456?*
- iv) *That the appellant craves to add, modify or alter any grounds of appeal and/or adduce additional evidence at the time of hearing the case.”*

As noted above, the assessee has not appeared in the matter. We have carefully considered the findings rendered by the learned Tribunal while allowing the assessee's appeal and setting aside the order reopening the assessment as done by the Assessing Officer vide order dated 15th December, 2017 under Sections 143 and 147 of the Act. The only ground on which the learned Tribunal has allowed the assessee's appeal is by holding that the Assessing Officer reopened the case on very vague reasons without recording objective satisfaction as to how the income has escaped assessment. To test the correctness of this finding, we have carefully perused the assessment order dated 15th December, 2017. The case was reopened on the ground that the assessee's bank account was credited with Rs.1 Crore from M/s. Rupak Developers Pvt. Ltd. during the financial year 2009-10 and accordingly, notice under Section 148 of the Act was issued on 29th March, 2017. In response to the said notice, the assessee filed return of income on 17th April, 2017. Notice under Section 143(2) of the Act was issued to the assessee on 16th August, 2017 and notice under Section 142(1) of the Act along with questionnaire was issued to the assessee on 14th July, 2017 calling upon the assessee to submit the details and documents to substantiate his return of income. In response to such notice, the assessee was represented by the chartered accountant and the Assessing Officer has recorded that the assessee though appeared through its authorized representative but could not submit or produce or explain the allegations against him nor could produce any details or documents. Furthermore, the Assessing Officer would state that from the records it is seen

that the assessee got Rs.1 Crore from M/s. Rupak Developers Pvt. Ltd. in the relevant financial year as a beneficiary in the form of bogus LTCG/STCG. Furthermore, the Assessing Officer had material to show that M/s. Rupak Developers Pvt. Ltd. was actually used for providing accommodation entries to various beneficiaries in the form of bogus LTCG/STCG on sale of penny stock shares. Since the assessee could not prove the genuineness of the transaction, the business with supporting documents, the Assessing Officer took a decision against the assessee and treated the sum of Rs.1 Crore as unexplained credit. From the assessment order it is seen that though sufficient opportunity was given to the assessee to explain the funds transferred in the bank account, no explanation was forthcoming. Accordingly, the assessment was completed. Therefore, it cannot be stated that the Assessing Officer did not apply his mind nor reasons given for reopening could be stated to be bogus. The reasons for reopening have been noted by the Tribunal which state that information is in possession of the department in respect of M/s. Event Developers Pvt. Ltd., the assessee from which it is revealed that the assessee has received Rs.1 Crore on 28th August, 2009 from the current account of M/s. Rupak Developers Pvt. Ltd. Further, the reasons stated that though survey operation carried out on 9.6.2009 by Mumbai Directorate (Investigation) in the case of M/s. Rupak Developers Pvt. Ltd., it was found that no business activity was carried out by the said company and was being used for providing accommodation entries to beneficiaries in the form of bogus LTCG/STCG on sale of penny stocks.

Therefore, the reasons have been clearly stated and the assessee having filed its return of income pursuant to the notice issued under Sections 147, had sufficient opportunity to give their explanation to the reasons so recorded. The assessee did not avail this opportunity when the assessment was taken up under Section 147 of the Act. The assessee was put to notice along with questionnaire and the assessee was represented by a chartered accountant but no explanation was offered. Therefore, it is not a case where the Assessing Officer did not apply his mind but has recorded his satisfaction upon considering the materials available with the department when the assessee carried out the matter on appeal before the Commissioner of Income Tax (appeals-2), Kolkata [CIT(A)]. Though certain grounds were raised, the assessee did not pursue the appeal. The Appellate Authority while rejecting the appeal by order dated 2nd April, 2019 has noted various dates on which the appeal was adjourned from April 2018 to March, 2019. The CIT(A) also took note of the reasons given by the Assessing Officer and affirmed the said order. Therefore, in our view, the Tribunal fell in error in coming to the conclusion that the Assessing Officer has reopened the case on very vague reasons without objective satisfaction as to how the income has escaped assessment.

More or less identical circumstances arose in the case of Principal Commissioner of Income Tax – 9, Kolkata –vs- P L Goenka HUF, ITAT/241/2024, IA NO: GA/2/2024, where the appeal filed by the department was allowed. In the said judgment dated 6th May, 2025, the following observations and findings were rendered :

- “9. Before we examine the correctness of the decision of the Tribunal, we take note of the decision of the Hon’ble Supreme Court in *Assistant Commissioner of Income Tax Vs. Rajesh Jhaveri Stock Brokers Private Limited* reported in (2008)14 SCC 208. The Hon’ble Supreme Court held that Section 147 authorises and permits the assessing officer to assess or reassess income chargeable to tax if he has reason to believe that income for any assessment year has escaped assessment. It was further pointed out that the word “reason” in the phrase “reason to believe” would mean cause or justification; if the assessing officer has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that an income had escaped assessment. It was further held that the expression cannot be read to mean that the assessing officer should have finally ascertained the fact by legal evidence or conclusion and that the function of the assessing officer is to administer the statute with solicitude for the public exchequer with an inbuilt idea of fairness to taxpayers. Further, a reference was made to the decision in the case of *Central Provinces Manganese Ore Co. Ltd. Vs. ITO* reported in (1991) 4 SCC 166 and it was held that at the initiation stage, what is required is “reason to believe”, but not the established fact of escapement of income. Further, at the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief; whether the materials would conclusively prove the escapement is not the concern at that stage since the formation of belief by the assessing officer is within the realm of subjective satisfaction. It was further held so long as the ingredients of Section 147 are fulfilled, the assessing officer is free to initiate proceeding under Section 147 and failure to take steps under Section 143(3) will not render the assessing officer powerless to initiate reassessment proceedings even when intimation under Section 143(1) had been issued.
10. Bearing the above legal principles, we proceed to examine the facts of the present case qua the findings recorded by the learned Tribunal for allowing the assessee’s appeal. As mentioned above, the learned Tribunal was of the view that the assessing officer has not formed an opinion and he has mechanically followed the report of the investigation wing.
11. We have carefully perused the assessment order dated 25.09.2021. In paragraph 2, the assessing officer sets out the information received from the investigation wing vide letter dated 6.3.2020. It is not in dispute that the assessee’s name also figures in the information furnished by the investigation wing. After setting out those details the assessing officer has taken note of the return filed

by the assessee dated 21.10.2020 and thereafter issued notice under Section 143(2) of the Act. In paragraph 3, the assessing officer has discussed the entire facts relating to the transactions done by the assessee in respect of purchase of shares of M/s. Tuni Textiles Mills Ltd. and noted that the value of the shares of the assessee is almost 4.5 times in a span of one year and 2 months resulting in huge capital gains to the assessee. Thereafter, the assessing officer has verified the contract note and the share certificate submitted by the assessee and other details of the transactions done by the assessee as well as the details furnished in the return of income and then has stated that the facts and circumstances surrounding the transaction of shares of M/s. Tuni Textiles Mills Ltd. and subsequent earning of exempt LTCG by the assessee through the transaction in the said shares clearly indicate that the claim of the assessee regarding earning of significant LTCG exempt under Section 10(38) requires deeper investigation and analysis to uncover the real nature of the alleged regular/prudent transaction. Thereafter, the assessing officer has taken note of the background of the investigation done by the department, discussed about the background of the company namely M/s. Tuni Textiles Mills Ltd. and taken note of the profit and loss account of the said company and its balance sheet, asset dt. March 31, 2012, statement of cash flow for the year ended 31.03.2012 and come to the conclusion that the fundamentals of the company are very weak and it clearly indicates that abnormal price rise in the shares of the company is not natural or normal but artificially manipulated. Further, noting the financial strength of the said company the assessing officer has noted that the price of the shares rose astronomically during the period May 2010 to March, 2011 from Rs.16/- to Rs. 271/-. With all these details, show cause notice was issued to the assessee on 03.09.2021 for which the assessee submitted their reply on 10.09.2021 and the assessing officer took into consideration the stand taken by the assessee in their reply and has recorded reasons to hold that the assessee has failed to discharge the onus and, therefore, the only escapable conclusion is that numerous individual assesseees have taken entry to LTCG by paying its unaccounted money. Furthermore, that the transaction in shares of M/s. Tuni Textiles Mills Ltd. by the assessee was a pre-arranged transaction in the form of accommodation entry managed through collusive transactions by group of entry operators and shell entities. Thereafter the assessing officer has taken note of the various decisions, namely, CIT Vs. Durga Prasad More reported in (1971) 82 ITR 540(SC), Sumati Dayal Vs. Commissioner of Income Tax reported in (1995) 214 ITR 801 (SC), applied the test of human probabilities as propounded in the said decisions and then

completed the assessment and has pointed out that before finalizing the assessment a final show cause notice was issued on 18.09.2021 for which the assessee submitted reply on 22.09.2021 and the said reply was also considered and the assessing officer has pointed out that the assessee has not submitted any new evidence in response to the show cause notice. Therefore, the learned Tribunal committed an error in coming to a conclusion that the assessing officer has not applied his mind for reopening the assessment under Section 147 of the Act.

12. *That apart, the learned Tribunal has not examined the reasons set out by the appellate authority which has re-examined the factual position, taken note of the grounds raised by the assessee and their oral submissions and has in detail discussed about the lowering of funds and how the funds reached the concerned beneficiaries and has factually found that the assessee is one of the beneficiaries who received accommodation entry which was used to avail bogus LTCG/STCL. The various decisions of the Hon'ble Supreme Court were taken into consideration and the appeal was dismissed. Therefore, we find that the learned Tribunal committed a serious factual error in coming to the conclusion that there was no application of mind of the assessing officer and erroneously elevated the status of CBDT which is meant as a guiding note of the assessing officer to have an effect of regulation. Therefore, the order impugned in this appeal deserves to be quashed."*

Thus, for all the above reasons, we are satisfied that the Assessing Officer had reopened the assessment with due application of mind. The reasons which have been recorded for reopening cannot be considered to be vague. Apart from that, the assessee miserably failed to establish the genuineness of the transaction, the creditworthiness of the company, namely, M/s. Rupak Developers Pvt. Ltd., which are found to be a shell company with no business activities and, therefore, the creditworthiness of the said company has also not been established. Thus, all these factors would go to show that the reopening

was done for valid reasons and, therefore, the learned Tribunal ought not to have interfered with the said assessment order.

Accordingly, the appeal filed by the revenue is allowed.

The order passed by the Tribunal is set aside and the assessment order stands restored. The questions of law raised are answered in favour of the revenue.

The stay petition (GA/2/2025) accordingly, stands allowed.

(T.S. SIVAGNANAM, C.J.)

(CHAITALI CHATTERJEE (DAS), J.)