

OD-11 & 12

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION [INCOME TAX]
ORIGINAL SIDE

ITAT /77/2025
GA/2/2025

PRINCIPAL COMMISSIONER OF INCOME TAX-2, KOLKATA
VS.
ANCHITA PROPERTIES PVT. LTD.

And

ITAT /78/2025
GA/2/2025

PRINCIPAL COMMISSIONER OF INCOME TAX-2, KOLKATA
VS.
ANCHITA PROPERTIES PVT. LTD.

BEFORE :

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

THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)

Dated : 3rd July, 2025

Appearance:

Mr. Tilak Mitra, Adv.

Mr. Amit Sharma, Adv...for Appellant

Mr. Saumya Kejriwal, Adv.

Ms. Ananya Rath, Adv.

Mr. Navin Mittal, Adv.

Mr.D. Banerjee, Adv...for Respondent

THE COURT: These appeals have been filed by the appellant/revenue under Section 260A of the Income Tax Act, 1961 (the Act) against the order dated 22nd August, 2024 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata (the Tribunal) in ITA No.687/Kol/2024 and ITA No.1067/Kol/2024 both for the assessment year 2013-14.

The appellant/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 law to quash the reopening of assessment under Section 147 of the Income Tax Act, 1961

by ignoring the findings of the Assessing Officer and the surrounding circumstances of the case?

ii) Whether on the facts and in the circumstances of the case the Learned Tribunal was justified in law to quash the reassessment proceedings and delete the addition of Rs. 1,51,00,000/- made on account of receipts from shell companies by way of accommodation entries to evade tax despite the fact that there were materials available on record to establish the live link/nexus between the assessee and accommodation entry provider?

We have heard the learned Advocates for the parties.

First, we take up for consideration ITAT/77/2025 which has been filed against the order passed by the learned Tribunal in ITAT/637/KOI/2024. The matter concerns the validity of reopening of the assessment under Section 147 of the Act. The Tribunal has examined the factual position and applied the various legal proceedings to the facts and granted relief to the assessee. We need not labour much to consider as to the correctness of the order passed by the learned Tribunal on account of undisputed facts. The Assessing Officer issued notice under Section 147 of the Act, pursuant to which the assessee filed its return of income and also sought for the reasons for reopening. The reason for reopening was furnished to the assessee and the assessee submitted their objection. It is an undisputed fact that the objections were not disposed of by the Assessing Officer by passing a speaking order. This defect goes to the root of the matter as the Assessing Officer failed to follow the mandate laid down by the Hon'ble Supreme Court in GKN Driveshafts (India) Limited vs. ITO & Ors. and the Hon'ble Supreme Court held that when a notice under Section 148 of the Act is issued, the proper course of action for the noticee is to file a report if it so desires to seek for reasons for issuance of notices. The Assessing Officer was bound to furnish the reasons within a reasonable time and on receipt of the reasons the noticee is entitled to file objection in

issuance of notice and the assessing officer is bound to dispose of the same by passing a speaking order. If this procedure has not been followed, then the entire reassessment proceeding has to fail. The decision in GKN Driveshafts (India) Limited (supra) was taken note of by this Court in the case PCIT vs. Champalal Omprakash, (2025) 171 taxmann.com 796 (Cal). The learned Tribunal, after entering into the finding that the reopening was bad in law, has also examined the factual position and has held in favour of the assessee stating that the information which has been furnished in the reasons for reopening does not link the assessee with the said information and therefore, the reopening was bad in law. Thus, on both grounds, we fully agree with the view subscribed by the learned Tribunal and we find no ground to interfere with the impugned order passed by the learned Tribunal in ITAT/637/KOL/2024.

ITAT/1067/KOL/2024 was filed by the assessee challenging the order passed by the Principal Commissioner of Income Tax, Kolkata-2 dated 30.3.2024 under Section 263 of the Act.

In the notice issued under Section 263 of the Act, the PCIT proposed to revise the assessment order passed under Section 143(3) of the Act. The Tribunal rightly took note of the limitation which has been prescribed under section 263 and found that the assessment order passed under section 143(3) of the Act on 16.12.2015 and power under Section 263 of the Act could have been invoked upto 31.3.2018. However, the notice under section 263 was issued on 22.2.2024 which will clearly show that the action initiated by the PCIT under section 263 of the Act was time barred. The learned Tribunal not stopping with that has also examined the factual position and found that the PCIT sought to reopen the assessment only based on the information collected pursuant to the show cause notice dated 20.2.2020 and if any information has been available with the assessing

officer with the approval of the PCIT and non-inclusion of such information in the reasons for reopening would indicate the assessing officer was satisfied that such information was not sufficient for reopening. The argument of the learned Senior Standing Counsel for the appellant/revenue is that power under Section 263 was invoked to revise the assessment passed under Section 147 of the Act. However, from the show cause notice issued under section 263 it is evidently clear that what was sought to be revised is the assessment order under section 143(3) and not under section 147 of the Act which re-assessment order has been set aside by the Tribunal in ITAT/637/KOL/2024 and the appeal filed by the department in ITAT/77/2025 has been dismissed in the preceding paragraph.

Thus, for all the above reasons, we find that the order passed by the learned Tribunal is just and proper and does not call for any interference.

Accordingly, the both appeals fail and are dismissed.

The substantial questions of law are answered against the revenue.

Both the stay petitions are dismissed accordingly.

(T.S. SIVAGNANAM, CJ.)

(CHAITALI CHATTERJEE (DAS), J.)