

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

CORAM:
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE CHAITALI CHATTERJEE (DAS)

ITAT/84/2025
IA NO: GA/2/2025
PRINCIPAL COMMISSIONER OF INCOME TAX 2 KOLKATA
VS
M/S PURPLE SUPPLIERS PVT LTD

ITAT/85/2025
IA NO: GA/2/2025
PRINCIPAL COMMISSIONER OF INCOME TAX 2 KOLKATA
VS
M/S PURPLE SUPPLIERS PVT LTD

ITAT/86/2025
IA NO: GA/2/2025
PRINCIPAL COMMISSIONER OF INCOME TAX 2 KOLKATA
VS
M/S PURPLE SUPPLIERS PVT LTD

HEARD ON : 04.07.2025
DELIVERED ON : 04.07.2025

Appearance:

Mr. Prithu Dudhoria, Adv.

...for the appellant.

Mr. J. P. Khaitan, Sr. Adv.

Ms. Swapna Das, Adv.

Mr. Siddharth Das, Adv.

...for respondent.

T.S. SIVAGNANAM, CJ. :

1. All the three appeals have been filed by the revenue under section 260A of the Income Tax Act, 1961 (the Act) challenging the common order passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata (the Tribunal) in ITA

No.757/Kol/2022 to ITA No.759/Kol/2022 for the assessment years 2011-12, 2012-13 and 2013-14. Since the facts and circumstances in all the three appeals are identical and the correctness of the order passed by the learned Tribunal which is a common order is challenged in all the three appeals, they are heard analogously and are disposed of by this common judgment and order.

2. The substantial questions of law suggested by the revenue are also identical and, therefore, ITAT/84/2025 is taken as lead case which relates to the assessment year 2011-12.
3. The revenue has raised the following substantial questions of law for consideration :

“a) WHETHER in facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal was justified in law in holding that the reopening was based on "borrowed satisfaction" by the Assessing Officer, whereas the Assessing Officer had very clearly recorded his independent satisfaction while reopening the case ?

b) WHETHER in facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal was justified in law in not considering the order of CIT (A) which upheld the validity of the reopening of the case, and confirmed the addition made on account of disallowances of expenses related to purchases from Sancheti Diamonds Pvt. Ltd. which were "bogus" in nature ?

c) WHETHER in facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal was justified in law in not following the binding decision of Hon'ble Supreme Court in case of Priya Blue Industries P Ltd. Vs. ACIT (2022) 138 taxmann.com 69 (SC) and holding that the investigation report was not sufficient for the Assessing Officer to reopen the assessment while in the said decision, the Hon'ble Supreme Court has ruled that where Assessing Officer had reason to believe that income

chargeable to tax had escaped assessment as assessee was beneficiary of accommodation entries and the basis for formation of such belief were several inquiries and investigation by the investigation Wing that there had been escapement of income of the assessee from assessment because of his failure to disclose fully and truly all material facts, reopening of assessment was justified ?

d) WHETHER the Learned Income Tax Appellate Tribunal was justified in law in quashing the reopening of the case U/s. 147 of the Act and in not adjudicating the merits of the case when there is the involvement of the issue of bogus purchase by the assessee?

e) WHETHER the Learned Income Tax Appellate Tribunal was justified in law in not considering that the transactions involved in the case were not only of highly suspicious nature, but the same were also bogus in terms of the well settled principles of circumstantial evidence and preponderance of probability as elicited by the Hon'ble High Court at Calcutta in the case of Swati Bajaj (2022) 139 taxmann.com 352 (Calcutta)/(2022) 116 ITR 56 (Calcutta)?”

4. We have heard Mr. Prithu Dudhoria, learned standing counsel appearing for the appellant/department and Mr. J. P. Khaitan, learned senior counsel for the respondent/assessee.
5. The assessee filed these appeals before the learned Tribunal for all the three assessment years challenging the order passed by the Commissioner of Income Tax (Appeals), NFAC, Delhi [CIT(A)] dated 3.11.2022 arising out of separate assessment orders under section 143(3) read with section 147 of the Act passed by the Assistant Commissioner of Income Tax, Circle-5(1), Kolkata, dated 30.1.2018.

6. The first aspect which has been considered by the Tribunal as well as by us is with regard to the validity of the reopening of the assessment for all the three years. It is seen that in so far as the assessment years 2012-13 and 2013-14, the assessments were scrutiny assessment under section 143(3) which was also raised.
7. The assessee is a Private Limited Company engaged in the wholesale business of jewellery and diamond. The return of income was filed for all the three assessment years and for the assessment year 2011-12 the same was processed under section 143(1) and for the other two years namely, AY 2012-13 and 2013-14 they were selected for scrutiny and assessments were framed under section 143(3) of the Act. It appears that the Assessing Officer receiving information from the Investigation Wing, Mumbai about suspicious business activities of M/s. Sancheti Diamonds Pvt. Ltd. (hereinafter referred to as 'Sancheti') which was having huge turnover but declared meager profit and there was no proper business premises and the key person of Sancheti had given a statement wherein he is alleged to have been accepted to be engaged in providing of entries of bogus purchases. It further appears that the Investigation Wing stated that the assessee company has entered into transaction of purchase of goods from Sancheti during the three assessment years and this led to issuance of notice under section 148 of the Act for reopening the assessment. The reasons for reopening were furnished and the assessee submitted their objections and the objections were disposed of by a speaking order. Thereafter, the reassessment proceedings were taken and they were completed making addition under section 69C of the Act on the ground of bogus purchases from Sancheti. The assessee preferred appeals before the

CIT(A) but the same was dismissed by order dated 3.11.2022. Challenging the said order, the assessee preferred appeals before the learned Tribunal which have been allowed by the impugned order.

8. As mentioned above, the first ground to be considered is the validity of the reopening of the assessment proceedings and if the assessee is to succeed on the said ground, the question of examining the merits of the case would not arise. What is important to note is that the Assessing Officer has only disputed the genuineness of the purchases but has accepted the sale transaction entered into with Sancheti and others and has noted the sale figures which clearly indicate that the assessee had business activities. The question would be whether the Assessing Officer had reason to believe that income has escaped assessment on account of the failure of the assessee to fully and truly disclose all relevant particulars for the purposes of assessment. For this purpose we are required to examine the reasons for reassessment which was communicated to the assessee.
9. On carefully going through the reasons we find that the Assessing Officer raised suspicion by alleging that large value of non cash transactions in the account seems to be unusual and raises suspicion. Further it was alleged that huge turnover does not match with the financial profile and seems suspicious and for every year huge credits and debits are outstanding which also further raises suspicion. The Hon'ble Supreme Court in *Lakhmani Mewal Das, (1976) 103 ITR 437 (SC)* held that the word contained in the statute is reason to belief or not reason to suspect. Suspicion of the Assessing Officer towards the possible escapement would not permit to reopen a completed assessment in defiance of the statutory requirement of substantial nature. If the Assessing Officer did not

have reason to believe that income has escaped assessment on account of failure on the part of the assessee to fully and truly disclose all material particulars for the assessment, the reopening could not have been done, that too, based on suspicion.

10. The learned Tribunal has elaborately examined the factual position and found that after receipt of the report from the Investigation Wing the Assessing Officer has to first form a belief about the escapement of income and that there is a failure on the part of the assessee to disclose all material facts in the regular return of income filed by it. Learned Tribunal also found that the Assessing Officer without proper application of mind and without examining the transactions of the assessee with the available records had come to a conclusion that income has escaped assessment to tax merely on the basis of the suspicion. Learned Tribunal noted that the assessee apart from making purchases from Sancheti has also made sales to Sancheti for the assessment years 2011-12 and 2012-13, which has been accepted by the Assessing Officer. The purchases during the assessment year 2012-12 from Sancheti is Rs.2,69,76,121/- and the sales to Sancheti was almost 100 times at Rs.254,32,99,846/-. Similarly, for the assessment year 2012-13 purchases from Sancheti was Rs.141.55 crores and sales to Sancheti was approximately Rs.4.69 Crores. Though the Assessing Officer examined the transactions between the assessee and Sancheti, curiously enough doubt has been raised only with regard to the purchase transactions with Sancheti while fully accepting sales is not only Sancheti but to other companies and the entities as well. Therefore, the learned Tribunal was justified in holding that the reopening was carried out based on borrowed satisfaction and mere change of opinion. In

Ganga Saran and Sons P. Ltd. vs. ITO, [1981] 130 ITR 1 (SC), it has been held that two distinct conditions were to be satisfied before the Assessing Officer can assume jurisdiction to issue notice under section 147 of the Act, the first reason to believe is that income of the assessee has escaped assessment. The important words in the said section 147(a) are “has reason to believe” and these words are stronger than the words “is satisfied”. The belief entertained by the Assessing Officer must not be arbitrary or irrational. It must be a reasonable or in other words, it must be based on reasons which are relevant and material. Though the court cannot investigate into the adequacy or sufficiency of the reasons which have weighed with the Assessing Officer in coming to the belief, the Court can certainly examine whether the reasons are relevant and have a bearing on the matter in regard to which he is required to entertain the belief before he can issue a notice under section 147(1) of the Act.

11. It was further held that if there was no rational and intelligible nexus between the reasons and the belief, so that, on such reasons, no one properly instructed on facts and law could reasonably entertain the belief, the conclusion would be inescapable that the Assessing Officer could not have reason to believe that any part of the assessee’s income has escaped assessment. It was further held that “reason to believe” postulates foundation based on information and the belief based on reason. If foundation based on information is made, there still must be some reason which should warrant the holding of belief that income chargeable to tax has escaped assessment.
12. It is not in dispute that for all the three assessment years the assessee has fully disclosed all material facts and the transactions of purchase and sales and in respect of two assessment years namely, 2012-13 and 2013-14, scrutiny

assessment was done under section 143(3) of the Act. It is also not in dispute that in such scrutiny assessment the revenue has accepted the purchases and sales for those two years. This would go to show that the revenue did not dispute the business transactions of the assessee. The statement said to have been recorded from the key person of Sancheti appears to have been the sole basis for issuance of the notice for reopening. The said statement has been retracted by the deponent within less than a month and neither the Assessing Officer nor the CIT(A) has dealt with the fact of retraction. The learned Tribunal has considered this aspect and has pointed out that the said person had filed an affidavit retracting the contents of the statement made on 14.1.2017 and 17.1.2017 stating that he was under tremendous stress and trauma and was not in a proper state of mind and was without sleep and proper food and that the statement was dictated by the Officer-in-Charge of the Sancheti and the statement was not out of his free volition and the same was also out of tiredness and fatigues.

13. It is no doubt true that a retraction is not always automatically accepted but once a retraction has been made, the concerned authority, who seeks to rely upon the statement, has to deal with the retraction and examine as to whether the retraction was valid and despite the retraction whether the original statement can be relied upon. The order passed by the Assessing Officer as well as the CIT(A) are absolutely silent on this aspect. Therefore, we have no hesitation to hold that the reassessment proceedings for all the three assessment years, 2011-12, 2012-13 and 2013-14 are not valid.

14. For all the above reasons, the appeals are dismissed and the substantial questions of law are answered against the revenue.

15. Consequently, all the connected applications stand dismissed.

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(T.S. SIVAGNANAM, CJ.)

I agree.

(CHAITALI CHATTERJEE (DAS), J.)

Pkd/S.N.
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