IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

PRESENT :
THE HON'BLE CHIEF JUSTICE T.S SIVAGNANAM
And
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)

ITAT/241/2024
IA NO: GA/2/2024

PRINCIPAL COMMISSIONER OF INCOME TAX 9 KOLKATA
VS
P L GOENKA HUF

For Appellant : Mr. Tilak Mitra, Advocate
Mr. Prithu Dudhoria, Advocate

For Respondent : None

Heard on : May 6, 2025

Judgment on : May 6, 2025

1. **T.S. SIVAGNANAM, CJ :** This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated February 09, 2024 passed by the Income Tax Appellate Tribunal "SMC" Bench, Kolkata (the Tribunal) in ITA/412/Kol/2023 for the assessment year 2013-14.

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

(a) Whether on the facts and in the circumstances of the case and in law the Learned Income Tax Appellate Tribunal (ITAT) was justified in law

by not considering the fact that entire transactions were stage managed with object to facilitate the assessee to plough back its unaccounted income in the form of fictitious Long Term Capital Gains and claim of bogus exemption?

(b) Whether on the facts and in the circumstances of the case and in law the Learned Income Tax Appellate Tribunal (ITAT) was justified in law by not considering the fact that assessee had indulged in manipulation of the share prices of penny stock M/s. Tuni Textiles Mils Ltd with an intention to record fictitious long Term Capital Gains of Rs.5,36,750/- claiming these as exempt from taxation?

(c) Whether on the facts and in the circumstances of the case and in law the Learned Income Tax Appellate Tribunal (ITAT) was justified in law by not considering the fact brought on record establishing manipulation of share prices of penny stock M/s. Tuni Textile Mills Ltd as part of colourable device to generate fictitious LTCG with the aim to evade taxes due?

(d) Whether on the facts and in the circumstances of the case and in law the Learned Income Tax Appellate Tribunal (ITAT) was justified in law by not considering the fact that the "tangible information for the purpose of reassessment contemplated under Section 147 of the Act would include "borrowed information" and the same ought not to be mistaken with "borrowed satisfaction" as there exists a striking distinction between the two concepts. Hence, conclusion arrived at by

the Assessing Officer based upon his own satisfaction drawn from the information received from the investigation wing cannot be said to be borrowed satisfaction?

(e) Whether on the facts and in the circumstances of the case and in law the Learned Income Tax Appellate Tribunal (ITAT) was justified in law by not considering the views taken by Hon'ble Supreme Court in Assistant CIT v. Rajesh Jhaveri Stock Broker Pvt. Ltd. (2008) 14 SCC 208 that the Assessing Officer can be said to have reason to believe that income has escaped assessment, if he has a cause or justification to know, or suppose, that income has escaped assessment. The expression cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion?

3. We have heard Mr. Tilak Mitra, learned senior standing Counsel assisted by Mr. Prithu Dudheria for the appellant/revenue

4. The notice sent to the respondent/assessee was served on 1st October, 2024 as per the track information filed along with the affidavit of service but none appears for the respondent/assessee.

5. We have elaborately heard the learned senior standing counsel appearing for the appellant/revenue and carefully perused the materials placed on record and the reasoning given by the learned Tribunal. The appeal was filed by the assessee before the learned Tribunal challenging the order passed by the National Faceless Appeal Centre (NFAC) dated 12th April, 2023. By the said order the appellate authority confirmed the findings

recorded by the assessing officer in the assessment order dated 25.09.2021 passed under Section 147 read with Section 144B of the Act. Before the learned Tribunal the assessee contended that the assessing officer has only acted on the information received from the investigation wing and has not recorded his satisfaction nor did any exercise to examine the transactions done by the assessee before recording the reasons for reopening. The learned Tribunal did not go into the merits of the matter but relied upon instruction given by the CBDT dated 10th January, 2018 which deals with standard procedure for recording satisfaction under Section 147 of the Act. After referring to the said instruction, the Tribunal came to the conclusion that the assessing officer has not adhered to the standard procedures as he has only referred to the information received from the investigation wing and the assessee is stated to be one of the beneficiaries for receiving accommodation entry to avail bogus short term capital gains and that it is incumbent upon the assessing officer after receiving information from the investigation wing, he should have examined the return filed by the assessee and the information *vis-à-vis* the computation of income and then forms an opinion that income has escaped assessment to tax. The Tribunal held that the assessing officer has not applied his mind for reopening the case that too after four years as the assessee has furnished all details of the alleged transaction in his income tax return and has not adhered to the standard operating procedure.

6. The learned Tribunal referred to a decision of the Coordinate Bench of the Tribunal in the case of Jai Prakash Gupta Vs. ITO in ITA

No.2142/Kol/2019 dated 18.06.2021 for the assessment year 2013-14 and held that the reopening was bad in law and, accordingly, allowed the assessee's appeal.

7. The Revenue being aggrieved by such order are before us by way of this present appeal.

8. The first aspect which we need to point out is with regard to the effect of the CBDT instruction. Admittedly, the CBDT instruction is a guiding note for the assessing officer and not for the assessee. If such is the position, what could be the effect for such standard operating procedure. The said procedure cannot be taken to be a rule or a regulation or a mandatory direction but it is to guide the assessing officer to proceed in a particular fashion while recording satisfaction under Section 147 of the Act. Therefore, the Tribunal, in our view, committed an error too by elevating the status of an instruction which is issued for the guidance of the assessing officer to be taken as a rule or a regulation which would also be binding on the assessee.

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 assessees 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.

13. Accordingly, the appeal filed by the revenue is allowed and the substantial questions of law raised by the revenue are answered in favour of the revenue.

14. The appeal and the connected application stand disposed of.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(CHAITALI CHATTERJEE (DAS), J.)

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