

IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI

BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.574/Mum./2021
(Assessment Year : 2012-13)

M/s. Arshiya Rail Infrastructure Ltd.
302, Level-3, Cheejay House
F-Block, Shiv Sagar Estate
Dr. Annie Besant Road, Worli
Mumbai 400 018 PAN – AAGCA9648B

..... Appellant

v/s

Dy. Commissioner of Income Tax
Central Circle-6(4), Mumbai

.....Respondent

Assessee by : Shri Piyush Chhajed a/w
Shri Sumit Mantri
Revenue by : Shri Mehul Jain

Date of Hearing – 14/06/2022

Date of Order – 09/09/2022

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 17/03/2021, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by learned Commissioner of Income Tax (Appeals)-54, Mumbai, [*"learned CIT(A)"*], for the assessment year 2012-13.

2. In its appeal, the assessee has raised following grounds:

"1. On the facts and the circumstances of the case, the learned Assessing Officer erred in reopening the assessment under section 147 when no income has escaped assessment.

2. The Commissioner of Income Tax-Appeals-54 has erred in law and in fact in making addition of Rs. 49,08,007/- under section 68 of the Act on account of average of Gross Profit Ratio @ 5% on amount of Rs. 9,81,60,143/-.

3. On the facts and the circumstances of the case, the learned Assessing Officer erred in initiating the penalty proceeding under section 271(1)(c) of the Act made by learned AO shall be dropped."

3. The brief facts of the case, as emanating from the record, are: The assessee is a private limited company incorporated in India and is engaged in the business of operating and maintaining the infrastructure facility etc. to Indian Railways. For the year under consideration, assessee filed its return of income on 30/09/2012 under section 139(1) of the Act declaring net loss at Rs. 21,79,30,180 and book profit at Rs. 7,67,96,699. The case of the assessee was selected for scrutiny and notice under section 143(2) was issued to the assessee on 06/08/2013. Thereafter, notice under section 142(1) of the Act was issued on 12/01/2015 along with a detailed questionnaire and various details, including details of sundry debtors, were sought from the assessee. The assessee, inter-alia, provided the details of sundry debtors as well as details of ageing of sundry debtors. After considering the submission of the assessing, the Assessing Officer vide order dated 28/03/2015 passed under section 143(3) of the Act assessed the total loss at Rs. 21,22,43,006 under normal provisions of the Act and book profit at Rs. 8,14,83,873 under section 115 JB of the Act, after adding the disallowance made under section 14A r/w Rule 8D. In appeal against the aforesaid assessment order passed under section 143(3) of the Act, partial

relief was granted to the assessee and disallowance made under section 14A of the Act was restricted to the exempt income earned during the year.

4. Pursuant to the search and seizure action undertaken in Arshiya Group of cases, notice under section 153C of the Act was issued to the assessee on 17/11/2016. Thereafter, notices under sections 143 (2) and 142 (1) of the Act were issued and various details were sought. The said notice was replied by the assessee. The Assessing Officer vide order dated 26/12/2016 passed under section 153C r/w section 143 (3) of the Act made no further addition to the total income/loss already determined during the scrutiny assessment proceedings under section 143 (3) of the Act.

5. Thereafter, on 27/03/2019, notice under section 148 of the Act was issued and reassessment proceedings in the case of the assessee were initiated on the basis of information received from DDIT (Investigation), Kolkata regarding certain paper/shell companies i.e. Silverson Logistics Private Ltd and Kalyani Vincom Private Ltd, whose bank accounts were alleged to have been used merely for transaction of layering of funds and assessee being one of the beneficiaries of such a transaction. Accordingly, the Assessing Officer was of the view that income totalling to Rs. 9,81,60,144 has escaped assessment, as assessee has failed to disclose truly and fully material facts. The assessee filed detailed objections against reopening of assessment, which were disposed off vide order dated 10/11/2019. The Assessing Officer issued notice under section 142(1) of the Act seeking information about the aforesaid two entities. In reply thereto, assessee

provided the information regarding Silverson Logistics Private Ltd. In respect of Kalyani Vincom Private Ltd, assessee submitted that it has not entered into any transaction during the year under scrutiny. The Assessing Officer vide order dated 24/12/2019 passed under section 143 (3) r/w section 147 of the Act held that assessee has failed to prove creditworthiness and genuineness of transaction with Silverson Logistics Private Ltd. Further, in respect of Kalyani Vincom Private Ltd, Assessing Officer held that the funds were transferred from the said entity to Highland Transport Private Ltd and Neelanchal Roadways Private Ltd, who had in turn transferred Rs. 1,49,62,890 and Rs. 2,77,75,322 to the assessee company. Thus, the Assessing Officer held the aforesaid transactions to be not genuine in absence of documents supporting the creditworthiness and genuineness of the said transaction and accordingly, added an amount of Rs. 49,08,007 by applying the gross profit rate of the assessee. In appeal, learned CIT(A) vide impugned order upheld the assessment order both on jurisdiction as well as on merits. Being aggrieved, the assessee is in appeal before us.

6. During the course of hearing, learned Authorised Representative (*learned AR*) submitted that all the details were furnished by the assessee during the course of original assessment proceedings and thus, there is no failure on behalf of the assessee to disclose truly and fully all material facts. Learned AR further submitted that assessment has been completed twice in the case of the assessee i.e. under section 143(3) as well as under section 153C of the Act after consideration of details. Learned AR also submitted that

all the sales pertain to the previous years and therefore, addition cannot be made in the year under consideration.

7. On the other hand, learned Departmental Representative by vehemently relying upon the orders passed by the lower authorities submitted that reassessment proceedings were initiated on the basis of specific information received from DDIT (Investigation), Kolkata and thus, same have been validity initiated.

8. We have considered the rival submissions and perused the material available on record. In the present case, the assessment in the case of the assessee was not only completed under section 143(3) of the Act, but the same was also done under section 153C of the Act. During each assessment proceedings, be it under section 143(3) or under 153C of the Act, information/details were sought by the Assessing Officer vide notices issued under section 143(2) of the Act. After considering of the submissions filed by the assessee, in pursuant of aforesaid notices, assessment order under section 143(3) of the Act was passed by the Assessing Officer after making disallowance under section 14A read with rule 8D. Similarly, order under section 153C r/w section 143 (3) of the Act was passed. However, after the expiry of 4 years from the end of the relevant assessment year, notice under section 148 of the Act was issued on 27/03/2019 alleging that income chargeable to tax has escaped assessment. While initiating the reassessment proceedings, the Assessing Officer recorded following reasons for reopening the assessment:

*"Reason for re-opening of the assessment
u/s 147 of the Income Tax Act, 1961*

As per the PAN database in the ITD System, the jurisdiction over the present assessee is lying with this charge. The assessee had filed its return of income on 30.09.2012, declaring net loss at Rs.21,79,30,180/-. The assessment was carried out u/s. 143(3) on 28.03.2015, assessing the net loss at Rs.21,32,43,006/-. Subsequent to search action in the cases of Arshiya Group, the assessment was completed u/s. 143(3) r.w.s. 153C on 26.12.2016, assessing the net loss at Rs.21,32,43,006/- under normal provisions of the Act and Book Profit at Rs.8,14,83,873/- u/s. 115JB of the Act.

1.1 The assessee is engaged into the business of operating and maintaining the infrastructure facilities which consist of PAN India Rail Freight Operation on India Railway Network.

2. Subsequently, information has been received from the office of the Deputy Director of Income Tax (Inv.), Unit 2(), Kolkata that on perusal and analysis of the Bank Statement of Account No.695205127912 with Kolkata-NS Road branch which was opened on 20.08.2010 in the name of Silverson Logistics Private Limited [AAOCS6924L], it was noted that the said account was being frequently credited followed by immediate transfer of funds to various parties. It was further observed by the Investigation Wing that though a huge amount of credit entries is observed from its bank account, Silverson Logistics Private Limited has shown to have turnover and fixed assets at ZERO and has shown to have profit before tax only to the tune of Rs.3,259/- and Rs.2,462/- for A. Ys. 2012-13 & 2013-14 respectively. Summons were issued to the Principal Officer of the company by the DDIT but the same was returned unserved by the postal authorities. Further, it was learnt that the said company and the other inter-linked companies did not manufacture any product or deal in any product or render any services. Prima facie, it appeared that these companies were running on papers only and that their bank accounts were being used for layering of funds only. The DDIT, after having made analysis of the bank accounts of various entities including that of Silverson Logistics Private Limited, concluded that the said bank accounts including that of Silverson Logistics Private Limited had been used merely for layering of funds. The DDIT identified the beneficiaries of such transactions of layering of funds through the bank account of Silverson Logistics Private Limited, which also included the name of the present assessee, Arshiya Rail Infrastructure Limited [AAGCA96488], which has been benefitted by a sum of Rs.5,54,21,934/-.

2.1 Though the assessment has been carried out in the instant case before as well as after the search action, the assessee has failed to disclose truly and fully material facts necessary for its assessment. In view of these facts, I have reason to believe that the income amounting to Rs.5,54,21,934/- chargeable to tax has escaped assessment within the meaning of Section 147 of the Income Tax Act, 1961.

3. Further, vide letter dated 28.02.2019, the DDIT (Inv.), Unit 2(2), Kolkata, has intimated that on perusal and analysis of the Bank Statement of

Kalyani Vincom Private Limited [AADCK9645D] and the other inter-linked companies, it was noted that the said accounts were being frequently credited followed by immediate transfer of funds to various parties. It was further observed by the Investigation Wing that Santu Maity is a common Director in Kalyani Vincom Private Limited, Shivbhumi Tradelink Private Limited and Time Dealcom Private Limited and 42 other companies. Further, it has been informed that Kalyani Vincom Private Limited, Shivbhumi Tradelink Private Limited and Time Dealcom Private Limited are under the process of striking off with the RoC. As per the database of shell / paper / Jamakharchi companies, all the above stated companies are controlled and managed by an entry operator, Shri Praveen Agarwal and that the dummy directors in those companies and the inter-linked companies between them money were rotated in the form of accommodation entries are Alope Chakraborty, Lipi Laha Singh, Rajesh Kumar Khanna, Dipankar Sarkar, Subrata Banerjee, Rana Pratap Singh, Sanjib Kumar Mondal, Vivek Jain, etc... Further, Summons were issued by the DDIT to those dummy Directors. In some of the cases, Summons returned back unserved and in some other cases, none appeared. Further, it has been communicated by the DDIT that these companies have no actual business activity and shows very meager income and that the companies also have no fixed assets in their Balance Sheets, thus, having attributes akin to shell companies and once existed on paper only. The DDIT, after having made analysis of the bank accounts of various entities including that of Kalyani Vincom Private Limited, identified the beneficiaries of such transactions of layering of funds through the bank accounts, which also included the name of the present assessee, Arshiya Rail Infrastructure Limited [AAGCA96488], which has been benefitted by a sum of Rs. 1,49,62,890/- Rs.2,77,75,320/-, thus, totaling Rs.4,27,38,210/-.

3.1 Though the assessment has been carried out in the instant case before as well as after the search action, the assessee has failed to disclose truly and fully material facts necessary for its assessment. In view of these facts, I have reason to believe that the income amounting to Rs.4,27,38,210/- chargeable to tax has escaped assessment within the meaning of Section 147 of the Income Tax Act, 1961.

4. Applicability of the provisions of Section 147/151 to the facts of the case:

In this case, the return of income was filed for the year under consideration and the scrutiny assessment u/s. 143(3) has also taken place but the assessee has failed to disclose truly and fully material facts necessary for its assessment. In view of the above, the provisions of clause (c) of Explanation [2] to Section 147 are applicable to the facts of this case and the assessment year under consideration is deemed to be a case where income totaling Rs.9,81,60,144/- [5,54,21,934 +4,27,38,210] chargeable to tax has escaped assessment. Hence, it is a fit case for issue of notice u/s.148 of the Act."

9. Thus, on the basis of information received from DDIT (Investigation), Kolkata, Assessing Officer alleged that the assessee is a beneficiary of

transaction of layering of funds with entities viz. Silverson Logistics Private Ltd and Kalyani Vincom Private Ltd and since the assessee has failed to disclose truly and fully all material facts, therefore, income chargeable to tax has escaped assessment within the meaning of section 147 of the Act.

10. Before proceeding further, it is relevant to analyse the provisions of 1st proviso to section 147 of the Act, as it stood prior to its substitution by Finance Act 2021, which reads as under:

"Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year:"

11. Thus, as per 1st proviso to section 147 of the Act, in a case where assessment was completed under section 143(3), reassessment under section 147 can be done after the expiry of 4 years from the end of the relevant assessment year only if income has escaped assessment (i) due to failure on the part of the assessee to make a return under section 139 or in response to notice issued under section 142(1) or section 148; or (ii) due to failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment. In the present case, from the facts it is evident that assessment was completed in the case of the assessee under section 143(3) of the Act. Further, notice under section 148 of the Act was issued on 27/03/2019 i.e. beyond a period of 4 years from the end of the relevant

assessment year i.e. 2012 – 13. Therefore, it needs to be examined whether the conditions prescribed in 1st proviso to section 147 of the Act are satisfied in the present case. There is no dispute that return of income was filed by the assessee under section 139(1) of the Act. Thus, in order to determine the validity of the impugned reassessment proceedings, in the present case, now it needs to be examined whether there is any failure on the part of the assessee to disclose fully and truly all material facts.

12. Vide reasons recorded for reopening the assessment, Assessing Officer has alleged that assessee is a beneficiary in transaction of layering of funds through the bank account of Silverson Logistics Private Ltd. and in this regard, the assessee has failed to disclose truly and fully all material facts. We find that during the course of scrutiny assessment proceedings, vide notice dated 12/01/2015 issued under section 142(1) of the Act, the assessee was, inter-alia, asked to provide the details of sundry debtors such as name and address, amount outstanding. Further, the assessee was also asked to separately indicate creditors outstanding for more than 3 years (copy of the aforesaid notice forms part of the paper book from page No. 2 – 4). We find that details of sundry debtors were provided by the assessee, at page 7 and 8 of the paper book, wherein, the assessee had specifically mentioned, Silverson Logistics Private Ltd, as one of the debtor from whom amount of Rs. 2,43,24,868 in respect of rail freight and related services was due. The assessee further submitted that the said payment was received on 28/04/2011, i.e. during the relevant financial year. We find that as required, assessee also separately provided details of debtors, including in the case of

Silverson Logistics Private Ltd, outstanding for more than 3 years, forming part of the paper book at page No. 9 – 12, wherein the assessee has specifically mentioned that the amount of Rs. 2,43,24,868 is due from Silverson Logistics Private Ltd since financial year 2010 – 11. We find that no further detail was sought by the Assessing Officer in this regard and after considering of the details as sought, from time to time, assessment order under section 143 (3) of the Act was passed by the Assessing Officer.

13. Further, in respect of alleged transactions with Kalyani Vincom Private Ltd, it has been the submission of the assessee that the assessee has not entered into any transaction with the said entity. From page No. 7 of the assessment order passed under section 143 (3) r/w section 147 of the Act, it is evident that Assessing Officer, while disposing of the objection against initiation of reassessment proceedings, agreed with the aforesaid submission of the assessee and observed as under:

"Further as response submitted by the assessee that they have not entered into any transaction with respect to Kalyani Vincom Pvt Ltd during the year under scrutiny has been accepted."

14. However, despite the aforesaid acceptance of the fact, the Assessing Officer during the course of reassessment proceedings alleged that the funds were transferred from Kalyani Vincom Private Ltd to Highland Transport Private Ltd and Neelanchal Roadways Private Limited, which were later on transferred to the assessee. In this regard, it is pertinent to note that the reasons recorded by the Assessing Officer while reopening the assessment did not have mention of assessee's transaction with these entities. It is

evident from record that it is only during the course of reassessment proceedings Assessing Officer alleged the transfer of funds from Kalyani Vincom Private Ltd to these 2 entities, which were subsequently transferred to the assessee. It is settled that the reasons recorded for reopening the assessment are to be read as they were recorded by the Assessing Officer and same cannot be supplemented. In this regard, following observations of Hon'ble jurisdictional High Court in Hindustan Lever Ltd vs ACIT, [2004] 268 ITR 332 (Bombay) become relevant:

20.It is needless to mention that the reasons are required to be read as they were recorded by the Assessing Officer. No substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn based on reasons not recorded. It is for the Assessing Officer to disclose and open his mind through reasons recorded by him. He has to speak through his reasons. It is for the Assessing Officer to reach to the conclusion as to whether there was failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the concerned assessment year. It is for the Assessing Officer to form his opinion. It is for him to put his opinion on record in black and white. The reasons recorded should be clear and unambiguous and should not suffer from any vagueness. The reasons recorded must disclose his mind. Reasons are the manifestation of mind of the Assessing Officer. The reasons recorded should be self-explanatory and should not keep the assessee guessing for the reasons. Reasons provide link between conclusion and evidence. The reasons recorded must be based on evidence. The Assessing Officer, in the event of challenge to the reasons, must be able to justify the same based on material available on record. He must disclose in the reasons as to which fact or material was not disclosed by the assessee fully and truly necessary for assessment of that assessment year, so as to establish vital link between the reasons and evidence. That vital link is the safeguard against arbitrary reopening of the concluded assessment. The reasons recorded by the Assessing Officer cannot be supplemented by filing affidavit or making oral submission, otherwise, the reasons which were lacking in the material particulars would get supplemented, by the time the matter reaches to the Court, on the strength of affidavit or oral submissions advanced."

15. We find that even in respect of Highland Transport Private Ltd and Neelanchal Roadways Private Limited, the assessee provided the details of same amount due from them in its reply to notice issued under section

142(1) of the Act, during the course of scrutiny assessment proceedings. The assessee also submitted that the amount is due from financial year 2010-11 and the same was paid by these entities in the relevant financial year. As noted above, after consideration of the details filed by the assessee in response to notice issued under section 142 (1) and questionnaire, Assessing Officer passed the order under section 143 (3) of the Act.

16. Thus, from the above it is evident that the details pertaining to the amount due from these entities were provided by the assessee during the course of scrutiny assessment proceedings and said details were accepted by the Assessing Officer under section 143(3) of the Act. Therefore, in view of the details available on record it cannot be said that assessee has failed to provide fully and truly all material facts necessary for his assessment in the present case. Further, as is evident from the record the amount due from these entities pertains to the previous financial year and assessee being an Indian company has already paid the taxes thereon, since it follows the mercantile system of accounting. Therefore, we are of the considered view that conditions laid down in 1st proviso to section 147 of the Act are not satisfied in the present case. Thus, the reassessment proceedings under section 147 of the Act, in the present case, are set aside being bad in law. Accordingly, the impugned order passed by the learned CIT(A), inter-alia, upholding the order passed under section 143(3) r.w.s. 147 of the Act is set aside. As a result, ground No. 1 raised in assessee's appeal is allowed.

17. Since, challenge to jurisdiction under section 147 has been decided in favour of the assessee, the other grounds raised in the assessee's appeal are rendered academic in nature in the present case and therefore need no separate adjudication.

18. In the result appeal by the assessee is allowed.

Order pronounced in the open Court on 09/09/2022

Sd/-
S. RIFAUH RAHMAN
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 09/09/2022

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai