

**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH,KOLKATA**

**SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**I.T.A. No.2357/Kol/2024  
(Assessment Year 2009-10)**

**Sumangal Jewels Private Limited,**  
C/o S.N. Ghosh & Associates,  
Advocates 2, Garstin Place, 2<sup>nd</sup> Floor,  
Suite No. 203, Off Hare Street,  
Kolkata- 700001  
[PAN: AAMCS3293E] ..... **Appellant**

**vs.**

**DCIT, Central Circle 4(3), Kolkata,**  
Aayakar Bhawan Poorva, 110,  
Shantipally, 5<sup>th</sup> Floor,  
Eastern Metropolitan By Pass,  
Kolkata – 700107 ..... **Respondent**

**Appearances by:**

Assessee represented by : Somnath Ghosh, Advocate

Department represented by : Mrinmoy Basak, Sr. DR

Date of concluding the hearing : 17.11.2025

Date of pronouncing the order : 16.12.2025

**O R D E R**

The present appeal filed by the assessee arises from order dated 26.09.2024 passed u/s 250 of the Income Tax Act, 1961 (hereafter “the Act”) by the Ld. Commissioner of Income Tax (Appeals), Kolkata-27 [hereafter “the Ld. CIT(A)].

2. At the time of hearing, the Ld. Counsel for the assessee is pressed Ground No. 1 which is extracted below:

*“1. FOR THAT the Ld. Commissioner of Income Tax (Appeals). Kolkata-27 failed to appreciate that none of the conditions precedent existed and/or have been complied with and/or fulfilled by the Ld. Deputy Commissioner*

of Income Tax, Central Circle 4(3), Kolkata for his alleged assumption of jurisdiction u/s. 147 of the Income Tax Act, 1961 in the facts and circumstances of the instant case and the alleged assessment order dated 29-12-2016 passed u/s. 147/143(3) of the Act in pursuance to the impugned notice dated 22-03-2016 issued u/s. 148 of the Act is therefore ab initio void, ultra vires and null in law."

3. The facts in brief are that the search and seizure action as well as survey operation were conducted on 01.12.2025 on Bhalotia Group of Companies as well as residential premises of Director /partners at different places at Raniganj, Asansol, Durgapur, Dhanbad, Delhi and Kolkata. The assessee M/s Sumangal Jewels Pvt. Ltd. being one of the group companies of the assessee was covered under the survey action. The AO noted in paragraph 2 of the assessment order that due to some specific findings during survey/search the AO has reasoned to belief that income of the assessee has escaped assessment. Consequently, the assessment was reopened u/s 147 by issuing notice u/s 148 of the Act on 22.03.2016. The assessee complied with the said notice by submitting before the AO that return of income filed u/s 139(1) of the Act may be treated as return in response to notice u/s 148 of the Act. Pertinent to state that the assessee filed return of income u/s 139(1) of the Act on 10.08.2009 declaring total income at Rs. "Nil". Thereafter, the notices along with questionnaire were issued and finally the addition of Rs. 10,00,000/- was made u/s 68 as unexplained cash credit in respect of share capital raised by the assessee during the year. The Ld. CIT(A) confirmed the order of AO in the appellate proceedings.

4. After hearing the rival contention and perusing the material on record. We find that the assessment of the assessee was reopened u/s 147 of the Act by issuing notice u/s 148 of the Act on 22.03.2016 after recording a reasons to believe which are available at page No. 30 of the paper book. For the sake of ready reference, the reasons are extracted below:

*"A search & Seizure action w/s 132 as well as Survey u/s 133A of the Income Tax Act 1961 in the case of BhalotinGroup of Companies, concerns as well as at*

residential premises of its directors, partners was conducted on 01.12.2015. Subsequently. M/s Sumangal jewels PAN-AAMCS3293E), one of the group companies, is centralised to this charge

*It appears from the record that during the F.Y. 2008-09, M/s Sumangal jewels Pvt. Ltd. has brought in share capital amounting to Rs. 10,00,000/- by issuing 1,00,000 shares at the face value of Rs. 10/- to Mis Pavitra Trexim Pvt. Ltd. Subsequently on enquiry it reveals that M/s Pavitra Trexim Pvt. Ltd., is a paper company as admitted by Siri Sikanta Mitra one Director of the said company. Therefore, share capital of Rs. 10,00,000/- brought in M/s Sumangal jewels Pvt. Ltd., is not genuine.*

*In view of the above, the Assessing Officer had reason to believe that income of the assessee at least to the extent of Rs. 10,00,000/- had escaped assessment in terms of section 147 of the Income Tax Act 1961.”*

5. From the perusal of the above reasons that the AO referred to the search action u/s 132 of the Act as well as survey action u/s 133A of the Act and noted the assessee is a group company of Bhalotia group. Thereafter, in second para, the AO noted that it appears from the records during the year 2008-09 that the assessee has brought in share capital amounting to Rs. 10,00,000/- by issuing equity shares to M/s Pavitra Trexim Pvt. Ltd. Thereafter, the AO noted that Shri Sikanta Mitra, one of the Director of the said company admitted that the said company was providing accommodation entries and therefore, the capital raised by the assessee the said company is not genuine. Therefore, the share capital raised is nothing but the income escaped during the year. We note that the AO has recorded a very cryptic reasons and it is a case of borrowed satisfaction and not the AO's own satisfaction without any non-application of mind to the information received by the AO. In our opinion, it is the satisfaction of the 1d. AO that income has escaped assessment is a pre condition for re-opening the assessment and not a borrowed satisfaction from outside source as has been held by the Hon'ble Delhi High Court in case of Sarthak Securities Co. (P.) Ltd. vs. Income-tax Officer-Ward 7(3) [2010] 329 ITR 110 (Delhi, wherein it is held as under:-

*“3. Further, the alleged information provided by the Addl. DIT has been accepted as gospel truth without any verification by the Assessing Officer. The law postulates the Assessing Officer (and not the Addl. DIT) to have reason to believe. Blind acceptance of the information furnished by the Addl. DIT cannot*

*form reasons leading to the belief by the Assessing Officer of any escapement of income."*

6. Similarly, Hon'ble Delhi High Court in case of Principal Commissioner of Income-tax-6 vs. Meenakshi Overseas (P.) Ltd. [2017] 395 ITR 677 (Delhi)[26-05-2017], has held that reopening made on the basis of borrowed satisfaction cannot be sustained where the reasons failed to demonstrate live link between the tangible material and formation of the reason to believe that the income has escaped assessment, as under:-

**"26.** *The first part of Section 147 (1) of the Act requires the AO to have "reasons to believe" that any income chargeable to tax has escaped assessment. It is thus formation of reason to believe that is subject matter of examination. The AO being a quasi judicial authority is expected to arrive at a subjective satisfaction independently on an objective criteria. While the report of the Investigation Wing might constitute the material on the basis of which he forms the reasons to believe the process of arriving at such satisfaction cannot be a mere repetition of the report of investigation. The recording of reasons to believe and not reasons to suspect is the pre- condition to the assumption of jurisdiction under Section 147 of the Act. The reasons to believe must demonstrate link between the tangible material and the formation of the belief or the reason to believe that income has escaped assessment.*

.....

**36.** *In the present case, as already noticed, the reasons to believe contain not the reasons but the conclusions of the AO one after the other. There is no independent application of mind by the AO to the tangible material which forms the basis of the reasons to believe that income has escaped assessment. The conclusions of the AO are at best a reproduction of the conclusion in the investigation report. Indeed it is a 'borrowed satisfaction'. The reasons fail to demonstrate the link between the tangible material and the formation of the reason to believe that income has escaped assessment."*

7. Similarly, the Hon'ble Bombay High Court in case of Principal Commissioner of Income-tax-5 vs. Shodiman Investments (P.) Ltd. [2020] 422 ITR 337 (Bombay)[16-04-2018], has held as under:-

*"13. In this case, the reasons as made available to the Respondent- Assessee as produced before the Tribunal merely indicates information received from the DIT (Investigation) about a particular entity, entering into suspicious transactions. However, that material is not further linked by any reason to come to the conclusion that the Respondent-Assessee has indulged in any activity which could give rise to reason to believe on the part of the Assessing*

Officer that income chargeable to tax has escaped Assessment. It is for this reason that the recorded reasons even does not indicate the amount which according to the Assessing Officer, has escaped Assessment. This is an evidence of a fishing enquiry and not a reasonable belief that income chargeable to tax has escaped assessment.

14. Further, the reasons clearly shows that the Assessing Officer has not applied his mind to the information received by him from the DDIT (Inv.). The Assessing Officer has merely issued a re-opening notice on the basis of intimation regarding re-opening notice from the DDIT (Inv.) This is clearly in breach of the settled position in law that re- opening notice has to be issued by the Assessing Office on his own satisfaction and not on borrowed satisfaction”

8. Considering the facts of the assessee's case in the light of the aforesaid decisions, we are inclined to hold that the reopening of assessment has been made invalidly on the basis of borrowed satisfaction as the ld. AO has failed to apply his mind independently to arrive at an objective conclusion as to how the income has escaped assessment. Therefore, the reopening of assessment is not sustainable in the eyes of law. We, therefore, respectfully following the above decisions quash the reopening of the assessment. Ground No. 1 is allowed.

9. In result, appeal of the assessee is allowed.

Order pronounced on 16.12.2025

**Sd/-  
(Rajesh Kumar)  
Accountant Member**

Dated: 16.12.2025  
AK, Sr. P.S.

*Copy of the order forwarded to:*

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches