

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'SMC' BENCH, KOLKATA**

Before Shri Rajesh Kumar, Accountant Member

**I.T.A. No. 1105/KOL/2023
Assessment Year: 2013-2014**

***Dinesh Gangwal,.....Appellant
Olympus Court,
Flat 102, Block-B,
4/2, Sarat Bose Road, Kolkata-700020
[PAN: ADXPG0498E]***

-Vs.-

***Income Tax Officer,.....Respondent
Ward-50(1), Kolkata,
Income Tax Office,
Manicktala, Civil Centre,
Uttarapan Complex DS-IV,
Kolkata-700067***

Appearances by:

*Shri Sunil Surana, A.R., appeared on behalf of the
assessee*

*Shri Amitava Sen, Addl. CIT, D.R., appeared on behalf
of the Revenue*

Date of concluding the hearing : December 18, 2023

Date of pronouncing the order: December 26, 2023

O R D E R

This appeal ,at the instance of assessee for assessment year 2013-14, is directed against the order of ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 03.08.2023, which is arising out of the order under section 147 of the

Act on 10.09.2021 framed by Income Tax Officer, National Faceless Assessment Centre, Delhi.

2. At the time of hearing, it was notice that the appeal is barred by limitation by 11 days and accordingly ld. Counsel for the assessee was asked to explain the delay. Ld. Counsel submitted that due to certain reasons beyond the control of the assessee, this appeal could not be filed within due time. The ld. A.R. stated that the Memorandum of Appeal was sent for assessee's signature however, the assessee being not well, therefore, this minor delay has occurred. The ld. D.R. left the issue of condonation of delay to the wisdom of the Bench.

3. After hearing both the sides and taking into consideration of the reasons for delay, I observe that the delay is for a reasonable cause and accordingly the same is condoned.

4. The assessee has challenged reopening of assessment by the ld. Assessing Officer under section 147 of the Act, which was upheld by the ld. CIT(Appeals).

5. The facts in brief are that the assessee filed his return of income on 31.03.2014 declaring total income of Rs.1,90,560/-. Thereafter the case of the assessee was reopened under section 147 of the Act by issuance of notice under section 148 on 19.03.2020 after obtaining approval from the competent authority. The said reopening was done on the basis of information received from the Investigation Wing that the

assessee has earned long-term capital gain of Rs.8,30,000/- from transfer of shares of Quest Financial Service Limited, which is a penny stock company and the said gain has been claimed as exempt under section 10(38) of the Income Tax Act. Thereafter notice was issued and served upon the assessee and after calling for the necessary details qua the said purchase and sale of shares of Quest Financial Service Limited, an addition of Rs.7,78,816/- was made under section 68 of the Act, beside making addition of Rs.46,730/- @ 6% towards commission for arranging accommodation entry of long-term capital gain in the assessment framed under section 147 dated 10.09.2021. The ld. CIT(Appeals) affirmed the addition by upholding the order of the ld. Assessing Officer and held that it was penny stock, which was rightly added by the ld. Assessing Officer.

6. After hearing the rival contentions and perusing the material available on record, I observe from the reasons recorded under section 148(2) of the Act , a copy of which is placed at page no. 2 of the assessment order, that the reasons wererecorded without application of mind and in a very casual and mechanical manner. The said reasons are extracted below for the sake of ready reference:

The assessee is regularly assessed in Ward 50(4), Kolkata. The assessee filed its return of income on 31.03.2014 declaring gross total income of Rs. 3,00,564/- for the A:Y-2013-14 which was processed u/s 143(1)of the IT Act on 22.08.2014.

Information has been received from DIT(Inv), Kolkata, dated 07.01.2015 , the assessee has taken entry of bogus LTCG for an amount of Rs.8,30,000/- during the F:Y: 2012-13. The assessee has earned profit of penny stock

amounting to Rs.8,30,000/- and the assessee involvement in prearranged bogus LTCG/STCG in the scrip of penny stock "M/s Quest Financial Services Ltd." , bogus LTCG value of penny stock was Rs.8,30,000/- during the F:Y: 2012-13 relevant to the A:Y: 2013-14.

In this case, Directorate of Investigation has conducted survey in the case of entry operators/middlemen, Broker etc. and also recorded their statement on oath u/s 133A/-131 of the 1.1. Act, In view of analysis of several incriminating documents/evidences found during survey and the statement of Key persons, it has finally been found that the share broker accepted their role in the entire scheme of providing accommodation entries of bogus LTCG/STCG regarding penny stock of "M/s Quest Financial Services Ltd. From in depth analysis of penny stocks involved, perusal of statement of unscrupulous" share "Brokers and exit provider, analysis of related shell companies and sham transactions along the statements of related persons available with me, it emerges that the beneficiaries (Individual/ HUF) have taken accommodation entry of pre-arranged bogus LTCG/STCG in the penny stock of "M/s. Quest Financial Services Ltd."

On examination of the information alongwith list beneficiaries perused alongwith statements of entry operators / key persons, it has been observed that the assessee is one of the beneficiary and she entered into this malpractice in order to hide his/her net value to the tune of Rs.14,31,250/- through bogus transaction in collusion with these entry operators.

The return data has been perused. The assessee has reported in its return under presumptive - 4S and shown business income of Rs.2,85,400/- and income from other source of Rs.15,164/-. The assessee has not shown any Long Term Capital Gain. On examination of details of report, it has found that {here has not been any real transaction in respect of penny stock and everything was created artificially in order to give profit / bogus Long Term Capital Gain to the assessee for consideration of money paid by the assessee out of his / her undisclosed income which was not included in her return income.

Hence, after due application of mind, I have reasons to believe that there is live link with the information received and the assessee failed to disclose fully and truly all material facts necessary for her assessment and escape income at least to the extent of (Rs.8,30,000) which being chargeable

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to tax has escaped assessment within the meaning of section 147 of the Income Tax Act.

In order to assess / reassess the said income of Rs.8,30,000/- chargeable to tax which has escaped assessment for the A.Y. 2013-14 and in order to assess / reassess any other income chargeable to tax which has escaped assessment and which may come to my notice subsequently in the course of this proceedings as the case may be, a proceeding u/s. 147 needs to be initiated.

Since four years have expired from the end of relevant assessment year in respect of the above case, sanction from your honour is solicited in terms of section 151 of the I.T. Act, for issuing notice u/s 148. Duly filled up ITNS-10 is attached herewith. If sanctioned, online approval may also kindly be accorded.

Sd/-

Income-Tax Officer-50(4). Kolkata.”

7. I observe from the reasons recorded that the ld. Assessing Officer has stated that the assessee is beneficiary is of Rs.4,31,250/-, which is a surprise figure and I am not able to decipher as to how this amount has been stated by the AO in para 4 above. The ld. Assessing Officer in the first second para stated that the assessee has taken bogus long-term capital gain of Rs.8,30,000/- through penny stocks. Besides I also note that the ld. Assessing Officer has stated sometimes in the said reasons recorded “his/her”. I find merit in the contentions of the ld. A.R. that the reasons have to be read as they are recorded and there has to be an independent application of mind by the AO and a objective satisfaction has to be recorded whereas the AO acted on the borrowed satisfaction which is a clear-cut non-application of mind by the AO. The case of the assessee finds support from the decision of the Hon’ble Bombay High Court in the case of Hindustan Lever Limited –vs.- R.B. Wadkar, Asst.

CIT reported in 268 ITR 332(Bom), wherein it has been held that the reasons have to be read as they are recorded and it cannot be substituted. The Hon'ble Court has held that there has to be satisfaction of the Assessing Officer for reopening of the assessment and reopening cannot be made for borrowed satisfaction in a mechanical manner. The Hon'ble Bombay High Court in the above decision has held as under:

“20. The reasons recorded by the Assessing Officer nowhere state that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment of that assessment year. 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.

21. Having recorded our finding that the impugned notice itself is beyond the period of four years from the end of the assessment year 1996-97 and does

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not comply with the requirements of proviso to section 147 of the Act, the Assessing Officer had no jurisdiction to reopen the assessment proceedings which were concluded on the basis of assessment under section 143(3) of the Act. On this short count alone the impugned notice is liable to be quashed and set aside.”

7.1. I, therefore, respectfully following the said decision of the Hon'ble Bombay High Court quash the reopening of assessment and direct the ld. Assessing Officer to delete the addition. The appeal of the assessee is allowed on legal issue.

8. The grounds raised on merit are not being adjudicated as we have allowed the appeal of the assessee on legal issue.

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

Order pronounced in the open Court on 26/12/2023.

Sd/-

(Rajesh Kumar)

Accountant Member

Kolkata, the 26th day of December, 2023

*Copies to : (1) Dinesh Gangwal,
Olympus Court,
Flat 102, Block-B,
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*(2) Income Tax Officer,
Ward-50(1), Kolkata,
Income Tax Office,
Manicktala, Civil Centre,
Uttarapan Complex DS-IV, Kolkata-700067*

*(3) Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre (NFAC), Delhi;*

4) Commissioner of Income Tax-;

(5) *The Departmental Representative*
(6) *Guard File*
TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.