

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
'C' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं डॉ दीपक पी. रिपोटे, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND  
Dr. DIPAK P. RIPOTE, ACCOUNTANT MEMBER**

आयकरअपीलसं./ITA No.: **3371/CHNY/2019**

निर्धारण वर्ष/Assessment Year: 2011-12

**Smt. Sangeetha Bhandari,**

No.44/3, Narayana Mudali Street, vs.  
Sowcarpet,  
Chennai – 600 079.

**The Income Tax Officer,**

Non-Corporate Ward 6(3),  
Chennai.

**PAN: AASPS 2396D**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri Suresh Kumar, F.C.A

प्रत्यर्थी की ओर से/Respondent by

: Shri Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing

: 17.08.2022

घोषणा की तारीख/Date of Pronouncement

: 24.08.2022

**आदेश /O R D E R**

**PER MAHAVIR SINGH, VICE PRESIDENT:**

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-5, Chennai in ITA No.67/CIT(A)-5/2018-19 dated 14.10.2019. The assessment was framed by the Income Tax Officer, Non-Corporate Ward 6(3), Chennai for the assessment year 2011-12 u/s.143(3) r.w.s. 147 of

the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 28.11.2018.

2. The first issue raised by assessee in this appeal is as regards to assumption of jurisdiction by the AO for framing of assessment u/s.143(3) r.w.s. 147 of the Act, as the assessment order is without jurisdiction and reassessment is bad in law as the AO failed to comply with the statutory requirements of reassessment. For this, assessee has raised following grounds:-

2. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the order of the Assessing Officer is without jurisdiction.

3. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the reassessment is bad in law.

4. For that the Assessing Officer failed to comply with the statutory requirements of reassessment.

3. Brief facts are that the AO received information that the assessee has traded in shares of M/s. Global Capital Market and earned bogus Long Term Capital Gains (LTCG) for an amount of Rs.5,86,975/- during the financial year 2010-11 relevant to assessment year 2011-12 and hence, notice u/s.148 of the Act dated 27.03.2018 was issued after obtaining the approval of PCIT-9, Chennai. In response to notice u/s.148 of the Act, the assessee filed her return of income on 09.04.2018 by admitting an income of

Rs.1,94,970/-. Subsequently, the AO issued notice u/s.143(2) of the Act dated 23.04.2018 and assessee filed details as called for. Subsequently, a show cause notice was issued dated 12.11.2018 that the assessee has earned LTCG and as to why the LTCG earned from sale of shares of M/s. Regency Investment be not assessed as LTCG of the assessee, as the assessee obtained bogus entries from penny stock companies and the details are as below:-

|                      |                     |
|----------------------|---------------------|
| Sale value of shares | Rs.5,85,200/-       |
| Less: Purchase value | <u>Rs. 10,650/-</u> |
|                      | Rs.5,74,550/-       |

The AO after discussing in detail made addition by disallowing the LTCG and added to the returned income being sale proceeds of an amount of Rs.5,86,975/- on sale of shares of M/s. Regency Trust Ltd., to the total income of the assessee. Aggrieved assessee preferred appeal before CIT(A). Before CIT(A) also assessee challenged the reopening and assumption of jurisdiction u/s.147 r.w.s. 148 of the Act.

4. The CIT(A) confirmed the reopening by stating that the AO has issued corrigendum dated 28.11.2018, wherein it is noted that the name of Global Capital Ltd., was inadvertently mentioned in the first page of the assessment order and the same should be read as

Regency Investments & Trust. The CIT(A) adjudicated the issue in para 18 as under:-

“18. In the corrigendum issued by the assessing officer on 28.11.2018, it is noted that the name of the "Global Capital Market" was inadvertently mentioned in the first page of the assessment order and therefore the same should be read as "Regency Investments & Trust". Taking this into consideration, the ground No. 2 fails and hence dismissed. In this case, the Assessing Officer has clearly established the fact that the impugned transaction is manipulated with the collusion of brokers to paint credit worthiness to the transaction and claim exemption u/s. 10(38) of the Income-tax Act, 1961. The case-laws relied upon by the assessee are not applicable to the facts of the case of the assessee. Hence, respectfully following the above stated case-laws, the action of the Assessing Officer to treat the entire sale proceeds of the above mentioned penny stock to the tune of Rs. 5,86,975/- as unexplained credit u/s. 68 of the Income-tax Act, 1961 is upheld. The grounds No. 1 & 3 to 12 are dismissed.”

Aggrieved, assessee came in appeal before the Tribunal.

5. Before us, the Id.AR for the assessee Shri Suresh Kumar, F.C.A raised the issue of reopening of assessment on the first facet i.e., the reason recorded are for assessment of LTCG in scrip of Global Capital Markets Ltd., and assessee never invested any amount in the scrip of Global Capital Markets Ltd and even the same was approved by the PCIT. The Id.AR requested the Bench to examine the assessment records where the reasons recorded and the approval given by PCIT be examined. He made argument that the reasons recorded are on entirely different facts altogether what the AO has framed assessment. When a query was put to Id. Senior

DR, he produced the reasons recorded and the relevant reasons reads as under:-

“ Information has been received from the Investigation Wing of the Income Tax Department about various beneficiaries who have taken accommodation entries in the form of Long Term Capital Gain in a scrip of GLOBALCAPITAL MARKETS LTD. listed in Calcutta Stock Exchange (CSE). It was established that GLOBAL CAPITAL MARKETS LTD. is a paper/ shell/ bogus Company and the directors of the company known are entry operators in Kolkatta. According to the information available, the assessee had traded in the above scrip to the tune of Rs.586975/- during the FY 2010-11 and bogus LTCG had been facilitated to the assessee. On verification from the System, it is found that the assessee filed return of income for Asst. Year 2011-12 on 16/11/2011 admitting a total income of Rs.194970/-. The assessee has shown a sum of Rs.5,74,550/- under Schedule EI (Details of exempt income not to be included in total income) of the return of income filed. Hence, I have reason to believe that income of Rs.586975/- which is chargeable to income tax has escaped assessment for the AY 2011-12 within the meaning of Sec. 147 of the Income Tax Act 1961.”

5.1 We also called the approval granted by PCIT, Chennai -9 and the approval in format is given and the approval given by PCIT reads as *“perused the above. It is a fit case for reopening the assessment u/s.147. AO’s proposal is approved.”* The Id.AR stated that the very reason recorded is on a wrong premises. The Id. AR stated that the AO as well as the CIT(A) admitted that the assessee never invested in Global Capital Markets Ltd., whereas the assessee’s investments was only in Regency Trust Ltd. The Id.AR stated that once the reasons recorded are not on the actual facts, the Revenue cannot improve upon the reasons by issuing any

corrigendum later as is being done by the AO in this case, during the course of assessment proceedings.

6. On the other hand, the Id. Senior DR, relied on the assessment order and the order of the CIT(A).

7. We have heard rival contentions and gone through the facts and circumstances of the case. Admitted facts are that the reasons recorded by the AO, as noted above in para 3 clearly reveals that there is no application of mind by the AO because the AO has based his entire premises on the fact that the assessee has obtained accommodation entry in term of LTCG in a scrip of Global Capital Markets Ltd. But, actually facts are that the assessee has made investment in Regency Trust Ltd. This fact is totally different from what is recorded in the reasons.

8. In the above given facts as in the present case, we are of the view that there exists reasons for formation of the belief that income has escaped the assessment but there is no rationale connection or relevant bearing with the material for formation of belief. According to us, there is no direct nexus or live link between the material coming to the notice of the AO and the formation of his belief that

there has been escapement of income from assessment as the AO is not sure about from which party the assessee did trading in shares. In similar circumstances, Hon'ble Gujarat High Court in *Desai Brothers vs. DCIT*, [1999] 240 ITR 121 held that

“If the action of the Assessing Officer is founded on some material or ground that has no nexus to the formation of reason to believe or is not founded on any existing material the same is liable to be interfered with. Recording of reasons opens the window to the process by which the Assessing Officer reaches his belief, in case the action is challenged, to enable the court to find out whether he has formed his belief on relevant material or grounds which have some nexus to the tentative opinion which he has formed. The correctness of his tentative opinion is not to be tested on the anvil of the final decision which may be reached after considering rival contentions and weighing them through the process of reasoning. But, at the same time, if it appears from the reasonings which has been adopted by the AO that no inference of escapement of income from assessment can at all be drawn there from, the conferment of jurisdiction on the AO is not valid.”

8.1 Further, Hon'ble Supreme Court in the case of *ITO vs. Lakhmani Mewal Das*, [1976] 103 ITR 437 (SC) held that for initiation of action u/s.147 of the Act, the Assessing Officer must have in his possession specific information or material to show that the particular transactions of the assessee were not genuine or were fictitious and the Assessing Officer must have arrived at a prima facie conclusion on the basis of such specific information or material that the particular transactions were not genuine or were fictitious. But in the present case before us, the AO himself is not clear for which transactions the assessee entered into for purchase of shares

with which party. Hence, according to us, the reasons recorded in the present case and consequent satisfaction recorded by the CIT(A) on the same reasons is based on wrong reasons whereas the correct fact might have been amended by AO during the course of assessment proceedings but the basis jurisdictional notice issued u/s.148 of the Act after recording of reasons u/s.147 of the Act is invalid and bad in law.

9. Once the reasons are not supporting the case of the Revenue, re-opening is totally bad in law. Hence, we quash the reopening and allow the appeal of assessee.

10. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 24<sup>th</sup> August, 2022 at Chennai.

Sd/-

(डॉ दीपक पी. रिपोटे)

**(Dr. DIPAK P. RIPOTE)**

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह )

**(MAHAVIR SINGH)**

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 24<sup>th</sup> August, 2022

**RSR**

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त /CIT    | 5. विभागीय प्रतिनिधि/DR  | 6. गार्ड फाईल/GF.            |