

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER) AND
SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)**

**ITA No. 620/MUM/2022
Assessment Year: 2012-13**

Globalworth Securities Limited,
716, Neelkanth Corporate Park,
Kiroli Road, Vidyavihar (West),
Mumbai-400086.

Vs.

ACIT, Circle-4(1)(1),
Room No. 640, 6th floor,
Aayakar Bhavan, Maharshi
Karve Road,
Mumbai-400020.

**PAN No. AADCG 7624 G
Appellant**

Respondent

Assessee by : Mr. Aditya Ramachndran, AR
Revenue by : Mr. Ashok Kumar Kardam, CIT-DR

Date of Hearing : 07/10/2022
Date of pronouncement : 14/10/2022

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against revision order dated 22.03.2022 passed by the Ld. Pr. Commissioner of Income-tax-4, Mumbai (in short 'the Ld. PCIT') for assessment year 2012-13, raising following grounds :



1. *On the facts and circumstances of the case and in law, the learned Pr. CIT -4, Mumbai has erred in holding that the reassessment order passed by the Assessing Officer is erroneous and prejudicial to the interest of the revenue.*
2. *On the facts and circumstances of the case and in law, the learned Pr. CIT -4, Mumbai ought to have appreciated that the reasons recorded under Section 148(2) as provided to the appellant were referring to transactions in only one scrip which was alleged to be a penny stock and there cannot be another version of the reasons referring to three scrips as claimed by him.*
3. *On the facts and circumstances of the case and in law, the learned Pr. CIT -4, Mumbai has erred in holding that the Assessing Officer failed to deal with the transactions in alleged two penny scrips namely Exelon Infrastructure Ltd. and Scan Steels Ltd. without appreciating that -*
 - a. *they were not the subject matter of the reassessment as per the reasons recorded by the Assessing Officer; and*
 - b. *no addition could have been made with respect to the transactions in the said two scrips since no addition was made on the issue which was the subject matter of the reassessment as per the reasons recorded by the Assessing Officer.*

2. Briefly stated, the facts of the case are that the assessee filed its return of income for the year under consideration i.e. AY 2012-13 on 30.09.2022 declaring total income of ₹34,38,840/-. Subsequently,



the assessment was reopened by way of issue of notice u/s 148 of the Act dated 23.03.2019. During the reassessment proceedings, the assessee was asked regarding genuineness of share transaction of scrip namely M/s Nivyah Infrastructure & Telecom Services Ltd. After considering the submission of the assessee, the return of income was accepted by the Assessing Officer in reassessment order dated 23.12.2019 passed u/s 147 r.w.s. 143 of the Act. Thereafter, the Ld. PCIT called for record and noticed that assessment was reopened in view of in genuineness of trading investment by the assessee in following three scrips:

F.Y.	Name of the 'penny scrip'	Amount of transaction
2011-12	Nivyah Infrastructure & Telecom Services Ltd.	₹49,90,870/-
2011-12	Exelon Infrastructure Ltd.	₹60,31,839/-
2011-12	Scan Steels Ltd.	₹1,98,000/-

2.1 But the Assessing Officer only examined the trading on one scrip namely M/s Nivyah Infrastructure & Telecom Services Ltd. Therefore, he held that the assessment order passed by the Assessing Officer is erroneous in so far as prejudicial to the interest



of the Revenue. He accordingly set aside the order of the Assessing Officer and directed to examine genuineness of the share transaction in other two scrip also. The relevant finding of the Ld. PCIT is reproduced as under :

“5. The submissions of the assessee are perused however the same is not acceptable for the following reasons:

5.1 The assessment for the assessment year 2012-13 was reopened on the basis of information received from the Investigation wing in respect of transactions by the assessee in respect of the following penny scrips:

F.Y.	Name of the 'penny scrip'	Amount of transaction
2011-12	Nivyah Infrastructure & Telecom Services Ltd.	₹49,90,870/-
2011-12	Exelon Infrastructure Ltd.	₹60,31,839/-
2011-12	Scan Steels Ltd.	₹1,98,000/-

The reasons recorded for reopening had the approval of the erstwhile Pr. Commissioner of Income Tax-16, Mumbai in respect of all the above three penny scrips.

5.2 It is seen that the re-assessment order u/s 143(3) r.w.s 147 dated 23/12/2019 was completed without making enquiries in respect of other 2 penny scrips i.e.

F.Y.	Name of the 'penny scrip'	Trade/Sale Value of transaction (₹)
2011-12	Exelon Infrastructure Ltd.	₹60,31,839/-
2011-12	Scan Steels Ltd.	₹1,98,000/-



5.3 The AO shared the reasons recorded with the assessee for re-opening only in respect of penny scrip of Nivayah Infrastructure & Telecom Services Ltd. of Rs.49,90,870/-Hence the AO glaringly omitted to deal with other 2 penny scrips rendering the order us 143(3) r.w.s 147 dated 23/12/2019 as erroneous in so far it is prejudicia" to the interest of revenue

5.4. The various case law relied by the assessee including the case of CIT vs Jet Airways (1) Ltd. (2011) 331 ITR 236 (Bom) is not applicable in the instant case as the facts are distinguishable. In the instant the case was reopened by recording reasons which were approved in respect of all 3 penny scrips. The AO during the re-assessment proceedings has only dealt with the transactions in respect of penny scrip of M/s. Nivayah Infrastructure & Telecom Services Ltd of Rs. 49,90870/-, Further, the AO has glaringly omitted to deal with the transactions in remaining 2 penny scrips namely M/s. Exelon Infrastructure Ltd. and Ms. Scan Steels Ltd although information in respect of these 2 scrips formed part of the reasons recorded for re-opening. Thus the re-assessment order passed by the AO is erroneous and prejudicial to the interest of revenue.

5.5 As per clause (a) to Explanation to Section 263 (amended by Finance Act, 2015 with effect from 01.06.2015), an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner, the order is passed without making enquiries or verification which should have been made. In the instant case, as mentioned in the preceding paragraph, it is found that the A.O passed the assessment order without making inquiries and verification which were required in facts and circumstances of the case. This non-



verification which was required in the facts and circumstances of the case and consequent loss of revenue has rendered the assessment order erroneous in so far it is prejudicial to the interest of revenue. In this regard, the judgment of the Hon'ble Supreme Court in the case of Malabar Industrial Co. Limited v. CIT (2000] 243 ITR 83 (SC) may be referred to wherein the Hon'ble Court held

The scheme of the Act is to levy and collect tax in accordance with the provisions of the Act and this task is entrusted to the Revenue. If due to an erroneous order of the Income-tax Officer, the revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to the interests of the revenue. The phrase prejudicial to the interests of the revenue has to be read in conjunction with an erroneous order passed by the Assessing Officer."

It was further held by the Apex Court that the assessment orders was erroneous if the assessing officer passed the assessment order without applying his mind to the case in all perspective. In view of the aforesaid judgment of the Apex Court, if assessment has been made without application of mind in all perspective and there is consequential loss of revenue the order becomes erroneous in so far it is prejudicial to the interest of revenue.

6. In view of the facts mentioned in the preceding paragraphs, the assessment order passed u/s. 143(3) r.w.s 147 dated 23.12.2019 is considered erroneous in so far it is prejudicial to the interest of revenue. Therefore, the assessment order u/s. 143(3) r.w.s 147 dated 23.12.2019 is set aside and restored to the file of Assessing Officer on the above issue i.e. to examine share transactions in other 2 penny scrips namely M/s.



Exelon Infrastructure Ltd. and Ms. Scan Steels Ltd., and the AO is directed to pass a fresh assessment order after giving due opportunity to the assessee. The AO may also examine and incorporate such concomitant that arises out of the same in his order.”

3. Before us, the Ld. Counsel of the assessee filed a paperbook containing pages 1 to 11 and copy of the case laws relied upon by him.

4. We have heard rival submission of the parties on the issue-in-dispute and perused the relevant material available on record. Before us, the Ld. Departmental Representative (DR) submitted that initially the assessment was reopened in view of information of the share transaction for one scrip namely M/s Nivyah Infrastructure & Telecom Services Ltd. amounting to ₹49,90,870/-. Subsequently, information in respect of trading by the assessee in other two scrip namely “Exelon Infrastructure Ltd. (₹60,31,839/-)” and “Scan Steels Ltd. (₹1,98,000/-)” was received and therefore, the Assessing Officer recorded another reasons to believe that income escaped in relation



approved by the appropriate authorities. The Ld. DR was accordingly asked to file a report from the Assessing Officer whether the reasons recorded which were duly approved by the appropriate authorities were supplied to the assessee. Despite providing sufficient opportunity of being heard, the Ld. DR could not substantiate whether the reasons which were duly approved by the appropriate authority, were supplied to the assessee. Thus it is beyond doubt that the assessee was supplied with the reasons, which were in relation to only one scrip namely M/s Nivyah Infrastructure & Telecom Services Ltd. Obviously, this reason to believe which was supplied to the assessee was not duly approved by the appropriate authority. Further, the scrip referred into the reasons recorded which the Assessing Officer has supplied to the assessee, the AO has made no addition in the reassessment order. In such circumstances, in view of decision of the Hon'ble Bombay High Court in the case of **CIT v. Jet Airways (I) Ltd. (2011) 331 ITR 236**



(Bom), the Assessing Officer is precluded from making addition in respect of issues other than the issue on which the assessment was reopened. It is settled law in view of decision of the Hon'ble Supreme Court in the case of **GKN Driveshaft (India) Ltd. v. ITO (2003) 259 ITR 19 (SC)**, the Assessing Officer was required to provide copy of the reasons recorded duly approved (i.e. containing three scrips) whereas the Assessing Officer has supplied incorrect reasons (i.e. containing one scrip) and therefore, assessment completed, is not in accordance with the law. The reassessment order itself deserved to be quashed and the Ld. PCIT cannot revive order which itself is illegal. The Hon'ble Delhi High Court in the case of **Commissioner of Income-tax v. Software Consultants [2012] 21 taxmann.com 155 (Delhi)** set aside the revision proceedings where assessment was reopened on the issue of investment and FDR whereas the Ld. PCIT invoked proceedings u/s 263 of the Act



for non-verification of receipt of share application money. The relevant finding of the decision is reproduced as under :

“14. For exercise of power under Section 263 of the Act, it is mandatory that the order passed by the Assessing Officer should be erroneous and prejudicial to the interest of the Revenue. In the present case, the Assessing Officer did not make any addition for the reasons recorded at the time of issue of notice under Section 148 of the Act. This position is not disputed and disturbed by the Commissioner of Income Tax in his order under Section 263 of the Act. Sequitur is that the Assessing Officer could not have made an addition on account of share application money in the assessment proceedings under Section 147/148. Accordingly, the assessment order is not erroneous. Thus, the Commissioner of Income Tax could not have exercised jurisdiction under Section 263 of the Act.”

4.1 Further, the Tribunal in the case of Aishwarya Rai Bachchan v. PCIT [2022] 135 taxmann.com 225 (Mumbai-Trib.) has held that illegal order cannot be subject matter u/s 263 proceedings. The relevant finding of the Tribunal is reproduced as under:

“4.1. One more excruciating fact that needs to be addressed in the instant case is that the ld. PCIT herein is only seeking to revise the order passed by the ld. AO u/s.143(3) r.w.s. 147 of the Act dated 12/12/2018. In the said re-assessment proceedings, the ld. AO had not even made any addition despite the fact that he had reason to believe that income of



Rs.11,55,330/- had escaped assessment in the hands of the assessee which was sought to be taxed u/s.56 of the Act as per the reasons recorded. Hence, when the very basis of reasons recorded by the ld. AO was ultimately not added by the ld. AO in the re-assessment proceedings, then the primary reason to believe that income of the assessee had escaped assessment fails and such re-assessment cannot be treated as a valid order in the eyes of law. The same is to be declared as void ab initio. Reliance in this regard was rightly placed on the decision of the Hon^{ble} Jurisdictional High Court in the case of Jet Airways reported in 331 ITR 236. When an assessment framed by the ld. AO is unsustainable in the eyes of law, the said invalid and illegal order cannot be subject matter of section 263 proceedings. On this count also, the revision order passed by the ld. PCIT u/s.263 of the Act deserves to be quashed.”

4.2 In view of aforesaid discussion, we quash the impugned revision order passed by the Ld. PCIT. Accordingly, the grounds raised by the assessee are allowed.

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

Order pronounced in the open Court in 14/10/2022.

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;

Dated: 14/10/2022

Dragon Legal/Rahul Sharma, Sr. P.S.



Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,
(Sr. Private Secretary)
ITAT, Mumbai