

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “SMC”, MUMBAI
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.621/M/2022
Assessment Year: 2013-14**

M/s. Navodaya Logistics Pvt. Ltd., Flat No.22, Vishwatar Condominium, Plot No.310, Khar (West), Mumbai – 400 052 PAN: AACCC8903H	Vs.	Asst. Commissioner of Income Tax, Circle 13(1)(1), Room No.218, 2 nd Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Dharan Gandhi, A.R.
Revenue by : Shri Krishna Kumar, D.R.

Date of Hearing : 16 . 11 . 2022

Date of Pronouncement : 20 . 01 . 2023

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, M/s. Navodaya Logistics Pvt. Ltd. (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 25.10.2019 passed by Commissioner of Income Tax (Appeals), Mumbai [hereinafter referred to as the CIT(A)] qua the assessment year 2013-14 on the grounds inter-alia that :-

“1. The Learned CIT(A) has erred in upholding the action of the Ld. ACTT of reopening the assessment u/s 14% of the Income Tax Act. The action of reopening the assessment by issuing notice u/s 148 of the Act is bad in law.

2. The Learned CIT(A) has erred in upholding the action of the Ld. ACTT in disallowing carry forward of Short term capital loss of Rs.5378341/-by alleging it to be bogus loss.

3. The Learned CTT(A) has erred in upholding the action of the Ld. ACTT of not granting adequate opportunity of hearing thereby violating the principles of natural justice.

4. The Learned CTT(A) has erred in perpetuating the action of the Ld. ACIT of not granting opportunity of cross examination inspite of the specific request of the assessee.

5. The Ld. CIT(A) erred in upholding the levy of interest u/s 234B and 234C of the Act.

6. The LA CIT(A) erred in not setting aside the action of the Ld. AO in initiating penalty proceedings u/s 271(1)(c) of the Act.

7. The appellant craves leave to add, to amend, alter/delete and/or modify the above grounds of appeal on or before the final hearing”

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : original return of income filed by the assessee was processed under section 143(3) of the Income Tax Act, 1961 (for short 'the Act') at the total income of Rs.24,33,700/-. Subsequently on the basis of information received from Directorate of Investigation (DIT) that an unorganised racket of generating bogus entries of long term capital gain (LTCG)/ short term capital gain (STCG) in penny stocks has been unearthed and assessee is found as one of the beneficiaries of such bogus entries of LTCG/STCG as reflected in the return of income for A.Y. 2013-14 to the tune of Rs.5,37,83,410/- on account of short term capital loss (STCL), reopening proceedings were initiated under section 147/148 of the Act by way of issuance of notice under section 148 of the Act. The assessee filed requisite documents during the reopening proceedings. The assessee's statement was also recorded. Declining the contentions raised by the assessee the Assessing Officer (AO) proceeded to disallow an amount of Rs.5,37,83,410/- claimed by the assessee as STCL to be carried forward by framing the assessment under section 143(3) read with section 147 of the Act.

3. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has confirmed the addition by dismissing the same. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing present appeal.
4. I have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.
5. Before proceeding further reasons recorded are required to be extracted for ready perusal which are as under:

Name of the Assessee	: M/s. Navodaya Logistics Pvt. Ltd.
PAN	: AACCC8903H
Status	: Company
Assessment Year	: 2013-14

REASONS FOR REOPENING OF ASSESSMENT U/S 147 OF THE IT ACT, 1961.

Return of income was filed by the assessee on 25.09.2013 declaring total income loss at Rs. 36,42,796/- and the scrutiny assessment u/s.143 was completed at Rs.24,33,700/- on 01/03/2016.

A detailed investigation report has been uploaded on the Department ITD system by Shri Dhruv Purari Singh DDIT(Inv.) Unit 2(3), Kolkata. It has been mentioned that Kolkata Investigation Directorate had undertaken investigation into 84 penny stocks and given detailed findings indicating bogus LTC/STCL entries claimed by large number of beneficiaries. The name of the beneficiaries includes the name of assessee also. The modus operandi involving operators, intermediaries and the beneficiaries has been detailed in the investigation report prepared and disseminated by the Kolkata Directorate.

It is also worth mentioning that Securities and Exchange Board of India (SEBI) has in the recent past, passed several orders on the issue of manipulation of share market for providing accommodation entry of bogus LTCG. SEBI considering the inputs from Income Tax Department as well as from its own surveillance system and that of the stock exchanges has taken appropriate action in case of the suspect scrips. These actions include passing interim direction, suspending the trade, reducing the price band etc. In a large number of penny stocks, the price band had been reduced to the lowest band of 2 %. Out of these scrips, and interim orders have also been passed by SEBI in the case of 11 scrips, giving a finding that price in the scrips was rigged. Details of such orders are available on the website of SEBI. Out of the 11 scrips in which SEBI has passed orders, 9 are appearing in the investigation report of Kolkata and the orders of SEBI in the case of the 9 scrip are available in the ITS screen also.

Specific information has been passed in the case of the assessee. As per the information sent on the ITD system, it is seen that the assessee has entered into transaction of selling scrip of RUTRON INT.. The assessee has sold total 1487000 Qty of shares on various date. The total of trade value comes to Rs. 9,39,23,110/-. It is worth mentioning that the concerned persons like share brokers, operators, exit providers, etc have already accepted the fact that trading in the penny stock was a manipulated affair to generate entries of bogus LTCG/STCL facilitating tax evasion by a large number of persons.

In the light of above facts, I have reason to believe that Rs 9,39,23,110/- has escaped assessment within the meaning of the provisions of section 147 of the Act. The reasons recorded for reopening of the assessment u/s 147 is submitted to the office of Jt. CIT 13(1), Mumbai for approval.

(RAKESH KUMAR SUMAN)
DCIT - 13(1)(1), Mumbai.

6. At the very outside the L. A.R. for the assessee contended that very initiation of reopening proceedings by way of issuance of notice under section 148 of the Act is bad in law being based on incorrect facts.

7. However, on the other hand the Ld. D.R. for the Revenue contended that reopening has been made in this case on the basis of material available with the AO and this issue has been duly thrashed by the Ld. CIT(A) in the impugned order.

8. Bare perusal of the reasons recorded in this case for the purpose of initiating the reopening proceedings under section 147/148 of the Act goes to prove that during investigation it has come on record that 84 penny stocks indicating bogus LTCG and STCL entries have been claimed by number of beneficiaries and the assessee is one such beneficiary. It is noticed that the assessee has entered into a transaction of selling scrips to "RUTRON INT" having sold 14,87,000 shares on various dates having trade value of Rs.9,39,23,110/-. Concerned persons like share broker, operators, entry providers etc. have already accepted the fact that trading in the penny stock was a manipulation affair to generate entries of bogus LTCG/STCL in order to evade tax. The AO reached the conclusion that Rs.9,39,23,110/- has escaped assessment within the meaning of section 147 of the Act.

9. Challenging the aforesaid facts in the "reasons recorded" the Ld. A.R. for the assessee categorically contended that in the year under consideration i.e. A.Y. 2013-14 no such transaction of sale of 14,87,000 shares for an amount of Rs.9,39,23,110/- as recorded in the reasons has taken place. Rather the said share of RUTRON INT was sold in the subsequent years i.e. A.Y. 2014-15.

10. To support his argument the Ld. A.R. for the assessee further contended that addition qua the loss of scrips in case of RUTRON INT has already been made in the assessment of the assessee for A.Y. 2014-15 and brought on record copy of the assessment order dated 24.12.2016 for A.Y. 2014-15.

11. I have perused the assessment order for A.Y. 2014-15 (supra) wherein STCL claimed by the assessee qua the sale of share of RUTRON INT has been disallowed to be carry forwarded. It is further contended by the Ld. A.R. for the assessee that no addition whatsoever has been made by the AO on the basis of “reasons recorded” as to claiming STCL qua selling of scrips of RUTRON INT rather the AO has made addition on the basis of sale of share of M/s. Tumni Textile Mills Ltd.

12. When I examine the aforesaid contentions raised by the Ld. A.R. of the assessee in the light of the findings returned by the AO in the assessment order as well as the Ld. CIT(A) in the impugned order there is not even a whisper of sale of scrips of RUTRON INT, being a penny stock and to further claim STCL qua the same.

13. It is settled principle of law that when addition has been made on the basis of allegations made in the “reasons recorded”, no addition on the basis of any other issue is sustainable in the eyes of law. When the AO has voluntarily waived off his right to examine the sale of scrip of RUTRON INT share and has claimed STCL thereon during the assessment proceedings the entire initiation of reopening falls flat.

14. Honourable Bombay High Court while deciding the identical issue in case of CIT vs. Jet Airways Ltd. 331 ITR 236 (Bom) held

that if after issuing the notice under section 148 of the Act the AO after accepting the contentions of the assessee that income for which he had initially formed a reason to believe that it had escaped assessment, has, as a matter of fact not escaped assessment, it is not open to him (AO) to independently assess some other income; if intends to do so a fresh notice under section 148 of the Act would be necessary.

15. So in view of what has been discussed above and following the decision rendered by Honourable Bombay High Court in case of Jet Airways (supra) very initiation of reopening by the AO under section 147/148 of the Act is bad in law having been made without applying his mind and as such is not sustainable in the eyes of law, hence initiation of reopening under section 148 of the Act and subsequent assessment order has been quashed without going into the merits of the case as the issues on merits have become academic. The Ld. CIT(A) has erred in not considering this fundamental principle of law, hence impugned order passed by the Ld. CIT(A) is set aside.

16. Resultantly, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 20.01.2023.

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 20.01.2023.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.