

**आयकर अपीलीय अधिकरण, कोलकाता पीठ “एसएमसी”, कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH: KOLKATA**  
श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष  
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

**I.T.A. No. 552/Kol/2023**  
**Assessment Year: 2011-12**

M/s Samridhi Stocks Pvt. Ltd. (PAN: AA ECS 4902 L)	Vs.	ITO, Ward-12(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	19.07.2023
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	08.08.2023
For the Appellant/ निर्धारिती की ओर से	Shri Sunil Surana, A.R
For the Respondent/ राजस्व की ओर से	Shri B. K. Singh, JCIT(Sr. D.R)

**ORDER / आदेश**

**Per Rajesh Kumar, AM:**

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)”) dated 22.05.2023 for the AY 2011-12.

2. Issue raised by the assessee in ground no. 1 is against the order of Ld. CIT(A) upholding the reopening of assessment u/s 147 of the Act which was not in accordance with Act and as such the assessment is invalid and liable to be quashed.

3. Facts in brief are that the AO received information from DDIT(Inv), Unit-8(3), Mumbai regarding investment in penny stock company S.V. Electricals Ltd. presently known as Nivyah Infrastructure and Telecom Services Ltd. The case of the assessee was reopened u/s 147 of the Act after obtaining prior approval from the competent authority. The notice u/s 148 of the Act was issued on 28.03.2018 which was served on the assessee on the same date and the assessee complied with the said notice by filing return of income on 30.04.2018 declaring total income of Rs. 7,08,918/- . Thereafter the assessee wrote to the AO to supply the copy of reasons for reopening of assessment which was provided on 23.08.2018. The assessment was completed by AO by making an addition of Rs. 41,12,845/- on account of disallowance bogus loss resulting from the trading in the equity shares of above penny stock company vide order dated 27.11.2018 passed u/s 147/143(3) of the Act.

4. The appeal of the assessee was dismissed by upholding the reopening of assessment u/s 147 of the Act after taking into account the contentions of the assessee by observing and holding as under:

*“5.3. Ground of Appeal No. 1 and 2: Vide the ground of appeal Nos. 1 and 2, the assessee has challenged the action of the AO in reopening the assessment alleging that the proceedings initiated u/s 147 of the act are bad in law since approval taken from the higher authority was not in accordance with law and only a mechanical approval was granted and the proceedings initiated u/s 147 of the Act was not in accordance with law as the AO had acted on the information of the investigation wing without forming his independent belief and as such the assessment was liable to be quashed. In this regard, I find that the assessment was reopened by the AO u/s 147 of the Act by issue of a notice u/s 148 of the Act, dated 28.03.2018 on the basis of and information in his possession that the assessee had booked bogus loss of Rs. 41,12,845/- by trading in penny stock namely in the shares of M/s Nivyah Infrastructure & Telecom Services Ltd. for which due approval was obtained from the higher authorities as proved in law after recording detailed reason for the same. The assessee filed the return in response to the notice u/s 148 of the act without raising any objections to the issue of notice u/s 148 or against the reasons recorded by the AO. I also find that the assessee did not cooperate during the assessment proceedings before the AO by not responding the statutory notices and show cause notice and no information or details were submitted by the assessee before the AO. In this view, if the matter the case laws cited by the assessee do not help its case. In the circumstances, I see no reason to interfere with the well reasoned order of the AO.*

*Hence, the grounds of appeal No. 1 and 2 are dismissed.”*

5. The Ld. A.R vehemently submitted before us that the appellate order passed by the Ld. CIT(A) is wrong as it has wrongly upheld the reopening of assessment on the

basis of reasons recorded sans application of mind. The Ld. A.R referred to the reasons recorded a copy of which is filed at page 1 of the PB and submitted that in the reasons recorded the AO has stated in para 2 that the information received from DDIT(Inv), Unit-8(3), Mumbai vide letter dated 23.08.2018 stating that M/s Samridhi Stocks Pvt. Ltd, the assessee has traded in penny stock company shares of M/s Nivyah Infrastructure and Telecom Services Ltd. listed on BSE with Scrip code 517534 and in para 3 of the reason recorded the AO has noted that on the basis of information received he has reasons to believe that the income chargeable to tax in the case of assessee has escaped assessment to the tune of Rs. 32,58,390/-. The Ld. A.R stated that the assessee has not traded in the share of M/s Nivyah Infrastructure and Telecom Services Pvt. Ltd. The counsel of the assessee stated that it has traded in S. V. Electricals Ltd. which was subsequently changed M/s Nivyah Infrastructure and Telecom Services Pvt. Ltd. The Ld. A.R stated that there was totally non-application of mind by the AO at the time of recording a reasons as equity shares traded by the assessee were wrongly mentioned and therefore reopening of assessment on the basis of reasons recorded on wrong facts and without application of mind is bad in law. The Ld. A.R referred to the decision of Hon'ble Bombay High Court in the case of South Yarra Holdings vs. ITO & anr. In Writ Petition No. 3398 of 2018 dated 01.03.2019 and stated that the same scrip was subject matter of the decision. The Ld. A.R stated that Hon'ble Bombay High Court quashed the assessment on the ground that reopening has been done by the AO not on his own satisfaction and it is not open to AO to issue notice at the dictate of the investigation wing. The Ld. A.R therefore prayed that the order of reopening may kindly be quashed by reversing the order of Ld. CIT(A).

6. The Ld. D.R., on the other hand, relied heavily on the order of authorities below by submitting that though the fact of S.V. Electricals Ltd. which was subsequently converted into M/s Nivyah Infrastructure & Telecom Services Pvt. Ltd. was not mentioned in the reasons recorded ,however this was duly mentioned in the order above and was very well within the knowledge of Ld. CIT(A) and was duly mentioned

in the appellate order. The Ld. D.R therefore prayed that the grounds of appeal raised by the assessee may be dismissed.

7. We have heard rival submissions and perused the material on record. We have also perused the reasons recorded by the AO u/s 148 of the Act and found that the AO has reopened the assessment on the basis of information received from DDIT(Inv), Unit-8(3), Mumbai stating that the assessee has traded in penny stock /shares of M/s Nivyah Infrastructure and Telecom Services Pvt. Ltd. which is BSE as per scrip code : 517534 to the tune of Rs. 32,58,390/- to bring its unaccounted income in the books through , circuitous route during AY 2011-12. It was also stated that as per the information found that all the transactions were arranged through brokers within the close group having sole purpose of providing bogus profits or loss. We note that the AO reopened the assessment by stating that on the basis of information stated above he has reasons to believe that the income chargeable to tax has escaped assessment. For the sake of ready reference ,the reasons recorded are extracted below:

**Reasons recorded for reopening u/s 148 of the Income Tax Act, 1961**

*The assessee company filed the return of income for the A Y. 2011-12 on 24.09.2011 declaring income of Rs. 7,08,918/-. The return was processed u/s 143(1) on 28.01.2012.*

*This office has received an information forwarded by DDIT(Inv),U-8(3), Mumbai vide letter no. DDIT(Inv)/Unit-8(3)/Diss/Action/2017-18/ dated 23.03.2018 stating that M/s. Samridhi Stocks Pvt Ltd, an assessee in this charge, has traded in penny stock company shares vir M/s. Nivyah Infrastructure & Telecom Services Ltd, listed on BSE with script code ( 517534) to the tune of Rs. 32,58,390/- to bring its unaccounted income in the books by avoiding paying due taxes through circuitous routes during the F.Y. 2010-11 relevant to the A.Y. 2011-12. As per the information this scrip has poor fundamentals and all these transactions are arranged through brokers within the close group , having sole purpose of providing bogus profits and losses.*

*On the basis of the information as stated above, I , have reason to believe that income chargeable to tax in the case of the assessee company had escaped assessment within the meaning of section 147 o' the I.T Act, 1961 to the tune of Rs. 32,58,390/- during the A. Y under-consideration.*

*Since the period of four years from the end of the A. Yr. has been expired, sanction for the issue of notice u/s 148 of the I. 7. Act, 1961 may kindly be given in terms of section 151(1) of the Income Tax Act, if deemed fit.”*

We also note that the scrip of S.V. Electricals Ltd. was converted into M/s Nivyah Infrastructure and Telecom Services Pvt. Ltd. and the assessee has in fact dealt in

share of S.V. Electricals Ltd. and not M/s Nivyah Infrastructure and Telecom Services Pvt. Ltd.. We also note that in the second last para the AO has simply stated that on the basis of information received from DDIT(Inv), Unit-8(3), Mumbai, the case is reopened. In our opinion, the reasons recorded by the AO are without any application of mind and without recording his own satisfaction and in fact it was a case of borrowed satisfaction as received from DDIT(Inv), Unit-8(3), Mumbai which is not permissible under the law. The case of the assessee finds support from the decision of Hon'ble Bombay High Court in the case of South Yarra Holdings (supra) wherein from same script, the Hon'ble Bombay High Court has held that it was a case of reopening of assessment on the basis of suspicion of other and not on AO's own satisfaction. The relevant part is extracted below:

*3. For the Assessment Year 2011-12 the petitioner filed its return of income on 29.9.2012 declaring an income of Rs.12.52 lacs (rounded off). The return was taken up for scrutiny assessment by the Assessing Officer. On 1.11.2013 the Assessing Officer passed an order under [section 143](#) (3) of the Act enhancing the petitioner's income to Rs.20.14 lacs.*

*4. Thereafter on 29.3.2018, the Assessing Officer issued the impugned notice seeking to reopen assessment for A.Y.2011-12. The reasons in support of the impugned notice as communicated to the petitioner reads thus:-*

*"Reasons for reopening u/s 148 for A.Y.2-011-12 is provided as under :*

*1. The information has been received from DDIT (Inv) Unit 8 (3) Scindia House, Mumbai-38 vide their letter dated 23-3-2018 which is received in this office on 28-03-2018.*

*2. The DDIT (Inv) Mumbai has received information that M/s Nivyah Infrastructure & Telecom Services Ltd is a penny stock listed do in BSE with scrip code (517634) and this company has been used to facilitate introduction of unaccounted income of members of beneficiaries in the form of exempt capital gain or short term capital loss in their books of accounts. It was noticed that share price of M/s Nivyah Infrastructure & Telecom Services Ltd rose from Rs.39 in 21st July 2009 to Rs.2050 on January 2011 and dipped to Rs.47.20 on 18 th July 2012. However, the financials of the company for the relevant period do not show any substantial change so as to support such huge share price movement. The company does not have business worth while to justify the sharp rise in market price of shares. The sharp rise in market price of this entity is not supported by the fundamentals of the company. Both purchase and sale of the shares are concentrated within few person/entities.*

*2.2. The DDIT (Inv) has traded in the above script namely M/s Nivyah Infrastructure & Telecom Services Ltd during the F.Y. 2010-11 to the tune of Rs.3504000000000000000.*

*2.3. The DDIT (Inv) Unit - 8 (3) Mumbai has given a finding that enquiries have been conducted in the penny scrip namely M/s Nivyah Infrastructure & Telecom Services Ltd vis-a-vis facilitating introduction of unaccounted income of members of beneficiaries in the form of*

*exempt Capital gain or Short term Capital Loss in their books of account. These transactions are mostly in view of cash of equal amount and commission is charged over and above at certain fixed percentage for providing such accommodation entry. These accommodation entries were taken from various beneficiaries for introducing their unaccounted cash into their books of accounts without paying the due taxes. 2.4 The detailed investigation report containing the modus operandi of tax evasion through penny stock and discussion in entry operators from brokers and scripts has been provided along with the letter of DDIT (Inv) Mumbai. 2.5. Our assessee is one of the beneficiary who have availed accommodation entries by way of traded in shares to the tune of Rs.3504000,000000000005 in M/s Nivyah Infrastructure & Telecom Services Ltd with a view to ultimately reduce tax liability and or to bring capital in the form of equity or debt or tax exempt income or a combination of the above transaction, therefore, it is necessary to verify the actual amount of bogus LTCC analyzing the D-mat statement and bank account statement.*

*3. In this case return of income as fixed for the year under consideration and regular assessment u/s 143 (3) was made on 27.11.2013. Since 4 years from the end of the relevant year has expired in this case the requirements to initiate proceedings u/s 147 of the [IT Act](#) are reasons to believe that income for the year under consideration has escaped assessment because of failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the year under consideration. It is pertinent to mention here that reasons to believe that income has escaped assessment for the year under consideration have been recorded in paragraph 2 above.*

*4. In this case more than four years have lapsed from the end of assessment year under consideration. Hence, necessary sanction to issue the notice u/s 148 has been obtained separately from the Pr. Commissioner of Income Tax as per the provisions of [section 151](#) of the Act.*

*5. Notice u/s 148 was issued with prior approval of Pr. Commissioner of Income Tax-6 Mumbai."*

*5. On receipt of above reasons on 9.8.2018, the petitioner filed its objections to the reasons in support of the impugned notice and in particular pointed out that the assessee had dealt with a company called "S.V.Electricals Ltd" and not with M/s Nivyah Infrastructure & Telecom Services Ltd. The name of company "S.V.Electricals Ltd" had subsequently changed on 14.2.2012 to M/s Nivyah Infrastructure and Telecom Ltd. It had also pointed out in its objection that during the regular assessment proceedings, details of the petitioner's dealing in scrip namely "S.V.Electricals Ltd" had been submitted during the regular assessment proceedings. The objections primarily proceeds on the basis, that the reasons as recorded, display total non-application of mind while forming reason to believe, this as during the relevant time, there was no company by the name "M/s Nivyah Infrastructure and Telecom Services Ltd" in which the petitioner could have dealt. The petitioner's objections were rejected by the Assessing Officer by passing an order on 28.9.2018. The order on objections, does not deal with the petitioner's primary contentions that the petitioner had not dealt with any company by name "M/s Nivyah Infrastructure and Telecom Services Ltd" during the period relevant to the subject assessment. This order dated 28.9.2018 disposing of the objections is completely silent on the above objections while RNG 5/7 5-wp3398.18 rejecting the petitioner's objections.*

*6. The respondent's Assessing Officer has filed an affidavit-in reply dated 5.2.2019 of the Assessing Officer. However, the reply does not deal with this objection taken in the petition.*

Nevertheless, Mr.Suresh Kumar the learned counsel for the revenue submits that all these issues will be subject of consideration during the re-assessment proceedings. Thus, this Court should not interfere at this stage.

7. It is a settled position in law that re-opening of an assessment has to be done by an Assessing Officer on his own satisfaction. It is not open to an Assessing Officer issue a reopening notice at the dictate and/or satisfaction of some other authority. Therefore, on receipt of any information which suggests escapement of income, the Assessing Officer must examine the information in the context of the facts of the case and only on satisfaction leading to a reasonable belief that income chargeable to tax has escaped assessment, that re-opening notice is to be issued.

8. From the reasons, it is evident that the impugned notice has been issued on the basis of information received from the Deputy Collector RNG 6/7 5-wp3398.18 Income Tax (Investigation) alleging that M/s Nivyah Infrastructure & Telecom Services Ltd is a penny stock listed on the Bombay Stock Exchange and that the petitioner had dealt with the same leading to escapement of income. On receipt of information, the least that is expected of the Assessing Officer is to examine the same in the context of the facts of this case and satisfy himself whether the information received does prima facie lead to a reasonable belief that income chargeable to tax has escaped assessment. In this case, the reasons indicate that the Assessing Officer has not carried out such exercise and accepted the report of the Deputy Collector of Income Tax (Investigation) Mumbai to conclude that the petitioner had dealt with Nivyah Infrastructure and Telecom Services Ltd during the previous year relevant to the assessment year 2011-12. Admittedly, there was no company by name "M/s Nivyah Infrastructure & Telecom Services Ltd" in existence during that year for consideration. This clearly shows that the Assessing Officer acted on the satisfaction of the Deputy Collector of Income Tax (Investigation) that income chargeable to tax has escaped assessment. It must also be borne in mind that the impugned notice is issued beyond the period of four years from the end of the relevant assessment year in a case, where the assessment was completed under [section 143](#) (3) of the Act. Therefore, RNG 7/7 5-wp3398.18 the Assessing Officer would have to examine the information received in the context of the facts on record. If such an exercise were to be done, it is likely that the Assessing Officer would have come to the conclusion that there was no failure to disclose truly and fully all material facts necessary for assessment. Thus, hit by the proviso to [section 147](#) of the Act. However, the Assessing Officer has not applied his mind to the information received in the context of the facts on record. The impugned notice is bad-in-law, as it has not been issued by the Assessing Officer on his satisfaction that there is reason to believe, that income chargeable to tax has escaped assessment.

9. In the above circumstances, the impugned notice is un-sustainable in law and therefore, is quashed and set aside.”

Since the facts of instant case before us are substantially similar, we, therefore respectfully following the decision of Hon’ble Bombay High Court quash the reopening of assessment and also the consequent order framed u/s 147 / 143(3) of the Act.

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

Order is pronounced in the open court on 8<sup>th</sup> August, 2023

Sd/-

Sd/-

(Sonjoy Sarma /संजय शर्मा)

Judicial Member/न्यायिक सदस्य

(Rajesh Kumar/राजेश कुमार)

Accountant Member/लेखा सदस्य

Dated: 8<sup>th</sup> August, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- M/s Samridhi Stocks Pvt. Ltd., Pratik, 2/2 , Justice Chandra Madhav Road, Bhowanipore, Kolkata-700020
2. Respondent – ITO, Ward-12(1), Kolkata
3. Ld. CIT(A)- NFAC, Delhi
4. Ld. PCIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata