

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

**BEFORE CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.494/DEL/2020
Assessment Year 2011-2012

Saket Agarwal, L-506, Agrasen Apt. Plot No.66, IP Extn. Patparganj, New Delhi.	Vs.	ACIT, Circle-58(1) New Delhi
TAN/PAN: ABXPA8150D		
(Appellant)		(Respondent)

Appellant by:	Shri C.S. Anand, Adv.		
Respondent by:	Shri Anuj Garg, Sr.DR		
Date of hearing:	26	09	2023
Date of pronouncement:	06	10	2023

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals) - XXXV, Delhi ['CIT(A)' in short] dated 15.12.2019 arising from the assessment order dated 30.12.2018 passed by the Assessing Officer (AO) under Section 147 r.w. Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2010-11.

2. The grounds of appeal raised by the assessee read as under:

"1. That the Id. CIT(A) has erred in not quashing the proceedings initiated u/s. 147.

2. That the Id. CIT(A) has erred in not appreciating the law that no other addition may survive, unless & until the reportedly escaped income (Rs.10,02,865/-) is assessed.

3. That the Id. CIT(A) has erred in not disapproving the Id AO's finding

that the Short Term Capital Gain of Rs. 1,37,643/-, (which arose on sale of 26500 shares of Amulya Leasing & Finance Limited) were bogus.

4. That the ld. CIT(A) has erred in upholding the treatment given by the Id AO to the amount of Short Term Capital Gain of Rs. 1,37,643/-(which arose on sale of 26500 shares of Amulya Leasing & Finance Limited)

5. That the ld. CIT(A) has erred in upholding the addition of Rs. 3,13,227/-, which was made by the Id AO on hypothetical basis u/s 68.

6. That the ld. CIT(A) has erred in upholding the addition of Rs. 10,238/- which was made by the Id AO while stating "since the gains in trading in Amulya Leasing & Finance Limited is being treated as bogus expenses claimed in this account are disallowed and added back to the income of the assessee us 69C of the Income Tax Act 1961".

3. When the matter was called for hearing, the ld. counsel for the assessee at the outset submitted that while there are many facets to the challenge towards assumption of jurisdiction under Section 147 of the Act in the instant case. One of the foremost grounds however is that the additions made in the course of the assessment are *dehors* the reasons recorded and therefore, where the reasons recorded do not lead to any additions or disallowances, the other additions are not sustainable in a re-assessment order in view of several judicial precedents in this regard. The reasons recorded in this regard were adverted and it was contended that as per the reasons, the sale consideration (trade value) amounting to Rs.10,02,865/- has escaped assessment *qua* the scrip 'Amulya Leasing and Finance Ltd.' (now Apollo Pipes Ltd.). The re-assessment however has been framed by invoking Section 68 of the Act towards gain on sale of securities amounting to Rs.3,13,227/-. The ld. counsel contended that the assessment of income other than income allegedly escaped assessment in the reasons recorded is contingent upon the assessment of income allegedly escaped assessment in the reasons recorded. The ld. counsel thus contended that the re-assessment framed in the instant case is totally divorced from the reasons recorded and thus the impugned additions are not

sustainable in law.

4. The reasons recorded by the Assessing Officer under reference is reproduced hereunder:

“Reasons for reopening of the assessment in the case of Sh. Saket Agarwal for AY 2011-12 u/s. 147 of the Income Tax Act, 1961.

The assessee is an individual and has income from business and profession, income from capital gains and income from other sources. The assessee filed return of income for AY 2011-12 declaring total income of Rs. 67,81,160/-. The ITR was processed u/s. 143(1) of the Act, however no assessment was carried out u/s. 143(3) of the Act.

2. For AY 2011-12, the Assessing Officer received information from Oo DDIT(Inv), Unit 6(2), Mumbai through e-mail dated 25.03.2018 that the assessee had sold shares of a penny stock 'Amulya Leasing and Finance Ltd. (now Apollo Pipes Ltd.) during FY 10-11.

3. This information was cross-verified with other information available with the AO in respect of the assessee. When the 360 degree profile of the assessee was examined on the ITBA portal, it was found that the assessee had sold shares of the scrip "Amulya Leasing and Finance Ltd." trade value amounting to Rs.10,02,865/-. It is also seen that the assessee has claimed income exempt u/s. 10(38) of the Act amounting to Rs. 1,18,94,247 during the year under consideration.

4. It is pertinent to note that the issue of penny stocks has been examined in considerable detail by the Income Tax Department, where it has been found that such scrips are used by beneficiaries to book non-genuine long-term/Short-term capital gains/capital loss/trading loss in order to escape paying tax on such consideration.

When the financials of the above scrips were analysed, it is seen that the company has reported negligible profits during the period when the prices of such scrips showed huge price variations. Profits before tax for AY 2010-11 and AY 2012-13 are as under:

(in crores)

<i>March ending</i>	<i>Amulya Leasing & Finance Ltd. (now Apollo Pipes Ltd.)</i>
<i>2010</i>	<i>2.19</i>
<i>2011</i>	<i>2.53</i>
<i>2012</i>	<i>0.52</i>

This was in complete contrast to the large fluctuation in prices of shares of this scrip during FY 10-11. Such huge price variations are not supported by the financials of the company. This also suggests that prices

of the scrip were rigged in order to allow beneficiaries to book bogus gains. During enquiries, it was also found that certain brokers and entry providers also made statements before the Directorate of Investigation, Kolkata and Pata wherein they admitted to having been involved in manipulation of prices of such scrips.

5. It is evident that M/s Amulya Leasing and Finance Ltd. (now Apollo Pipes Ltd.) is penny stocks and gains booked by the assessee are not genuine. This is based on the information received in this office, as well as independent enquiries to corroborate the same as explained in the preceding paras.

6. Therefore, based on the assessee's nature of transactions, corroborative evidence on the Scrips and its financials as detailed above, I have reasons to believe that income chargeable to tax has escaped assessment for AY 11-12. Such escaped income is likely to amount to at least Rs.10,02,865/-

7. In this case, a return of income was filed for the AY under consideration, but no scrutiny assessment u/s. 143(3) of the Act was carried out. Accordingly, in this case, the only requirement to initiate proceedings u/s. 147 of the Act is that the AO have "reasons to believe" that income chargeable to tax has escaped assessment, which has been duly recorded in Paras 1 to 6 above. It is pertinent to mention here that in this case, the return was merely processed u/s. 143(1) of the Act. In view of the above, the provisions of clause (b) of Explanation 2 to Section 147 are applicable to the facts of this case and it is deemed to be a case where income chargeable to tax has escaped assessment for the relevant assessment year."

5. It is the case of the assessee that the re-assessment has been made on altogether different grounds than what is recorded in the reasons for reopening the assessment. As per the reasons recorded, the allegation of escapement is with reference to income claimed as exempt under Section 10(38) of the Act to the extent of Rs.10,02,865/- in relation to trading in the scrips namely, Amulya Leasing and Financing Ltd. However, a perusal of the re-assessment order shows that the additions have been made by invoking Section 68 of the Act for an amount of Rs.3,13,227/- holding the same to be unexplained cash credit. Thus, the 'reason to believe' which in the first instance, impelled the Department to reopen the proceedings has undergone a complete change.

6. It is well settled that once the Assessing Officer assumes jurisdiction to reopen the proceedings under Section 148, he cannot independently make additions in respect of other income which escapes assessment unless the Assessing Officer makes some additions based on allegations in the reasons recorded. In other words, if the Assessing Officer does not assess income for which reasons were recorded, he is not empowered to assess 'other income' in the re-assessment proceedings. A reference is made to various judgments viz, *CIT vs. Jet Airways, 331 ITR 236 (Bom)*; *Ranbaxy Laboratory Ltd. vs. CIT, order dated 03 June, 2011 (Del HC)*; *CIT vs. Living Media India Ltd., 359 ITR 106 (Del)*. In the light of these judgments, it is not open to the Assessing Officer to assess income on account of other issues independently where the reasons recorded do not culminate in any additions to the returned income.

7. In the instant case, the foundation of reopening has been knocked out and additions have been made on unrelated grounds which is not permissible in law. Thus, the additions under challenge are not permissible in law. Hence, such impugned additions are liable to be quashed.

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

Order pronounced in the open Court on 06/10/2023

Sd/-

**[CHALLA NAGENDRA PRASAD]
JUDICIAL MEMBER**

DATED: /10/2023

Prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**