

आयकर अपीलीय अधिकरण  
कोलकाता 'ए' पीठ, कोलकाता में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'A' BENCH, KOLKATA**

श्री राजेश कुमार, लेखा सदस्य  
एवं  
श्री संजय शर्मा, न्यायिक सदस्य  
के समक्ष

**Before**

**SRI RAJESH KUMAR, ACCOUNTANT MEMBER  
&  
SONJOY SARMA, JUDICIAL MEMBER**

**I.T.A. No.: 871/KOL/2023  
Assessment Year: 2013-14**

***Anand Kumar Padia.....Appellant  
[PAN: AFTPP 1166 Q]***

***Vs.***

***ITO, Ward-5(1), Kolkata.....Respondent***

**Appearances:**

***Assessee represented by – Sh. S.M. Surana, A/R.***

***Department represented by – Sh. B.K. Singh, JCIT, Sr. D/R.***

Date of concluding the hearing : October 16<sup>th</sup>, 2023

Date of pronouncing the order : November 6<sup>th</sup>, 2023

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

This appeal preferred by the assessee is against the order passed by Learned Commissioner of Income-tax (Appeals)-NFAC, Delhi [hereinafter referred to Ld. 'CIT(A)'] dated 27.07.2023 for the Assessment Year (in short 'AY') 2013-14.

2. In the ground nos. 1 & 2 the assessee has challenged the order of Ld. CIT(A) upholding the reopening of assessment u/s 147 of the Act by the Assessing Officer (in short ld. 'AO') on the basis of borrowed satisfaction that too without application of mind and in a mechanical manner.

3. The facts in brief are that the assessee filed return of income u/s 139(1) of the Act on 01.10.2013 showing total income at Rs. 10,18,880/-. The return order was processed u/s 143(1) of the Act. Thereafter, the case of the assessee was reopened u/s 147 of the Act by issuing notice u/s 148 of the Act on 29.03.2019 recording reasons therein that the assessee has claimed bogus long term capital gain on trading of penny stocks namely M/s. Tuni Textile Mills Ltd. amounting to Rs. 49,40,000/-. The assessee filed the return of income in response thereto on 07.12.2019 and thereafter, statutory notices were issued and duly served upon the assessee. Finally, the assessment was completed by the AO by making an addition of Rs. 43,74,434/- which was calculated by reducing the purchase cost of Rs. 5,47,365/- from total sale value of Rs. 49,21,800/- thus, computing the capital gain of Rs. 43,74,434/-. It is pertinent to note that the assessee purchased 2,500 equity shares of M/s. Tuni Textile Mills Ltd. on 25.02.2011 at Rs. 218.10 per share. Ld. CIT(A) also in the appellate proceedings dismissed the appeal of the assessee.

4. Now, the assessee has raised the legal issue before us challenging the validity of assessment on the ground that reasons recorded by the AO for reopening the assessment lacks the individual application of mind by the AO and the same were

recorded in a mechanical manner without carrying out any enquiry and were in fact based upon the borrowed satisfaction. Ld. A/R drew our attention to the copy of reasons recorded at page no. 2 of the paperbook. For the sake of ready reference, the same is reproduced below:

*“An information has been received from the Office of the CCIT, Kolkata-2, Kolkata vide letter No. CCIT-2/Kol/Misc/2015-16/2663-2664 dated 31.03.2016 regarding information related to Penny Stock (Suspected Long Term Capital Gains / Short Term Capital Loss) in respect of assesseees for consideration for appropriate actions u/s 147/148 of the Act.*

*In the above mentioned report and in the context of investigation conducted by Kolkata Investigation Directorate in respect of large number of penny stock companies, whose share prices were artificially raised on the stock exchanges in or to book bogus claims of long term capital gains or short term capital loss by various beneficiaries. Extensive investigation, including search and seizure/survey action on entry providers, riggers, beneficiaries etc. was conducted by the Investigation Directorate in such cases. Based upon outcome of such investigation and analysis of the data, Sri Anand Kumar Padia is having transaction amounting to Rs. 49,40,000/- in penny stock with scrip name ‘Tuni Textile’.*

*Assessee has filed its return for the A.Y. 2013-14 relevant to F.Y. 2012-13 on 01.10.2013 showing a total income of Rs. 10,18,880/-. From the ITS module of ITD application it is found that no scrutiny assessment u/s 143(3) of IT. Act has been done in this case. From the ITR for the A.Y. 2013-14 available in the e-filing records, it is found that assessee has not disclosed any capital gain in its return filed for the relevant year.*

*Under the circumstances, the above income is required to be re-assessed as per provisions of sec. 147 of the I.T. Act, 1961.*

*Since four years elapsed from the end of the relevant assessment year and the escaped income is more than Rs. 1,00,000/-, the approval of Ld. Pr. CIT-2, Kolkata is to be obtained as per sec. 151 of the I.T. Act in this case.*

*Put up for the kind approval of Ld. Pr.CIT-2, Kolkata for issuance of notice u/s. 148 of the LT Act, 1961.”*

5. We observe from the perusal of the above reasons that in the first two paras the AO has discussed the information received from the office of the CCIT, Kolkata-2 stating that the assessee was having transactions amounting to Rs. 49,40,000/- being penny stock in M/s. Tuni Textile Mills Ltd. which was a penny stock and thereafter, in third para the AO has noted that the assessee has filed return on 01.10.2013 showing total income of Rs. 10,18,880/- . It was also noted that though scrutiny was done in this case on the basis of information available in the e-filing records. It was found that the assessee has not disclosed any income relating to the capital gain in the return filed for the relevant year and thereafter, the AO noted that the income is to be re-assessed as per the provisions of Section 147 of the Act. We find merit in the contentions of Ld. A/R that the AO has recorded the reasons based on the borrowed satisfaction without application of mind and without carrying out any enquiry into case. We also note from page no. 4 of the paperbook at Schedule-EI which contained the details of exempt income earned during the year by the assessee and note that at Sl. No. 3 the assessee has disclosed the long term capital gain from the transactions on which the STT is paid at Rs. 43,74,435/-. Thus, the AO noting in the reasons that the assessee has not disclosed the capital gain in the return of income is also wrong and against the facts on record. In our opinion, the AO has acted on the borrowed satisfaction without recording his own satisfaction and belief that income of the assessee has escaped assessment. The case of the assessee finds support from the

decision of Hon'ble Delhi High Court in the case of *Pr. Commissioner of Income Tax (in short ld. 'Pr. CIT') vs. Meenakshi Overseas (P.) Ltd.* reported in [2017] 395 ITR 677 (Delhi).

6. In view of the above facts and circumstances and the ratio laid down by the Hon'ble Court, we are inclined to quash the assessment framed by the AO as the same lacks any independent application of mind and is based upon the borrowed satisfaction of the Investigation wing.

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

***Kolkata, the 6<sup>th</sup> November, 2023.***

*Sd/-*

[Sonjoy Sarma]  
Judicial Member

*Sd/-*

[Rajesh Kumar]  
Accountant Member

Dated: 06.11.2023

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

- 1. Anand Kumar Padia, 26/1 Strand Road, Burrabazar, Kolkata-700 001.***
- 2. ITO, Ward-5(1), Kolkata.***
- 3. CIT(A)-NFAC, Delhi.*
- 4. CIT-*
- 5. CIT(DR), Kolkata Benches, Kolkata.*

*//True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata