आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

श्री मंजुनाथ. जी, लेखा सदस्य एवं श्री मनोमोहन दास, न्यायिक सदस्य के समक्ष
BEFORE SHRI MANJUNATHA. G, ACCOUNTANT MEMBER AND SHRI MANOMOHAN DAS, JUDICIAL MEMBER

आयकर अपील सं./**ITA No.362/Chny/2023**
निर्धारण वर्ष /**Assessment Year: 2013-14**

Muthusamy Shanmugam, C/o.Ramesh & Ramachandran, CAs New No.39, Old No.29/3, Viswanathapuram Main Road, Kodambakkam, Chennai – 600 024. **[PAN: DGHPS-7897-P]**	**Vs.**	**The Income Tax Officer**, Ward-2(2), Chennai.
(अपीलार्थी/**Appellant)**		**(**प्रत्यर्थी/**Respondent)**

अपीलार्थी की ओर से/ Appellant by	:	Shri Y. Sridhar, F.C.A
प्रत्यर्थी की ओर से /Respondent by	:	Shri V. Nandakumar, CIT
सुनवाई की तारीख/Date of Hearing	:	21.09.2023
घोषणा की तारीख /Date of Pronouncement	:	30.11.2023

आदेश / **O R D E R**

PER MANOMOHAN DAS, J.M:

This appeal by the assessee is directed against the assessment order passed by the Ld. Assessing Officer [AO] dated 25-01-2023 and pertaining to the Assessment Year [AY] 2013-14. The grounds of the assessee are as under:

> *"1. The order of the Dispute Resolution Panel (DRP by the ld. AO is contrary to law and facts and circumstances of the case.*
>
> *2. The Hon'ble DRP erred in passing the order without considering the information placed on record.*

3. Reassessment proceedings-initiated u/s. 147 of the Act are bad in law and is liable to be quashed:

a) The Learned Assessing Officer ('Ld. AO') erred in reopening the assessment w/s.147 of the Act without any proper reason to believe that income has escaped assessment and the same is made for doing fishing or roving inquiry. Whereas the appellant has filed the return of income on 28/2/2022 admitting an income of Rs.47,16,30,490/-, the Id. AO has erred in passing the instant order u/s 147 r.w.s 144.

b) The Ld. AO erred in proceeding with the reassessment without issuance of notice u/s.143(2) of the Act.

c) The Ld. AO reopening the assessment merely based on Investigation Wing, is bad in law.

d) The Ld. AO erred in reopening the assessment based on suspicion / surmise / borrowed satisfaction that appellant had traded on penny stock, without any fresh tangible material to substantiate the investment made in stock / derivative by the appellant.

e) The Ld. AO erred in reopening the assessment w/s.147 of the Act after the expiry of four years, when the appellant had fully and truly disclosed all material facts necessary for assessment as prescribed in 1% proviso to section 147 of the Act.

f) The reassessment proceedings by the Ld. AO are mere change of opinion as the appellant during the course of regular assessment proceedings u/s.143(3) of the Act submitted all the relevant information proposed to be added in response to the notice issued u/s. 142(1) of the Act during the course of regular scrutiny proceedings.

g) The Ld. AO proceeded to complete the assessment without providing the reasons for reopening of the assessment u/s.147 of the Act which is against the law laid down by Hon'ble Supreme Court and the reassessment order 1s liable to quashed as bad in law.

h) The reassessment proceedings are bad in law as the notice for reopening the assessment w/s.148 of the Act was issued / served on the assessee beyond the time - limit specified in section 149 of the Act and hence liable to quashed as bad in law.

i) It is to be noted that the Order of the Hon'ble DRP did not so comment on the validity of re-opening of the assessment.

j) The Hon'ble DRP erred to understand that the new information, basis of which the AO relied on, was not made to the assessee for suitable rebuttal.

4. Without prejudice to objection on validity of the reassessment proceedings, the appellant submits that the Ld. AO erred in making an addition of Rs.61,37,305/on account of disallowance of capital loss.

a) The Ld. AO erred in invoking the provisions of section 69 of the Act when the said investments are undertaken through share brokers registered with regulatory authorities and therefore very much part of the books-of account maintained by the applicant.

b) The Ld AO erred in facts by stating that the shares of JRI Industries and Infrastructure Ltd are categorized under "Z" by BSE GSM.

5. The Appellant craves leave to amend, alter, add or delete any of the above grounds of appeal."

2. The brief facts of the case are that the assessee is an individual Non Resident Indian (NRI). The assessee e-filed his return of income for the AY 2013-14 on 11.09.2013 admitting a total income of Rs.47,16,30,490/-. The case was selected for scrutiny under CASS and accordingly notices under sections 143(2) and 142(1) of the Act issued to the assessee on 02-09-2014 and on 01-05-2015, respectively, asking for details. The assessee was one of the share holders of M/s Edict Pharmaceuticals Pvt. Ltd. This company along with the assessee entered into a share purchase agreement on 17-05-2011 with M/s Par Pharmaceuticals LLC, a Delware Corporation for sale of shares. The assessee admitted sale consideration of his share and arrived at long term capital gains of Rs. 54,01,85,018. The assessee claimed cost of acquisition and transaction expenses. The ld. AO noticed that the assessee set off Short term capital loss of Rs.

6,90,56,034 against the long term capital gains. The ld. AO found that the assessee claimed Securities Transaction Tax paid as deduction while computing the loss on sale of shares. The ld. AO observed that Securities Transaction Tax paid is not an allowable deduction and accordingly the same was disallowed and the loss from short term capital gain was recomputed at Rs. 6,81,26,133/- Finally, the ld. AO completed the assessment under section 143(3) showing the income from capital at Rs. 47,24,45,389/-.

3. The ld. Assessing Officer re-opened the assessment by issuing a notice u/s 148 of the Act dated 31-03-2021 to the assessee stating that the ld. AO has reason to believe that the income chargeable to tax has escaped assessment within the meaning of section 147 of the Act and accordingly, directed the assessee to file a return in the prescribed form within 30 days from the date of service of the notice. Questionnaire notice u/s 142(1) of the Act dated 13-11-2021 was also issued to the assessee. The assessee, in response to the notice u/s. 148 of the Act, filed return of income for AY 2013-14 on 28-02-2022. The assessee, vide this return of income admitted Rs. 47,16,30,490/- as his total income. At the same time, the assessee claimed TDS amounting to Rs.8,40,34,976/- and refund of Rs. 3,54,77,480/-. Tax

was computed as per section 115E i.e. Tax on investment income and LTCG.

4. The ld. AO, thereafter, issued show-cause notice dated 26-03-2022 to the assessee as under:

> *"Reason: Bogus long term capital gains/ short term capital loss by way of manipulated trading. High volatility in price shares in the shares of JRI Industries and Infrastructure Ltd on BSE (Srip code: 506016). Various persons have booked profit more than Rs. 6.5 crores in the scrip. Various clients have also booked losses to Rs. 1.78 crores in the scrip during various F.Ys. The assessee is one of the beneficiary and has traded in the above scrips. The income earned in the earlier years does not commensurate with the investments made Penny scrips, traded scrips and income earned has to be treated as income from other source u/s 69. Loss of Rs. 61,37,305 in derivative trading has to be disallowed and capital gains of Rs. 32,05,000 from sale of shares is to be taxed. (Total Rs. 93,42,305 to be taxed u/s 69). All the above was not disclosed and hence, subject to tax as they form part of chargeable income.*
>
> *Notice u/s 148 and notice u/s 142(1) were issued in your re-open assessment case, which is to be completed soon. As there are no relevant submissions / replies / evidences were furnished till date by the assessee, the re-open assessment in your case will be completed as per materials available on record, on merit basis.*
>
> *Obliging to the principle of natural justice, one more final opportunity of being heard in the form of show-cause notice is hereby issued in order to give a chance to the assessee to explain his stand / view with respect to the issues involved in the reassessment pending proceedings. In the absence of explanation and proof, the assessing officer is bound to make additions / disallow the claims on the emanating quantifying amount as per information available in the case file.*
>
> *The assessee is hereby show caused why not the additions / disallowance shall be made in your reopen assessment.*
>
> *You are hereby requested to furnish your reply on or before 29-03-22 (Tue) through e-proceedings of your linked e-mail account in the Income Tax web portal and also as a precautionary measure to avoid technical glitches in the submission, a copy of your reply with evidence shall be submitted to the mail id:chennai.ito.it2.2@incometax.gov.in."*

5. The assessee, in response to the show-cause notice submitted his explanations whereby the assessee inter alia claimed vide reply dated 29th March, 2022 that the notice u/s 148 of the Act dated 31-03-2021 was received by him in September 2021 and the notice for disallowance of loss of Rs. 61,37,305/- in derivative trading & taxing of capital gains of Rs. 32,05,000/- are completely contradictory. The Ld. AO did not satisfy to the explanations made by the assessee. The ld. AO observed that the assessee failed to submit necessary proof. The ld. AO observed that the onus is on the assessee to show with proof that the bogus penny scrip M/s JRI Industries & Infrastructure Ltd on BSE (Scrip code 506016) has already dealt in the scrutiny assessment u/s 143(3) of the Act. The ld. AO ultimately rejected the explanation of the assessee and passed the draft assessment order u/s 144C of the Act on 31-03-2022 proposing to disallow the loss of Rs. 61.37 lacs incurred in share trading and adding Rs. 32.05 lacs as unexplained income u/s 69 of the Act.

6. Being aggrieved, the assessee filed objections before the Dispute Resolution Panel against the draft order passed by the ld.AO. The DRP after considering the submissions of the assessee vide direction dated 19-12-2022 confirmed the disallowance of Rs.61,37,305/-. Accordingly, the ld. AO vide order dated 25-01-2023

passed the final assessment order by disallowing the capital loss of Rs. 61,37,305/- which was claimed by the assessee.

7. Being aggrieved, the assessee filed the present appeal before the Tribunal. Heard the representatives of both the parties and perused the materials on record. The Ld. AR inter alia submitted that the ld. AO failed to furnish the reasons for reopening of the assessment to the assessee and notice under section 143(2) of the Act was not issued. He also submitted that the return of income was assessed under section 143(3) of the Act and hence, reopening of the assessment was not correct. On the other hand, the Ld. DR submitted that the assessment was reopened on the information received from the Directorate of Income Tax Investigation (Delhi). We carefully considered the rival submissions of the parties and also perused the orders/directions of the concerned authorities. The DRP while confirming the disallowance of capital loss of Rs. 61,37,305/- vide direction dated 19-12-2022 observed as under:

> *"2.1. Panel : Having perused the submissions of the assessee and the draft order of the Assessing Officer, the panel notes that the assessing officer had reopened the assessment in the light of new piece of information available before him which revealed that the assessee had traded and incurred long term capital loss in a scrip namely JRI Industries & Infrastructure Limited which was held to be penny in nature and also suspended by the market regulator SEBI for certain irregularities / non-compliances. The Assessing Officer had also received a piece of information from the Investigation Wing, Delhi of the Department in which it was reported that manipulated trading and booking of bogus long term capital loss / gain in this*

particular scrip i.e. JIIL was part of a larger tax evasion modus operandi. It was observed as per the subject report that more than Rs. 6.5 crores of fictitious capital gain and around Rs. 1.78 crores of fictitious capital loss was booked through manipulative trading in this scrip by various individuals and Mr. MuthusamyShanmugam was one such beneficiary who had booked long term capital loss to the tune of Rs. 61,37,305/-. In view of these facts, the AO reopened the assessment after obtained approval from the competent authority and hence, we do not find any infirmity in the same. Accordingly, this ground is dismissed".

8. We observe that, the Income Tax Officer, International Taxation Ward 2 (2), Chennai vide proposal dated 31-03-2021 sought approval for reopening the assessment u/s. 147 of the Act from the Commissioner of Income-Tax (International Taxation), Chennai. In order to getting such approval from the Commissioner of Income Tax (International Taxation) the matter was placed before him. Para 8 of the proposal inter alia contained as under:

"In this case a ROI was filed for the year under consideration but no scrutiny assessment u/s 143(3) of the IT Act was made. Accordingly, in this case, the only requirement to initiate proceedings u/s 147 of the Act is reason to believe which has been recorded above. It is pertinent to mention here that in this case the assessee has filed ROI for the year under consideration but no assessment has stipulated u/s 143(3)/144 of the IT Act was made and the ROI was only processed u/s 143(1) of the IT Act."

9. We observe that the aforesaid information as was placed before the Commissioner of Income Tax (International Taxation), Chennai was incorrect and misleading. We observe that the return of income as was filed by the assessee for the AY 2013-14 on 11.09.2013 was assessed by the ld. AO u/s. 143(3) of the Act. The ld. AO after consideration of the details submitted by the assessee had disallowed

the claim for deduction of amount as was paid as Securities Transaction Tax. The ld. AO vide assessment u/s 143(3) of the Act had recomputed the loss from short term capital gain at Rs.6,81,26,133/- instead of Rs. 6,90,56,034/- and finally recomputed the income from long term capital gains at Rs. 47,24,45,389/- vide order dated 30-03-2016.

10. In view of the obtention of approval for reopening the assessment dated 30-03-2016 by stating incorrect /misleading information in the proposal for approval by the Income Tax Officer and reopening the assessment cannot be upheld legally. It was not a fact that the return of income filed by the assessee on 11-09-2013 was not assessed u/s. 143(3) of the Act. The said return of income was assessed u/s. 143(3) of the Act by the ld. AO after considering the details as was submitted by the assessee and completed the assessment vide order dated 30-03-2016.

11. As the approval for re-assessment was obtained by placing misleading and incorrect information from the concerned authority by the Income Tax Officer, we decide the appeal in favour of the assessee and set aside the reassessment order passed by the ld. AO

dated 25-01-2023 and restore the original assessment order dated 30-03-2016.

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

Order pronounced on 30th November, 2023.

Sd/-	Sd/-
(मंजुनाथ. जी)	**(मनोमोहन दास)**
(Manjunatha. G)	**(Manomohan Das)**
लेखा सदस्य /Accountant Member	**न्यायिक सदस्य/Judicial Member**

चेन्नई/Chennai, दिनांक/Dated: 30th November, 2023.

EDN/-

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त/CIT 4. विभागीय प्रतिनिधि/DR 5. गार्ड फाईल/GF