

**आयकर अपीलीय अधिकरण, कोलकाता पीठ 'सी', कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA**

**श्री संजय गर्ग, न्यायिक सदस्य एवं श्री गिरीश अग्रवाल, लेखा सदस्य के समक्ष**  
**Before Shri Sanjay Garg, Judicial Member and Shri Girish Agrawal, Accountant Member**

**I.T.A. No.1045/Kol/2023**  
**Assessment Year : 2012-13**

**Tanuj Properties Pvt. Ltd.**  
**(successor to Darshan Tradelink Pvt. Ltd.....Appellant**  
**6<sup>th</sup> Floor, Unit-6A, 238A,**  
**A.J.C. Bose Road, L.R. Sarani S.O.,**  
**Kolkata - 700020**  
**[PAN: AACCT4910B]**

**vs.**

**ITO, Ward-9(1), Kolkata..... Respondent**

**Appearances by:**

Shri Akkal Dudhewala, AR, appeared on behalf of the appellant.

Shri Bonnine Debarma, Addl. CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : January 22, 2024

Date of pronouncing the order : February 19, 2024

**आदेश / ORDER**

**संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:**

The present appeal has been preferred by the assessee against the order dated 20.09.2023 of the National Faceless Appeal Centre [hereinafter referred to as the 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee in this appeal has taken the following grounds of appeal:

*"1. a) For that on the facts and in the circumstances of the case, the order u/s 147/143(3) was passed by the A.O who did not hold valid jurisdiction and therefore the impugned order being ab initio void deserves to be quashed.*

*b) For that on the facts and in the circumstances of the case, the notice u/s 148 of the Act was issued in the name of non-existent entity and in*

*that view of the matter the consequent order passed u/s 147/143 (3) of the Act ought to be held to be bad in law.*

*c) For that on the facts and in the circumstances of the case, the Ld. CIT(A) ought to have held that the A.O did not satisfy the conditions precedent for reopening of assessment and for recording the reasons to form belief that income chargeable to tax had escaped assessment and for that reason the notice issued u/s 148 and the consequent order framed thereto was bad in law and deserves to be quashed.*

*2. a) For that on the facts and circumstances of the case and without prejudice to the above, the Ld. CIT(A) erred in disposing of the appeal on merits ex-parte without affording sufficient opportunity of being heard.*

*b) For that on the facts and circumstances of the case and without prejudice to the above, the lower authorities erred in disallowing the loss of Rs.60,88,040/- incurred upon sale of shares while computing the taxable income.*

*3. For that the appellant craves leave to submit additional grounds and/or amend or alter the grounds already taken either at the time of hearing of the appeal or before.”*

3. A perusal of the above reproduced grounds of appeal would reveal that the assessee, inter alia, has contested the validity of reopening of the assessment u/s 147 r.w.s. 148 of the Act.

4. The brief facts of the case are that the Assessing Officer received information from DDIT(Investigation) regarding bogus long-term capital gains booked by various persons by way of transaction/sale of shares of penny stock company of M/s Nivyah Infrastructure and Telecom Services Limited. Since the assessee was also one of the beneficiaries, therefore, the case of the assessee was reopened u/s 147 of the Act. The assessee filed objections against the reopening of the assessment stating that it had not earned any long-term capital gains by way of sale of shares of M/s Nivyah Infrastructure and Telecom Services Limited, rather, he had transacted in the shares of M/s SV Electric in which he in fact incurred a loss and not any gain. The Assessing Officer further dismissed the objections of the assessee summarily observing as under:

*“Your objection against issuance of notice u/s 148 of the Income Tax , 1961. And request to drop the proceedings is not accepted as the information has been received from PDIT(Inv), Kolkata after proper verification and Notice u/s 148 had been issued after scrutinizing the reasons recorded and this also needs more verification.*

*In view of the above, your objection against the issuance of notice u/s 148 is hereby rejected.”*

4.1 The Assessing Officer thereafter framed the assessment and treated the loss incurred by the assessee in respect of sale of shares of M/s SV Electric which was subsequently changed as M/s Nivyah Infrastructure and Telecom Services Limited. The ld. CIT(A) confirmed the disallowance so made by the Assessing Officer.

5. We have heard rival contentions and gone through the record. The ld. counsel for the assessee has submitted that in this case, there was no application of mind by the Assessing Officer to form belief that the income of the assessee has escaped assessment. That the Assessing Officer while recording the reasons recorded has observed that the information was received from Investigation Wing that M/s Nivyah Infrastructure and Telecom Services Limited was a penny stock company and that this company has been used to facilitate to introduce unaccounted income of the beneficiaries in the form of exempt capital gain or SSTCL in their books of account. He further observed that the total trade in the script of M/s Nivyah Infrastructure and Telecom Services Limited by the assessee was Rs.19,43,028/- during the F.Y 2011-12. Simply on this information, he held that he had reasons to believe that the income of the assessee has escaped assessment for the assessment year under consideration amounting to Rs.19,43,028/-. The Assessing Officer also noted that since four years have passed and the escaped amount was more than Rs.1,00,000/-, therefore, the permission of the ld. PCIT was taken for reopening of the assessment.

In response to the said reasons, the assessee filed objections, wherein, it was categorically pleaded that the assessee did not transact with the shares of M/s Nivyah Infrastructure and Telecom Services Limited and in fact the assessee had traded earlier in the case of M/s SV Electric which later on changed to M/s Nivyah Infrastructure and Telecom Services Limited. It was also brought to the knowledge of the Assessing Officer that the information mentioned by the Assessing Officer in the reasons recorded was not correct as the assessee did not earn any long-term capital gains, rather, the assessee has incurred loss in transaction of the said shares. However, the Assessing Officer has summarily rejected the objections without application of mind. The ld. counsel, in this respect, has submitted that the satisfaction of the Assessing Officer was a borrowed satisfaction. The Assessing Officer after receipt of any information of escapement of income was supposed to correlate the said information with the assessment records of the assessee then was required to form a belief regarding the escapement of income of the assessee. Further, *the original assessment in this case was completed u/s 143(3) of the Act* and the assessment was reopened after four years from the end of the relevant year which is hit by First Proviso to section 147 of the Act and that there was no allegation in the notice that any income chargeable to tax has escaped assessment because of the failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the assessment year under consideration. In this case, the assessee duly disclosed capital loss incurred by the assessee in trading in shares of M/s SV Electric and nothing has been pointed out by the Assessing Officer that the income of the assessee has escaped assessment due to failure on the part of the assessee in disclosing fully and truly all material facts necessary for

assessment. The ld. counsel has further submitted that under similar circumstances, wherein, the assessee has traded in shares of M/s SV Electric in the reasons recorded, the name of M/s Nivyah Infrastructure and Telecom Services Limited was mentioned and the assessee's objections were summarily rejected by the Assessing Officer without considering the contentions of the assessee. The Hon'ble Bombay High Court in exactly similar circumstances *in the case of "South Yarra Holdings vs. ITO & anr."* in Writ Petition No.3398 of 2018 dated 01.03.2019 has held that the Assessing Officer was required to examine the information received in the context of the facts on record and if such an exercise would have been done and the Assessing Officer would have come to the conclusion that there was failure on the part of the assessee to disclose truly and fully all material facts necessary, only then he would have been justified in issuing the notice u/s 148 of the Act. The Hon'ble Bombay High Court, therefore, held that the reopening of the assessment was hit by First Proviso to section 147 of the Act. The Hon'ble Bombay High Court also held that since the Assessing Officer has not applied his mind to the information received in the context of the facts on record, therefore, the notice issued u/s 148 of the Act was also bad in law and therefore, the Hon'ble Bombay High Court quashed the notice and assessment framed u/s 148 of the Act.

5.1 The ld. counsel has further invited our attention to the decision of the Coordinate bench of the Tribunal in the case of "M/s Samridhi Stocks Pvt. Ltd. vs. ITO" in ITA No.552/Kol/2023 order dated 08.08.2023, wherein, under similar facts and circumstances, where the loss was incurred by the assessee on account of trading in shares of M/s SV Electric, however, the assessment was reopened based on information that the assessee had earned long-term capital gains by

sale of shares of M/s Nivyah Infrastructure and Telecom Services Limited. The Coordinate Kolkata Bench of the Tribunal vide order dated 08.08.2023 has held that the reopening of the assessment as bad in law. The relevant part of the order of the Coordinate Bench of the Tribunal is reproduced as under:

*"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 re-open 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 LTCG 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.”*

6. The facts and issue involved are squarely covered by the above referred to two decisions and the ld. DR has not brought any distinguishing fact or legal proposition before us, therefore, respectfully following the decision of the Hon’ble Bombay High Court and also of the Coordinate Bench of the Tribunal, we quash the reopening of the assessment and thereby the additions made in the course of such assessment are ordered to be deleted.

7. In the result, the appeal of the assessee stands allowed.

***Kolkata, the 19<sup>th</sup> February, 2024.***

Sd/-

[गिरीश अग्रवाल /Girish Agrawal]  
लेखा सदस्य/Accountant Member

Sd/-

[संजय गर्ग /Sanjay Garg]  
न्यायिक सदस्य/Judicial Member

Dated: 19.02.2024.

RS

*Copy of the order forwarded to:*

1. Tanuj Properties Pvt. Ltd. (successor to Darshan Tradelink Pvt. Ltd)
2. ITO, Ward-9(1), Kolkata
3. CIT (A)-

4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches