

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "D" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)  
AND  
SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)**

**ITA No. 3562/MUM/2023  
Assessment Year: 2012-13**

Maya Milind Sirsath,  
2102, 2103, Neptune Sunrise  
CHSL, LBS Road, Neptune  
Living Point, Bhandup West,  
Mumbai-400078.

**PAN NO. AKMPS 3821 M  
Appellant**

**Vs.** ITO 33(2)(3),  
Room No. 848, 8<sup>th</sup> floor, Kautilya  
Bhavan, C-41 RO C-43, G Block,  
Bandra Kurla Complex, Bandra  
West,  
Mumbai-400051.

**Respondent**

Assessee by : Mr. Rajesh Kothari  
Revenue by : Ms. Mahita Nair, Sr. DR

Date of Hearing : 26/04/2024  
Date of pronouncement : 30/04/2024

**ORDER**

**PER OM PRAKASH KANT, AM**

This appeal has been preferred by the assessee against order dated 09.08.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2012-13, raising following grounds:



1. *The learned CIT(A) erred in confirming the assessment order passed u/s. 143(3) r.w.s. 147 though the notice u/s. 143(2) of the Act was not issued by the learned ITO.*
2. *The learned CIT(A) erred in confirming the addition of Rs. 1,45,00,000 being 100% sale consideration of the flat u/s. 69A though the assessee had declared capital gain on the sale of the said flat in the return of income and her ownership share in the said flat is only 50%.*
3. *Without prejudice, the learned CIT(A) erred in confirming the addition of Rs. 1,45,00,000 being 100% sale consideration of the flat u/s. 69A without giving deduction of cost of flat and expenses incurred in the financial year 2010-11 relevant to assessment year 2011-12.*

2. Before us, the Ld. counsel for the assessee also filed an additional ground which is reproduced as under:

1. *The assessment order passed u/s. 143(3) r.w.s. 147 ought to be treated as invalid and bad in law since it does not provide computer generated Document Identification Number (DIN) nor state the facts in the required format given in para 3 of the circular no. 19 of 2019 dated 14/08/2019.*
2. *The learned Income Tax Officer erred in reopening the assessment u/s. 147 after a pg: 13 period of four years from the end of the relevant assessment year and issuing notice u/s. 148 without forming a belief that income escaped is more than Rupees one lakh as required u/s. 149(1)(b) as per the reasons recorded for reopening the assessment.*

2.1 We have heard rival submission of the parties on the issue of admissibility of the additional ground. As the additional ground raised being purely legal in nature and no investigation of fresh facts was required, therefore, same are admitted for adjudication, in view of the decision of the Hon'ble Supreme Court in the case of **NTPC Ltd. 229 ITR 283 (SC)**.

3. We have heard submission of the parties on the issue of additional ground. Before us, the Ld. counsel for the assessee



referred to the reasons recorded by the Assessing Officer and provided to the assessee. On specific request of the assessee, a copy of the said reasons provided by the Assessing Officer through online portal on 18/11/2019 [DIN: ITBA/AST/F/17/2019-020/1020610163(1)] is available on Paper Book page 13. The Assessing Officer also in the assessment order in para 2 has mentioned that reasons recorded were provided to the assessee only on 18.01.2019. The relevant part of the same is reproduced as under:

**“Subject: Reasons for Re-opening – reg.**

*As required by you, the reason for re-opening of the assessment in your case for A. Y. 2012-13 is as per information received from DDIT(Inv.)-Unit-4(2), Mumbai that an enquiry was conducted in the penny scrip namely M/s. Nimbus Industries Limited (Script Code-530971) vis-à-vis providing Bogus Accommodation Entry in LTCG/STCL/Business Loss and beneficiaries involved are analysed by the DIT (Inv.)-Unit-4(2), Mumbai. On verification, it was found that you were one of the beneficiaries who has traded in the above mentioned scrip.*

SUNITA SUNIL  
Ward 33(2)(3), Mumbai”

3.1 In view of the above reasons recorded, the Ld. counsel for the assessee submitted that the Assessing Officer has not recorded a belief that income escaped was more than Rs. 1,00,000/- , which was required u/s 149(1)(b) of the Act . In response, the Ld. Departmental Representative (DR) submitted that reasons recorded available on the assessment folder of the department are different from the reasons which have been produced by the assessee before the Tribunal. A copy of the reasons recorded supplied by the Ld.



DR, available on page 5 of her submission, are reproduced as under:

**“MAYA MILIND SIRSAT**H is an Individual assessee and as per ITD system verification the assessee has filed return of income for A.Y-2012-13 on 02/07/2012 declaring total income of R\$ 2,85,534/-The return was processed u/s 143(1) of the I.T Act on 09/05/2013.

2. An information in respect of penny stock companies was forwarded by DDIT(Inv), Unit 4(2), Mumbai vide letter No. DDIT(Inv.)-4(2)/Information/Nimbus/2018-19 dated 15.03.2019. Enquiries have been conducted in the penny scrip namely M/s. Nimbus Industries Limited (Script Code- 530971) vis-à-vis providing Bogus Accommodation Entry Of Long Term Capital Gains /Short Term Capital Loss /Business Loss and beneficiaries involved are identified by DDIT(Inv), Unit 4(2), Mumbai. While conducting enquiry date collected from BSE has been analyzed to identify the beneficiaries who had traded in the scrip namely M/s. VAS Infrastructure Ltd. On analysis of such data the DDIT(Inv), Unit 4(2), Mumbai found that above named assessee is one of the beneficiary who had traded in the scrip namely M/S. Nimbus Industries Limited during F.Y.2011-12 relevant to A.Y. 2012-13. The DDIT(Inv), Unit 4(2), Mumbai disseminated the data and forwarded the information of the above assessee to the office of undersigned.

3. As per the information received the assessee is one of the beneficiaries of such transactions classified as non genuine shares sale/purchase transactions. The assessee has made Total Sale of Rs.5,69,501/- in the scrip M/s. Nimbus Industries Limited during the F.Y. 2011-12.

4. The investigation conducted by the Mumbai Investigation Directorate reveals that this company has been used by beneficiaries (Sellers of Shares) to launder money in the garb of Long Term Capital Gain (LTCG) while claiming tax exemption u/s 10(38) of the Income Tax Act 1961. Summons u/s 131 of the I.T Act 1961 was issued to BSE and the data of the scrip was called for analyzed. Financial profiling of few exit providers and statement of Director of M/s Nimbus Industries Ltd was recorded.

5. In view of the above I have reason to believe that the income to the extent of Rs. 5,69,501/-chargeable to tax has escaped assessment within the meaning of section 147 of the I T Act for A.Y.2012-13. I therefore propose to assess the income of the assessee for A. Y.2012-13.

6. In this case a return of income was filed for the year under consideration but no scrutiny assessment u/s 143(3) of the I.T. Act was made. Accordingly, in this case the only requirement to initiate proceedings u/s 147 is reason to believe which has been recorded above. It is pertinent to mention here that in this case the assessee has filed return of income for the year under consideration but no assessment as



*stipulated u/s 2(40) of the Act was made and the return of income was only processed u/s 143(1) of the Act. In view of the above, provisions of clause (b) of explanation 2 to section 147 are applicable to facts of this case and the assessment year under consideration is deemed to be a case where income chargeable to tax has escaped assessment.*

7. *In this case more than four year have been lapsed from the end of assessment year under consideration, hence necessary approval to initiate proceedings u/s 147 of the I.T. Act and to issue notice W/s 148 of the I.T. Act may be accorded as per the provisions of section 151 of the Income tax Act.”*

3.2 In view of above two sets of the reasons recorded available before us, the Ld. DR was asked to substantiate as whether the second set of the reasons made available on assessment folder and produced before us during the hearing, was served upon the assessee or not. The Ld. DR referred to the service of letter dated 31.03.2019 available on page No. 2/3 of her submission, but which is found to be in respect of notice u/s 148 of the Act. Therefore, it is clear that said reasons were never provided to the assessee and authenticity of the same is doubtful, hence can't be relied upon.

3.3 Therefore, the issue-in-dispute left before us in additional ground raised is whether the Assessing Officer has complied the conditions specified in section 149(1)(b) during relevant time. The relevant part of the provision is reproduced as under:

*“149. (1) No notice under section 148 shall be issued for the relevant assessment year,—*

*(a) if four years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b) or clause (c) ;*

*(b) if four years, but not more than six years, have elapsed from the end of the relevant assessment year unless the income*



*chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year.*

*(c) if four years, but not more than sixteen years, have elapsed from the end of the relevant assessment year unless the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment.?*

*Explanation.-In determining income chargeable to tax which has escaped assessment for the purposes of this sub-section, the provisions of Explanation 2 of section 147 shall apply as they apply for the purposes of that section.”*

3.4 In the instant case, notice u/s 148 has been issued beyond the period of four years from the end of the relevant assessment year, therefore, according to above provision, the Assessing officer was required to record that income escaped was more than Rs. one lakh but in copy of the reasons recorded provided to the assessee, the Assessing Officer has not complied with the mandatory condition of tax effect involved being more than Rs.1,00,000/-. The Hon'ble jurisdictional High court in the case of **Hindustan Unilever ltd in 439 ITR 333 (Bom)** held the assessing officer has to specifically point out the failure on the part of the assessee in disclosing all the material facts and in absence therefore , reassessment proceedings is invalid in law. In instant case also in absence of any such satisfaction in the reasons recorded, the assessment proceedings are void *ab-initio*, therefore, same are quashed. Since, the additional ground No. 2 of the appeal of the assessee is allowed and the reassessment proceedings has been quashed, therefore, the other grounds are merely rendered



academic and therefore, we are not adjudicating upon. The appeal of the assessee is accordingly allowed.

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

**Order pronounced in the open Court on 30/04/2024.**

**Sd/-**  
**(SANDEEP SINGH KARHAIL)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(OM PRAKASH KANT)**  
**ACCOUNTANT MEMBER**

Mumbai;  
Dated: 30/04/2024  
Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,  
(Assistant Registrar)  
**ITAT, Mumbai**