

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'SMC' Bench, Hyderabad

Before
Shri Manjunatha, G. Accountant Member

आ.अपी.सं / **ITA No.253/Hyd/2024**
(निर्धारण वर्ष / Assessment Year: 2016-17)

Smt. Surjitha Annapareddy Secunderabad PAN:BNWPA6703L (Appellant)	Vs.	Income Tax Officer Ward 12(1) Hydrabad (Respondent)
निर्धारिती द्वारा / Assessee by:	Shri A.V. Raghuram, Advocate	
राजस्व द्वारा / Revenue by:	Shri Y Srikanth Reddy, DR	
सुनवाई की तारीख / Date of hearing:	22/05/2024	
घोषणा की तारीख / Pronouncement:	22/05/2024	

आदेश/ORDER

This appeal filed by the assessee is directed against the order dated 17/01/2024 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2016-17.

2. The grounds raised by the assessee reads as under:

1. On the facts and in the circumstances of the case, the order passed by the Id. Commissioner (Appeals) dismissing the appeal filed by the Appellant is incorrect and unsustainable in law and on facts.
 2. The Id. Commissioner (Appeals) erred in upholding the reopening of the assessment under section 147 of the Act by the AO, without appreciating the facts of the present case and by relying on the judgements which are applicable to the case on hand.
 3. Without prejudice, the Id. Commissioner (Appeals) erred in sustaining the action of the AO in denying claim of exemption Rs.32,64,275 in respect of LTCG earned on sale of shares under section 10(38) of the Act, and in treating the said income as unexplained cash credits under section 68 of the Act.
 4. On the facts and in the circumstances of the case the Id. Commissioner (Appeals) failed to appreciate that the Appellant has nothing to do with the alleged bogus transaction in as much as the Appellant is a bonafide investor in shares and the events which happened with others cannot disentitle the relief available to the Appellant.
 5. On the facts and in the circumstances of the case, the findings of the authorities below are incorrect and so also the reliance placed by the authorities below on the judgements/orders is misplaced.
- (Tax Effect: Rs. 10,08,660/-)**
6. For these and other grounds that may be urged at the time of hearing.

3. Brief facts of the case are that the assessee is an individual who filed her return of income for the A.Y 2016-17 on 27.10.2016 declaring total income of Rs.2,09,840/- which was processed u/s 143(1) of the I.T. Act, 1961. The case has been

subsequently reopened on the basis of information available in inside Portal, as per which income chargeable to tax has been escaped assessment on account of under estimation of capital gain from sale of shares. Therefore, a notice u/s 148 of the Act dated 31.03.2021 was issued and served on the assessee. In response to the notice u/s 148 of the Act, the assessee filed her return of income on 20.04.2021 declaring total income of Rs.2,09,840/-. The case was selected for scrutiny and during the course of assessment proceedings, the Assessing Officer called upon the assessee to file necessary evidences in support to purchase and sale of shares in light of investigation carried out by the Investigation Wing, Kolkata. The Assessing Officer after considering the relevant details and also taking note of the submission of the assessee, opined that the assessee is a beneficiary of bogus Long-Term Capital Gain facilitated by the entry providers operating at Kolkata and thus, rejected the explanation and assessed the consideration received for sale of shares as unexplained credit taxable u/s 68 r.w.s. 115BBE of the I.T. Act.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT (A) NFAC. Before the learned CIT (A) NFAC, the assessee challenged the reopening of the assessment on the ground that there is no live nexus between the reasons and escapement of income. The assessee had also challenged the additions made towards capital gain received as unexplained cash credit. The learned CIT (A) LEARNED CIT (A)

NFAC, after considering the relevant submission of the assessee and also taken note of various evidences brought on record, including the investigation carried out by the Investigation Wing, Kolkata opined that, the Assessing Officer has reopened the assessment on the basis of fresh tangible material vis-à-vis escapement of income. The learned CIT (A) had also rejected the explanation of the assessee with regard to Long-Term Capital Gain derived from sale of shares and claim of exemption u/s 10(38) of the Act on the ground that the assessee is a beneficiary of bogus Long-Term Capital Gain facilitated by entry providers operating from Kolkata and thus, there is no error in given by the learned Assessing Officer to make addition u/s 68 of the I.T. Act, 1961.

5. Being aggrieved by the orders of the learned CIT (A) NFAC, the assessee is in appeal before the Tribunal.

6. The learned Counsel for the assessee submitted that the reopening of assessment u/s 147 of the Act is bad in law and liable to be quashed, because if, we go through the reasons recorded for reopening of re-assessment, the Assessing Officer has formed reasonable belief of escapement of income on the basis of return of income filed by the assessee for the A.Y 2016-17 and opined that the assessee has not disclosed the purchase of shares in ITR, whereas the fact remains that for the impugned year, the assessee has sold the shares which has been duly reflected in Schedule E-1 given in exempt income. From the

above, it is very clear that the formation of belief by the Assessing Officer is not based on fresh material which suggest escapement of income.

7. The learned DR, on the other hand, supported the order of the learned CIT (A) NFAC and submitted that the assessment has been reopened on the basis of investigation report submitted by the Investigation Wing of the I.T. Department at Kolkata where the modes operandi of entry providers has been unearthed which clearly suggests providing of bogus Long-Term Capital Gain entries to various beneficiaries. The Assessing Officer on the basis of investigation report and also taking note of the return of income filed by the assessee has come to the conclusion that there is an escapement of income and thus there is no error in the reasons given by the learned CIT (A) NFAC to reject the legal ground taken by the assessee challenging the reopening of the assessment.

8. I have heard both the parties, perused the material available on record and gone through the orders of the authorities below. The assessment has been reopened on the basis of reasons recorded for reopening, as per which, the Assessing Officer formed reasonable belief of escapement of income on the ground that the assessee has not disclosed purchase of shares in ITR. If we go through the reasons recorded by the Assessing Officer except this point, there is no reference to any inquiry conducted with regard to transactions carried out by the assessee for purchase and sale

of shares. The assessee has disclosed Long-Term Capital Gain derived from sale of shares and claimed exemption u/s 10(38) of the I.T. Act, 1961. The assessee had also reported Long-Term Capital Gain derived from sale of shares in ITR filed for the impugned A.Y in Schedule E-1 under exemption income category. If we go through the facts disclosed by the assessee and the reasons given by the Assessing Officer for reopening of the assessment, in my considered opinion, there is no live nexus between the reasons recorded for reopening of the assessment and escapement which is clearly evident from the observation of the Assessing Officer and further, the Assessing Officer failed to apply his mind in light of ITR form filed by the assessee. Therefore, I am of the considered view, that the reopening of the assessment on the basis of reasons recorded by the Assessing Officer is bad in law and liable to be quashed.

9. In this regard, the assessee has relied upon the decision of the ITAT B Bench of the Chandigarh Tribunal in the case of Smt. Sudha Rani vs. ACIT reported in (2023) 222 TTJ (Chd) 759 where under identical set of facts, the reopening of the assessment has been quashed. The relevant finding of the Tribunal are as under:

“It is a settled legal proposition that for assumption of jurisdiction under s. 147, the AO has to form a prima facie opinion on the basis of tangible material that there is an escapement of income, the opinion formed may be subjective but the reasons recorded or the information available on record must show that the opinion is not a mere suspicion, the reasons recorded and/or the documents available on record must show a nexus and relevancy to the opinion formed by the AO regarding escapement of income. The

reasons are required to be read as they were recorded by the AO. No substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn on the basis of reasons not recorded. It is for the AO to disclose and open his mind through the reasons recorded by him and he has to speak through the reasons. It is for the AO to form his opinion and record his reasons in clear and unambiguous terms and the reasons should not suffer from vagueness and should be self-explanatory.

The AO States that "as per information available with him, the assessee is involved in manage trading of shares of penny stocks in order to convert its undisclosed income into exempt income thereby the assessee has not paid the due taxes on the undisclosed income" and thereafter. It talks about the details of transactions in terms of scrip sold by the assessee, quantity of scrip sold, rate and trade value. What information is available with the AO is neither stated nor enclosed with the reasons so recorded by him and thus not discernible from the reasons so recorded. Mere fact that the assessee sold certain shares with certain value on the stock exchange cannot by itself be held as tangible material. Further, the AO has not just recorded a reason to believe rather recorded a conclusOve finding that assessee is involved in manage trading of penny stock to convert his undisclosed income into exempt income. How the AO has reached such a conclusive finding and basis thereof is again not borne out from the reasons so recorded by him. (Para 15)

The AO talks about the fact that AG Ltd. is a Calcutta Stock Exchange listed company having paid-up capital of Rs. 28,87,30, 000 and it talks about three companies having amalgamated with AG Ltd. The AO goes on further to state that AG Ltd. has allotted shares to a large number of persons including four Jarmakharchi companies and under the scheme of amalgamation, the swap ratio is so fixed which been raised using Jamah Karchi route indicative that the capital in the listed company have the form of allotment of shares to Jama Kharchi companies and amalgamation of Jama Kharchi companies with the listed company. This is again a generic information wherein three companies have been said to be amalgamated with AG Ltd. and merely the fact that the assessee has sold shares of AG Ltd, how the same can lead to reasonable belief that its assessee's undisclosed income which has been routed back in form of sale consideration and income has escaped assessment is

not borne out of the reasons so recorded. The whole focus of the AO is on AG Ltd. and he has in fact failed to carry out even preliminary enquiry that the assessee had originally purchased shares of AG Ltd. and on its amalgamation, was allotted shares of AG Ltd. in exchange for its existing holding and there is thus no finding that the purchases so made were bogus and therefore, where the purchases have not been doubted, how the sale have been held to be bogus is again not borne out of the reasons so recorded. (Para 17)

Mere fact that the assessee's return of income has not been selected for scrutiny earlier cannot be a reason sufficient to hold that the income has escaped assessment. AO has to record reasons as to why the transaction reflected in the return of income and claimed exempt is liable for taxation which has escaped assessment and such reasons to believe must be based on tangible material. As the whole focus of the AO is on AG Ltd. whose shares have been sold and sale consideration thereof has been shown in the return of income and he has in fact failed to carry out preliminary enquiry and examine the return of income that the assessee had originally purchased shares of MG Ltd. and on its amalgamation, was allotted shares of AG Ltd. in exchange for its existing holding and whose cost of acquisition has been claimed as eligible deduction and net sale consideration has been claimed as exempt as long-term capital gains. (Para 18)

The AO has started with the conclusion, that the assessee is involved in manage trading of shares of penny stocks in order to convert its undisclosed income into exempt income and the last part of the reasons, the AO again concluded that the assessee has taken bogus long-term capital gains through managed trading of shares. Thus, the whole exercise shows a predetermined mind on the part of the AO to issue notice under section 148 and complete lack of application of mind on receipt of information from the Investigation Wing without carrying out any further examination/verification and that too at the fag end of the limitation period as evident from the fact that the notice u/s 148 was issued on 30th March, 2017.

(Para 19)

AO has simply relied upon the report and conclusion drawn upon by Investigation Wing, without carrying out any preliminary enquiry and investigation and establishing the necessary nexus between material and formation of belief that income has escaped assessment. There is clearly no

independent application of mind by the AO as can be discernible from the reasons SO recorded and in view of the same, the AO does not have the legal basis to acquire jurisdiction for reassessment under s. 147 and thus. the notice issued under s. 148 and consequent assessment proceedings are set aside.- Principal CIT Vs. RMG Polyvinyl (P) Ltd. (2017) 156 DTR (Del) 79; (2017) 396 ITR 5(Del), Principal CIT Vs. Meenakshi Overseas (P) Ltd (2017) 1254 DTR (Del) 100 : (2017) 395 ITR 677 (Del.) CI vs. SFIL Stock Broking Ltd (2010) 233 CTT (Del)69; (2010) 41 DTR (Del) 98; (2010) 325 ITR 285 (Del), SABH Infrastructure Ltd vs. ACIT (2017) 398 ITR 198(Del), Future Tech IT Systems (P) Ltd vs. Income Tax Officer (2021) 89 ITR (Trib) 676 and Century Fiscal Services Ltd vs. Income Tax Officer (2021) 210 TTJ (Chd)(UO) 26 followed”.

10. In this view of the matter and by following the decision of Coordinate Bench of the Tribunal at Chandigarh, I am of the considered opinion that reopening of the assessment and consequential re-assessment order passed by the Assessing Officer u/s 143 (3) r.w.s. 147 is bad in law and liable to be quashed. Thus, we quash the re-assessment order passed by the Assessing Officer.

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

Order pronounced in the Open Court on 22nd May, 2024.

Sd/-

<p>(MANJUNATHA, G.) ACCOUNTANT MEMBER</p>
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Hyderabad, dated 22nd May, 2024

Vinodan/sps

Copy to:

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1	Smt. Surjitha Annapareddy Plot No.127 Ravi Colony, Mahendra Hills, Secunderabad 500026 Telangana
2	Income Tax Officer Ward 2(1) Hyderabad
3	Pr. CIT – Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order