

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "F", MUMBAI  
BEFORE SHRIPAVAN KUMAR GADALE, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

**ITA No. 2875/Mum/2023 (A.Y.2014-15)**

**Vinisha Jitendra Adnani,**  
101/104, 1<sup>st</sup> floor, Spenta,  
3 Road, Khar West,  
Mumbai-400 052  
**PAN:ADHPA0316M**

..... Appellant

Vs.

**NFAC/ITO Ward 23(3)(6),**  
Earnest House,  
Mumbai.

..... Respondent

Appellant by	:	Shri Snehal Shah, Ld. AR
Respondent by	:	Ms. Rajeshwari Menon,Ld.DR
Date of hearing	:	24/04/2024
Date of pronouncement	:	14/05/2024

**ORDER**

**PER GAGAN GOYAL, A.M:**

This appeal by the assessee is directed against the order of the National Faceless Appeal Centre (NFAC), Delhi dated 23.06.2023 u/s.250 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2014-15. The assessee has raised the following grounds of appeal: -

*1. The notice issued under section 148 of the Act is null and void, bad in law and ultra vires the provisions of the Act. The Learned CIT(A) NFAC, Delhi has erred in confirming the action taken by the Learned Assessing Officer without appreciating the facts of the case from the right perspective.*

*2. The Learned CIT(A) NFAC, Delhi has erred in confirming the action taken by the Learned Assessing Officer of making an addition of Rs. 82,80,751/- under section 68 of the Act without appreciating the facts of the case in the right perspective.*

*3. The Learned CIT(A) NFAC, Delhi has erred in confirming the action taken by the Learned Assessing Officer wherein he has erred in not appreciating that the Appellant has disclosed the LTCG of Rs.80,99,396/- under Schedule Exempt Income in the return of income filed for the year under reference.*

*4. The Appellant reserve the right to amend, alter or add to the grounds of appeal.*

2. The brief facts of the case are that the assessee Individual filed her return of income on 24.07.2014 declaring total income at Rs. 12,98,590/- and also claimed exempt income u/s. 10(38) of the Act amounting to Rs. 82,80,751/-. There was a piece of information received from the office of the Director of Income Tax (Inv.), Kolkata that the scrip namely Luminai Tech is penny stock scrip and in connivance with the promoters, brokers, entry operators and exit providers accommodation entry has been provided to various beneficiaries as Long-Term Capital Gain/ Short Term Capital Loss. Based on this information case of the assessee was re-opened u/s. 148 of the Act and amount claimed exempt u/s. 10(38) of the Act was added back to the income of the assessee. Assessee being aggrieved with the same preferred an appeal before the Ld. CIT (A), NFAC, Delhi. Who in turn confirm the order of AO. Now, the assessee being aggrieved with the order of First Appellate Authority, preferred this appeal before us.

3. We have reviewed the order of AO and Ld. CIT(A), reasons for re-opening and submissions of the assessee along with grounds raised before us. The following points emerged out of our review of various orders and documents placed before us during the hearing of the case:

1. The report of the Investigation Wing, Kolkata indicates the name of the scrip as Luminai Tech. In contrast, AO himself vide his order, para 3, page 2 discusses some PS Global and Redford Global Limited. As a matter of fact, on record, the assessee herself declares that she dealt with the shares of PS Global and Redford Global Limited but the name and reference of Luminai Tech are totally out of context;

2. The observation made above establishes that despite possessing information from the Investigation Wing, Kolkata, AO had not bothered to apply his mind before and after the re-opening of the case. The same observation is further strengthened by the fact that in the same assessment order, the AO is discussing the scrip of Jolly Plastic Ltd. and its ban by SEBI, being a penny stock involved in price rigging to provide artificial Long-Term Capital Gain/ Short Term Capital Loss vide para 5.2 of the assessment order;

3. The assessing officer discussed in detail the modus operandi of transactions involving fictitious Long-Term Capital Gain/ Short Term Capital Loss but nowhere established the identity of the exit- provider which is a *sine qua non* in such types of transactions and is always a part of any investigation report on such issues;

4. In the whole assessment order, we have not found any link between Luminai Tech vis-à-vis PS Global and Redford Global Limited or Jolly Plastic Ltd. Rather assessee vide her letter dated: 22.11.2021, placed on pages no. 58-60 of the paper book filed before us categorically raised this issue but the same is disposed of by the AO without addressing the same vide his letter dated: 10.01.2022, placed on pages 61-62 of the paper book. In his letter also, AO was discussed about PS Global and Redford Global Limited.

4. We have reviewed the order of Ld. CIT (A) also but again this linkage of names of the scrips of the companies under consideration was missing. Both the orders of lower authorities substantially failed to establish the link between Luminai Tech vis-à-vis PS Global and Redford Global Limited or Jolly Plastic Ltd. In addition to this identity and statement of the exit provider are also not there in any of the orders of lower authorities. Given these circumstances, there may be a possibility that PS Global and Redford Global Limited or Jolly Plastic Ltd. may be the penny stocks and involved in fictitious transactions of providing Long-Term Capital Gain/ Short Term Capital Loss but in this case, the re-opening of the matter was done without application of mind and without establishing the identity of the exit provider, which must in such type of case to establish the nexus between the assessee and fictitious entry providers.

5. In the result, based on the above factual observations, proceedings carried out by the AO and further confirmed by the Ld. CIT(A) is declared to be null and void as the same is assumed without proper jurisdiction. The Assessment Order passed is declared to be null and void and the same is set aside.

**6. In the result, the appeal of the assessee is allowed.**

The order was pronounced in the open court on 14<sup>th</sup> May 2024.

Sd/-

(PAVAN KUMAR GADALE)

JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 14/05/2024

*Sr. PS (Dhananjay)*

Sd/-

(GAGAN GOYAL)

ACCOUNTANT MEMBER

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt.Registrar)  
**ITAT, Mumbai**