

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, MUMBAI
BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER,

ITA No.447/Mum/2024

(A.Y. 2014-15)

ITO-19(2)(4) 507, 5 th Floor, Piramal Chambers, Parel, Mumbai – 400 012	Vs.	Priti Bharat Parekh 6C Landsend CHS 29 D Dongersey Road, Malabar Hill Maharashtra – 400006
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAEP1784C		
Appellant	..	Respondent

Appellant by :	B.V. Jhaveri & Ms. Bhargavi Raval
Respondent by :	H.M. Bhatt

Date of Hearing	14.05.2024
Date of Pronouncement	26.06.2024

आदेश / O R D E R

Per Amarjit Singh (AM):

The present appeal filed by the revenue is directed against the order of Id. CIT(NFAC) of the Income Tax Act, 1961 for A.Y. 2014-15. The revenue has raised the following grounds before us:

- “1. Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) is right in quashing the reopening by the AO with the opinion that the reopening is without jurisdiction and bad in law without appreciating that the facts on which the reopening was done are not available by the AO at the time of original assessment
2. Whether on the facts and circumstances of the case and in law, Ld. CIT (A) is right in deleting the addition made on account of penny stock transaction without appreciating the facts that during the course of investigation, it was found that the scrips in which the assessee traded is penny stock used for providing accommodation entry only in form of bogus LTCG and STCG and shared with the jurisdiction AO in the FY 2020-21.
3. Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) is right in deleting the addition made on account of penny stock transaction without appreciating the facts that the assessee has entered

into penny stock transaction, which is arranged transaction, which involve the series of preconceived steps and lack of commercial content and totally an artificially structured transaction entered into with the sole intent to evade taxes.

4. *Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) is right in deleting the addition made on account of penny stock transaction without appreciating the facts that the action of the AO was based on analysis of information received from investigation wing of the department which is a premier institution.*
5. *Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) is right in application of judgment of GKN Driveshaft in the case of the assessee as the assessee has not filed her valid return of income in prescribed time limit.*
6. *Whether on the facts and circumstances of the case and in law, the Ld. CIT A) is right in ignoring the acts that the assessee has done very smartly some non existent transactions of some other shares were made part of the contract note(s) along with the shares of M/s Shree Shaleen Textiles Limited during the relevant year as discussed in the reassessment order.*
7. *Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) is right in ignoring the facts that the assessee has filed ITR-1 and showed short term capital gain of Rs. 4,73,565/- under the head "Income from other Sources under the tag income from share but actually any individual assessee who has earned capital gain during the year has to file ITR-2 only.*
8. *The Appeal is being filed as it is covered under the exception provided in Para 10(e) of the CBDT;'s Circular No. 3 of 2018 Dated. 11.07.2018, as amended vide F. No. 279/ Misc. 142/200 7-ITJ(Pt), Dated. 20.08.2018.*
9. *The appellant craves leave to amend or to alter any ground or add a new ground, which may be necessary."*

2. Fact in brief is that in this case return of income declaring total income at Rs.8,61,010/- was filed on 12.08.2010. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 29.07.2016. The assessment order u/s 143(3) of the Act was passed on 30.12.2016 assessing the income as disclosed in the Return of income filed by the assessee. Subsequently, on the basis of information available with the department the assessing officer noticed that assessee has traded in penny stock and received an amount of Rs.1.50 crores and paid commission of Rs.3,00,000/- on such trade transactions. Therefore, the case of the assessee was reopened u/s 147 of the Act by issuing of a notice u/s 148 of the Act on 31.03.2021. The

assessing officer stated that assessee has earned long term capital gain on sale of shares of company namely M/s Shree Shaleen Textiles Ltd. The assessing officer has rejected the submission of the assessee that the same issue has already been considered as per the relevant information filed during the course of original assessment proceedings finalised u/s 143(3) of the Act on 30.12.2016. The assessee has made transaction on sale of 5,50,000 shares of M/s Shree Shaleen Textiles Ltd. on which the assessee has claimed exemption of Rs.1,45,36,418/- u/s 10(38) of the Act. During the course of assessment the assessee has brought to the notice of the assessing officer that information and details regarding share transaction on which exemption u/s 10(38) was claimed had already been submitted at the time of original assessment made u/s 143(3). However, the AO has not agreed with the submission of the assessee and stated that at the time of original assessment proceedings new facts pertaining to bogus accommodation entries of purchase and sale of shares were not available. Therefore, the AO has treated the claim of exemption u/s 10(38) from LTCG as fictitious and disallowed the claim of exemption.

3. The assessee filed appeal before the ld. CIT(A). The ld. CIT(A) held that reopening of assessment is bad in law and not valid, after referring the assessment order passed u/s 143(3) dated 30.12.2016 wherein various document and submission called for were submitted during the assessment proceedings.

4. During the course of appellate proceedings before us the ld. D.R supported the order of assessing officer.

5. On the other hand, the ld. Counsel filed paper book comprising copies of various document filed before the assessing officer during the course of original assessment proceedings in the case of the assessee which was finalised by passing order u/s 143(3) of the Act on

30.12.2016. The ld. Counsel referred copies of notices issued by the AO at the time of original assessment proceedings wherein the AO had asked various details pertaining to the transactions in the shares of M/s Shree Shaleen Textiles Ltd. and claiming exempt income u/s 10(38) as capital gain. The ld. Counsel also referred the various submission made by the assessee in response to the queries raised by the assessing officer during original assessment proceedings.

7. Heard both the sides and perused the material on record. Without reiterating the facts as discussed above, the ld. CIT(A) has also referred in his order that in the original assessment proceedings the AO had issued show cause notice dated 19.12.2016 wherein the assessee was asked to show cause as to why claimed exemption u/s 10(38) of long term capital gain of Rs.1,49,99,418/- on sale of shares of M/s Shree Shaleen Textiles Ltd. be not treated as unexplained cash credit u/s 68 of the I.T. Act by treating the same as a sham transaction. In the show cause notice the AO had also referred the information received from the Director of Income Tax (Inv.) Kolkatta relating to bogus long term capital gains arisen on sale of these shares. Some of the extract of the decision of ld. CIT(A) is reproduced as under:

“16.11 I am not in agreement with the decision of the AO. The AO held that as the assessee filed the return of income after a time gap from the notice u/s. 148 was issued and the same was not verified electronically by her till 07.03.2022, therefore, the procedure laid down in GKN Driveshaft (supra) is not applicable and the assessee foregoes all the privileges In GKN Driveshaft case Hon'ble Supreme Court held that when a notice under section 148 of the Act is issued, the proper course of action for the assessee is to file the return and if he so desires, to seek the reasons for issuing the notice. If sought for, AO is bound to furnish the reasons within a reasonable time On receipt of reasons, the noticee is entitled to file objections to the notice in which event the Assessing Officer would be under an obligation to dispose of the same by passing a speaking order Hon'ble Apex court laid down that furnishing of reasons recorded and also disposing of objections raised are obligations of the AO in a reopened assessment, before going ahead with passing of reassessment order. The AO cannot disobey the direction of the Supreme Court, which is law of the land and binding AO cannot use his discretion to curtail the rights of the tax payer granted by the Hon'ble Apex Court by bringing in any arbitrary condition of his own. The AO supplied the reasons recorded to the assessee after seeing the return in the ITBA and the assessee filed her objections. As per the procedure, there was no

need of any further opportunity required to be given to the assessee before passing the order disposing the objections raised. He could have passed an order disposing of objections complying with the procedure laid down by the Supreme Court. Further, it is seen that there was sufficient time before the AO after filing of objections by the assessee and before passing final order on 28.03.2022. Therefore, I am of the considered opinion that there is a violation of jurisdiction by the AO.”

8. The ld. CIT(A) has also referred the various submission made by the assessee during the original assessment proceedings u/s 143(3) of the Act in response to the notices issued by the assessing officer. The ld. CIT(A) has reproduced the various detail furnished by the assessee at the time of original assessment proceedings. The relevant part of the finding of the ld. CIT(A) after perusal of the various submission filed by the assessee during the original assessment proceedings is reproduced as under:

“6.21 Further, there are plethora of other judgments and decisions by the various courts of law on the point that mere change of opinion cannot be per se reason to reopen as under:-

*German Remedies Ltd vs. DCIT & Ors (2006) 285 ITR 26 (Bom.)
Siemens Information System Ltd vs. ACIT (2007) 295 ITR 333 (BOM)
Techspan India (P) Ltd & Anr Vs. ITO (2006) 283 ITR 212 (Del)
(Assessment Year 2001-2002)
Karthikeya International vs. CIT (2010) 329 ITR 539 (All)
Godrej Agrovet Ltd 323 ITR 97 (Bom)
Aakash Land Developers ITA No. 7350/M/2008 & 7351/M/2008 dated
29/10/2010*

*6.22 Further, the provisions of sec 147 of the Act can be applied wherein in the original assessment the income liable to tax has escaped assessment due to oversight, inadvertence or a mistake committed by the AO based on the principle that the taxpayer would not be allowed to take advantage of an oversight or mistake committed by the taxing authority. However, in the instant case, the information was very much available with the AO on the record based on which a show cause notice was given during the original assessment proceedings Based on the very same information, the assessment was reopened by serving notice u/s 148 of the Act on 31.03.2021 **Therefore, the instant case doesn't fall in the category of oversight, inadvertence or a mistake committed by the AO, instead it becomes a change of opinion. Accordingly, I am of the view that the AO is not empowered to review the issue of LTCG claimed on the same set of facts as available at the time of completion of the original assessment proceedings for the assessment year 2014-15. In view of the above, I am of the considered***

opinion that the reopening is without jurisdiction and bad in law and hence quashed. Grounds of appeal 1, 2 and 3 are allowed.

7. Grounds of appeal at 4 to 8 are on the issue is addition of sale consideration received by the appellant on sale of shares made by the AO u/s 68 of the Act in the reopened assessment order. As the grounds of appeal 1 to 3 have been allowed and the reopening is quashed, hence these grounds are not adjudicated.

8. Grounds of appeal 9 and 10 are general in nature does not require any adjudication.

9. In the result, the appeal is allowed.”

9. As per copy of notice issued u/s 142(1) of the Act by the assessing officer on 31.08.2016 at serial no. 2 assessing officer has asked the assessee to produce detail of share transaction and capital gains. As per copy of notice issued u/s 142(1) of the Act on 30.11.2016 wherein at serial no. 2 to 7 various detail pertaining to the long term capital gain claimed as exempt was asked. The relevant detail asked by the assessing officer are as under:

- “1. Please state whether you have dealt in to purchase or sale of shares of listed companies during the AY2014-15
2. Please state whether Short Term Capital Gain (STCG)/ Long term Capital Gain (LTCG)/ Short Term Capital Loss (STCL) is claimed in the return of income filed.
3. Please state whether the LTCG is claimed exempt u/s 10(38) of the act.
4. Please furnish details of shares purchased & sold in which LTCG or STCL claimed during the AY2014-15
5. Please furnish the details of demat account & Provide copy of demat account for relevant period in which these shares in which LTCG/ STCL claimed are held.
6. Mode of acquisition of the shares on whose sale LTCG or STCL is claimed. Whether the shares were acquired through.

Preferential allotment through private placement.

Whether allotment was made in a private company and the private company merged with a listed company

Purchased on stock exchange.

7. Please furnish the details of the payments made for purchase of such shares on which LTCG / STCL claimed.
8. Please state whether any bonus shares were issued. Please state whether the share was split into multiple shares with reduced face value.
9. Please furnish the details of broker & provide copy broker ledger & broker notes & Global Report of share transactions.

10. *Copies of your bank statements from which the shares were purchased & also the copies of bank account in which the sale proceeds of the shares are received.*

10. In response vide letter dated 09.12.2016 the assessee has submitted the various detail asked by the assessing officer. The assessee has filed all the contract notes of sale and purchase of the shares of M/s Shree Shaleen Textiles Ltd. placed at page no. 16 to 39 on the paper book filed by the assessee. The assessee has also referred notice u/s 142(1) issued by the assessing officer on 09.12.2016 wherein the AO has categorically mentioned that information has been received from the Directorate Kolkata about the bogus long term capital gain taken by selling the shares of M/s Shree Shaleen Textiles Ltd. by the assessee during the year under consideration. The ld. Counsel also referred the reply of the assessee submitted on 20.12.2016 on the specific query raised by the assessee as per the report received from the investigation wing. In reply the assessee has explained the alleged bogus transaction accommodation entry pertaining to long term capital gain amounting to Rs.1,45,36,418/- for assessment year 2014-15.

11. After making in-depth inquiry and verification the assessing officer has passed the assessment order u/s 143(3) of the Act on 30.12.2016 and accepted return of income filed by the assessing officer. The ld. Counsel has also referred the different part of the order of the ld. CIT(A) wherein he has considered that various detail on the issue on which the case was reopened was already furnished before the assessing officer, therefore, the reopening made in the case of the assessee was bad in law.

12. The assessing officer has issued notice u/s 148 of the Act on 31.03.2021 asking the assessee to file profit and loss account and balance sheet and computation of income for the year under consideration. In response the assessee vide letter dated 19.12.2021

requested the assessing officer to provide the copy of reason recorded and escaped income requiring reassessment of the income of the assessee. However, without providing any copy of reason recorded the assessing officer has issued notice u/s 142(1) of the Act on 15.12.2021 calling various details including the detail pertaining to the purchase and sale shares. The assessing officer has again issued notice u/s 142(1) of the Act on 02.12.2022 about the detail of transaction pertaining to the sale and purchase of shares on which assessee has shown exempt income. The assessee has filed her reply vide letter dated 09.12.2022 and requested the assessing officer to furnish the copy of reason recorded and also requested the assessing officer to dispose the objection filed by the assessee as per the decision of Hon'ble Supreme Court in the case of GKN Driveshaft Vs. ITO (259 ITR 19).

13. The assessee has also submitted in the aforesaid letter about the transactions on sale and purchase of shares of M/s Shree Shaleen Textiles Ltd. on which income was claimed as exempt u/s 10(38) of the Act. The assessee also provided the detail relating to the fact that purchase and sale of shares were made through banking channels on the stock exchange through registered broker at the prevailing market rates. The assessee again reiterated her statement that in the original assessment proceedings the necessary details pertaining to the issue of exempt income earned on the sale of shares were called for and same were submitted before the assessing officer. It is also submitted that since the case was reopened beyond period of 4 years and there was no failure on the part of the assessee for not disclosing fully and truly all the material fact before the AO at the time of original assessment proceedings. Therefore, reopening of the assessee's case u/s 148 is not valid. We have perused the copies of various document placed in the paper book submitted by the assessee. It is noticed that during the course of original assessment proceedings vide notice issued u/s 142(1)

of the Act on 31.08.2016, 30.11.2016 and show cause notice issued on 19.12.2016 the assessing officer has categorically made detailed investigation and verification by calling various details in respect of sale and purchase of shares of M/s Shree Shaleen Textiles Ltd. on which the assessee has claimed long term capital gain as exempt u/s 10(38) of the Act. Further, we have noticed that in response during the course of original assessment proceedings the assessee has made detailed submission vide letter dated 19.12.2016, 22.12.2016 by submitting the various details on the issue on which the case was reopened by the assessing officer. The assessee has demonstrated from the information placed in the paper book that in the original assessment proceedings the assessing officer has called various details on the issue pertaining to share transaction and claim of capital gain as exempt income. Further the assessee has filed copies of contract notes, copies of ledgers of the share broker, copies of statement showing date wise selling of shares of M/s Shree Shaleen Textiles Ltd. at the stock exchange, copy of bank statement etc, which was called by the assessing officer at the time of original assessment proceedings. During the course of original assessment proceedings the assessee has made compliance with all the queries and detail called by the assessing officer on the issue of long term capital gain claimed on the sale of shares of M/s Shree Shaleen Textiles Ltd. It is also undisputed fact that assessing officer has not disposed off the objection filed by the assessee in respect of reopening of the case as directed by the Hon'ble Supreme Court in the case of GKN Driveshaft as mentioned supra. Therefore, we don't find error in the decision of Id. CIT(A) in holding that reassessment order in the case of the assessee was passed by the assessing officer without justification on account of non-disposal of the objection filed by the assessee. Further the assessee has demonstrated from the copies of various material as discussed supra in this order and in the finding of Id. CIT(A)

that in the original assessment proceedings, the AO has specifically raised issue regarding information received from DIT(Investigation) Kolkata relating to claim of long term capital gains from operators and the AO has obtained the various explanation of the assessee and did not make any addition after raising the issue in the show cause notice issued. During the course of assessment proceedings before us the assessee has also referred the decision of Hon'ble Supreme Court in the case of ACIT Vs. Kalpataru Land P. Ltd. (2022) 145 taxman.com 77 (SC) and decision of Hon'ble Supreme Court in the case of ITO, Ward-16(2) Vs. TechSpan India (P) Ltd. (2018) 92 taxmann.com 361 (SC) on the proposition that when the assessing officer finalised the assessment and passed assessment order subsequent reopening can be said to be change of opinion on the similar information. After considering the above facts and circumstances the ld. CIT(A) held that reopening of the assessment for the assessment year 2014-15 is bad in law as the conditions precedent for invoking the provision for reopening of the assessment are not complied, therefore, the assessment order passed u/s 143(3) r.w.s 147 of the Act was quashed. Considering the above facts and circumstances we don't find any infirmity in the decision of ld. CIT(A) and the ld. CIT(A) has rightly quashed the assessment order, therefore, all the grounds of the revenue stand dismissed.

14. In the result, the appeal of the revenue stand dismissed.

Order pronounced in the open court on 26.06.2024

Sd/-

(Rahul Chaudhary)
Judicial Member

Sd/-

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 26.06.2024

Rohit: PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.