

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H(SMC)", MUMBAI

**BEFORESHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**I.T.A No.3428/Mum/2024
(Assessment Year: 2012-13)**

Yogeshkumar Agarwal, Borivali East 163, Avon Classic, Dattapada Road, Borivali East Mumbai-400 066 PAN : AADPA7618K	Omprakash	vs	WARD 32(1)(7), BKC BANDRA ROOM NO.734, KAUTILYA BHAVAN, C-4 ITO C-43 G BLOCK BKC, BANDRA
APPELLANT			RESPONDENT

Assessee by : Shri Bhupendra Shah
Respondent by : Shri Anoop Hiwase, Sr.DR

Date of hearing : 13/08/2024
Date of pronouncement : 13/ 08/2024

ORDER

PER ANIKESH BANERJEE, J.M:

Instant appeal of the assessee was filed against the order of the Learned National Faceless Appeal Centre (NFAC), Delhi ([for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2012-13, date of order 07.06.2024. The impugned order was emanated from

the order of the Income-tax Officer 32(1)(7), Mumbai (in short, 'the A.O.')

passed under section 143(3) read with section 147 of the Act, date of order 23/12/2019.

2. The assessee has taken the following grounds:-

"1. In the facts and circumstances of the case and in law, the learned Assessing Officer erred in passing order of reopening u/s 147 for the alleged full value of sale of Rs.41,83,450/-.

a. merely on the basis of borrowed satisfaction,

b. presumption and surmises and

c. relying upon information from Investigation wing

d. Based on wrong reasons because all transactions pertain to Yogeshkumar Agarwal HUF and not to individual MrYogeshkumar Agarwal

e. Without hearing

f. Without inquiry

g. Mechanically approved

h. Without disposing objections well

i. Without issuing notices u/s 133(6) or 131.

j. By ignoring the fact that purchase was by cheque and demat.

k. Although the appellant is not liable to maintain books of accounts and therefore provisions of section 68 does not apply.

2. In the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (A) erred in confirming the same there by not considering the written submissions and several judgments cited before him.

3. In the facts and circumstances of the case and in law, the learned A.O. erred in levying interest u/s 234A, B, C and D & initiating penalty u/s 271[1][c]."

2. Brief facts of the case are that the assessee's case was reopened under section 147 of the Act by issuance of notice under section 148. The observation of the Ld.AO was that the assessee has earned long term capital gain amount to Rs.41,83,450/- related to sales of 1,40,000 shares of penny stock, Banas

Finance Limited. The assessee fully denied that the transaction was not made by himself, But by “Jogesh Agarwal, HUF” had made the transaction for A.Y. 2012-13. The objection was filed by the assessee against the recorded reason of the Ld.AO. The Ld. AO issued rebuttal against the objection of the assessee, Finally, the entire transaction of LTCG was made with the total income of the assessee under section 68 of the Act. Being aggrieved on the assessment order, the assessee filed an appeal before the Ld. CIT(A). The Ld.CIT(A) has passed the order in a very cryptic manner and upheld the assessment order. Being aggrieved on the appeal order, the assessee filed an appeal before us.

3. We heard the rival submission and considered the documents available in the record. The Ld.AR filed a written submission which is kept in the record (in short, 'APB'). Considering the submission of the Ld.AR, the computation of the assessee and the HUF is duly filed in **APB pages 1-3** and the financial statement of the assessee in **APB pages 4-9**. Perusal the documents there are no trace of transaction of LTCG. The recorded reason was supplied to the assessee. The assessee submitted the objection and mentioned that the LTCG transaction was not made by the assessee, but by the HUF. The Ld.AO finally submitted the rebuttal and disposed the objection without any verification from his end. The Ld.AO duly relied on the observation of the Investigation Department only. No separate investigation was made. The Ld.AO referred that the verification was made from broker house, but no such evidence was supplied to assessee for cross verification. The certificate from Banas Finance Ltd is duly annexed by the assessee in **APB pages 45** where it is clearly mentioned that the share was issued in the name of HUF and not to an individual. There is no reflection in bank

account or in the account statement that the assessee has made the transactions. The Ld.AO was not able to specify the documents / evidence that the assessee had made the transaction and the demat account which is filed by the assessee before the Bench and the Revenue in **APB pages 19-40**. There is no reflection of the shares in question. The assessee has taken this ground before the Id.CIT(A) but Id.CIT(A) had passed very cryptic order and without considering the submission of the assessee. The appeal order is reproduced as below:-

The appeal is filed against the order of ITO , Ward-32(1)(7), Mumbai passed u/s 143(3) r/w s 147 of the IT Act 1961, dated 23.12.2019.

- 1. In the grounds of appeal, the assessee objects to received from the DDIT(Inv)-8(2), Mumbai wherein it is informed that Banas Financial Ltd is a penny STOCK and has been used by beneficiaries to launder money in the garb of Long term capital gains while claiming tax exemption under section 10(38) and also under short term capital loss of the IT Act, 1961. It can be seen from the share price movement graph available in public domain that there is a sharp rise during AY.2012-13 while the financial fundamentals of the company do not support same. The assessee is a beneficiary of the penny stock Banas Financial Ltd. With total sale value being Rs. 4183450/-. In view of the above discussed facts, findings and discrepancies, the script- M/s.Banas Finance Ltd. Traded by assessee is treated as penny stock. As the stock is penny stock the transaction by assessee is nothing but accommodation entry. In view of the above, the assessee has clearly failed to prove the trading in the shares of M/s.Banas Financial Ltd. was a genuine transaction and the entire sale consideration of Rs.4183450/-w.r.t. share transactions of 1,40,000 shares added back to total income of the assessee as unexplained cash credit under section 68 of the act. The mount of rs.4183450 u/s 68 is confirmed.*
- 2. The appeal filed by the assessee is dismissed.”*

4. The Ld.DR has not been able to submit any contrary facts before the bench. In our considered view, the reason recorded by the Id. AO itself is erroneous and perverse. The Id. AO had no jurisdiction for reopening the assessment U/s 148 of the Act. So, the recorded reason is baseless and liable to be quashed. We dismissed the appeal order and the addition amount to Rs. 41,83,450/- is deleted. The appeal of the assessee is succeeded.

5. In the result, the appeal of the assessee bearing **ITA No.3428/Mum/2024** is allowed.

Order pronounced in the open court on 13th day of August 2024.

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER
Mumbai, दिनांक/Dated: 13/08/2024
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL 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. गार्डफाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar), ITAT, Mumbai