

**THE INCOME TAX APPELLATE TRIBUNAL,
'SMC' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Rakesh Mishra, Accountant Member**

**I.T.A. No. 757/KOL/2024
Assessment Year: 2012-2013**

***Shruti Chowdhary,.....Appellant
Rang Tarang Apartment,
Flat W2B, Block-'C',
53/54, Ramtanu Lahiri Sarani,
New Alipore, Kolkata-700053
[PAN:ACTPC0199F]***

-Vs.-

***Income Tax Officer,.....Respondent
Ward-30(7), Kolkata,
Aayakar Bhawan Dakshin,
2, Gariahat Road,
Kolkata-700031***

Appearances by:

*Shri Abhishek Bansal, A.R., appeared on behalf of the
assessee*

*Smt. Madhumita Das, Addl. CIT, appeared on behalf of
the Revenue*

Date of concluding the hearing: August 28, 2024

Date of pronouncing the order: September 11, 2024

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The present appeal is directed at the instance of assessee against the order of Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 9th March, 2024 passed for Assessment Year 2012-13.

2. The assessee has taken seven grounds of appeal, but her grievances revolve around a single issue, namely Id. CIT(Appeals) has erred in confirming the addition of Rs.29,55,400/-, which was added by the Id. Assessing Officer with the aid of Section 68 of the Income Tax Act.

3. Brief facts of the case are that the assessee has filed her return of income on 07.02.2013 declaring total income of Rs.61,946/-. According to the Id. Assessing Officer, he has received information that M/s. Nivyah Infrastructure and Telecom Services Pvt. Limited is a penny stock listed on BSE with scrip code 517534 and this Company has been used to facilitate introduction of unaccounted income of the members of beneficiaries in the form of exempt capital gain or short-term capital loss in their books of account. He further observed that earlier this Company was known as M/s. S V Electrical Limited. He thereafter observed that the assessee is among the list of beneficiaries, who have traded in this scrip during Financial Year 2011-12. He mentioned trade value and then reopened the assessment by issuance of a notice under section 148 of the Income Tax Act. The Id. Assessing Officer

thereafter reproduced certain material on the basis of some information received by him. Such reproduction is just cut and paste of the material. He made the addition of Rs.29,55,400/-.

4. The assessee has stated before the Id. Assessing Officer that she has no concern with the Company as stated by the Id. Assessing Officer. She had never purchased any share of such a Company. The Id. Assessing Officer did not adjudicate this issue but confirmed the addition.

5. On appeal, the assessee again reiterated her stand. Her submission was noticed by the Id. CIT(Appeals) on page no. 4 of the impugned order. The Id. CIT(Appeals) did not adjudicate that aspect. The finding of the Id. CIT(Appeals) reads as under:-

“5. Findings:

The Grounds of appeal, the facts and circumstances of the case, the submissions of the assessee and the case laws adduced have been carefully considered.

The facts of the case are that the assessee’s case was reopened u/s 148. Information was received that M/s Nivyah Infrastructure and Telecom Services Pvt Ltd, a penny stock listed on BSE with Scrip code (517534) had been used to facilitate introduction of unaccounted income of members of beneficiaries in the form of exempt capital gain in their books of account. The said company was earlier known as M/s SV Electrical Limited and changed to current name on 14.03.2012.

Among the beneficiaries who traded in the Scrip during F.Y. 2011-12 was the assessee Shruti Chaudhary. The trade value in the Scrip was Rs.29,55,400/-.

Notice u/s 148 was issued to the assessee. Notice u/s 143(2) was issued and served. Notice u/s 142(1) along with questionnaire was issued and served.

The AO gave a clear finding that during the F.Y. 2011-12 the assessee had traded in the Scrip of M/s Nivyah Infrastructure

and Telecom services Pvt Ltd for an amount of Rs.29,55,400/- and has claimed an exemption u/s 10(38) of the LT Act for such trading.

Analysis of the share price pattern of M/s Nivyah Infrastructure & Telecom Services Pvt. Ltd. showed pattern typical of a penny stock company. The financials of the company were analysed and it was found that there was no substantial change in the financials of the company to support such a huge share price movement as evinced by the said company.

From trade data it was seen that most of the purchases were done by Companies and individuals controlled by Navneet Singhanian, Beni Prasad Lohati and Shiv Shankar Banka. These had been proven bogus. The latter companies were involved in providing bogus capital gain through accommodation entries. Analysis of sale data showed that bogus Long Term Capital Gains were claimed by purchasers who either filed no return or almost nil return. These were Exit Providers employed by the operator to provide exit to beneficiaries of bogus Long Term Capital Gains. The beneficiaries have also been found to be non-filers and also have failed to comply with disclosure norms by SEBI. No details of company financials were found on BSE website. Almost no transaction was performed on this Scrip after 06.01.2014. Thus, the Scrip was found manipulated.

Thus, the Scrip was found manipulated. A summons was issued dated 30.11.2019 and served upon the assessee for recording Statement in person on 09.12.2019. However, there was no compliance by the assessee in response to the summons. A show cause notice dated 13.12.2019 was issued to the assessee directing assessee to show cause as to why entire trade value of Rs.29,55400/- should not be added back to the assessee's income. No reply to the show cause was given.

AO added Rs.29,55400/- to the income.

In appeal, assessee has pleaded that appellant has not traded in the scrip alleged. Assessee has also pleaded lack of opportunity and lack of verification by the AO.

In view of the above facts as brought out by AO and clear finding given by AO in assessment order that assessee had traded in the said Scrip, assessee's pleading cannot come to the rescue of the assessee.

Accordingly, the Grounds of appeal are hereby dismissed.

6. As a result, the appeal is dismissed”.

6. With the assistance of Id. Representatives, we have gone through the record carefully. The assessee has filed her paper book before the Id. CIT(Appeals) also. She has placed on record the copy of balance-sheet, details of long-term capital gain and short-term capital gain along with ledgers, Bank statement, Holding Statement as on 31.03.2011 as well as on 31.03.2012, brokers ledger etc. and balance-sheet and Profit & Loss account for A.Y. 2010-11. Neither the Id. Assessing Officer has categorically recorded any finding as to how he construed that assessee has purchased the shares of M/s. Nivyah Infrastructure and Telecom Services Pvt. Limited. The assessee has been denying any such dealing in such share. It was for the Revenue to demonstrate with credible evidence that she has purchased those shares. The Id. Assessing Officer is only harping upon some information, which must have been prepared by the Investigating Agency on the basis of some other information that information cannot be a gospel truth. The Id. Assessing Officer has to demonstrate with the help of documents of financial transactions. It is pertinent to note that the Id. 1st Appellate Authority has further observed that the Id. Assessing Officer gave a clear finding that during F.Y. 2011-12 the assessee had traded in the scrip of M/s. Nivyah Infrastructure and Telecom Services Pvt. Limited. This observation of the Id. CIT(Appeals) is factually incorrect because Id. Assessing Officer has not recorded any finding. He just made reference to the information transmitted to him. He himself has not examined

anything nor he has recorded any categorical finding on that aspect. Similarly, the Id. CIT(Appeals) is totally silent on that aspect. It is the Assessing Officer, who has to first prove as to how the assessee could be charged to tax. He cannot treat the information received for taking action against the assessee as a gospel truth, rather it has to be analytically examined by him with the help of other documentary evidence. The assessee could be asked thereafter to explain her side, but no such step was taken by the Revenue. Therefore, we are of the view that the addition made by the Id. Assessing Officer is not at all sustainable. This addition is deleted.

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

Order pronounced in the open Court on 11/09/2024.

Sd/-

(Rakesh Mishra)
Accountant Member

Sd/-

(Rajpal Yadav)
Vice-President (KZ)

Kolkata, the 11th day of September, 2024

*Copies to :(1) Shruti Chowdhary,
Rang Tarang Apartment,
Flat W2B, Block-'C',
53/54, Ramtanu Lahiri Sarani,
New Alipore, Kolkata-700053*

*(2) Income Tax Officer,
Ward-30(7), Kolkata,
Aayakar Bhawan Dakshin,
2, Gariahat Road, Kolkata-700031*

- (3) *Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre (NFAC),
Delhi;*
- (4) *CIT - , Kolkata;*
- (5) *The Departmental Representative;*
- (6) *Guard File*
- TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.