

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI RAHUL CHAUDHARY (JUDICIAL MEMBER)**

**ITA No. 3146/MUM/2024
Assessment Year: 2012-13**

DCIT Central Circle 2(1),
804, 8th floor, Pratistha Bhavan,
CGO Building,
Maharishi Karve Road,
Mumbai-400020.

Appellant

Abhinandan Suresh Jain,
C/8, Mamta Society, LBS Marg,
Govardhan Nagar, Mulund (W),
Mumbai-400080.

Vs.

**PAN NO. AAFPJ 2303 D
Respondent**

Assessee by : Mr. Jayant Bhatt
Revenue by : Mr. Ram Krishn Kedia, Sr. DR

Date of Hearing : 22/10/2024
Date of pronouncement : 28/10/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal has been preferred by the assessee against order dated 05.03.2024 passed by the Ld. Commissioner of Income-tax (Appeals), Pune -12 [in short 'the Ld. CIT(A)'] for assessment year 2012-13, raising following grounds:

1. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A), Pune-12 erred in deciding reopening of assessment



u/s. 147 of the Income Tax Act 1961 is bad in law ignoring the fact that the case was re-opened u/s.147 of the Act on the basis of information received from the investigation wing that assessee had entered into bogus transactions amounting to Rs.1,86,15,057/-"

2. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A), Pune-12 erred in deciding assessment order passed u/s. 147 of the Income Tax Act 1961 is bad in law ignoring the fact that the case was re-opened u/s.147 of the Act on the basis of information received from the investigation wing that assessee had entered into bogus transactions amounting to Rs.1,86,15,057/-."

3. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A), Pune-12 is erred in not deciding the case on merits ignoring the fact that the case was re-opened u/s. 147 of the Act on the basis of information received from Investigation wing, Mumbai that the assessee had traded in penny stock scrip- M/s Scan Steel Limited amounting to Rs.1,47,41,298/- and M/s. Devine Multimedia (India) Limited amounting to Rs.38,73,759/-"

4. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A), Pune- 12 is erred in deleting addition made by the assessing officer by disallowing claim of the assessee u/s. 10(38) on the ground that the gains were earned through bogus penny stock transactions and companies to whom sold shares belonged were bogus."

2. Briefly stated facts of the case are that the assessee had filed original return of income on 22.09.2012 declaring total income at Rs.9,98,710/-. Subsequently, a search and seizure action u/s 132 of the Income-tax Act, 1961 (in short 'the Act') was carried out on 20.10.2016 at the premises of 'Ranka' Group including the assessee. Consequently, the proceedings for search assessments were initiated and the Assessing Officer accepted the return of income declared u/s 153A of the Act vide his order dated 30.12.2018. Subsequently, information was received from the Mumbai Investigation Wing that assessee obtained benefit of bogus long term capital gain in a script which was managed and operated by one Shri Naresh M. Jain. On the basis of the information, the



Assessing Officer recorded reasons to believe that income escaped assessment and issued notice u/s 148 of the Act. After following due procedure under the law, the Assessing Officer completed the assessment u/s 147 of the Act on 25.11.2019, wherein he made addition of Rs.1,86,14,057/- on account of disallowance of claim of long term capital gain u/s 10(38) of the Act and treated the same as unexplained cash credit u/s 68 of the Act.

3. On further appeal, the Ld. CIT(A) held the reassessment order as unsustainable in law and also deleted the addition on merit.

4. Aggrieved, the Revenue is in appeal before us by way of raising grounds as reproduced above.

5. Before us, the Ld. counsel for the assessee has also filed application under Rule 27 of the Income-tax Appellate Tribunal Rules 1963 (in short the 'ITAT Rules') for raising grounds in support of finding of the Ld. CIT(A) on validity of the reassessment.

6. We have heard rival submission of the parties on the ground No. 1 and 2 of the Revenue challenging the validity of the reassessment and ground raised in application under Rule 27 of the ITAT Rules by the assessee. We find that the Ld. CIT(A) on the issue of the validity of the reassessment has held as under:

"4.2 I have gone through the assessment order, Statement of facts as well as the submission made during the appellate proceedings. In the case of the appellant, assessment proceedings were initially completed u/s 153A of the Act accepting the returned income. It is also not disputed that, during the course of the assessment proceedings



u/s 153A, the appellant had filed all the requisite details regarding the claim of LTCG. However, as the assessment proceedings u/s 153A of the Act were barred by limitation of time, the AO passed an order accepting the income returned by the appellant. If the assessment was barred by limitation then there was no question of passing any order even by accepting the returned income. The Appellant has also challenged the reopening being made in a mechanical manner without appreciation of material on record.

The appellant has also raised the objection in terms of violation of natural justice by relying on the decision of Jurisdictional High court in the case of Asian Paints (Supra) wherein it was held that after passing the order rejecting the objection raised by the appellant, the AO is supposed to pass an order not before four weeks from such order. In the instant case the order rejecting the objection raised by the appellant was disposed of on 08/11/2019 and the assessment order has been passed on 25/11/2019. i.e. prior to completion of four weeks after rejecting the objection. It is pertinent to note that the AO had sufficient time before the assessment would have become barred by limitation of time and therefore he should have waited for four weeks before passing the assessment order as has been laid down by the Hon'ble Jurisdictional High Court. Thus, following the binding judicial pronouncement, the assessment order is held bad in law.

On perusal of the reasons for reopening as well as rejection of objection the AO has merely stated the fact of one Shri Naresh Jain having admitted before the authorities that he was indulged in providing the LTCG and STCG. However, it is not a case of the AO that the said Naresh Jain had admitted having provided LTCG to the appellant himself and therefore in absence of any such admission or for that matter having any material to show that the appellant was actually the beneficiary of such bogus claim, the reopening made merely on a general statement and not on the basis of any specific information that the appellant was an actual beneficiary of the accommodation entries provided by the said Shri Naresh Jain, cannot be upheld. Further at no point the AO has brought on record any material to show that the appellant had dealt with the said Shri Naresh Jain. It is also not a case of the AO that in either of the transactions of sales or purchase of scrips Shri Naresh Jain was involved in such transaction and therefore, it cannot be inferred that the AO has acted on specific information in the case of the appellant that income had escaped the assessment barring the fact that according to the AO the scrips were penny stock and to support his claim the AO has relied on a chart showing fluctuation in said scrips. It is true that such fluctuation does raise the suspicion about transactions being genuine in such scrips, but mere suspicion cannot be made as the ground for reopening the case. It is a trite law that suspicion howsoever strong it may be but it cannot partake the character of proof. Thus in absence of any direct and proximate material brought on record, the reopening does not meet the test of law and hence the same is held to be bad in law, more so when during the course of the erstwhile assessment proceedings the appellant had



already filed the necessary documentary evidence which has not been found fault with.”

6.1 We find that in the reasons recorded, the Assessing Officer has merely referred that certain scrips were managed and operated by Shri Naresh Jain. The AO further observed that assessee had also transacted in those scrips and therefore he recorded the reasons to believe that income escaped, whereas there is no information of the evidence indicating link of the assessee with Shri Naresh Jain. In absence of any such relevant material, the Assessing Officer recorded reasons to believe that income escaped assessment. The Hon'ble Supreme Court in the case of **Rajesh Jhaveri Stock Brokers (P.) Ltd. [2007] 161 Taxman 316 (SC)** held that for recording reasons to believe that income escaped, it is necessary to have relevant material on which a reasonable person can make the requisite belief but in the case there is no material to establish link of the assessee of having taken benefit of the services of Shri Naresh Jain and the information only is relating to the activity of the scrips managed and operated by Shri Naresh Jain. In view of the above, we do not find any infirmity in the finding of the Ld. CIT(A) on the issue in dispute. Accordingly, we uphold the same. The ground Nos. 1 and 2 of the appeal of the Revenue are accordingly dismissed and the ground raised in application under Rule 27 of the ITAT Rules is accordingly allowed.

6.3 Since, we have already upheld quashing of the reassessment proceedings by the Ld. CIT(A), the issue of addition on merit is



merely rendered academic, which is left open and we are not adjudicating at this stage.

7. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 28/10/2024.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;
Dated: 28/10/2024
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai