

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH MUMBAI

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 4730/MUM/2024
Assessment Year: 2016-17**

Indus Securities Pvt. Ltd., 94A, Maker Chambers III, Nariman Point, Mumbai – 400021 (PAN : AAACI0327H)	Vs.	Deputy Commissioner of Income Tax, Circle -3(2)(1), Mumbai
(Assessee)		(Respondent)

Present for:

Assessee : Shri Madhur Agarwal, Advocate
Revenue : Shri Krishna Kumar, Sr. DR

Date of Hearing : 29.10.2024
Date of Pronouncement : 30.10.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide order no. ITBA/NFAC/S/250/2024-25/1067142997(1), dated 30.07.2024 passed against the assessment order by the National Faceless Assessment Centre, Delhi, u/s. 147 r.w.s. 144B of the Income-tax Act (hereinafter referred to as the "Act"), dated 30.03.2022 for Assessment Year 2016-17.

2. Grounds taken by the assessee are reproduced as under:

1. *On the facts and in the circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) (CIT(A)) erred in confirming the reassessment order passed by the learned Assessing Officer ('AO') under section 143(3) r.w.s. 147 of the Income-tax Act, 1961 ('the Act') without appreciating the fact that no income has escaped assessment;*

2. *On the facts and in the circumstance of the case and in law, the CIT(A) erred in confirming the reassessment order passed by the AO without appreciating that while passing the order the AO failed to adhere to the principles laid down by the Hon'ble Supreme Court of India in the case of GKN Driveshafts India Ltd. Vs. ITO [(2003) 259 ITR 19 (SC)] rendering the impugned assessment order invalid;*

3. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in upholding the action of the AO of initiating the re-assessment proceeding vide notice under section 143(2) of the Act dated 23.06.2021 before disposing objection to re-opening, rendering the assessment order void and illegal;*

4. *On the facts and in the circumstance of the case and in law, the CIT(A) erred in confirming the order under section 143(3) r.w.s. 147 of the Act being initiated on borrowed satisfaction, without application of mind, mechanical and unsustainable in law on merits;*

Addition under section 68 of the Act

5. *On the facts and in the circumstance of the case and in law, the CIT(A) erred in upholding that the transaction of sale of shares of a listed company as non-genuine and as unexplained cash credit under section 68 of the Act.*

6. *On the facts and in the circumstance of the case and in law, the CIT(A) erred in confirming the action of the AO of making an addition under section 68 of the Act without appreciating the evidences produced on records to prove the "identity". "source" and "genuineness";*

7. *Without prejudice to the above, the CIT(A) erred in confirming the action of the AO in taxing Rs. 55,88,573/- under section 115BBE of the Act without a corresponding reduction in the business income (wherein the said amount has already been included), resulting in double taxation;*

3. Assessee is engaged in the business of trading and derivatives transactions in shares and securities and brokerage on investments. Assessee filed its return of income on 15.10.2016, reporting business loss of Rs. 22,99,32,629/- under normal provisions as well as section 115JB of the Act. Assessee's case was selected for scrutiny assessment under section 143(3) of the Act. Ld. Assessing Officer passed the

assessment order u/s 143(3) of the Act dated 06.12.2018 after making addition under section 14A of the Act of Rs 1,29,49,500 and accordingly assessed the total loss at Rs 21,69,83,129 under the normal provisions of the Act.

3.1. Assessee's case was reopened by issuing a notice u/s 148 of the Act dated 31.03.2021. In the reasons to believe recorded by the Id. Assessing Officer for initiating the re-assessment proceedings, in para -3, it is noted that assessee has earned fictitious profits in equity/derivative trading transaction and is a beneficiary of bogus long term capital gain (LTCG)/short term capital loss (STCL). Para-3 of the said reasons to believe are reproduced as under:

“As per the information summary available in Insight Portal, the following information relating to Assessment Year 2016-17 pertains to the assessee company.

Sr. No	Source of PAN	Source of PAN Name	Information F.Y.	Information Type	Information Value	Information Date	Remarks
1	AAACN1882E	Nutraplus India Ltd	2015-16	Fictitious Profits in Equity/Derivative Trading	Rs.5588573/-	--	Information of beneficiaries of bogus LTCG/STCL.

”

3.2. Based on the above information summary, Id. Assessing Officer noted that large scale manipulation of trades and fabricated trading activity had taken place in the scrip of NutraPlus India Ltd. (NPIL) which had led to generation of fictitious profit and loss which are not genuine and are pre-determined. Id. Assessing Officer thus, called for explanation from the assessee in respect of the aforesaid transaction

which according to him had led to escapement of income of Rs.55,88,573/- within the meaning of section 147 of the Act.

3.3. Pursuant to this, assessee filed its objection on the re-opening proceedings, initiated u/s.147 r.w.s. 148 by making its submission dated 08.07.2021. In the said objections, assessee strongly submitted that the income alleged to have escaped assessment by the Id. Assessing Officer is an income chargeable to tax as 'business income' which has already been reported in the audited financial statements and included in the return so filed by the assessee. No exemption is claimed by the assessee in this respect u/s. 10(38) of the Act. Assessee also objected on the purported investigation report and other referred information to suggest that assessee is involved in price manipulation. It was thus, contended that the reasons to believe reported by the Id. Assessing Officer are mechanical and general without appreciation of the facts of the case.

3.4. Assessee furnished detailed break up of profit earned on shares of NPIL during the year under consideration, details of which are tabulated as under:

Purchase			Sell			Closing Balance		Profit/ (Loss)
Date	Qty	Amount	Date	Qty	Amount	Qty	Amount	
28.12.2015	77,000	2,50,93,005	02.02.2016	31,791	1,47,62,067			44,01,914
			03.02.2016	5,157	24,65,438			7,84,859
			05.02.2016	1,621	5,96,894			68,638
			22.02.2016	15,000	50,82,386			1,94,138
			23.02.2016	2,126	7,05,157			12,329
			02.03.2016	796	2,47,294			(12,109)
31.03.2016	77,000	2,50,93,005		56,491	2,38,59,236	20,509	66,83,538	54,49,769
							Mark to Market Loss (27,49,912)	
							Closing Value reflected in books of account 39,33,626	

3.5. Assessee further submitted that there is no basis to identify NPIL as penny stock as alleged by the Id. Assessing Officer in the reasons to believe recorded by him since the said company had significant underlying sales to demonstrate its revenue generating operations, details of which are tabulated as under:

Particulars	Quarter Jun'15	Quarter Sep'15	Quarter Dec'15	Quarter Mar'16	Quarter Jun'16	Year ended Mar'19
Total Revenue	152.96	194.67	177.77	253.60	244.98	1434.32
Profit from ordinary activities before tax	18.85	17.55	18.99	15.24	34.82	33.63

4. In order to prove the identity, source of money and genuineness of the transaction of purchase and sale of shares of NPIL, assessee submitted the following documents which included –

- i) Contract notes of purchase and sale by Axis on BSE platform.
- ii) Bank statements showing source of purchase and sale.
- iii) DMAT account of the assessee showing purchased / sold shares credited, debited or transferred from/to broker.
- iv) Broker ledger account showing purchase and sale transactions in NPIL shares.

4.1. According to the assessee it had earned profit of Rs. 54,49,769/- (55,88,637 – 1,38,868) after considering brokerage, taxes and other charges on sale of shares of NPIL. Proceeds of this transaction were

received in the bank account. The said transaction was undertaken on the Bombay Stock Exchange Platform through SEBI registered brokers and other intermediaries regulated by SEBI. However, ld. Assessing Officer proceeded to complete the re-assessment by holding that creditworthiness and genuineness of the transaction are not satisfactorily explained, since assessee sold the shares resulting in profit of 23% without giving any valid reasons for the increase in the price of the shares. Aggrieved, assessee went in appeal before the ld. CIT(A), who confirmed the addition so made by the ld. Assessing Officer. Aggrieved, assessee is in appeal before the Tribunal.

5. Before us, ld. Counsel of the assessee strongly asserted that the impugned re-assessment proceedings initiated by the ld. Assessing Officer are based on borrowed satisfaction, without application of mind, mechanical and therefore un-sustainable in law. It was pointed out that the addition so made has already been included in the audited financial statements and return of income filed by the assessee under the head 'Business Income', since assessee is in business of trading and derivative transactions in shares and securities and brokerage on investments. Further, it was pointed out from the information summary noted in para-3 of the reasons to believe that in the remark column, ld. Assessing Officer himself is not sure about the nature of benefit which has arisen to the assessee, i.e., whether it is LTCG or STCL. According to the ld. Counsel, once the income from the alleged transaction has already been offered to tax, there is no question of escapement of income.

5.1. Further, since no specific case is made out by the ld. Assessing Officer in respect of the nature of income, it demonstrates non application of mind while recording the reasons to believe for the re-

assessment proceedings. From para-7 of the impugned assessment order, it was pointed out that ld. Assessing Officer has recognised and acknowledged the contention of the assessee that income had already been offered to tax though he did not accept this verifiable fact even though necessary documentary evidence were placed on record. It was also pointed out that in the order disposing objections raised by the assessee, this contention of the assessee that income has already been offered under the head 'Business Income' is taken note of but negated by the ld. Assessing Officer.

6. Per contra, Sr. DR placed reliance on the order of ld. Assessing Officer.

7. We have heard both the parties and perused the material on record. Brief facts narrated above are undisputed and uncontroverted. Department has not brought on record to controvert the fact of income reported by the assessee under the head 'Business Income', taking into consideration its nature of business. In the given set of facts, when the income has already been offered under the head 'Business Income' for which all the cogent material has been placed on record, making addition once again of the same amount on the same transaction u/s.68 of the Act, tantamount to double taxation of the same income. We are in agreement with the submissions made by the ld. Counsel and accordingly, delete the addition so made by the ld. Assessing Officer u/s. 68 of the Act in respect of transaction of sale of shares of NPIL, more particular, when ld. Assessing Officer, himself was not sure of the benefit received by the assessee as to whether it is LTCG or STCL, and when it has already been offered as business income. It is also important to note that no exemption has been

claimed by the assessee u/s.10(38) in respect to this transaction.
Accordingly, grounds taken by the assessee are allowed.

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

Order is pronounced in the open court on 30th October, 2024

Sd/-
(Amit Shukla)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 30th October, 2024

MP, Sr.P.S.

Copy to :

1. The Assessee
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai