

आयकर अपीलीय अधिकरण, कोलकाता पीठ "बी", कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH: KOLKATA
श्री संजय गर्ग, न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सटस्य के समक्ष
[Before Shri Sanjay Garg, Judicial Member & Shri Rajesh Kumar, Accountant Member]

I.T.A. No. 318/Kol/2024
Assessment Year: 2012-13

Subhra Dugar (PAN: AGBPD 3155 E)	Vs.	ITO, Ward-33(7), Kolkata
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	20.11.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	20.11.2024
For the Appellant/ निर्धारिती की ओर से	Shri Sunil Surana, A.R
For the Respondent/ राजस्व की ओर से	Shri P. P. Barman, Addl. CIT, Sr. DR

ORDER / आदेश

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the "Ld. CIT(A)") dated 12.01.2024 for the AY 2012-13.

2. At the time of hearing, the Ld. Counsel for the assessee pressed the only legal issue challenging the reopening of assessment u/s 147 of the Act on the ground of reassessment is bad in law as the reopening of assessment has been made without any independent application of mind that too on the borrowed satisfaction.

3. Facts in brief are that the assessee filed return of income on 04.12.2012 declaring total income of Rs. 4,34,360/-. During the year, the assessee declared long term capital gain of Rs. 1,42,69,074.65/- under the head capital gain and claimed the same as exempt. Subsequently the case was reopened u/s 147 of the Act after obtaining approval from the competent authority i.e. PCIT-11, Kolkata after the AO received information from the Investigation Wing that the assessee involved in taking entries of bogus long term capital gain through transactions of M/s Bakra Pratisthan Ltd., a penny stock company. Accordingly, the statutory notices were duly issued and served on the assessee. During the course of assessment proceedings, the details were called for by the AO. Thereafter after looking into the accounting details and discussing modus operandi of penny stock company added a sum of Rs. 1,32,40,990/- to the income of the assessee u/s 68 of the Act in the assessment framed u/s 143(3) read with Section 147 of the Act dated 11.12.2019.

4. In the appellate proceedings, the Ld. CIT(A) dismissed the appeal of the assessee.

5. After hearing the rival contentions and perusing the material on record, we find that the case was reopened for the reason that the assessee had sold shares of M/s Bakra pratisthan Ltd. a penny stock company and capital gain of Rs. 1,32,40,990/- was declared from the sale of 37500 equity shares which was claimed as exempt u/s 10(38) of the Act. The Ld. Counsel of the assessee referred to the reasons recorded u/s 148(2) of the Act a copy of which is filed at page 7 of PB which states that the assessee has traded in scrip which is a penny stock as per the report of the Investigation Wing. However, we find that the said company did not appear in the list of 84 stocks the details wherein is furnished in the PB from page 60 to 62. We find that in this case no adverse view drawn was drawn by the SEBI even nonetheless the stock remained suspended for some time through SEBI order but ultimately no adverse view was taken by SEBI and the trading on the stock exchange was restored. The ld. Counsel for the assessee relied on the decisions of Hon'ble Calcutta High Court in the case of PCIT vs. Deepa Agarwal in ITAT/47/2022, IA NO. GA/2/2022 dated 07.11.2022 and PCIT vs.

Shri Abhay Kr. Jain in ITAT/63/2022 IA No. GA/2/2022 dated 10.11.2022 which have been perused and we find that the assessee case is squarely covered by these decisions. We also note that these decisions of the Hon'ble High Court after the PCIT Vs Swati Bajaj ITA No. GA/2/2022 in ITAT/6/2022 & others dated 14.6.2022.

6. Further we find merit in the contentions of Ld. A.R that the list of penny stocks did not contain this share , therefore, we are not in a position to sustain the orders of authorities below which has not done anything to find out whether the assessee has routed his own money by trading in the said stock. In our opinion, the AO is not free to generalize any inference from the report of Investigation Wing that the stock is a penny stock by ignoring the fact that stock does not even figure in the list of 84 penny stock which has been discussed by the Hon'ble Calcutta High Court (supra). We observe that the ld AO has only relied on the investigation wing report and has not done any enquiry to bring any substantive material on record. In view of the facts, we are inclined to hold that the reopening of assessment by the AO is not as per the provisions of Act and is in fact based on the borrowed satisfaction and also done without any application of mind.

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

Order is pronounced in the open court on 20th November, 2024

Sd/-

Sd/-

(Sanjay Garg /संजय गर्ग)
Judicial Member/न्यायिक सदस्य

(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 20th November, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Subhra Dugar, 4th Floor, Flat 4C, 34, Rowland Court, Kolkata-700020
2. Respondent – ITO, Ward-33(7), Kolkata
3. Ld. CIT(A)- NFAC, Delhi
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata