

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'A', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA

**Before Shri Sanjay Garg, Judicial Member and
Shri Manish Borad, Accountant Member**

**I.T.A. Nos.190 to 192/Kol/2024
Assessment Years: 2015-16 to 2017-18**

Pradip Kumar Jajodia (HUF) **Appellant**
Room No. 421A, 4, Fairlie Place, HMP House,
4th Floor, Kolkata-700001.
(PAN: AAFHP2293B)

vs.

ITO, Ward-44(1), Kolkata **Respondent**

Appearances by:

Shri Miraj D. Shah, AR appeared on behalf of the Appellant
Shri Pradip Kumar Biswas, Addl. CIT appeared on behalf of the Respondent

Date of concluding the hearing: 25/11/2024
Date of pronouncing the order: 30/12/2024

आदेश / ORDER

Per Sanjay Garg, Judicial Member :

All the captioned appeals have been preferred by the assessee against the separate orders evenly dated 04.12.2023 for Assessment Years 2015-16 to 2017-18 of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) [hereinafter referred to as the "Ld. CIT(A)"] passed u/s. 250 of the Income-tax Act, 1961 (hereinafter referred to as the "Act"). Since facts are identical, grounds are common and all the appeals have been heard together, except variance in amount, we dispose of all these appeals vide this common order for the sake of convenience by taking the ITA No. 190/Kol/2024 as the lead case.

ITA No. 190/Kol/2024, AY 2015-16 :

2. The assessee in this appeal is aggrieved by the action of the Ld. Lower authorities in making/confirming the addition of Rs. 20,19,000/- by treating the Long Term Capital Gain (LTCG) earned by the assessee on

sale of shares as bogus and thereby denying the claim of exemption to the assessee. The assessee in this appeal has challenged the impugned addition not only on merits but also on the legal ground that the reopening of the assessment in this case u/s. 147/148 of the Act was bad in law.

3. At the outset, the Ld. Counsel for the assessee has invited our attention to the reasons recorded for reopening of the assessment, copy of which has been placed at page 10 of the paper book, the contents of which, for the sake of ready reference are reproduced as under:

“On perusal of various information disseminated by the Investigation Unit of the Department and as available in Income-tax Business Application in respect of the assessee for the said assessment year, it is ascertainable that the assessee has traded in the penny scrip of Appu Marketing and Manufacturing Ltd./Ejecta Marketing Ltd. SCRIP CODE (538653) to the tune of Rs.20,9,000/- (Trade value) during the relevant Financial year under consideration.

The AO studied the financials of the company. The AO also went through the business activities of the day and the various reports of the company. This was done to have an insight at how market and non- market forces were affecting the share prices to the scrip.

The shares in which the assessee is reported to have traded in, have been identified as penny shares by the investigation wing of the Department. The shares do not have sound fundamentals. Rather they are manipulated to reach high prices from negligible values. The same conclusion has also been reached by the AO on independent enquiry.

The AO on perusal of the financials of the said scrip (Appu Marketing and Manufacturing Ltd./Ejecta Marketing ltd. SCRIP CODE (538653) has found that the rise in prices of the scrip are totally unrelated to its financial fundamentals (profitability, EPS etc) or to any other factors (such as market news etc) that causes rise or fall in prices of shares. The rise and fall in prices of the shares exhibit a curve that is typical of rigged shares (rise and fall of prices sans reasons). In the instant case it is clear that it is a sham trade only for the purpose of laundering undisclosed out of books income.

From the above it is clear that the assessee has invested in the shares/ scrips of the Appu Marketing and Manufacturing Ltd / Ejecta Marketing Ltd. SCRIP CODE (538653) with a pre-planned intention to bring into books his undisclosed monies through accommodation entry. There is also reason to believe that the above trade value of the shares to the tune of Rs. 20,19,000/- is assessee's undisclosed monies. Thus, the assessee has invested in

penny stock and took accommodation entry in the form of Long term capital gain.

The aforementioned facts clearly indicates that the assessee has taken accommodation entry to channelize its undisclosed income in the guise of LTCG. Therefore, I have reason to believe that the entire trade amount of Rs. 20,19,000/- has escaped assessment within the meaning of section 147 of the Income Tax Act 1961 and is a fit case for issuing notice u/s 148 of the IT Act 1961.

Hence, you are requested to comply to the notice u/s 142(1) of the IT Act so as to complete the assessment proceedings.”

4. A perusal of the above reproduced reasons would reveal that the only information available to the Assessing Officer (in short 'AO') that the assessee had traded in the shares of Appu Marketing & Manufacturing Ltd./Ejecta Marketing Ltd. to the tune of Rs.20,19,000/- (Trade value) during the financial year under consideration. Thereafter, the AO goes on to note the financials of the said Appu Marketing & Manufacturing Ltd. and further goes on to note that the rise in prices of the said scrip was totally unrelated to these financial fundamentals. That the rise and fall in prices of the share exhibits a curve that is typical of rigged shares. He, therefore, formed the view that the assessee had invested in penny stock and that the LTCG earned by the assessee were bogus. He, accordingly, formed the belief that the income of the assessee has escaped assessment and reopened the assessment.

4.1. The Ld. Counsel inviting our attention to the afore-reproduced reasons for reopening of the assessment has submitted that the aforesaid reasons were vague. That the AO did not apply his mind at all to the alleged information received from the Investigation Wing. That the satisfaction of the AO regarding escapement of the income of the assessee was a borrowed satisfaction. That there was no bona fide material that has come to the possession of the AO to form the belief that income of the assessee has escaped assessment.

5. The Ld. DR, on the other hand, has relied on the orders of the lower authorities.

6. We have considered the rival contentions of the Ld. Representatives of the parties. In our view, the reasons pointed out by the AO did not constitute valid reasons for reopening of the assessment. The only information available to the AO was that the assessee had traded in shares of Appu Marketing & Manufacturing Ltd./Ejecta Marketing Ltd. This information was already on record. No new tangible information has come to the possession of the AO that the LTCG declared by the assessee was bogus. The AO, in this case, formed the belief of escapement of income by way of reappraisal of the facts, that too by merely examining the financials of the said Appu Marketing & Manufacturing Ltd. This action of the AO was not valid for the purpose of reopening of the assessment. No doubt the AO could have examined the aforesaid issue including financials of the said Appu Marketing & Manufacturing Ltd. during the original assessment proceedings. Once the limitation period to issue notice u/s. 143(2) of the Act after filing of the return of income on 25.01.2015 had expired, the AO was not supposed to revisit the facts of the case and change his opinion. No tangible material had come to the possession of the AO to form the belief that income of the assessee has escaped assessment. As observed above, the only information that the assessee had traded in certain scrip would not constitute a reliable and sufficient information to form the belief that the income of the assessee has escaped assessment. A perusal of the reasons recorded would show that there was no information to the AO that the LTCG shown by the assessee in the return of income was bogus. Even in the reasons recorded, the observations of the AO are based on preponderance of probabilities. The AO, in this case, goes on to discuss the financials of the Appu Marketing & Manufacturing Ltd. and from that he noted that

there was unnatural rise in the share price. However, the said conclusion arrived at by the AO was based on his assumption only and there was no definite information available to the AO, either that the share price of the said company was rigged or that the assessee booked bogus LTCG. The aforesaid reasons to believe of the AO, therefore, does not constitute valid reasons for reopening of the assessment. It has been held time and again that the reasons to believe regarding the escapement of the income should be based on certain tangible material and it should not be mere pretence of the Assessing Officer. The reasons to believe does not mean reason to suspect. Reopening of the assessment is not permitted for making fishing and roving enquiries. Reopening is not permissible on the basis of borrowed satisfaction of the Assessing Officer. That such reasons to believe must have a material bearing on the question of escapement of income. It does not mean a purely subjective satisfaction of the assessing authority, such reason should be held in good faith and cannot merely be a pretence. The reasons to believe must have a rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Assessing Officer and the formation of belief regarding escapement of income. The powers of Assessing Officer to reopen an assessment, though wide, are not plenary. The words of the statute are "reason to believe" and not "reason to suspect". Such an action of the Assessing Officer regarding formation of belief of escapement of assessment and thereby in starting proceedings u/s 147 is open to challenge in a court of law. The entire law as to what would constitute "reason to believe" has been summed up by the hon'ble Supreme Court in the case of "Income Tax Officer v Lakhmani Mewaldas" (1976) 103 ITR 437. Reliance in this respect can also be placed on the decision of the Hon'ble Punjab & Haryana High Court in the case of 'CIT vs Paramjit Kaur' (2008) 311 ITR 38 (P&H), wherein, making identical observations, the

Hon'ble High Court has held that in the absence of sufficient material to form satisfaction of the Assessing Officer that income of the assessee had escaped assessment, the issuance of notice u/s 148 of the Act was not valid.

7. Reliance in this respect can also be placed on the decision of the Hon'ble Delhi High Court in the case of PCIT Vs. Meenakshi Overseas ltd. 395 ITR 677 (Del.) and of the Hon'ble Bombay High Court in the case of Hindusthan Lever Ltd. Vs. R. B. Wadkar, Asst. CIT reported in 268 ITR 332. The Hon'ble Supreme Court in the case of CIT Vs. Kelvinator India Ltd. reported in 320 ITR 560 has held that some tangible material must come to the AO for formation of belief that the income of the assessee has escaped assessment. However, as observed in above, there was no tangible material available to the AO regarding escapement of income of the assessee. In this case, the AO has reopened the assessment only on assumptions and presumptions without any tangible material coming to his possession, which would be sufficient to form the belief that the income of the assessee has escaped assessment.

8. In the case in hand, the only information available to the Assessing Officer was that the assessee had done transaction of Rs. 20,19,000/- with Appu Marketing & Manufacturing Ltd./Ejecta Marketing Ltd. Such information does not in any manner was sufficient to form the belief that the income of the assessee has escaped assessment. In view of the above discussion, the reasons pointed out by the Assessing Officer cannot be said to be the "reasons to believe " that income of the assessee had escaped assessment. Therefore, the reopening of assessment was bad in law and consequential assessment order is not sustainable and the same is accordingly quashed. The assessee, therefore, succeeds on legal ground.

ITA Nos. 191 & 192/Kol/2024, AY 2016-17 & 2017-18 :

9. The facts and issue are identical to this appeal as in the ITA No. 190/Kol/2024. The finding of this appeal is mutatis mutandis apply in this case also.

10. In the result, both the appeals of the assessee are allowed.

Order is pronounced in the open court on 30.12.2024.

Sd/-

[Manish Borad]
लेखा सदस्य/Accountant Member

Sd/-

[Sanjay Garg]
न्यायिक सदस्य/Judicial Member

Dated: 30.12.2024.

JD Sr. P.S

Copy of the order forwarded to:

1. **Appellant – Pradip Kumar Jajodia, HUF**
2. **Respondent – ITO, Ward-44(1), Kolkata**
3. **CIT(A), NFAC, Delhi**
4. **Pr. CIT**
5. **CIT(DR),**

True Copy

By Order

Assistant Registrar, ITAT, Kolkata