

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, KOLKATA

**BEFORE SHRI RAJESH KUMAR, AM
AND
SHRI SONJOY SARMA, JM**

**ITA No.236/KOL/2024
(Assessment Year: 2013-14)**

Sangeeta Devi Anchalia
31-C, Jhowtalla Road, Park
Cicus, Kolkata-700017,
West Bengal

(Appellant)

Vs.

ITO
2, Gariahat Road (South)
Aaykar Bhavan Dakshin,
Kolkata-700068,
West Bengal

(Respondent)

PAN No. ADDPA0199C

Assessee by : Shri Sunil Kumar Surana, AR
Revenue by : Shri Rajat Datta, DR

Date of hearing: 03.12.2024
Date of pronouncement : 02.01.2025

ORDER

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the Commissioner of Income-tax (Appeals) (hereinafter referred to as the "Ld. CIT(A)") dated 31.01.2024 for the AY 2013-14.

02. The issue raised in ground no.1 by the assessee is against the confirmation of addition when the proceedings-initiated u/s 147 of the Act were not in accordance with Income Tax Act ,1961 (herinaft3er referred to as the Act) and hence, re-assessment was liable to be quashed.
03. The facts in brief are that the assessee filed the return of income u/s 139(1) on 01.10.2013, declaring total income of ₹7,02,160/-.



Thereafter, the case of the assessee was reopened u/s 147 of the Act, after obtaining the approval from the competent authority and notice u/s 148 of the Act was issued accordingly after recording reasons to believe u/s 148(2) of the Act. According to the Id. AO assessee did not comply with the said notice however, vide letter dated 15.03.2018, the assessee stated that the return already filed u/s 139(1) may kindly be treated as the return filed in response to notice u/s 148 of the Act. Thereafter, statutory notices were issued and served upon the assessee along with questionnaire. Finally, the assessment was framed u/s 143(3) read with section 147 of the Act vide order dated 06.12.2018 by making addition of ₹14,69,700/- as unexplained money. The Id. CIT (A) dismissed the appeal of the assessee by simply affirming the order of the Id. AO.

04. After hearing the rival contentions and perusing the materials available on record, we note that the assessment in this case was re-opened u/s 147 of the Act r.w.s. 148 of the Act after recording reasons u/s 148(2) of the Act and obtaining the approval of the competent authority. We note that the Id. AO stated in the reasons recorded that assessee has taken accommodation entry in the grab of long-term capital gain at the platform of Calcutta Stock Exchange through a number of private limited shell companies and some listed penny stock companies, managed and controlled by Prakash Jajodia, who was promoter of M/s Quest Financial Ltd. Thereafter, in third para, the Id. AO noted that as per the information available with the department it appeared that said long term capital gain has been claimed on the sale of penny stock of "Quest Financial Services Ltd.", which was claimed as exempt and thus, the income to the tune of ₹14,69,700/- has escaped assessment. The said reasons recorded are extracted below for the ready reference as under:-



"To
Smt. Sangeeta Devi Anchalia
31B, Jhawtala Road, Kolkata-700017

Date: 15/10/2018

Sub: Supply of reasons for issuing Notice u/s 148 in the case of Sangeeta Devi Anchalia for the A.Y. 2013-14[PAN: ADDPA0199C]-Matter Reg.-

Ref: Your letter received by this office on 01/09/2018.

In response to your letter under reference this is to inform you the assessee filed Return of Income 139(1) for the A.Y. 2013-14 on 01.10.2013 declaring total income of Rs.7,02,160/-. The return was processed u/s.143(1) on 25.03.2015. No notice u/s. 143(2) is found to have been issued in this case.. As per return, the assessee claimed exempt income of Rs.13.74.453/- under the head "Other including exempt income of minor child in Schedule EI of the return.

Information has been received from the Principal Director of Income Tax(Inv), Kolkata vide F. No. DIT(Inv)/Bogus LTCG/Kol/2014-15/5118-26 dated 13/01/2015 that the assessee had taken accommodation entries in the garb of LTCG at the platform of CSE(Calcutta Stock Exchange) through a number of Private Limited shell companies and some listed penny stock companies managed and controlled by Prakash Jajodia who was a promoter of Quest Financial Services Ltd and Kwality Credit & Leasing Ltd. Involved in providing bogus long term capital gains. The modus operandi of given such entries of bogus LTCG, a list of Penny Stocks, brokers, details of transactions along with modus operandi of circular transactions have also been incorporated in the information. The accommodation entries taken by the assessee are evident in the list.

In this case the assessee had taken accommodation entries amounting to Rs.14,69,700/-/- during the F.Y. 2012-13 relevant to A.Y. 2013-14. As per the information received and on examination of data available with us it appears that the aforesaid LTCG has been claimed on sale of scrip of penny stock of QUEST FINANCIAL SERVICES LTD for which the assessee claimed exempt income for the A.Y. 2013-14.

Thus, the facts and circumstances as stated above, substantiate that the assessee's income to the tune of Rs.14,69,700/- has escaped assessment within the meaning of section 147(b) of the LT. Act, 1961 and such escapement occurred due to assessee's failure to disclose primary facts truly and completely in the return of income.

Sd/-
(Pinaki Biswas)
ITO W-32(4), Kolkata"



05. We note that the above reasons indicate that a report received by the Id. AO from PCIT Investigation Kolkata vide letter dated 13.01.2015, and thereafter the Id. AO concluded that the income to that extent has escaped assessment. In our opinion this is the case of non-enquiry by the Id. AO and only re-opening on the basis of information received and arriving at the conclusion without any independent application of mind and in fact a case of borrowed satisfaction. The case of the assessee find force from the decision of Hon'ble Delhi High Court in case of *CIT Vs. SFIL Stock Broking Ltd.(2010) 325 ITR 285 and M/S Shreyans Jain, Huf Vs. ITO 357 ITR 330*. Accordingly, taking into account the ratio laid down in the above decisions and the facts of the instant case at hand, we are of the view that the reopening of assessment u/s 147 of the Act is invalid and void ab initio. Accordingly, the proceedings u/s 147 of the Act and also the consequent order passed are quashed.

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

Order pronounced in the open court on 02.01.2025.

Sd/-
(SONJOY SARMA)
(JUDICIAL MEMBER)

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 02.01.2025

Sudip Sarkar, Sr.PS



Copy of the Order forwarded to :

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

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Kolkata