



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

BEFORE DR.MANISH BORAD, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.1571/KOL/2024
Assessment Year : 2011-12

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| Manju Devi Daftari, Room No.405, 4 th Floor, 77, Netaji Subhas Road, Burrabazar, Kolkata – 700 001 West Bengal PAN : ADOPD0192P | V/s | ITO, Ward-36(1), Kolkata |
| Appellant | | Respondent |

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|-----------------------|---|------------------------------|
| Assessee by | : | Shri Sunil Surana, AR |
| Revenue by | : | Shri Kapil Mondal, Addl. CIT |
| Date of hearing | : | 26.11.2024 |
| Date of pronouncement | : | 03.02.2025 |

आदेश / ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The captioned appeal pertaining to Assessment Year 2011-12 at the instance of assessee is directed against the order dated 28.06.2024 passed by National Faceless Appeal Centre, Delhi u/s.250 of the Income-tax Act, 1961 (in short 'the Act') which in turn is arising out of Assessment Order dated 30.12.2018 passed u/s. 144/147 of the Act.

2. The grievance of the assessee are two-fold, firstly that the re-assessment proceedings carried out are bad in law and they have been initiated by the Assessing Officer without any tangible material and applying independent mind to believe that income of the assessee has escaped assessment. Second



fold of argument on merits of the case is challenging the finding of ld.CIT(A) disallowing the claim of bogus loss of Rs.12,09,924/- from trading in scrip in the name of M/s. Nivyah Infrastructure & Telecom Services Ltd.

3. So far as the legal issue challenging the re-assessment proceedings are concerned, at the outset, ld. Counsel for the assessee submitted that the case is squarely covered by the judgment of Hon'ble Bombay High Court in the case of *South Yarra Holdings Vs. ITO & Another in Writ Petition No.3398/2018, dated. 01.03.2019* as well as the decision of Tribunal in the case of *Tanuj Properties Pvt. Ltd. Vs. ITO in ITA No.1045/Kol/2023, dated 19.02.2024*. Ld. Counsel submitted that in the reasons recorded for reopening for the trading of Equity shares is the very same company namely M/s. Nivyah Infrastructure & Telecom Services Ltd. alleged to a penny stock company in the Writ filed before the Hon'ble Bombay High Court and Hon'ble Court has quashed the reassessment proceedings and the same was subsequently followed by the Tribunal in the case of *Tanuj Properties Pvt. Ltd. Vs. ITO (supra)* dealing with the very same issue.

4. On the other hand, ld. Departmental Representative vehemently argued supporting the orders of the lower authorities.

5. I have heard the rival contentions and perused the record placed before me. I observe that the assessee who is an individual furnished regular return of income on 02.08.2011 showing Nil income and the same was processed u/s.143(1) of the Act on 23.12.2011. In this return, assessee has shown business loss of Rs.9,18,617/- and income from other sources



at Rs.1,37,631/-. After lapse of four years, notice u/s.148 of the Act was issued and the reasons are recorded, copy placed at page 61 of the paper, which read as under :

"In response to your letter dated 03.04.2018 on the above subject, the following reasons for reopening u/s. 147 is provided as under :-

An information has been received from DDIT (Inv.), Unit-8(3), Mumbai bearing letter : No. DDIT(Inv)/Unit-8(3)/Diss./Action/2017-18 dated 23/03/2018. In the said information it has been claimed that M/s. Nivyah Infrastructure & Telecom Services Limited (NITSL) is penny stock listed on BSE with script code (517534) and this company has been used to facilitate introduction of unaccounted income of members of beneficiaries in the form of exempt capital gain or short term capital loss in their books of accounts. It was further claimed that share price of M/s. NITSL rose from Rs.39 on 21.07.2009 to Rs.2050 on 05.01.2011 and dipped to Rs.47.20 on 18.07.2012. The financial of the company for the relevant period do not show any substantial change so as to support such a huge share price movement. The company does not have business worthiness to justify the sharp rise in the market price of the shares Both purchase and sale of the share are concentrated within few persons/entities. The above mentioned assessee has performed trade in the said script for a value of Rs. 7,34,6247-.

Considering the above fact, I have reason to believe that an amount of Rs.7,34,624/- has escaped assessment in the case of the above mentioned assessee for the A.Y. 2011-12 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".

6. I further notice that the Hon'ble Bombay High Court in the case of *South Yarra Holdings Vs. ITO & Another (supra)* wherein the assessee challenged the re-assessment proceedings, the reasons recorded for reopening in that case reads as under :

"Reasons for reopening u/s 148 for A.Y.2-011-12 is provided as under :

1. The information has been received from DDIT (Inv) Unit 8 (3) Scindia House, Mumbai-38 vide their letter dated 23-3-2018 which is received in this office on 28-03-2018.



2) The DDIT (Inv) Mumbai has received information that M/s Nivyah Infrastructure & Telecom Services Ltd is a penny stock listed do in BSE with scrip code (517634) and this company has been used to facilitate introduction of unaccounted income of members of beneficiaries in the form of exempt capital gain or short term capital loss in their books of accounts. It was noticed that share price of M/s Nivyah Infrastructure & Telecom Services Ltd rose from Rs.39 in 21st July 2009 to Rs.2050 on January 2011 and dipped to Rs.47.20 on 18th July 2012. However, the financials of the company for the relevant period do not show any substantial change so as to support such huge share price movement. The company does not have business worth while to justify the sharp rise in market price of shares. The sharp rise in market price of this entity is not supported by the fundamentals of the company. Both purchase and sale of the shares are concentrated within few person/entities.

7. From going through the above reasons in the case of the assessee and that in the case of *South Yarra Holdings (Supra)* I notice that the reasons recorded are verbatim similar and that re-assessment proceedings were carried out after four years from the end of the relevant assessment year. Hon'ble Bombay High Court decided the Writ Petition in favour of the assessee by holding that the notice issued was bad in law and it has not been issued by the AO on a satisfaction that there is reason to believe and that income chargeable to tax has escaped assessment observing as follows :

"5. On receipt of above reasons on 9.8.2018, the petitioner filed its objections to the reasons in support of the impugned notice and in particular pointed out that the assessee had dealt with a company called "S.V.Electricals Ltd" and not with M/s Nivyah Infrastructure & Telecom Services Ltd. The name of company "S.V.Electricals Ltd" had subsequently changed on 14.2.2012 to M/s Nivyah Infrastructure and Telecom Ltd. It had also pointed out in its objection that during the regular assessment proceedings, details of the petitioner's dealing in scrip namely "S.V.Electricals Ltd" had been submitted during the regular assessment proceedings. The objections primarily proceeds on the basis, that the reasons as recorded, display total non-application of mind while forming reason to believe, this as during the relevant time, there was no company by the name "M/s Nivyah Infrastructure and Telecom Services Ltd" in which the petitioner could have dealt. The petitioner's objections were rejected by the Assessing Officer by passing an order on 28.9.2018. The order on objections, does not deal with the petitioner's primary contentions that the petitioner had not dealt with any company by



name "M/s Nivyah Infrastructure and Telecom Services Ltd" during the period relevant to the subject assessment. This order dated 28.9.2018 disposing of the objections is completely silent on the above objections while RNG 5/7 5-wp3398.18 rejecting the petitioner's objections.

6. The respondent's Assessing Officer has filed an affidavit-in reply dated 5.2.2019 of the Assessing Officer. However, the reply does not deal with this objection taken in the petition. Nevertheless, Mr.Suresh Kumar the learned counsel for the revenue submits that all these issues will be subject of consideration during the re-assessment proceedings. Thus, this Court should not interfere at this stage.

7. It is a settled position in law that re-opening of an assessment has to be done by an Assessing Officer on his own satisfaction. It is not open to an Assessing Officer issue a reopening notice at the dictate and/or satisfaction of some other authority. Therefore, on receipt of any information which suggests escapement of income, the Assessing Officer must examine the information in the context of the facts of the case and only on satisfaction leading to a reasonable belief that income chargeable to tax has escaped assessment, that re-opening notice is to be issued.

8. From the reasons, it is evident that the impugned notice has been issued on the basis of information received from the Deputy Collector RNG 6/7 5-wp3398.18 Income Tax (Investigation) alleging that M/s Nivyah Infrastructure & Telecom Services Ltd is a penny stock listed on the Bombay Stock Exchange and that the petitioner had dealt with the same leading to escapement of income. On receipt of information, the least that is expected of the Assessing Officer is to examine the same in the context of the facts of this case and satisfy himself whether the information received does prima facie lead to a reasonable belief that income chargeable to tax has escaped assessment. In this case, the reasons indicate that the Assessing Officer has not carried out such exercise and accepted the report of the Deputy Collector of Income Tax (Investigation) Mumbai to conclude that the petitioner had dealt with Nivyah Infrastructure and Telecom Services Ltd during the previous year relevant to the assessment year 2011-12. Admittedly, there was no company by name "M/s Nivyah Infrastructure & Telecom Services Ltd" in existence during that year for consideration. This clearly shows that the Assessing Officer acted on the satisfaction of the Deputy Collector of Income Tax (Investigation) that income chargeable to tax has escaped assessment. It must also be borne in mind that the impugned notice is issued beyond the period of four years from the end of the relevant assessment year in a case, where the assessment was completed under section 143 (3) of the Act. Therefore, RNG 7/7 5-wp3398.18 the Assessing Officer would have to examine the information received in the context of the facts on record. If such an exercise were to be done, it is likely that the Assessing Officer would have come to the conclusion that there was no failure to disclose truly and fully all material facts necessary for



assessment. Thus, hit by the proviso to section 147 of the Act. However, the Assessing Officer has not applied his mind to the information received in the context of the facts on record. The impugned notice is bad-in-law, as it has not been issued by the Assessing Officer on his satisfaction that there is reason to believe, that income chargeable to tax has escaped assessment.

9. In the above circumstances, the impugned notice is unsustainable in law and therefore, is quashed and set aside.

8. Further I notice that the above ratio laid down by the Hon'ble Bombay High Court has subsequently been followed by this Tribunal in the case of *Tanuj Properties Pvt. Ltd. Vs. ITO (supra)* wherein also similar issue regarding reopening of the assessment proceedings was raised and ld. AO referred to the information about transaction in the alleged penny stock company namely M/s. Nivyah Infrastructure & Telecom Services Ltd. and the Tribunal decided the issue in favour of the assessee holding that the notice u/s.148 of the Act was bad in law and reassessment proceedings deserves to be quashed.

9. Respectfully following the judgment of Hon'ble Bombay High Court in the case of *South Yarra Holdings (supra)* and the consistent view adopted by this Tribunal, I am of the considered opinion that the re-assessment proceedings carried out in the instant case by the AO are without any tangible material and without independent application of mind even when all the details of the alleged transaction were duly reflected in the regular return of income filed by the assessee. Therefore, the notice issued u/s.148 of the Act is bad in law and the reassessment proceedings deserves to be quashed.



10. Since I have held the legal issue in favour of the assessee and quashed the reassessment proceedings, no addition survives and therefore, the grounds raised by the assessee on merits became merely academic in nature.

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

Order pronounced on this 03rd day of February, 2025.

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

पुणे/Pune; दिनांक / Dated : 03rd February, 2025

Satish

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “(SMC)” बेंच, Kolkata/ DR, ITAT, “(SMC)” Bench, Kolkata.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Assistant Registrar,
ITAT, Kolkata