

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI “E” BENCH: NEW DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER &  
SHRI SUDHIR KUMAR, JUDICIAL MEMBER**

**ITA No.4751/Del/2024  
[Assessment Year : 2012-13]**

Marut Nandan & Co. C/o-C.S.Anand, Advocate, B-81 First Floor (Part-B), Defence Colony Bhishma Pitamaha Marg New Delhi-110024 <b>PAN-AASFM4068L</b>	vs	ITO Ward-1 Hisar
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Shri C.S.Anand, Adv. Shri Sarthak Upadhyay, Adv. & Vaishnavi.	
<b>Respondent by</b>	Shri Kumar Avikal Manu, Sr.DR	
<b>Date of Hearing</b>	15.01.2025	
<b>Date of Pronouncement</b>	19.02.2025	

**ORDER**

**PER PRADIP KUMAR KEDIA, AM :**

The captioned appeal has been filed by the assessee against the first appellate order passed by Ld. Commissioner of Income Tax (A), National Faceless Appeal Centre (“NFAC”), Delhi [“CIT(A)”] under s. 250 of the Income Tax Act, 1961 dated 23.11.2023 which in turn emanates from the assessment order dated 28.12.2019 passed by the AO under s. 147 r.w.s 143(3) of the Act pertaining to Assessment Year 2012-13.

2. The grounds of appeal raised by the assessee reads as under:

1. *“That the proceedings initiated by the learned AO u/s 147 in the name of M/s Marut Nandan & Co. are liable to be quashed because at that point of time, the said Partnership Firm was not in existence.*

*Note: Vide letter having been filed in his office on 28.09.2012, the learned AO was well informed about the dissolution of Partnership Firm.*

2. *That the proceedings initiated u/s 147 are liable to be quashed because the very foundation of reopening was faulty.*
3. *That the proceedings initiated by the AO u/s 147 are liable to be quashed because the learned AO had done so in the mechanical manner, without applying his own mind.*
4. *That the proceedings initiated u/s 147 are liable to be quashed because apparently there was no failure on the part of M/s Marut Nandan & Co. to disclose fully & truly all material facts.*
5. *That the proceedings are liable to be quashed /annulled because despite specific request, the AO had failed to provide copies of Form (meant for recording the reasons for initiating the proceedings u/s 147 and obtaining approval/sanction from the Pr.CIT) alongwith the Reason Recorded for initiation of proceedings u/s 147 and other connected documents.*
6. *That the assessment order passed by the learned AO u/s 147 in the name of M/s Marut Nandan & Co. is liable to be quashed/annulled because at that point of time, the said Partnership Firm was not in existence.*  
  
*Note: Vide letter having been filed in his office on 28.09.2012, the learned AO was well informed about the dissolution of Partnership Firm.*
7. *That the assessment order is liable to be annulled because the principles of natural justice were violated by the learned AO.*
8. *That the appeal order passed by the learned CIT(A) in an ex-parte manner on 23.11.2023 is liable to be annulled firstly because the notice issued u/s 250 on 27.09.2023 (as referred in para 6.1 on page 8 of the appeal order, through which facts of the case, grounds of appeal, Form 35 with copies of relevant order and other relevant documents & submissions were required) was not served and secondly because the principles of natural justice were violated.*
9. *That on the facts of the case and in law, the addition of Rs.63975187/- (alleged to be the bogus loss in the transactions of*

*M/s.Banas Finance Ltd.) which was made by the learned AO u/s 68 and confirmed by the learned CIT(A), is liable to be deleted.”*

3. As per the case records, the assessee is a partnership firm operating in the name and style of M/s. Marut Nandan & Co. The assessee firm was constituted vide Partnership Deed dated 09.08.2010 to carry on the business of purchase and sale of shares and securities etc. The partnership firm carried out its business activities only till AY 2011-12. The assessee filed a letter dated 28.09.2012 to the ITO, Ward-2, Hisar (“AO”) intimating him regarding dissolution of partnership firm and with a request for surrender of PAN. It was informed by this letter that the firm stood dissolved and the bank account stood closed on or before 13.04.2012. It was further informed that there is neither any asset nor any liability of the firm. The last return of income of the firm for AY 2012-13 stood filed on 28.09.2012 as per e-filing acknowledgement. Mr. Dheeraj Bothra, ex-partner of the dissolved firm informed the AO to take cognizance the communication and remove the name of the firm from the list of assessee and also the PAN with immediate effect. Thereafter, the AO issued clarificatory communication seeking certain information on Long Term Capital Gain (“LTCG”) arising on transfer of shares to the erstwhile partnership firm vide communication letter dated 15.03.2019. Pursuant to such non-statutory communication, copy of the ITR for AY 2012-13 (which was already filed previously on 28.09.2012), audited financial and reports for AY 2011-12, bank statement etc. were furnished in compliance of such communication. Subsequently thereto, a notice dated 28.03.2019 was issued under s. 148 of the Act for AY 2012-13 in the name of erstwhile firm M/s. Marut Nandan & Co. A notice dated 10.10.2019 was also issued under s. 143(2) of the Act for the purposes of carrying out re-assessment proceedings. Thereafter, notices under s. 142(1) dated 08.11.2019, 20.11.2019 were continued to be issued on the erstwhile partnership firm. In response to such notices, the assessee uploaded e-communication as per ‘e-proceedings response acknowledgement’ wherein it was brought to the notice of the AO yet again that partnership firm M/s. Marut Nandan & Co. is not in existence for last several years and consequently, notices issued on the non-existent firm to

carry out reassessment proceedings for AY 2012-13 in question should be dispensed with and withdrawn. The AO vide notice dated 20.11.2019 issued under s. 142(1) of the Act took cognizance of the intimation by the assessee that partnership firm is no longer in existence for last several years but however, rejected the request for withdrawal of the notices issued under s. 148 and 143(2) of the Act on the ground that the firm was duly in existence in AY 2012-13 for which the case has been re-opened under s. 148 r.w.s. 147 of the Act. The AO observed that the firm becoming non-existent at a later point of time is of no consequence and the partners namely, Shri Dheeraj Bothra & Shri Sandeep Rathi are individually/jointly are severely liable for dues of the Department as per s. 188A of the Act. The AO thus observed that the re-opening proceedings have been legally initiated and the assessment as completed for AY 2012-13 in which the firm was in existence. Another communication dated 25.11.2019 was made to the AO to submit that the notice dated 28.03.2019 issued under s. 148 of the Act by the AO in the name of non-existent partnership firm was not a valid notice because as on date of issuance of such notice, the partnership firm had been dissolved (on 31.03.2012) and was not in existence. The assessee further pointed out that s. 188A of the Act has nothing to do with the validity of the notice issued in the name of dead person or in the name of a firm which was non-existent on the date of issue of notice. A reference was made to the judgement rendered in the case of *Spice Entertainment Ltd. Vs Commissioner of Service Tax [ITA Nos. 475 & 476 of 2011] (Del.) dated 03.08.2011* to contend that notice issued in the name of non-existent firm on the date of issue of notice is null and void.

4. The assessee vide the same communication letter dated 25.11.2019 also pointed out that the copy of reasons recorded under s. 148(2) of the Act for the purposes of initiating proceedings under s. 147 as well as sanction issued under s. 151 of the Act was not provided. The assessee thus called upon the AO to provide-

- (a) copy of reasons recorded;
- (b) copy of sanction letter under s. 151; and

(c) entire material on the basis of which the proceedings under s. 147 of the Act were initiated and sanction was granted.

5. The assessee also pointed out that proper objections apropos assumption of jurisdiction under s. 147 of the Act can be possibly raised by the assessee only on receipt of such crucial documents and thus requested the AO to keep the proceedings in abeyance till the supply of such documents.

6. Unmoved by such representation, the AO issued a show cause notice dated 06.12.2019 pointing out that as per information available with the Department, the assessee has undertaken transaction in the share namely, Banas Finance Ltd. which is penny stock listed company and has been used to facilitate introduction of unaccounted income by claiming exempt capital gains or short term capital loss. It was thus alleged that the amount introduced in the form of capital gains is representing income from undisclosed sources. The assessee was thus asked by the show cause notice to prove genuineness of the capital gains with supporting evidences and failure to do so would invite disallowance of capital gains of INR 6,39,75,188/- and will be added to the income of the assessee.

7. In pursuance of the show cause notice, the assessee filed a communication dated 16.12.2019 and provided clarifications on merits of the allegations. The assessee *inter-alia* pointed out that SEBI has not implicated either the share broker to whom the transactions in Banas Finance Ltd. were carried out or to the assessee firm. The details of purchase and sales and payments made and amount received from the stock brokers were also provided. The assessee also re-iterated that despite specific requests calling upon him to provide the copy of reasons recorded under s. 148(2) alongwith copy of sanction granted under s. 151 of the Act and material in possession of the AO at the time of recording reasons for formation of belief towards alleged escapement of income has not been provided. It was further pointed out that the assessment earlier was carried out under s. 143(3) of the Act. The assessee thus once again requested to the AO to provide the copies of the reasons recorded etc. in continuity with previous requests. The assessee further

requested the AO to desist from making any additions/ disallowances without confronting the adverse material behind the back of the assessee.

8. The AO however, eventually passed assessment order dated 28.12.2019 wherein the AO alleged that the assessee has claimed bogus loss of INR 6,39,75,187/- and consequently, made an addition of such amount to the total income of the assessee as income from undisclosed sources taking shelter of s. 68 of the Act.

9. Aggrieved by the additions made, the assessee preferred appeal before the CIT(A). The CIT(A) however, declined to provide any relief to the assessee.

10. Further aggrieved, the assessee preferred appeal before the Tribunal.

11. When the matter was called for hearing, the Ld. Counsel raised wide ranging objections on (i) legality of issuance of notice under s. 148 of the Act on the non-existent firm; (ii) legality of assessment framed under s. 147 r.w.s. 143(3) despite non-service of reasons recorded and preventing the assessee to raise objections and to take remedial steps thereon well as; and (iii) the merits of additions made shelter of s. 68 of the Act which is claimed to be wholly inapplicable in the facts of the case. We shall deal with the respective arguments raised in the succeeding paras.

12. The Ld. Sr. DR for the Revenue, on the other hand, supported the action of the Revenue authorities and submitted in furtherance that the assessee has failed to substantiate the business loss claimed on transactions attributable to penny stock namely, Banas Finance Ltd. and therefore, the AO rightly made the additions in accordance with law and after providing detailed reasons. The Ld. Sr. DR for the Revenue thus submitted that no interference with the first appellate order and the assessment order is called for.

13. We have carefully considered the rival submissions and perused the appellate order and the assessment order under challenge. The material referred to and relied upon by the respective sides have been perused in accordance with law under Rule 18(6) of the Income Tax (Appellate Tribunal) Rules, 1963. The case laws cited in the course of hearing has been given due weight having regard to the context of the case.

13.1. The broad counters of the appeal of the assessee hinges around following pertinent legal issues emanating in the present case:

(i) whether AO was justified in issuance of notice under s. 148 of the Act on the nonest partnership firm despite holding proper intimation from the assessee towards dissolution of the firm since long back that the partnership firm has discontinued its business and has ceased to exist any longer.

(ii) whether the re-assessment order framed under s. 147 r.w.s 143(3) of the Act is sustainable in law despite refusal to provide reasons recorded and approval granted under s. 151 of the Act, resulting in denial of opportunity to the assessee to raise objections and take remedial actions available in law against purportedly unjustified and expropriatory re-opening action?

(iii) whether it was incumbent upon the AO to provide relevant material coming to the possession of the AO subsequent to the conclusion of the assessment carried out which formed the basis for formation of belief towards alleged escapement of income.

(iv) whether the business loss resulting from transactions in alleged penny stock could give rise to undisclosed income from other sources *per se* and whether outgo/debits in the bank accounts owing to losses from such transactions provide legal foundation for invoking s. 68 of the Act.

13.2. The assessee has *inter-alia* challenged the legal propriety of issuance of notice on non-existent partnership firm. It is the case of the assessee that the partnership firm stood dissolved and rendered nonest with effect from 01.04.2012. The bank accounts were also closed about the time of dissolution. The intimation to this effect was also provided to the AO vide letter dated 28.09.2012. The Revenue also acknowledges the receipt of such intimation towards closure of business account and dissolution of firm since September, 2012 as revealed by RTI application for which relevant material are placed on record.

13.3. The law is well-settled in this regard. The re-assessment notice under s. 148 of the Act in the name of a non-existing entity despite unequivocal knowledge of its non-existence, is clearly vitiated and rendered nonest in law.

The notice issued on a non-existent firm is not a mere technical glitch. The notice issued under s. 148 to the non-existent firm which was a distinct taxable entity is thus liable to be quashed at the threshold without anything more. This view is supported by the judgement rendered in the case of *Pr.CIT, New Delhi vs vs Maruti Suzuki India Ltd. [2019] 107 taxmann.com 375 (SC)*, *Uber India Systems (P.) Ltd. vs ACIT [2024] 168 taxmann.com 200 (Bom.)* and *Alok Knit Exports Ltd. vs DCIT, Circle-6(1)(1), Mumbai [2021] 130 taxmann.com 457 (Bom.)*.

13.4. Recently the Hon'ble Bombay High Court in *City Corporation Ltd. vs ACIT/Pr.CIT/Union of India [Writ Petition Nos.6076 to 6081 of 2023] dated 29.01.2025* has held that 'issuance of notice on non-existent company despite being fully aware of its non-existence is a substantive illegality and not merely a procedural violation of the nature adverted to in s.292B of the Act'. Reference was made to the judgement rendered in the case of *Pr.CIT-7, Delhi vs Vedanta Ltd.[ITA No.88 of 2022] dated 17.01.2025* thereon. The judgement rendered by the Hon'ble Supreme Court in the case of *Skylight Hospitality LLP vs Asstt. CIT [2018] 92 taxmann.com 93/254 taxman.com 390 (SC)* was also distinguished therein.

13.5. We also find merit in the contention of the assessee that s. 188A, 189, 189A of the Act etc, are not applicable and such provisions operate in a different field. The law mandates that notice for assumption of jurisdiction under s. 148 of the Act can be legally issued only on the entity which is in existence at the time of issuance of notice. As contended on behalf of the assessee, notice under s. 148 in the instant case ought to have been issued on the partners who were representing the firm at the time of its subsistence. S.188A says that the partner of the firm and their legal representative shall be liable alongwith the firm for the amount of tax penalty etc. relating to the firm. This is different from issuance of notice under s. 148 for creating fresh liability on a non-existent assessee. Likewise s. 189 & 189A deals with liability arising to the firm despite discontinuance or dissolution of such firm. However, to ascertain the correct taxable income, the jurisdictional notice must be issued to the subsisting entity or to its legal representative as the case may

be. Notice issued on a non-existent entity has no sanctity in the eyes of law. The legal objection raised on behalf of the assessee is thus well-founded.

14. The assessee has also challenged the legal propriety of the re-assessment order framed under s. 147 of the Act in gross non-compliance of the mandatory formalities. Despite specific and repeated requests seeking copy of reasons recorded under s. 148(2), copy of sanction under s. 151 etc., the AO has proceeded on merits without providing such basic documents. The Hon'ble Bombay High Court in the case of *KSS Petron P.Ltd. vs ACIT [ITA No.224 of 2014] dated 03.10.2016* has addressed the issue and held that the re-assessment order is without jurisdiction where the law laid down by the Apex Court in the *GKN Driveshafts (India) Ltd. vs ITO 259 ITR 19 (SC)* has not been followed. The Hon'ble Bombay High Court also declined to restore the matter to the AO. The Hon'ble Bombay High Court observed that if the AO does not follow the law laid down in *GKN Driveshafts (India) Ltd. (supra)* which mandatorily requires the AO to provide the copy of reasons recorded to the assessee when requested, the re-assessment order is liable to be quashed. The assessment order in such circumstances, cannot be restored for fresh assessment by providing fresh opportunity to AO. Such act would lead to unnecessary harassment of the assessee in such old matters.

15. The Hon'ble Supreme Court in *GKN Driveshafts (India) Ltd. (supra)* has revolutionized the law on erstwhile s. 147 to put an end to the practice of many AO keeping recorded reasons discreet from the assessee. The Hon'ble Supreme Court in inexplicit terms has cast obligation on the AO to not only hand over the copy of recorded reasons but also entitle the assessee to raise the objections on such reasons. If the assessee elects to point out irrelevance, irrationality or inadequacy in such reasons to seek termination of the proceedings, the AO is thus not only bound to provide the copy of reasons but is also bound to pass a speaking order on the objections of the assessee with regard to reasons recorded. The Hon'ble Rajasthan High Court in the case of *Hanuman Sahai Choudhary vs Union of India (UOI) and Others [2004] 136 taxmann.com 93* went one step ahead and held that unless the assessee's

objections are dealt with by a speaking order, there is no question of passing of final assessment order.

16. In the instant case, despite specific requests, the copy of reasons recorded were not provided to the assessee, far less copy of sanction letter or the material collected giving rise to alleged escapements. Thus, the assessee has been completely estopped from seeking lawful remedy against action of the AO in this regard.

17. Noticeably, in the instant case, reasons are neither provided at the time of initiation of proceedings nor such reasons have been spelt out in the re-assessment order. Apparently, the vested right of the assessee to file objection to any unlawful assumption of jurisdiction has been completely done away causing serious prejudice to the assessee and embroiled him in protracted litigation. Needless to say, for assumption of lawful jurisdiction under the Act, all jurisdictional conditions and procedural requirements need to be satisfied. In the absence of copy of reasons made available in spite of specific request, presumption would arise adverse to the Revenue on compliance of pre-requisites of s.147 & 151 of the Act. The re-assessment order framed under s. 147/143(3) is thus, liable to be quashed as rightly contended on behalf of the assessee.

18. At this juncture, we also however advert to the merits of the addition under s. 68 of the Act. It is pointed out on behalf of the assessee that it has neither claimed any short term capital gains nor claimed any exempt capital gain tax. Thus, the allegation that unaccounted money has been routed using penny stocks is *prima facie* bereft of any logic. The assessee has actually incurred business losses on the transactions in Banas Finance Ltd., a stock which is otherwise duly listed on the platform of the exchanges and transactions registered have been routed through SEBI registered stock brokers. The loss claimed has actually resulted in an outgo and depletion of funds. Hence the business loss by no stretch of imagination could fall within the expression 'unexplained cash credits'. The outgo/loss has resulted in a debit transaction rather than credit transaction. Hence, the additions made under s. 68 is impermissible in law at the threshold. We find apparent

rationality in the plea of the assessee for inapplicability of s. 68 of the Act to deny a business loss claimed to have occurred to the assessee. The assessee thus succeeds on this aspect as well.

19. In the light of delineation made, the plea of the assessee appears sound on all counts. We thus, set aside the first appellate order and quash the re-assessment order.

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

Order dictated and pronounced in the open Court on 19.02.2025.

**Sd/-**

**(SUDHIR KUMAR)  
JUDICIAL MEMBER**

*\*Amit Kumar, Sr.P.S\**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**Sd/-**

**(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR  
ITAT, NEW DELHI