

**| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"G" BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, HON'BLE VICE PRESIDENT**

**&**

**SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER**

**I.T.A. No. 2048 & 2049/Mum/2024**

**Assessment Years: 2013-14 & 2014-15**

<b>Graceunited Developers Private Limited</b> 704, Building No. 13A Siddharth Nagar, Khatau Mill Compound WE Highway, Borivali East Mumbai - 400066 <b>[PAN: AACCG6261E]</b>	Vs	<b>Income Tax Officer, Ward - (12)(2)(1), Mumbai</b>
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>

Assessee by :	Shri Suchek Anchaliya, C.A. & Vaishali More, C.A.
Revenue by :	Shri Bhangapatil Pushkaraj Ramesh, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 05/03/2025

घोषणा की तारीख /Date of Pronouncement: 12/03/2025

**आदेश/ORDER**

**PER NARENDRA KUMAR BILLAIYA, AM:**

I.T.A. No. 2048 & 2049/Mum/2024 are two separate appeals preferred against two separate orders of the NFAC, Delhi, dated 12/03/2024 pertaining to AYs 2013-14 & 2014-15.

2. Since common issues are raised in these appeals, they were heard together and are disposed off by this common order for the sake of convenience and brevity.

3. Vide Ground No. 1, the assessee has challenged the assumption of jurisdiction by the AO in reopening the assessment u/s 147 of the Act. It is the claim of the assessee that the assumption of jurisdiction is bad in law as the conditions laid down for initiating reassessment proceedings u/s 147 of the Act have not been fulfilled. With other grounds, the assessee has challenged the addition on merits of the case.

Since the challenge to the assumption of jurisdiction goes to the root of the matter, we adjudicate it first.

4. Representatives of both the sides were heard at length, case records carefully perused and the relevant documentary evidence brought on record, duly considered in the light of Rule 18(6) of the ITAT Rules, 1963.

5. Briefly stated, the facts of the case are that vide notice dated 31/03/2021 issued u/s 148 of the Act, the AO assumed jurisdiction for initiating reassessment proceedings within the meaning of Section 147 of the Act. The reasons recorded for reopening of assessment is identical in both the years and for AY 2013-14, it reads as under:-

**GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
INCOME TAX DEPARTMENT  
OFFICE OF THE INCOME TAX OFFICER  
WARD 12(2)(1), MUMBAI/**

To,			
GRACEUNITED DEVELOPERS PRIVATE LIMITED FLAT NO. 704 BUILDING NO. 13A .SIDDHARTH NAGAR, KHATAU MILL COMPOUND WE HIGHWAY, BORIVALI			
<b>PAN:</b> AACCG6261E	<b>Assessment Year:</b> 2013-14	<b>DIN &amp; Notice No:</b> ITBA/AST/E/143(2)_4/2021- 22/1033738764(1)	<b>Dated:</b> 28/06/2021

**Notice under section 143(2) read with section 147 of the Income-tax Act, 1961 ('Act')**

*Thank you for filing your return of income for Assessment Year 2013-14 in response to notice under section 148 of the Act, vide Ack. no. 345386641270421 on 27/04/2021.*

2. *While acknowledging the care and diligence you have taken in preparing the return, there are certain issues as mentioned below which need further clarification:-*

***Issues as per reasons recorded for reopening***

***/s. GRACEUNITED DEVELOPERS PRIVATE LIMITED  
PAN: AACCG6261E FOR A.Y 2013-14;  
REASONS FOR REOPENING***

**1. Brief details of the assessee**

*The assessee M/s. Graceunited Developers Private Limited PAN: AACCG6261E is a company having*

address at Flat No. 704, Building No. 13A, Siddharth Nagar, Khatau Mill, Compound, We Highway, Borivali, Mumbai-66. The assessee has filed its return of income for A.Y. 2013-14 on 27.09.2013 declaring total income of Rs.27,267/-.

**1. Brief Details of Information Collected/received by the AO:**

In this case information has been received through insight from Deputy Director of Income Unit-7(1) & 7(3), Mumbai that a search and survey action was conducted on a syndicate of persons led by Shri Naresh Jain & associates. During the course of search and seizure action, several incriminating documents, communications and digital data has been found, which led to unearth the operations of the syndicate, establishing clearly the modus operandi of providing Bogus Long Term Capital Gain (LTCCG)/Loss and rigging the price of various scrips on stock exchange for providing Bogus Long Term Capital Gain (LTCCG)/Loss.

Shri Naresh Jain was discovered to be operating with his several associates to rig the stock market and to provide accommodation entries (in the form of bogus LTCCG, bogus short term loss/gain) to various beneficiaries who intended to bring their unaccounted income into their books of account without paying taxes. Cash was deposited in various Dummy bank accounts and then layered through several pass - through bank accounts and then would reach the bank accounts linked to dummy trading accounts.

Shri Naresh Jain operating as the lynchpin of the syndicate had been instrumental in manipulating the prices of several penny stocks scrips on the stock exchange including the following, which were specifically analyzed in the run-up to the search action. The details of the penny stocks are as under:-

1. VMS Industries Ltd.
2. Aditya consumer Marketing Limited (ACML)
3. Steel Exchange Limited
4. Scan Steels Limited
5. Nyssa Corporation Ltd.
6. Diving Multimedia India Ltd ./Kaleidoscopic Films Ltd.
7. Shantanu Sheoray Aquakult ltd/52 Weeks
8. Aagam Capital Ltd. (Old Name: Shubhkam Capital Ltd.
9. Oasis Tradelink Ltd.
10. Monotype India Ltd.
11. Diamant Infrastructure Ltd.
12. Riddhi Steel & Tube Limited.

One of the beneficiaries who take accommodation entry/ies (in the form bogus LTCCG, bogus short term loss/gain) from is as under:

Sr. No.	Name of the Beneficiary	A.Y.	Amount (In Rs.)
1	Graceunited Developers Private Limited	2013-14	3,11,11,713/-

On verification of information it is seen that M/s. Graceunited Developers Private Limited PAN: AACCG6261E brings unaccounted Income into its books of account without paying taxes through accommodation entry in form of bogus long term capital gain or bogus short term capital gain form penny stock scrips.

**4. Finding of the AO:-**

From the information provided to this office, it is seen that M/s. Graceunited Developers Private Limited has received accommodation entry (in form of bogus Long Term Capital Gain/Loss or bogus

short term loss/gain) of Rs. 3,11,11,713/- from penny stock scrips. I have gone through the assessment records, profit & Loss accounts and Balance sheet it was found that this transactions has not been accounted for and not disclosed in return of income. Based on the information provided to this office and as per the analysis of information as stated above, it is seen that there is escapement of income resulting in underassessment.

1. *Basis of forming reason to believe and details of escarpment of Income:*

On the basis of the aforesaid details and analysis of information (para 2&3) and the consequent finding (para 4) stated above and after duly applying my mind I have reasons to believe that the assessee has not disclose fully and truly all material facts in the return of income. Therefore, I have reason to believe that income chargeable to tax exceeding above 1 lakh has escaped assessment within the meaning of section 147 of the IT Act 1961.

In view of the "Taxation and other laws" (Relaxation of certain provisions) ordinance 2020 and notification no. 35/2020 dated 24.06.2020, the applicability of provisions of sub-section (1) of section 151 of I. T. Act, 1961 stands extended from 31.03.2020 to 31.03.2021.

1. **Applicability of the Provisions of section 147/151 of the facts of the case:**

In this case since ROI was filed for relevant A.Y.- 2013-14 and No regular assessment u/s 143(3) was made, the provision of clause (b) of Explanation 2 to "Section 147 are applicable and the assessment year under consideration is deemed to be a case where income chargeable tax has escaped assessment is more than four years have elapsed from the end of assessment year under consideration. Hence, necessary sanction to issue notice u/s 148 is sought as per the provision of section 151(1) of the Income Tax Act, 1961.

3. In view of the above, you may submit your response with supporting documents (if any) on the above mentioned issues to undersigned electronically in 'E-proceedings' facility through your account in e-Filing website([www.incometaxindiaefiling.gov.in](http://www.incometaxindiaefiling.gov.in)) at your convenience on or before 13/07/2021

4. In course of assessment proceedings, if required specific questionnaire(s) or requisition(s) for information/document may be issued subsequently

5. A brief note on E- Proceeding is enclosed for your kind reference. In case you require any assistance in filing your response, you may contact toll free Call Centre number 1800 103 4215

6. Enclosure: As above."

6. We have carefully perused the aforementioned reasons recorded for reopening the assessment. We find that the very basis of reopening the assessment is based on erroneous facts. Firstly, the assessee has nowhere claimed any long term capital gains/loss in the alleged penny stocks and secondly, the list of the penny stocks mentioned in the reasons, the assessee has not done any transactions in those stocks and most importantly, the claim of the AO that no regular assessment u/s 143(3) of the Act was made is factually incorrect. The original assessment for AY 2013-14 was framed u/s 143(3) of the Act vide order dated 28/01/2016 and for AY 2014-15 vide order dated 26/12/2016.

Both the assessment orders are on record.

7. Notice u/s 148 of the Act has been issued after four years and, therefore, first proviso to Section 147 of the Act squarely applies, which reads as under:-

***“Income escaping assessment.***

***147. If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of [sections 148](#) to [153](#), assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in [sections 148](#) to [153](#) referred to as the relevant assessment year) :***

.....

***Provided that where an assessment under sub-section (3) of [section 143](#) or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under [section 139](#) or in response to a notice issued under sub-section (1) of [section 142](#) or [section 148](#) or to disclose fully and truly all material facts necessary for his assessment, for that assessment year:***

... ..

***Explanation 1.—Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.”***

***[emphasis supplied]”***

8. During the course of original assessment proceedings, specific queries were raised vide annexure to notice u/s 142(1) of the Act to which specific reply was filed vide letter dated 26/11/2015 in which the assessee has categorically mentioned that no exempt income was claimed during the year and furnished scrip-wise details of sale and

purchase along with quantitative details.

8.1. A perusal of the profit and loss account show that the assessee has shown revenue from operations which includes sale of shares. Nowhere the assessee has shown or claimed long term capital gain or has claimed set off of any loss from alleged long term capital gain/loss and rigging of the price of various scrips of stock exchange by the syndicate of persons engaged in providing bogus long term capital gain/loss to the beneficiaries. The assessee has raised specific objections challenging the reopening of assessment and in its objections, the assessee has brought to the notice of the AO that it is incorrect to say that no scrutiny assessment was made for the assessment years under consideration as this assertion is blatantly incorrect and far from the true facts as mentioned hereinabove, scrutiny assessment was made u/s 143(3) of the Act. Therefore, application of clause (b) to Explanation (2) of Section 147 of the Act is not applicable on the facts mentioned hereinabove.

8.2. As mentioned above, first proviso to Section 147 of the Act, squarely applies and there is not even a whisper of failure on the part of the assessee to disclose fully and truly, all material facts for assessment as the audited statement of accounts show the nature of business of the assessee which is trading in shares and the financial details furnished show the opening stock of these scrips purchased during the year as well as closing stock of the scrip at the end of the year. In the return of income, nowhere the assessee has claimed any income exempt from tax suggesting the claim of bogus long term capital gain.

9. On similar situation, the Hon'ble High Court of Bombay in the case of *TAO Publishing (P.) Ltd. vs. DCIT [2015] 370 ITR 135 (Bombay)* has *interalia* held as under:-

*"10. As stated above, the reasons supplied to the Petitioner do not disclose that there was any failure on the part of the Petitioner to provide all the material facts. That being the position, this ground could not have been taken up against the Petitioner at the time of disposing of the objections. Once this was not the basis for issuance of notice for Reassessment, it cannot be held against the Petitioner that the Petitioner had failed to make a true and full disclosure. It will have to be held that the Petitioner did not fail to make full and true disclosure of all material facts. The jurisdictional requirement for carrying out the reassessment, after the expiry of period of four years, is not fulfilled in the present case.*

*11. The learned counsel for the Petitioner also submitted that, in fact, there was no failure to disclose all material facts as the Respondent No.1 had specifically sought details as regard the relevant expenditure and which were furnished. He relied upon the decision of the Apex Court in the case of *Gemini Leather Stores v. ITO [1975] 100 ITR 1*, to contend that the duty of the assessee was to place on record all the primary facts and drawing of inference from the primary facts is upto the Assessing Officer. However, this issue need not be gone into in depth any further, as the Petitioner is entitled to succeed on the first ground mentioned above.*

*12. In the circumstances, the Petitioner is entitled to the reliefs prayed for in the Petition. It will have to be held that the Respondent No.1 had no jurisdiction to proceed with the impugned reassessment proceedings."*

10. Similarly, in the case of *Sound Casting (P) Ltd. vs. DCIT [2012] 250 CTR 119 (Bombay)*, the Hon'ble High Court of Bombay held as under:-

*"Held that the reopening of the assessment had admittedly taken place beyond a period of four years from the end of the relevant assessment year. There was no allegation in the reasons which had been disclosed to the assessee that there was any failure on his part to fully and truly disclosed material facts necessary for assessment for relevant assessment year. Hence, the jurisdictional condition for reopening the assessment beyond a period of four years had not been fulfilled. Even during the course of hearing, it had not been the submission of the revenue that there was any suppression of material facts on the part of the assessee. Therefore, the impugned notice was to be set aside."*

11. In another case of *First Source Solutions Ltd. vs. ACIT in [2021] 438 ITR 139 (Bombay)*, the Hon'ble Jurisdictional High Court, held as under:-

*"11. Therefore, when the assessment is sought to be reopened after the expiry of period of four years from the end of the relevant year, the proviso to section 147 stipulates a requirement that there must be a failure on the part of the assessee to*

*disclose fully and truly all material facts necessary for his assessment for that year. This stipulation does not govern a notice for reopening within a period of four years. In the case at hand, as noted earlier, there is not even a whisper about what fact was not disclosed. In our view, therefore, the notice to reopen under section 148 of the said Act itself was issued without jurisdiction. Consequently, the order passed also cannot be sustained."*

12. Considering the facts of the case in totality in the light of the judicial decision discussed hereinabove, we have no hesitation in setting aside the impugned notice u/s 148 of the Act and the resultant assessment order framed u/s 147 of the Act is hereby quashed. Since we have quashed the assessment order, we do not find it necessary to delve into the merits of the case.

13. In the result, both the appeals by the assessee are allowed.

**Order pronounced in the Court on 12<sup>th</sup> March, 2025 at Mumbai.**

**Sd/-**

**(SAKTIJIT DEY)  
VICE-PRESIDENT**

**Sd/-**

**(NARENDRA KUMAR BILLAIYA)  
ACCOUNTANT MEMBER**

Mumbai, Dated 12/03/2025

*S.S.P.*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER  
TRUE COPY

Assistant Registrar  
आयकर अपीलीय अधिकरण  
ITAT, Mumbai