

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH  
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.648/Mum/2024  
(Assessment Year :2012-13)**

Dharmil Anil Bodani 51, 5 <sup>th</sup> Floor ELCID CHS Ltd., Ridge Road Walkeshwar Mumbai – 400 006	Vs.	ACIT Circle 19(1) Matru Mandir, Tardeo Road Mumbai- 400 007
<b>PAN/GIR No.AACP3387K</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Rajiv Khandelwal (virtual)
Revenue by	Shri R.R. Makwana, Addl. CIT
<b>Date of Hearing</b>	<b>22/01/2025</b>
<b>Date of Pronouncement</b>	<b>25/03/2025</b>

**आदेश / O R D E R**

**PER AMIT SHUKLA (J.M):**

The aforesaid appeal has been filed by the assessee against order dated 15/12/2023 passed by NFAC / CIT(A) for the quantum of assessment passed u/s.143(3) r.w.s. 147 for the A.Y.2012-13.

2. In various grounds of appeal assessee has challenged-

- *Firstly*, the validity of reopening of assessment u/s.147;
- *Secondly*, addition of Rs.79,22,127/- made u/s.68 on account of alleged non-genuine transaction in respect of shares of M/s.Kyra Landscapes Ltd; and
- *Lastly*, addition u/s.69C of Rs.1,58,443/- on account of alleged commission on notional basis for accommodation entry.

3. The brief facts are that assessee has filed its return of income on 27/07/2012 declaring total income of Rs.76,24,160/- which was duly processed u/s.143(1). Later on, the assessee's case was reopened by issuance of notice u/s.148 dated 30/03/2019 after recording the following reasons dated 29/09/2019.

*“REASON OF RE-OPENING OF THE ASSESSMENT U/S 147 r.w.s 148*

*1 The assessee, Sri Dharmil Anil Bodani had filed the return of income for A.Y. 2012-13 on 27.07.2012 declaring total income of Rs 76.24 160/- which was processed u/s. 143(1) of the I.T: Act, 1961. An Information has been received from the ITO Ward 3(4). Sharanpur, Mumbai vide letter dated 18.04.2016. As per information the following BSE listed penny stock company has been used for generating bogus long term capital gain:*

Sr. No.	Full Name of Penny Scrip
1	<i>M/s Kyra Landscapes Ltd (Earlier known as TCL Technologies Ltd. and later on as M/s Aricent Infra Ltd.)</i>

2. As per the information received during the course of assessment proceedings in a case it was found that a penny stock viz. M/s Kyra landscapes Ltd. (Earlier known as TCL Technologies Ltd. and later on as M/s Aricent Infra Ltd.) was used by various beneficiaries to convert their undisclosed income (black money) into tax exempt long term capital gain(LTCG) by first purchasing shares through preferential placement (Rs. 10/- per share at nominal value) and later on selling them at rates which marked upto 15-20 times of the purchase price on the BSE to bogus entities after the lock in period ended. This was nothing but a meticulously planned exercise to evade tax and generate white money without paying any tax. The assessee is one of those beneficiary. The assessee purchased 3.40 lacs no. of shares at Rs. 10/- per share in December 2010 and started selling the scrip after the mandatory lock in period of 12 months (being preferentially placed shares). The assessee has used this edifice to convert his unaccounted mney into tax exempt long term capital gain. The assessee has traded in the scrip for Rs. 3,98,17,137/- during FY 2011-12 relevant to AY 2012-13.

3. As per the information available on record, the assessee sold shares of the penny stock companies M/s Kyra landscapes Ltd. for Rs. 3,98,17,137/- and had claimed the profit thereon as income from long term capital gains and has claimed it as exempt. It may be noted that during the period from which the assessee purchased the share and the date on which the shares were sold there were no noteworthy profits shown by the company that could raise prices of the shares by more than 1000% Neither the turnover of the company had Increased substantially nor there was any special achievements by the company to justify huge price rise. The basic aim of this dubious scheme was to route the

*unaccounted money of the beneficiary into their account/books in the garb of Long Term Capital Gain.*

*4. In view of the above facts and circumstances of the case it may be noted there is no logical explanation available which could satisfactorily explain such steep as well as unreasonable LTCG. Therefore, after application of my mind, I have reason to believe that income of the assessee, chargeable to tax for the assessment year 2012-13 amounting to at least Rs. 3,98,17,137/- and any other income which comes to my knowledge subsequently has escaped assessment due to failure on the part of the assessee to disclose fully and truly all material facts in this case in terms of provisions of section 147 of the L.T. Act, 1961.*

4. Later on, there was a change in the incumbency and another AO once again provided the reasons recorded for reopening vide letter dated 09/10/2019 which was exactly the copy of same reasons recorded. In response to said notice, assessee filed his return of income on 10/04/2019 and requested the AO to provide reasons for reopening the assessment. After getting the reasons recorded assessee filed an objection before the AO vide letter dated 15/10/2019 and in the said objection assessee had specifically stated that, first of all, the said allegation made in the reasons are baseless and incorrect on facts because the total value of sale of shares transacted in the relevant F.Y. 2011-12 (A.Y.2012-13) was only Rs.79,22,136/- and not Rs.3,98,17,137/- Further, assessee has also stated that in the return of income filed for A.Y.2012-13 on 27/07.2012 assessee had duly disclosed long term capital gain at Rs.71,72,136/- on the sale of shares of M/s. Kyra Landscapes Ltd., The relevant portion of reply is reproduced hereunder:-

*“In this context it is submitted that the said allegation is baseless and unwarranted on the facts of the case. At the outset please note total value of trade done in FY 11-12 is only Rs. 79,22,136/- and not Rs.3,98,17,137/- as alleged in reasons for reopening. Assessee has filed the return of Income for AY 2012-13 on 27th July 2012 and while filing the return of income, the assessee had duly disclosed long term capital gain at Rs. 71,72,136/-, on the sale of said shares which has been claimed exempt U/s 10(38) of the income tax act 1961. The same were sold by assessee through the registered stock brokers in the recognized stock exchange and Securities transaction tax have been paid on the same. Further, such transactions are supported by contract notes, ledgers, and other evidences. Receipt in respect of such sale transactions were settled through proper banking channels. Therefore alleging that the income to the extent of Rs. 3,98,17,137/-has escaped the assessment is without substance.*

*2. Assessee had purchased said shares from company at face value of Rs. 10/- in December 2010 Payment for the same was made through proper banking channel and duly disclosed in books of accounts*

*3. Further prior to recording of the reasons and re-opening the assessment, assessing officer is required to apply his independent mind on the information received by him from the third party. whether actually income has escaped or not. But it appear from the reasons recorded, the case is reopened without application of independent mind by the AO on the fact of the case and it is totally based on the information received from ITO Ward 3(4) Sharanpur.”*

*5. Thereafter, assessee relied upon the judgment of Hon’ble Jurisdictional High Court in the case of Hindustan Lever Ltd., vs. DCIT reported in 137 Taxman 479; Prashant Joshi vs. ITO reported in 324 ITR 154; and Indivest Pte Ltd. vs. Addl.*

Commissioner of Income Tax reported in 350 ITR 120. Thus, it was categorically objected that there is a factual error and there is no application of mind and therefore, entire notice is bad in law. Despite this specific objection, the AO did not dispose of the assessee's objection and neither it is discernable from the assessment order that AO has dispose of the objection filed by the assessee. The assessee has also taken this specific plea before the Id. CIT (A) that, *firstly*, the reasons recorded is based on borrowed satisfaction; *secondly*, the notice has been issued based on wrong assumption of facts and incorrect reasons; and *lastly*, the objections filed by the assessee has not been disposed of by the Id. AO which was mandatory requirement as per law as laid down by the Hon'ble Supreme Court in the case of GKN Driveshaft Ltd., vs. ITO reported in 259 ITR 19. However, the Id. CIT (A) has rejected the said submissions of the assessee after quoting certain decisions and the proposition laid down therein which was on general principles of reopening and was not even remotely connected to the facts of the assessee's case or specific objection raised by the assessee; and held that information received from ITO was based on detailed investigation carried out by the department, hence, there was a prima facie belief based on this information that income had escaped assessment.

6. We have heard both the parties at length on the legal issue and also perused the relevant finding given in the impugned order as well as material referred to before us. As stated above and is also evident from the reasons recorded communicated twice by the Id. AO, one on 29/09/2019 and other on

09/10/2019 that there was certain information received from ITO Ward(E)-4, Sharanpur, Mumbai vide letter dated 18/04/2016. As per the information there was a penny stock company, named M/s. Kyra Landscapes Ltd. (earlier known as TCL Technologies Ltd.) and as per the information assessee was also one of the beneficiaries who had purchased 3.40 lakhs number of shares at Rs.10/- per share and assessee has traded in scrip for Rs.3,98,17,137/- during the F.Y.2011-12 relevant A.Y.2012-13 and accordingly, an amount of Rs.3,98,78,137/- had escaped assessment. First of all, the ld. AO has simply referred to the information received from ITO and without applying his mind and verifying the record of the assessee, simply based on borrowed satisfaction has issued the notice without even verifying whether assessee had actually sold shares to the tune of Rs.3,98,17,137/- during the relevant assessment year or not. He has even failed to peruse the return of income filed originally wherein assessee has declared long term capital gain of Rs.71,72,136/- on the total sale consideration of Rs.79,22,137/-. This clearly shows that ld. AO has not even verified the return of income of the assessee which was on record and has blindly issued the notice u/s.148 based on incorrect figures reported in the information received from another ITO. Any information received from Investigation Wing or from another Officer can be the triggering point, however, it is incumbent upon the AO to verify the records of the assessee and after verifying he has to arrive at his own reason to believe based on material or information in his possession and then only he

can acquire jurisdiction to issue a notice u/s.148 to reopen the assessment. The Hon'ble Jurisdictional High Court in the case of **PCIT vs. Shodiman Investments Pvt. Ltd., reported in 422 ITR 337** (Bom) held that the reasons must indicate the material which forms the basis of reopening the assessment and the reasons should evidence the linkage / nexus to the conclusion that income chargeable to tax has escaped assessment. There has to be a rational connection with the formation of belief and if the aforesaid requirements are not made, reopening u/s.147 cannot be upheld. In that case the reopening was done on the basis of information received from DIT (Investigation) about a particular entity entering into suspicious transaction. However, that material was not further linked by any reason to come to the conclusion that assessee has indulged in any activity which could give rise to reason to belief on the part of the AO that income chargeable to tax has escaped assessment. The relevant observation reads as under:-

*“13. In this case, the reasons as made available to the Respondent- Assessee as produced before the Tribunal merely indicates information received from the DIT (Investigation) about a particular entity, entering into suspicious transactions. However, that material is not further linked by any reason to come to the conclusion that the Respondent-Assessee has indulged in any activity which could give rise to reason to believe on the part of the Assessing Officer that income chargeable to tax has escaped Assessment. It is for this reason that the recorded reasons even does not indicate the amount which according to the Assessing Officer, has escaped Assessment. This is an evidence of a fishing enquiry and not a reasonable belief that income chargeable to tax has escaped assessment.*

14. Further, the reasons clearly shows that the Assessing Officer has not applied his mind to the information received by him from the DDIT (Inv.). The Assessing Officer has merely issued a re-opening notice on the basis of intimation regarding re-opening notice from the DDIT (Inv) This is clearly in breach of the settled position in law that re- opening notice has to be issued by the Assessing Office on his own satisfaction and not on borrowed satisfaction.”

7. Here in this case there is no linkage between information received by the ld. AO from another ITO because the information pertain to some alleged transaction of shares for Rs. 3,98,17,137/- wherein the fact of the assessee was that he has not done any such transaction of that amount and AO based on this information has held that income chargeable to tax has escaped assessment for the amount of Rs.3,98,17,137/-. This shows that there is absolutely no application of mind and entire reasons is based on borrowed satisfaction. It is also well settled law that if the reopening is based on defective reasons or incorrect / wrong assumption of facts, the same is unsustainable in law. Reference can be made to following jurisdictional High Court judgments:-

- Tata Sons Limited vs DCIT [2022] 137 taxmann.com 414 (Bombay HC)
- Anwar Mohammed Shaikh vs ACIT [2023] 148 taxmann.com 288 (Bombay HC)
- Arvind Sahdeo Gupta vs ITO [2023] 153 taxmann.com. 244 (Bombay HC)
- Amarjeet Thapar v. ITO (2019) 411 ITR 626 (Bom) (HC)

Thus, on this ground also the reasons recorded cannot be sustained.

8. *Lastly*, here in this case assessee has filed detailed objections before the AO highlighting that reasons contain incorrect assumption of facts and despite filing such objection ld. AO has not disposed off the objection and even in the two subsequent show-cause notice issued u/s.142(1) also, AO continued to allege that income escaped assessment is Rs.3,9817,137/-. If assessee files objection, then it is mandatory for the AO to dispose of the objections and this principle has been affirmed by the Hon'ble Bombay High Court in the following judgments:

- **Rabo India Finance Ltd. v DCIT [2012] 346 ITR 81 (Bombay HC)**
- **Bayer Material Science v DCIT [2016] 66 taxmann.com 335 (Bombay HC)**

9. Thus, it has been held that if AO has not disposed of the objections, then he cannot proceed further and pass the assessment order and consequently the order of reassessment is invalid. Accordingly, in view of the aforesaid three grounds, the impugned notice u/s.148 dated 30/03/2019 and the reasons recorded are held as *void ab initio* and accordingly, entire reassessment proceeding and order is quashed.

10. Since we have quashed the assessment on legal ground therefore, the merits of the additions are not adjudicated upon as the same has become purely academic.

**11. In the result, appeal of the assessee is allowed on legal grounds.**

Order pronounced on 25<sup>th</sup> March, 2025.

**Sd/-**  
**(GIRISH AGRAWAL)**  
**ACCOUNTANT MEMBER**

Mumbai; Dated 25/03/2025  
KARUNA, *sr.ps*

**Sd/-**  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**