

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA No. 577/DEL/2019
Assessment Year: 2010-11

Sumita Singhal, 149, Tarun Enclave, Pitampura, Delhi PIN 1100 34 PAN No. ACOPS9544H	Vs.	Income Tax Officer, Ward 17(4), New Delhi
(Appellant)		(Respondent)

Assessee by:	Shri R.R. Singhla, CA
Department by:	Shri Sahil Kumar Bansal, Sr. DR
Date of Hearing:	23.04.2025
Date of pronouncement:	29.04.2025

ORDER

PER VIMAL KUMAR, JUDICIAL MEMBER:

The appeal filed by the appellant/assessee is against order dated 20.12.2018 of the Learned Commissioner of Income-Tax(Appeals)-6, Delhi (hereinafter referred as 'Ld. CIT(A)') arising out of assessment order dated 22.12.2017 under Sections 147 r.w.s. 143(3) of the Income-Tax Act, 1961 (hereinafter referred as "the Act") by the Income Tax Officer, Ward 17(4), New Delhi (hereinafter referred as "Ld. AO") for assessment year 2010-11.

2. Brief facts of the case are that an information was received from Pr.DIT(Inv.) Kolkata that Ashok Kumar Kayan and Sunil Kumar Kayan, share brokers at the CSE and BSE were involved in providing bogus LTCG through penny stocks. A survey was conducted in the premise of Ashok Kumar Kayan and its was found he was involved in providing accommodation entry in the form of bogus long term capital gains in connivance with entry operators and promoters of scrips at Calcutta Stock Exchange as well. He named penny stocks at BSE and CSE which were used for the purpose of providing accommodation entry in the form of Long term capital gains. Ten penny stocks were identified which were used for purpose of providing bogus LTCG at the CSE. The Directorate of Investigation has also covered other share brokers under Sections 131 or 133A of the Act who were involved in providing accommodation entry in the form of bogus LTCG. In this exercise, it was also found that the brokers were active at the CSE for the same purpose. On further analysis of trade data taken from the Calcutta Stock Exchange, it was found that the above mentioned brokers traded in the 9 penny stocks at the platform of CSE for providing bogus LTCG to clients. It is known that out of the total trade volume at the platform of CSE for these

9 scripts more than 85% of the trade has been carried out by these 10 brokers. Apparently, from the trade patterns it is evident that while trading is done in a time in synchronised way, it has also been observed that trading is one in a syndicate which comprises of promoter of the company/stock, broker and entry operators. Though on SEBI's directions, CSE has stopped trading on C-Star (the fully computerised online system) since 2013, yet trading in all penny stocks prior to that period have yielded huge long term capital gains to the beneficiaries and it is very much possible that the assessee would have taken it as exempt/income under Section 10(38) of Act. The assessee has invested in scrip i.e. Shardaraj Tradefin Ltd. and claim LTCG of Rs. 2,17,200/- and on the perusal of ITR filed by the assessee for the assessment year 2010-11, it reveals that the assessee has shown income of Rs. 2,07,486/- and tax liability created of Rs. 1,801/- which shown that the financial position is not very sound.

3. After recording the reasons and taking necessary approval from the Pr. CIT, notice under Section 148 Act dated 28.03.2017 was issued. Shri R.R. Singla, CA and Learned Authorised Representative of the assessee attended proceedings and filed Power of Attorney. He also submitted that the return filed under

Section 139 dated 31.03.2011, declaring taxable income at Rs.2,07,486/- may be treated as return in response to Notice issued u/s 148. Assessee vide letter dated 05.06.2017 had filed her objection for re-opening of assessment proceedings which were duly disposed off vide letter dated 16.08.2017. Notice under Sections 143(2) and 142(1) with detailed questionnaire dated 16.08.2017 was issued and served upon the assessee. In response to the same, Ld. AR has submitted vide letter dated 31.09.2017 that the assessee was engaged in the business activities of Retail Business which has been closed. Gross Receipts from the business were Rs.7,25,500/- and Net Profit was Rs.57,200/-, no accounts were being maintained in view of the provisions of section 44AF of the Income Tax Act, 1961 along with Acknowledgment of ITR, Computation of Income, Bank Statement with HDFC Bank, Copy of Contract Note of Mr. Ashok Kumar Kayan and D-mat account statement with HDFC Bank. On perusal of Return filed by the assessee, it was observed by the Ld. AO that the assessee is Director of M/s MSG Enterprises Private Limited and hence case of the assessee was transferred to Ward 17(4), New Delhi on 07.09.2017. Notice under Section 133(6) was issued to Mr. Ashok Kumar Kayan who had filed the

incomplete reply vide letter dated 15.11.2017 in which only the ledger account of the assessee was submitted. No details of the specific queries raised by this office have been submitted. The details asked from Mr. Ashok Kumar Kayan through notice issued under Section 133(6) of the Act were produced before the Ld. Assessing Officer.

4. Assessee vide letter dated 27.11.2017 had again raised her objections for re-opening of the case which were duly disposed off vide Final Show Cause Notice dated 24/29.11.2017.

5. The assessee filed letter dated 01.12.2017 referring that assessee could not able to trace the salary certificate and also filed justification regarding the Long Term Capital Gains. Ld. AO vide order dated 22.12.2017 made additions of Rs.2,17,200/- and Rs.10,860/-.

6. Against order dated 22.12.2017, appellant/assessee preferred appeal before the Ld. CIT(A) which was dismissed vide order dated 20.12.2018.

7. Being aggrieved, appellant/assessee has preferred present appeal.

8. Learned Authorised Representative for the appellant/assessee submitted that Ld. CIT(A) erred in upholding the assessment order and reopening of assessment, even though, no reasons were recorded by the Ld. AO himself. Ld. ITO, Ward 40(3) who recorded reasons has no jurisdiction of the assessee. Even if, Ld. AO had assumed jurisdiction on transfer of case was without following the prescribed legal procedure by the law. Ld. AO failed to comply with the said procedure of law for disposal of objections against reassessment proceedings. Reliance was placed on order dated 23.06.2022 in ITA No.958/Del/2021 titled as 'Hari Das Singhla, Delhi Vs. ITO in which similar assessment order was set aside.

9. Learned Authorised Representative for Department of Revenue relied on orders of departmental authorities.

10. From the examination of record in the light of aforesaid rival contentions, it is crystal clear that ITO, Ward 40(3), New Delhi issued notice dated 28.03.2017 under Section 148 of the Act accompanied by reasons dated 24.03.2017. Assessee raised objections dated 05.06.2017 which were rejected on 16.08.2017. ITR Verification Form for assessment year 2010-11 mentions Designation of A.O as "ITO, Ward 25(1)".

11. A Co-ordinate Bench of the ITAT, New Delhi in ITA No.958/Del/2021 dated 23.06.2022 in para nos. 5 and 6 has observed as under:

“5. I have heard the rival contention and gone through the record. Admittedly, no notice was issued by the concerned ITO-Ward-50(4) to the assessee before proceeding to frame the assessment. Any notice issued by ITO, Ward-37(4) being without jurisdiction has no legal sanctity. The issue is squarely covered by the decision of the Co-ordinate Bench of the Tribunal in the case of Mukesh Kumar vs ITO in ITA No.2358/Del/2012, order dated 12.06.2015. The relevant part of the order is reproduced hereunder:- “5. We perused the relevant material on record. In the present case the notice u/s 148 was issued on 2nd March 2009 by ITO Ward-26(4) New Delhi. After receipt of notice the appellant had responded through its authorized Representative and submitted the copy of the return filed under provisions of section 139. After noticing that the jurisdiction over the appellant is vested with ITO Ward-26(3), the file was transferred by ITO Ward-26(4) to ITO Ward - 26(3). The ITO Ward-26(3), New Delhi had proceeded 3 | Page ITA No. 958/Del/2021 4 | Page with the framing assessment without issuing fresh notice u/s 148. It means that ITO Ward-26(4), New Delhi had no valid jurisdiction over the appellant, at the time of issuing notice u/s 148 of the Act. In such circumstances, it was held by the Hon'ble Allahabad High Court in the case of CIT Vs. M/s MT Builders Pvt. Ltd., (2012) 349 ITR 271 (All.) that the notice issued by an Officer who had no valid jurisdiction over the assessee is invalid. The notice under Section 148 of the Act issued by the Income Tax Officer, Ward-26(4) is non est in the eyes of law since he had no valid jurisdiction over the appellant either territorial as notified under Section 124 of the Act or by transferring the case under the provisions of Section 127 of the Act. Now, the question is whether the action of the Income Tax Officer, Ward-26(3) New Delhi was valid in law in concluding the assessment proceedings based on the notice issued under Section 148 of the Act by the Income Tax Officer, Ward26(4)

who had no valid jurisdiction to issue the notice. The issue of valid jurisdiction is a condition precedent to the validity of any assessment under Section 147 of the Act; therefore, the assessment made pursuant to such notice is bad in law. In support of this proposition we rely upon the cases of Hon'ble Apex Court in the cases of Y. Narayana Chetty Vs. ITO, 35 ITR 388, 392 (SC); CIT Vs. Maharaja Pratap Singh Bahadur, 41 ITR 421 (SC); and CIT Vs. Robert, 48 ITR 177 (SC). In the light of the above settled principle of law, we have no hesitation to quash the reassessment proceedings since there was no valid notice pursuant to which the reassessment proceeding was made in the present case. Accordingly, the appeal filed by the appellant is allowed.” 6. In view of this, the assessment framed by the ITO, Ward-50(4) being bad in law for want of issue of notice u/s 148 of the Act is hereby quashed and consequential addition stands deleted.”

12. In view of above material facts, respectfully following the above-mentioned judicial precedents, the grounds of appeal are allowed and impugned orders dated 27.12.2017 passed by the Ld. AO and 20.03.2019 of Ld. CIT(A) are set aside.

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

Order pronounced in the open court on 29/04/2025.

Sd/-

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

Sd/-

**(VIMAL KUMAR)
JUDICIAL MEMBER**

**Dated: 29/04/2025
Mohan Lal**

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi