

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B': NEW DELHI**

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.2393/Del/2024
(ASSESSMENT YEAR 2013-14)

Cellcap Invofin India Pvt. Ltd., A-60, Naraina Industrial Area-1, New Delhi-110028 PAN-AAACC41024 (Appellant)	Vs.	ACIT, Central Circle-26, New Delhi. (Respondent)
--	-----	--

Assessee by	Shri Amandeep Mehta, Adv.
Department by	Shri Rajesh Kumar Dhanestha, Sr. DR
Date of Hearing	25/03/2025
Date of Pronouncement	02/05/2025

ORDER

PER MANISH AGARWAL, AM:

This is an appeal filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-29, New Delhi [CIT(A), in short], dated 20.03.2024 in appeal No. 10135/12-13 passed u/s 250 of the Income Tax Act, 1961 (the Act, in short) for Assessment Year 2013-14.

2. Brief facts of the case are that assessee company is engaged in the business of making investment in telecom sector and related ventures and to promote the formation and mobilization of capital

investment on behalf of its promoters. The return of income was filed on 28.09.2013 declaring total loss of Rs.1,43,63,227/-. The assessment u/s 143(3) of the Act was completed on 17.03.2016 wherein loss declared by the assessee was accepted. Thereafter, based on the information available in insight portal, the case of the assessee was reopened on the allegation that the assessee has obtained bogus fictitious loss by trading in shares of penny stock company namely M/s Stampede Capital Ltd. of Rs.44,12,308/-. Thereafter in the order passed u/s 143(3)/ 147 of the Act, loss claimed from the trading of shares in M/s Stampede Capital Ltd. of Rs. 44,12,308/- was added as 'Income from Other Sources' in the hands of assessee by invoking the provisions of section 68 of the Act. The AO also holds the company M/s Stampede Capital Ltd. as a penny script. Against this order, the assessee preferred an appeal before the Ld. CIT(A) who dismissed the appeal of the assessee, thus, the assessee is in appeal before the Tribunal by taking following grounds:

"1. The Ld. CIT(A) has erred both in law and on facts in confirming loss of the appellant firm at Rs.96,86,180/- as against the returned loss of Rs. 1,43,63,227/- in the order of assessment dated 24.03.2022 under section 147 of the Income Tax Act, 1961.

2. The Ld. CIT(A) has erred on facts and law in disregarding the material on record and not appreciating that the Appellant and Stampeded Capital Limited are not related parties nor known to each other.

3. The Ld. CIT(A) has erred in law and on facts and circumstances of the case in holding that the Assessee's investment in Stampede

Capital Limited, which was made through an independent SEBI registered broker, is a sham transaction without any document on record.

4. The Ld. CIT(A) has erred both in law and on facts in confirming that Long Term Capital Gain claimed u/s 10(38) of Rs. 44,12,308/- is bogus and adding it to the income of the appellant u/s 68 of the Act.

5. The Ld. CIT(A) has erred on facts in confirming that a commission of Rs.2,64,738/- has been paid by the Appellant without any material on record.

6. The Ld. CIT(A) erred in law and on facts and circumstances of the case in holding that the Appellant paid any commission for acquiring accommodation entry and adding it to the income of the appellant u/s 69C of the Act.

7. The Ld. CIT(A) erred in law and on facts and circumstances of the case in holding that Section 69C of the IT Act is applicable in the present case.

8. The Ld. CIT(A) erred in law and on facts and circumstances of the case in upholding the reopening the assessment u/s 148 of the IT Act.

9. The Ld. CIT(A) has erred on facts and in law in not appreciating that the reopening of assessment u/s 148 is bad in law as it constitutes a change of opinion as the original assessment u/s 143(3) was completed on 17.03.2016 after proper verification of the exemptions claimed by the appellant.

10. The learned CIT(A) has erred in the law and on facts of the case in upholding the wrongly calculated loss on account of sale of Shares of M/s Stampede Capital Ltd of Rs. 44,12,308/- instead of Rs.41,61,896/- as per the documents on records.

11. The appellant craves leave to add, modify, or alter any of the grounds of appeals either before or during Appellate Proceedings.”

3. We first take up grounds of appeal No.8 & 9 wherein the assessee has challenged the reopening of the completed assessment being made with any fresh material and is mere change of opinion.

4. Before us, ld.AR of the assessee argued that in the instant case the assessment was originally completed u/s 143(3) where the assessee had filed all the relevant documents in support of loss claimed in the return of income such as copies of ledger accounts of purchase and sales of scrips having full details of shares traded alongwith the contract notes issued by the broker which are available in paper book pages 46 to 58. The AO after considering them, had accepted the loss declared by the assessee without raising any doubts about any transaction carried out by the assessee. Thereafter, without showing as to how and in what manner the assessee failed to disclose truly and fully all martial facts, the completed assessment has reopened, thus the basic requirements of section 147 are not fulfilled. To confirm these facts, an affidavit of the Director of the assessee company is filed before us which read as under:



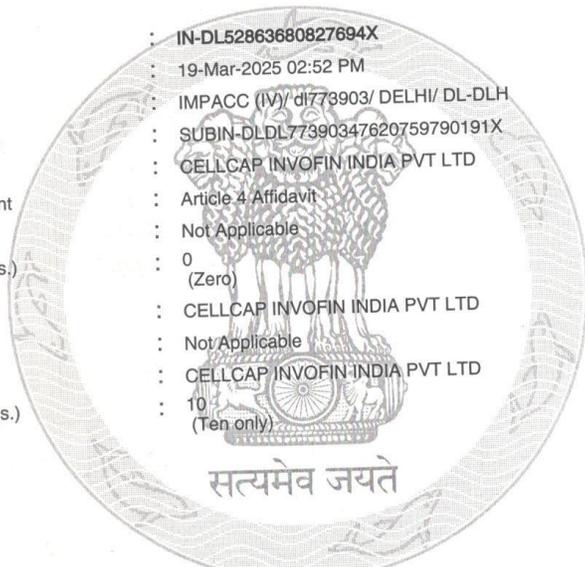
INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

₹10

e-Stamp

Certificate No.	: IN-DL52863680827694X
Certificate Issued Date	: 19-Mar-2025 02:52 PM
Account Reference	: IMPACC (IV)/ di773903/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL7390347620759790191X
Purchased by	: CELLCAP INVOFIN INDIA PVT LTD
Description of Document	: Article 4 Affidavit
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: CELLCAP INVOFIN INDIA PVT LTD
Second Party	: Not Applicable
Stamp Duty Paid By	: CELLCAP INVOFIN INDIA PVT LTD
Stamp Duty Amount(Rs.)	: 10 (Ten only)



₹10 ₹10 ₹10 ₹10



₹10

Please write or type below this line

IN-DL52863680827694X

AFFIDAVIT

Case:- Cellcap Invofin India Pvt. Ltd. for the Assess. Year – 2013-14



CELLCAP INVOFIN INDIA PVT. LTD.
[Signature]
Director

Statutory Alert:

1. The authenticity of this Stamp certificate should be verified at 'www.shclsestamp.com' or using e-Stamp Mobile App of Stock Holding. Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

E-Stamp Certificate No.- IN-DL52863680827694X

AFFIDAVIT

I, AJAY KHANNA, son of Late Shri Banwari Lal Khanna, aged about 68 years resident of A-9, Ring Road, Naraina Vihar, New Delhi-110028, do hereby solemnly affirm and state as under:

1. That I am the Director/authorized signatory of the Appellant and in that capacity, I am fully conversant with the facts and circumstances of the present case and competent to depose by way of this affidavit.
2. That the documents placed on record before the Assessing Officer in the reassessment proceedings, forming the subject matter of the present Appeal, as regards the sale and purchase of scrips, were also part of the original assessment record, wherein the Department had accepted the Appellant's return of income.
3. That the sale and purchase ledger signifying trading in M/s. Stampede Capital Pvt Ltd., appearing at Pages 57 and 58 of the Paperbook filed on 13.11.2024, were also a part of the original assessment record.
4. That the aforesaid ledger was resubmitted to the Assessing Officer during the course of reassessment proceedings vide reply dated 04.02.2022, along with other relevant documents. The same ledger forms Page 16 to 18 of the Paperbook filed on 18.03.2025.
5. That the loss incurred upon the sale of shares of M/s. Stampede Capital Pvt Ltd. to the tune of Rs. 41,61,896 was declared by the Appellant in its return of income, and thereby, in the absence of any documents or evidence confronted to the Appellant as regards the alleged escapement of income to the tune of Rs. 44,12,309, no income chargeable to tax has escaped assessment.

Cont.... Page- 02

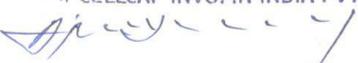


For CELLCAP INVOFIN INDIA PVT. LTD.
[Signature]
Director

E-Stamp Certificate No.- IN-DL52863680827694X

: Page-02 :

- 6. That the Appellant had not directly traded with M/s. Stampede Capital Pvt Ltd.; instead, the purchase and sale of shares were carried out through a recognized stock exchange and a SEBI-registered broker.
- 7. That I am making the present affidavit in compliance with the Hon'ble Tribunal's directions.
- 8. That the contents of the present affidavit are true and correct to the best of my knowledge and belief, and no part of it is false nor has anything material been concealed therefrom.

For CELLCAP INVOFIN INDIA PVT. LTD.

 DEPONENT Director

VERIFICATION

Verified at **New Delhi** on this **24th day of March 2025** that the contents of the affidavit are true and correct to the best of my knowledge and belief. No part of it is false and nothing material has been concealed therefrom.

For CELLCAP INVOFIN INDIA PVT. LTD.

 DEPONENT Director

I Identified the deponent who has signed in my presence.



CERTIFIED THAT THE DEPONENT
 Shri/Smt/Km *Ajay Chandra* Aged.. 68..
 S/o, W/o, D/o... *Banwanilal Chandra*
 R/o... *179 Ring Road Narain, New Delhi*
 Identified by *Suk* *(13)*
 has signed on: *24/3/2025*
 that the contents of the affidavit have been read & explained to him and are true and correct to his knowledge.

24 MAR 2025 Notary Public, Delhi

5. The Ld. AR placed reliance on the judgment of Hon'ble Bombay High Court in the case of Infinity.com Financial Securities vs. ACIT, wherein it is held that reopening of assessment cannot be sustained when the issue has already been examined during the scrutiny. He further placed reliance on the Hon'ble Jurisdictional High Court in the case of Sashi Mohan Garg vs. ITO reported in 157 Taxmann.com 549 (Del.) wherein the Hon'ble High Court has held that the reassessment proceedings were triggered against the petitioner without application of mind solely on the basis of information received from Kolkata Division of Investigation Wing, therefore, notice issued u/s 148 was quashed by the Hon'ble Court. The Ld. AR further submitted that during the year under appeal assessee has traded in multiple stocks, including Stampede Capital Pvt. Ltd., and majority of shares were sold. Ld. AR also submitted that the AO without even reconciling the information available in insight portal with the details already available had alleged that assessee had sold entire shares purchased of the company Stampede capital ltd. The assessee has stock of 16155 shares having value of Rs. 17,77,050/- as at 31.3.2013 which fact though was observed by AO himself at page 1 of the order however, has ignored the same by observing that as per the information available in insight portal, assessee had sold all the shares. AS per ld.AR this action of the AO shows the non-application of mind while reopening the assessment. In last ld. AR stated that it is the business of the assessee and genuineness of the transactions were proved by filing all the evidences before the AO

during assessment proceedings u/s 143(3), therefore, it submitted that the notice issued u/s 148 is mere change opinion and deserves to be quashed.

6. On the other hand, the Ld. SR. DR vehemently supported the orders of the lower authorities and submit that there was information with the Assessing Officer that the company Stampede Capital Pvt. Ltd. is a penny script company and the information was come to the notice of the Assessing Officer after completion of the assessment u/s 143(3) and, therefore, the action of AO in reopening the assessment u/s 148 is correct and he prayed for the confirmation of the same.

7. We have heard the rival submissions and perused the materials available on record. From the perusal of the assessment order from page 3 to 25, we find that the Assessing Officer has reproduced the information available in insight portal of the department with respect to the company M/s Stampede Capital Pvt. Ltd which described the back ground of the company, its' shares holding pattern, analyses of the trade etc. are given. Thereafter, general modus operandi was discussed which is not applicable to the present case as assessee has purchased and sales through online mode, thereafter, the certain name of the beneficiaries were reproduced which do not contain the name of the assessee and in the last, the Assessing Officer based on which such enquiry had held on company M/s Stampede Capital Pvt. Ltd is penny stock company and disallowed the loss claimed by the assessee. It is relevant to state that all such information mainly related to AY 2015-16. From the paper book filed by the assessee, it

is seen that during the assessment proceedings, the assessee has filed all the details with respect to the purchase and sale of the shares and filed the broker contract notes in the reply given to the Assessing Officer which are available in the PB 55 to 58 of the PB. The Assessing Officer while completing the assessment u/s 143(3) has applied his making and allowed the loss after making verification all these facts, therefore, it cannot be said that assessee has not truly and fully disclosed of material facts necessary for the assessment before us Assessing Officer more particularly when the case of the assessee is reopened after the expiry of the four years from the end of the relevant assessment years.

8. The Hon'ble Delhi High Court in the case of the Harsh Vardhan Bansal vs. ACIT reported in 168 Taxmann.com 188 has held as under:

“Section 10(38), read with section 148, of the Income-tax Act, 1961 Capital gains - Income arising from transfer of long-term securities (Penny stock) - Assessment year 2013-14 Assessee reflected income from transactions in penny stocks as capital gains - Assessing Officer issued reopening notice against assessee - It was noted that impugned notice merely alleged that assessee had taken bogus profits through scrips which was a penny stock -However, there was no material or evidence to suggest that transactions in penny stocks were bogus - Whether, therefore, impugned reopening notice issued against assessee was not valid - Held, yes [Paras 19 to 23] [In favour of assessee]”

9. In the instant case, the entire case of the Revenue rests on Information available in insight portal which was collected in some other cases and nowhere, it was established that the assessee was part of the beneficiary. Further the AO has failed to appreciate the fact that the assessee was having closing stock of Rs. 17,77,050/- of

16155 shares of Stampede Capital Ltd. however, the AO has included this stock in the sale and loss thereon. Clearly there is no basis with the AO to support the allegation that the transaction of purchase and sale of shares of M/s Stampede Capital Pvt. Ltd made by the assessee were bogus. The assessee has been able to discharge the onus casted upon it to prove the genuineness of the transactions and was accepted by the Department in the order passed u/s 143(3), therefore, now alleging the same as bogus is nothing but mere change of opinion. Under similar facts, the Hon'ble Gujarat High Court in the case of Nimesh Maheshbahi Shah HUF vs. Income Tax Officer, reported in [2025] 171 Taxmann.com 24 has observed as under:

“42. It is also pertinent to note that there is no basis to form reasonable belief for escapement of income except the information made available on the insight portal. The respondent-Assessing Officer has not considered the material on record to come to the conclusion that there is failure on the part of the petitioner to disclose truly and fully all material facts to have reason to believe for escapement of income. Therefore, on the basis of the information received from another agency on insight portal or from the SEBI report, there cannot be any reassessment proceedings unless the respondent, after considering such information/ material received from other sources, consider the same with the material on record in the case of the petitioner assessee and thereafter, is required to form independent opinion that income has escaped assessment. Without forming such opinion solely and mechanically relying upon the information received from the other sources, the respondent-Assessing Officer could not have assumed the jurisdiction to reopen the assessment based on such information. This Court in case of Raajratna Stockholdings (P.) Ltd. v. Asstt. CIT [2025] 170 taxmann.com 473 (Gujarat)/(judgment dated 25.11.2024 rendered in Special Civil Application No.3696 of 2022) in similar circumstances has quashed and set aside the impugned notice issued under section 148 of the Act and consequential order disposing off the objections raised by the petitioner.”

10. In view of the facts and by respectfully following the judgment of the various High Courts and Co-ordinate Benches of ITAT, we are

of the considered view that in the instant case, the AO has simply proceeded on the basis of the information available in insight portal, without bringing on record any fresh material, therefore, it is a case of change of opinion and thus, initiation of reassessment proceedings by issue of notice u/s 148 is not permissible. Accordingly, we hold the notice issued u/s 148 as bad in law and consequent reassessment order passed u/s 147 read with section 143(3) of the Act is quashed. Ground of Appeal Nos. 8 & 9 of the assessee are allowed.

11. Remaining grounds of appeal of the assessee are on the merits of issue and since we have allowed legal grounds of appeal taken by the assessee, therefore, they become academic and not adjudicated.

12. As a result, the appeal of the assessee is allowed.

Order is pronounced in open court on 02.05.2025.

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

Sd/-
(MANISH AGARWAL)
ACCOUNTANT MEMBER

Dated: 02/05/2025

PK/Sr. Ps

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI