

IN THE INCOME TAX APPELLATE TRIBUNAL
“E” BENCH, MUMBAI
BEFORE SHRI VIKRAM SINGH YADAV, ACCOUNTANT
MEMBER
AND
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER

I.T.A. No.176/Mum/2025
Assessment Year: 2012-13

Ms. Hetal Daxesh Shah 604, 6 th Floor, Deccan Vikas, V.P.Road, Khotachiwadi, Mumbai-400004. PAN: ARWPS1310C (Appellant)	Vs.	The Assistant Commissioner of Income Tax-19(1), Piramal Chambers, Lalbaug, Mumbai-400012. (Respondent)
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Appellant by	Shri. Sanjay Parikh
Respondent by	Shri. Hemanshu Joshi, SR. D.R.

Date of Hearing	01.05.2025
Date of Pronouncement	27.05.2025

ORDER

Per Vikram Singh Yadav, A.M.:

The present appeal by the assessee is directed against order dated 18.11.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2012-13.

2. Briefly the facts of the case are that the assessee filed her return of income declaring total income of Rs. 30,05,669/- which was processed u/s. 143(1) of the Act. Thereafter information was received from DGIT(Inv.), Mumbai that M/s. Gemstone Investment Limited is a penny stock company listed on the stock exchange and trading in shares of the said company was manipulated to generate bogus capital gains/losses and assessee has traded in the shares of the said company and has received a sum of Rs. 22,58,450/- by way of proceeds on sale of shares of M/s. Gemstone Investment Limited. Basis the said information, the reasons were recorded and notice u/s. 148 was issued and duly served upon the assessee. The assessee thereafter filed her return of income in response to notice u/s. 148 declaring income of Rs. 30,05,669/-. The reasons so recorded were sought by the assessee which were provided by the AO, thereafter, the assessee filed her objections which were disposed off by the AO vide order dated 20.11.2019. Thereafter, notices u/s. 143(2) and 142(1) were issued and information was called for from the assessee. Thereafter, the AO has recorded his findings stating that considering the findings of the search/survey enquiry conducted in the case of brokers, operators, entry providers and exit providers and on the basis of SEBI and NSE findings, the transactions entered into by the assessee in respect of shares of M/s. Gemstone Investment Limited is not genuine and accordingly the sale consideration of Rs. 22,58,450/- was treated as unexplained income and brought to tax u/s. 68 of the Act. Separately, an amount of Rs. 45,169/ being 2% of Rs. 22,58,250/- being the commission alleged to be paid to the entry

provider/operator was added to the income of the assessee u/s. 69C of the Act and the order u/s. 143(3)/147 was passed determining the assessed income at Rs. 53,09,290/- vide order dated 13/12/2019.

3. Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A)/NFAC Delhi who has since sustained the findings of the AO. Against the said order and the findings of the Ld. CIT(A), the assessee is in appeal before us.
4. During the course of hearing, the Ld. AR submitted that the assessee filed her return of income on 31.07.2012 declaring income of Rs. 30,05,369/- and major source of her income was from capital gains and income from other sources. It was submitted that for the year under consideration, the assessee has earned Long term Capital Gain of Rs. 16,75,782/- and inadvertently in the computation of total income has taken the figure of Long term Capital Gain of Rs. 17,34,000/- basis the return filed for the earlier A.Y. 2011-12. It was submitted that though the Long term Capital Gain was exempt from tax u/s. 10(38) of the Act, the assessee has erroneously offered the same to tax. It was submitted that the return of income was thereafter processed u/s. 143(1) and basis, information received from DGIT (Inv.), Mumbai that M/s. Gemstone Investment Limited is a penny stock company, notice u/s.148 dated 25.03.2019 was issued to the assessee and the reasons for reopening of the assessment were supplied to the assessee as part of notice u/s. 142(1) dated 13.11.2019. It was submitted that the assessee

thereafter filed her objection to reopening of the assessment vide letter dated 18.11.2019 and it was pointed out as part of her objections that in the reasons so recorded, the AO has stated that the transaction made by the assessee seems to be suspicious and have remain unverified. It was also submitted as part of her objections that reopening undertaken to carry out fishing enquiry based on suspicion is not valid. It was submitted that the AO thereafter passed the order disposing off objection vide order dated 20.11.2019 stating that prima facie satisfaction was required and which has been duly recorded as part of the reasons and objections were disposed off. It was submitted that the assessee challenged before the 1d CIT(A), the order so passed by the AO regarding illegality of the reopening as well as on the merits of the case. However, the order so passed by the AO was confirmed by the 1d CIT(A) and against the said order, the assessee is in appeal before this Tribunal.

5. In the aforesaid background, it was submitted by the 1d AR that firstly, as per the reasons so recorded, the AO has stated that the assessee has traded in the scrip of M/s. Gemstone Investment Limited during F.Y. 2012-13 i.e A.Y. 2013-14. It was submitted that as the information pertained to A.Y. 2013-14, there could be no reason to believe that the income for the year under consideration i.e A.Y. 2012-13 has escaped assessment. It was further submitted that in para 3 of the reasons so recorded, the AO stated that the assessee has filed her return of income for A.Y. 2012-13 and in para 2 of the reason so recorded, the AO stated that information was received that the scrip i.e M/s.

Gemstone Investment Limited was used to facilitate introduction of unaccounted income in the form of exempt capital gains or STCL. However, the reasons so recorded do not specify whether the assessee has claimed exempt income u/s. 10(38) or has claimed Short Term Capital Loss. It was submitted that it is therefore a clear case of non- application of mind by the AO to the information so received. It was further submitted that the assessee has neither claimed any exemption u/s. 10(38) nor claimed Short Term Capital Loss. Hence, there is no reason to believe that any income has escaped assessment. It was submitted that a persual of the reasons so recorded shows that in para 1 to 4, it contain facts and thereafter, the AO in para 5 has concluded that he has reason to believe that income has escaped assessment and as such, there is no application of mind by the AO to believe that income has escaped assessment and in support, reliance was place on the Hon'ble Delhi High Court in case of PCIT V. Meenakshi Overseas Pvt. Ltd. 395 ITR 677 for the proposition that there has to be a live link between the information made available to the AO and the formation of belief. It was submitted that similar view has been taken by the Hon'ble Bombay High Court in case of PCIT V. Shodiman Investments Pvt. Ltd. 93 taxmann.com 153. It was submitted that the similar issue regarding reopening on the basis of information regarding M/s. Gemstone Investment Limited had come up before the Co-ordinate Mumbai Bench of the Tribunal in case of Mamta Lalit Jain V. ITO wherein the Co-ordinate Bench has held that the reopening is bad in law. Further reliance was placed on the Co-ordinate Jaipur Bench of the Tribunal in case of Satish Kumar

Kandelwal V. ITO 2021 127 taxmann.com 683 for the proposition that reopening of the assessment without application of mind deserve to be set aside. It was accordingly submitted that the reopening of the assessment in the present case be held to be bad in law and the necessary relief be provided to the assessee.

6. The second contention which has been raised by the Ld. AR relates to violation of principle of natural justice. In this regard, it was submitted that the assessee vide letter dated 18.11.2019 had requested the AO to furnish the data/information which has been used to arrive at an adverse inference against the assessee. The AO was also requested vide the said letter to issued necessary notice u/s. 133(6)/131 to the broker/stock exchange to ascertain the genuineness of the transaction. However, no such information was provided to the assessee nor any notices were issued. In this regard, it was submitted that the assessee brought the said fact to the notice of the Ld. CIT(A), however, no such record was provided to the assessee even at the appellate stage and the Ld. CIT(A) merely held that the AO has followed the proper procedure and has dismissed the contention so raised by the assessee. It was submitted that as the principle of natural justice has been violated, the order so passed by the AO deserve to be set aside.
7. Regarding merits of the addition so made by the AO u/s. 68, it was submitted that the assessee has purchased 10,000 shares of M/s. Gemstone Investment Limited on 13.04.2009 for Rs. 227,500/- inclusive of STT service tax. Thereafter the assessee

purchased additional 15,000 shares of M/s. Gemstone Investment Limited on 16.04.2009 for Rs. 338,450/ inclusive of STT and service tax, and said transactions are duly reflected in the summary report prepared by the broker. It was further submitted that the assessee has duly disclosed the said investment in her balance sheet prepared for the financial year ended 31.03.2010, 31.03.2011 and 31.03.2012. It was submitted that the said shares amounting to Rs. 25,000/- were later on split and in respect of the existing shares held by the assessee, the assessee received 250,000/- shares. It was further submitted that the assessee thereafter sold 250,000/- shares between 09.05.2011 and 22.06.2011 for Rs. 22,45,950/- inclusive of STT and service tax and the amount was received in her bank account between 11.05.2011 and 24.06.2011 and the same is duly confirmed by the broker by way of settlement summary. It was submitted that all the transactions are duly reflected in the DMAT statement of the assessee and all this documentation in terms of copy of the contract note for purchase of share in F.Y. 2009-10 and sale of shares in F.Y. 2011-12, copy of the bank statement evidencing the payments for purchases and subsequent sale and copy of the global report, copy of the DMAT Account, and copy of the broker ledger were duly submitted during the course of assessment proceedings as part of the assessee's submission dated 18.11.2019. It was submitted that the AO has not accepted the genuineness of the said transaction merely basis information received from the investigation wing and has added the whole of the sale proceeds as assessee's income invoking provision of section 68 of the Act and has also made a

separate addition of Rs. 45,169/- towards alleged commission for arranging the said accommodation entry. In this regard, it was submitted that neither the AO nor the Ld. CIT(A) has been in position to disprove the purchase and sale transactions entered into through SEBI authorized stock broker on the stock exchange for which the payment has been made for purchase and received subsequently on sale of the shares. It was submitted that the shares has been duly delivered on sale which has not been disputed as the same have been undertaken through the stock exchange. It was further submitted that the SEBI order itself specifies that manipulation of price was done in 2009 and not in 2011 when the appellant sold the shares and as there was no price manipulation in 2011 when appellant sold the shares and the sale transaction and LTCG cannot be doubted by the AO.

8. It was further submitted that there are various decisions wherein it has been held that the AO could not make the addition disregarding or disproving the evidences filed by the assessee and in this regard, reference was drawn to Hon'ble Bombay High Court decision in case of PCIT V. Indravan Jain HUF (2024) 463 ITR 711, Hon'ble Bombay High Court decision in case of Asha Gupta V. ITO 173 taxmann.com 834, Hon'ble Rajasthan High Court in case of PCIT V. Gaurav Bagaria 453 ITR 513, Hon'ble Gujarat High Court in case of PCIT V. Sandipkumar Parsottambhai Patel 457 ITR 368 and Hon'ble Madhya Pradesh High Court in case of CCIT V. Nilesh Jain 163 taxmann.com 229.

9. In light of the aforesaid submission, it was submitted that the addition made by the AO and confirmed by the Ld. CIT(A) u/s. 68 be directed to be deleted and consequentially the addition made u/s. 69C be also directed to be illegal.

10. Per contra, the Ld. DR has relied on the order so passed by the lower authorities. It was submitted that the AO was in position of tangible information basis investigation carried out by the Investigation wing that the assessee has transacted in shares of penny stock company i.e M/s. Gemstone Investment Limited and basis the said information and after examining the return of income, the AO has recorded the reasons stating that the income to the extent of Rs. 22,58,450/- has escaped assessment. It was accordingly submitted that the reasons were duly recorded after due application of mind by the AO.

11. It was further submitted that the AO has noticed that investigation into the penny stock, i.e. M/s Gemstone Investment Ltd has unearthed the fact that the price of the shares of the penny stock companies are rigged and are raised through circular trading. These entire operations are managed by the Syndicate members/ the brokers/ Operators of the scrip. They manage many paper/ bogus companies and use them to do circular transactions to rig the price of the shares. The shares of these penny stock companies, although "listed on exchange, are always closely held and are controlled by the promoter of the Penny Stock Company and the Operator who is arranging for the bogus LTG loss and this helps the operator to keep a control on the price movement of the shares.

12. It was submitted that since the assessee has dealt in this penny stock of this scrip, i.e. M/s Gemstone Investment Pvt Ltd, assessee is one of the beneficiaries of accommodation entry for bogus Long Term Capital Gain. Further, the financials of the penny stock company also does not support such huge increase in the value of the shares. The business profile of penny stock company shows that the company was not engaged in any substantial activity and not having strong fundamentals making it able to attract investors from all over India to invest in the company. This is beyond human probability without predetermined and prearranged scheme. When the conditions for long term capital gain are met and prices of the shares have been sufficiently rigged, the beneficiaries sell their shares to the exit providers.

13. It was submitted that the SEBI in its interim order passed under relevant sections of SEBI Act, 1992 and the Securities Contracts (Regulations) Act 1956 banned trading in penny stock of M/s Gemstone Investment Ltd. The findings/actions of the SEBI testify the fact that the prices of the shares were determined artificially by manipulations and cannot be a product of market factors and commercial principals.

14. It was further submitted that the AO has given tangible findings and reasons which further substantiates the above scheme and design. The mode of acquisition of the shares; unusual rise of the price of these shares defying all the

commercial principals and market factors; and sale of shares at pre-determined and opportunistic time; finding of the investigation authorities; failure of appellant to discharge his onus to prove the factors that led to unusual rise and fall share prices to be natural and based on market principles; weak financial health and defunct and inoperative status of the company etc. The analysis of transactions reveals that these were not governed by market factors prevalent at relevant time of such trades, but governed by pre-determined and pre-conceived design and connivance on the part of various beneficiaries including appellant and other operators.

15. It was submitted that during the appellate proceedings before the 1d CIT(A), the detailed findings and observations of the AO were not controverted by the assessee by placing any material evidence. While dealing with the issue of long term capital gain accrued to the appellant in short span, one has to look at the financials of the scrip whose shares were rigged within a short time. In the instant case, the financials of the scrip reveals that company is meagre and not at all worth to be invested therein. With such weak financials, it is beyond comprehension how there can be manifold increase in the price of the shares. In view of the short duration of these transactions and the weak financials of the scrip whose shares were transacted, the AO has rightly brought sufficient material on record to establish that unaccounted money of appellant was introduced in the books of accounts through long term capital gain by adopting such scheme with the connivance of different players. Moreover, the

appellant has nowhere disclosed the rationale for investing in a company, which is essentially defunct, inoperative and have very weak fundamentals. In view of these facts, it was submitted that the 1d CIT(A) has rightly concluded that these transactions are nothing but shame transactions to make believe the relevant authorities including the Revenue under the garb of bogus long term capital gain and the findings of the AO have been upheld. It was accordingly submitted that there is no infirmity in the order so passed by the 1d CIT(A) and the same should be confirmed and the appeal of the assessee be dismissed.

16. We have heard the rival contentions and pursued the material available on record. Firstly, the assumption of jurisdiction u/s 147 has been challenged by the assessee and in this regard, we refer to the reasons so recorded by the AO and the contents thereof read as under:

“Reasons for reopening of the assessment u/s 147 of the I.T. Act

1. The assessee had filed his return of income Rs. 3005669/- for the A.Y. 2012-13.

2. In this case, information was received from DDIT(INV.), Unit-5(2), Mumbai vide letter dated 06.03.2018. As per the Information M/s Gemstone Investment Lid with script code (531137) has been used to facilitate introduction of unaccounted Income of members. Of beneficiaries in the form of exempt capital gain or short term capital loss in their books of amounts. However the financial of the company for the relevant period do not show any substantial change so as to support such as huge share price movement. The company does not have business worthwhile to justify the sharp rise in market price of share. The sharp rise in the market price of

this entity is not supported by financial fundamentals of the company.

3. On verification of the ITS details assessee has filed his return income system ITBA/360 degree, it is found that the 2012-13

4. Subsequently, HETAL DAKSHESH SHAH have faded in this script during financial year 2012-13 which is given below:

<i>Sr no.</i>	<i>PAN of the beneficiaries</i>	<i>Script code</i>	<i>Total Trade value for F.Y. 2012-13 (Rs.)</i>
<i>1</i>	<i>ARWPS1310C</i>	<i>531137</i>	<i>2258450/-</i>
<i>TOTAL:-</i>			<i>2258450/-</i>

5. In view of the above facts and circumstances of the case and after application of my mind, I have reason to believe that income of the assessee, HETAL DAKSHESH SHAH, chargeable to tax for the assessment year 2012-13 amounting to Rs. 2258450/- has escaped assessment due to failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment in this case in terms of provisions of section 147 of the I.T Act, 1961.”

17. In this regard, the 1d AR has contended that as per the reasons so recorded by the AO, the assessee has traded in the scrip of M/s. Gemstone Investment Limited during F.Y. 2012-13 and it was submitted that as the information pertained to F.Y. 2012-13 i.e, A.Y. 2013-14, there could be no reason to believe that the income for the year under consideration i.e A.Y. 2012-13 has escaped assessment. We find that the factual position that the assessee has traded in the scrip of M/s. Gemstone Investment Limited during F.Y. 2011-12 i.e A.Y. 2012-13 having

trade value of Rs 22,58,450/- has not been disputed, therefore, it is more of a clerical mistake where the AO has referred to F.Y. 2012-13 instead of A.Y 2012-13 and the same cannot be a reason to dislodge the jurisdiction so acquired by the AO invoking provisions of section 147 of the Act and the contention so raised is hereby dismissed.

18. The second contention which has been raised by the ld AR is that there is clear non-application of mind by the AO to the information so received from the DDIT(Inv) and there is thus lack of necessary nexus between the information so received and the formation of reason to believe that the income has escaped assessment. In this regard, it was submitted that in para 2 of the reason so recorded, the AO stated that information was received that the scrip i.e M/s. Gemstone Investment Limited was used to facilitate introduction of unaccounted income in the form of exempt capital gains or STCL. However, the reasons so recorded do not specify whether the assessee has claimed exempt income u/s. 10(38) or has claimed Short Term Capital Loss. It was further submitted that the assessee has neither claimed any exemption u/s. 10(38) nor claimed Short Term Capital Loss and has infact, offered long term capital gains of Rs. 17,34,000/- in the return of income. The ld DR couldn't controvert the fact that the assessee has infact offered an amount of Rs 17,34,000/- as long term capital gains in her return of income and no exemption u/s section 10(38) or short term capital loss has been claimed by her. We have thus no hesitation but to accept the contention so advanced by the ld AR that there is clear non-application of mind

by the AO as the AO has failed to establish the necessary nexus between the information so received and formation of belief as to how the income has escaped assessment in the hands of the assessee. The assessee has neither claimed exemption u/s 10(38) nor claimed short term capital loss in her return of income and in such a situation, how the information so received can form the basis for formation of belief that income has escaped assessment is not discernable from the reasons so recorded by the AO. We further find that even though the proviso to section 147 is not strictly applicable, where the AO has alleged in the reason so recorded that income has escaped assessment due to failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment, the AO has failed to spelt out what material facts have not been disclosed by the assessee in the reasons so recorded. Merely stating that there is a failure without specifying the nature and extent of failure in order to constitute material fact is not sufficient for assumption of jurisdiction u/s 147 of the Act. It is a settled legal proposition that the AO has to speak through the reasons and reasons alone and in absence of any reasoning apparent from the reasons so recorded as to how he has analysed the information so received and come to a prima facie belief that income has escaped assessment, the assumption of jurisdiction u/s 147 clearly suffers from jurisdictional defect and the same cannot be sustained and is hereby set-aside.

19. In view of the aforesaid discussions where we have quashed the reassessment proceedings u/s 147 in view of jurisdictional

defect, other contentions raised by the ld AR on merits of the case have become academic in nature and we don't deem it necessary to adjudicate the same and the same are thus left open.

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

Order pronounced in the open court on 27/05/2025

Sd/-

(RAJ KUMAR CHAUHAN)
Judicial Member

Sd/-

(VIKRAM SINGH YADAV)
Accountant Member

Mumbai

Dated: 27/05/2025

Anandi.Nambi,
Stenographer

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy

By order

(Asstt. Registrar)
ITAT, Mumbai