

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

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SMT RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No.855/Mum/2024
(Assessment Year :2012-13)**

Indu Mahendra Shah (L/H of Lae Shri Mahendra G Shah) 601, Harbour Crest Building, Mazgaon T.T. Mazgaon, Mumbai Maharashtra-400 010	Vs.	Income Tax Officer Ward 20(2)(2), Mumbai
PAN/GIR No.ALRPS2483D		
(Appellant)	..	(Respondent)

Assessee by	Shri Devendra Jain
Revenue by	Shri R A Dhyani
Date of Hearing	16/07/2025
Date of Pronouncement	29/07/2025

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

This appeal has been filed by the assessee challenging the order dated 29.12.2023 passed by the National Faceless Assessment Centre (NFAC), Delhi, under section 143(3) read with section 147 of the Income Tax Act, 1961, for the Assessment Year 2012-13.

2. The assessee has raised several grounds challenging the validity of the reassessment proceedings initiated under

section 147, as well as the additions made under section 69A on account of alleged unexplained sale proceeds from certain scrips. The disputed additions are tabulated as under:

<i>Sr. No.</i>	<i>Particulars</i>	<i>Additions u/s</i>	<i>Amount</i>
1.	<i>Sales Proceeds of the shares of M/s. Nivyah Infrastructure (Formerly known as SV. Money Electricals Ltd.)</i>	<i>69AUnexplained Money</i>	<i>8,56,177/-</i>
2.	<i>Sales Proceeds of the shares of M/s. Scan Steels Ltd. (Formerly known as Clarus Finance and Money Securities Ltd.)</i>	<i>69AUnexplained Money</i>	<i>9,97,05,387/-</i>
3.	<i>Sales Proceeds of the shares of 69AUnexplained M/s. Divine Multimedia (Formerly known askale Films) Money</i>	<i>69AUnexplained Money</i>	<i>85,06,290/-</i>
	Total		10,90,67,854/-

3. The return of income for the impugned assessment year was filed on 29.09.2012 declaring total income of Rs.18,50,300/-. Subsequently, the assessment was reopened under section 147 based on information from the Investigation Wing, which alleged that the assessee was a beneficiary of unexplained income routed through sale of shares in a penny stock. The reasons recorded are reproduced as under:

“In connection with the assessment preceding u/s 143(3) rws 147 in your case, I am providing you the reasons recorded for issue of no Notice u/s 148 as under:

1. The assessee filed return of income for A.Y 2012-13 on 29.09.2012 declaring total income of Rs. 18,50,400/-. The return was processed u/s 143(1) of the Act on 28.12.2012

2 In this case information has been received from DDIT(Inv.) Unit-8(3) vide letter No. DDIT(Inv.)/Unit-8(3)/TEP/Diss/Action/2018-19 dated 20.02.2019 as under

2.1 Reliable information is received that M/s. Nivyah Infrastructure Telecom Services Ltd. is a penny stock listed on BSE with scrip code 517534 and this company has been used to facilitate introduction of unaccounted income of members of beneficiaries in the form of exempt capital gains or Short term capital loss in their books of accounts. It was noticed that share price of M/s. Nivyah Infrastructure Telecom Services Ltd. rose from Rs. 39 on 21st July 2009 to Rs. 2050 on 5th Jan 2011 and dipped to Rs.47.20 on 18th July 2012

2.2 However, the financials of the company for the relevant period do not show any substantial change so as to support such huge share price movement. The company does not have business worthwhile to justify the sharp rise in market price of shares. Both purchase and sale of shares was concentrated within few persons /entities. The exit providers do not have creditworthiness. They are either non-filers or have filed nominal return of income and have not paid the tax.

Sr.No	PAN	Trade Value
1.	ALRPS2483D	8,68,110.75

2.3. In view of the information received as above, it is clear that income to the extent of Rs.8,68,110.75 chargeable to tax has escaped assessment for the AY 2012-13 and this is a fit case for issuance of notice u/s 148 of the Income Tax Act, 1961"

If you have any objection to the issue of notice u/s.148, the same should reach this office on or before 04.07.2019 otherwise it will be presumed that you have no objection to the notice u/s.148.

4. In response, the assessee submitted detailed objections, clarifying that not only was there no exempt income claimed

under section 10(38), but in fact a long-term capital loss had been incurred and disclosed in the return of income. Documentary evidences such as share allotment letter, bank statement, demat statement, contract notes, and broker's financial ledger were submitted.

5. The assessee also contended that the reasons recorded were based on incorrect facts, and that the reopening was initiated without proper application of mind. Further, it was submitted that the objections filed under the GKN Driveshafts procedure were never disposed of by the Assessing Officer.

6. The learned DR relied on the assessment order and argued that the reopening was valid. However, he fairly admitted that the objections had not been dealt with by any speaking order.

7. We have heard the rival submissions and perused the material available on record with careful deliberation. The reassessment proceedings in the present case are predicated upon an allegation that the assessee introduced unexplained income of Rs.8.68 lakhs through transactions in the scrip of M/s. Nivyah Infrastructure Telecom Services Ltd., which was purportedly a penny stock used as a conduit for tax evasion. However, upon a comprehensive examination of the return of income, the accompanying computation statement, and the documentary evidence placed before the Assessing Officer as well as this Tribunal, it becomes abundantly clear that such an allegation is not merely unfounded but is factually inverted. The assessee had originally acquired the subject

shares in November 2009 at Rs.10 per share through proper banking channels and in compliance with regulatory norms. The sale transactions were executed after more than a year, through a registered broker on the Bombay Stock Exchange platform, at Rs.9.30 and Rs.9.34 per share, resulting not in capital gain, but in a long-term capital loss of Rs.74,382/-, which was duly disclosed in the return. Significantly, the assessee did not claim any exemption under section 10(38), nor was there any set-off of such loss. These facts were already available on record and were easily verifiable.

8. In light of the above, we find that the very foundation upon which the “reason to believe” was constructed, namely, the escapement of income, is severely flawed, being based on incorrect and unverified assumptions. The Assessing Officer, in his haste, failed to undertake the elementary task of verifying the return of income and the accompanying documents, and proceeded to issue the notice under section 148 solely on the strength of generic information received from the Investigation Wing. There is no material or factual nexus between the said information and the actual transactions undertaken by the assessee. This reflects a clear abdication of the statutory duty imposed upon the Assessing Officer to apply his own mind before assuming jurisdiction under section 147. It is now well settled in law that the Assessing Officer cannot act merely as a conduit of third-party information. He is statutorily bound to evaluate the veracity of such inputs in the context of the assessee’s specific case. Failure to do so results in initiation of

reassessment proceedings on the basis of borrowed satisfaction, which is impermissible in law.

9. This very principle was lucidly enunciated by the Hon'ble Bombay High Court in the case of Ankita A. Choksey v. ITO (Writ Petition No. 3344 of 2018), wherein Their Lordships held as under:

“...the reasons to believe that income chargeable to tax has escaped assessment must be based on correct facts. If the facts as recorded are incorrect and the assessee has pointed this out in objections, then it is incumbent upon the AO to deal with such objections and establish the correctness of the facts. Failure to do so vitiates the entire reassessment.”

In the present case, not only were the facts recorded in the reasons demonstrably incorrect, but the assessee's objections supported by cogent documentation—were neither addressed nor disposed of by a speaking order. Such procedural lapses render the entire exercise jurisdictionally vulnerable.

10. The Hon'ble Jurisdictional High Court has, in a consistent line of decisions, reiterated the necessity of independent application of mind by the Assessing Officer before invoking the reassessment jurisdiction. Noteworthy among them are:

- Sea Glimpse Investments Pvt. Ltd. (Writ Petition No. 3172 of 2019), and
- South Yarra Holdings v. ITO (Writ Petition No. 3398 of 2018),

wherein it was categorically held that the Assessing Officer must not act at the behest of investigative reports, but must form an independent belief on the basis of objective evaluation of facts, before issuing a notice under section 148.

11. Applying the aforesaid principles to the facts of the present case, we are constrained to hold that the reassessment proceedings have been initiated in a mechanical and perfunctory manner, devoid of the statutory precondition of an informed and reasoned belief. The Assessing Officer failed not only in verifying the facts available on record, but also in appreciating that the assessee had not claimed any exempt income or gain from the alleged transaction. On the contrary, a long-term capital loss was disclosed, and no benefit of exemption or set-off was availed. Consequently, the very jurisdiction assumed under section 147 stands vitiated, and the reassessment order cannot be sustained in law.

12. In the result, the appeal filed by the assessee is allowed and the reassessment order passed under section 143(3) read with section 147 is quashed.

Order pronounced on 29th July, 2025.

Sd/-

(RENU JAUHRI)

ACCOUNTANT MEMBER

Mumbai; Dated 29/07/2025
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