

IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH MUMBAI  
BEFORE: SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No. 3690/MUM/2025(A.Y: 2013-14)

Shri Parin Seventilal Shah 101-B, Atlas Apartment, 11J Mehta Marg, Nepeansea Road, Mumbai- 400006	Vs.	The Assistant Commissioner of Income Tax, Central Circle 1(2) Pratishtha Bhavan, Old CGO Annexe, Maharishi Karve Road, Mumbai- 400020
<b>PAN: ABIPS 4450 K</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri. Neel Khandelwal Advocate
Revenue by	Shri. Virabhadra Mahajan, Sr. DR
Date of Hearing	06/10/2025
Date of Pronouncement	08/10/2025

**Order under section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by the assessee is directed against the order of NFAC/Learned Commissioner of Income Tax (Ld. CIT(A)) dated 18.02.2025 for A.Y. 2013-14. The assessee was raised following grounds of appeal.

*"The ground or grounds of appeal are without prejudice to one another.*

*1.a) On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in confirming the action taken by the AO in re-opening the assessment u/s.147 of the Income Tax Act, 1961 inspite of the fact the prescribed conditions are not satisfied.*

*b) The Id. CIT(A) failed to appreciate that initiation of re-opening of the assessment proceedings and completion of the assessment u/s.143(3) r.w.s.147 is without jurisdiction and bad in law.*

*2.a) On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in confirming the addition to the extent of Rs 3,93,31,374/- representing Long term capital gains out of addition of Rs 4,13,49,716/- made by the AO to the income of the Appellant on account of unexplained cash credit u/s. 68 representing consideration on sale of shares of M/s. Wagend Infra Venture Ltd. (formerly known as Agarwal Holdings Ltd.) after rejecting the claim of the Appellant in respect of Long term capital gains being exempt u/s.10(38) treating the same as not genuine on the basis of information received from Insight portal and the Investigation reports of*

*the Investigation Wing, Kolkata that certain operators and intermediaries had provided accommodation entries of bogus Long term capital gains using certain penny stock companies.*

*b) The Id. CIT(A) failed to appreciate that:-*

*(i) the Appellant has earned Long term capital gains of Rs 3,93,31,374/- on sale of shares of M/s. Wagend Infra Venture Ltd. (formerly known as Agarwal Holdings Ltd.) and the same is supported by independent and admissible evidences;*

*(ii) the shares were sold in the open free market of Bombay Stock Exchange on BOLT;*

*(iii) the payments for purchase of shares and receipts for sale of shares are through banking channels;*

*(iv) the delivery of shares are taken and given from the Demat account of the Appellant; and*

*(v) the AO did not provide copy of materials and statements relied upon by him nor allowed any opportunity to the Appellant to cross examine those parties who have been suspected to provided accommodation entries to the Appellant.*

*c) In reaching to the conclusion and confirming such addition the Id. AO omitted to consider relevant factors, considerations, principles and evidences while he was overwhelmed, influenced and prejudiced by irrelevant considerations and factors.*

*3. The Id. CIT(A) erred in holding that levy of interest u/s.234A, 234B and 234C of the Income Tax Act, 1961 is mandatory. The Appellant denies his liability for such interest.*

*4. The Id. CIT(A) erred in holding that the ground raised disputing initiation of penalty proceedings u/s.271(1)(c) is premature. The Appellant denies his liability for such penalty.*

*5. The Appellant was prevented by sufficient and reasonable cause from presenting the present appeal within the prescribed time and therefore prays your Honour to condone the delay in presenting the appeal and admit the appeal in the fairness of law.*

*The Appellant craves leave to add, alter, amend or delete any or all of the above grounds of appeal."*

2. The rival submissions of both the parties have been heard and record perused.

The learned Authorized Representative (Ld.AR) of the assessee submits that there is slight delay of 26 days in filing the appeal before Tribunal. Impugned

orders was passed by Ld. CIT(A) on 18.02.2025. However, neither SMS alert on the mobile phone nor email was received by the assessee. The assessee was not aware about passing of appellate order on 18.02.2025. The assessee came to know about such order in May 2025 when the assessee log in on ITBA portal and realized about dismissal of appeal. The assessee immediately approach his tax consultant and the filled the present appeal. The delay in filing appeal is neither intentional nor deliberate. The delay is not inordinate. The assessee has good case on merits and is likely to succeed, if he is allowed to make a submission on merits.

3. On merits the Ld.AR of the assessee submits that he has two folds<sup>h</sup> submissions. Firstly, on validity of reopening and secondly, on merit. On validity of reopening, Ld.AR of the assessee submits that the case of assessee for AY 2013-14 was reopened under section 147. Notice under section 148 was served upon assessee on 30.03.2021. On receipt of notice under section 148, the assessee filed return of income on 20.07.2021 declaring income of Rs. 92,18,600/. The assessee objected to the reasons recorded / about the validity of reason recorded. There is no satisfaction of assessing officer that income of assessee is escaped assessment. The assessee objected before the assessing officer his objection was rejected. The assessee also raised specific grounds of appeal before Ld. CIT(A) that no valid reasons were recorded. The reasons recorded are absolutely vague which cannot be made basis for reopening of completed assessment. The Ld.AR of the assessee submits that in response to his request, he was provided a copy of reasons recorded, which is placed on record. While showing reasons recorded to us, the Id.AR submits that such

reason recorded does not disclose anything as to how the income of assessee has escaped assessment. The reason recorded must be specific. Power to reopening the assessment is condition on the formation of reason to believe that income chargeable to tax has escaped assessment. Such power is not like a power of review. No reassessment is permissible to make an enquiry for verification. The words "Has reasons to believe" prescribed under section 147, this words are stronger than "it satisfied". The satisfaction of assessing officer must not be arbitrary or irrational. The reasons recorded cannot be supplemented or substituted. Mere suspicious or incomplete information cannot be basis of reassessment income. Thus, the reasons recorded as supplied to the assessee cannot be consider as a valid and proper reasons. Once there is no proper reasons/subsequent action initiated thereon are invalid and order passed by assessing officer is *void ab-initio*.

On merit of the addition, Ld.AR of the assessee submits that during the assessment proceeding, before assessing officer the assessee furnished complete details of share scrips of M/s. Wagend Infra Venture Ltd. The assessee furnished contract note, Dmat details and submitted that transaction was carried out through banking channel. The assessing officer had not given any findings on various documentary evidence. The assessing officer merely relied upon the information allegedly received from inside portal, copy of such information was not shared with the assessee. The assessee purchased 1,50,000/- share of Agarwal Holdings Ltd. having face value of Rs. 10.00/- at the premium of Rs. 2.00/- per share by making payment of Rs. 18,00,000/- by way of cheque. The assessee was allotted share on 07.01.2011. Subsequently the name of said

company was changed to Wagend Infra Venture Ltd. The assessee sold the same through Mangal Keshav Securities Ltd. a member of Bombay Stock Exchange (BSE) and registered with SEBI. There is no allegation against the broker of assessee that he was indulging in price rigging of shares or providing accommodation entry. The assessing officer merely relied upon the report of investigation survey without giving any finding of various evidence furnished by the assessee. The Ld.AR submits that the good case on legal issue as well as on merits.

4. On the other hand, Ld. Senior Departmental Representative (Sr.DR) on the plea of Ld.AR of the assessee for condoning the delay submits that bench may take decision in accordance with law. On the objections of the Ld AR of the assessee against validity of reasons recorded submits that reasons were provided to the assessee. The assessee filed objection before the assessing officer. Objection of assessee were disposed of by assessing officer in its speaking order. Further Ld. CIT(A) after considering the corresponding ground of appeal also rejected submission of the assessee. At the time of recording reasons, mere information, which leads to escapement of income, is sufficient and not full proof conclusion that income of the assessee has escaped assessment. On merits of additional Ld. Sr. DR for the revenue supported the order of Ld.AO and Ld. CIT(A).
5. We have considered the rival submission of both the parties and have gone through the orders of lower authorities carefully. Firstly, we are considered the plea of Ld.AR of the assessee for condonation of delay. We find that impugned order was passed by Ld. CIT(A) on 18.02.2025, however the present appeal has filed on 26.05.2025. The registry of Tribunal has issued defect memo pointing

out delay of 26 days in filing the appeal. We find that assessee has filed his affidavit. The affidavit of assessee is in line with the submission of Ld.AR of the assessee. The main submission of Ld.AR of the assessee is that the assessee was not aware of impugned order as neither SMS alert was received on his phone nor email and that when the assessee came to know in May 2025 immediately filed this appeal. Considering the facts that the assessee has filed its own affidavit, moreover delay is not inordinate. Considering the peculiar facts of the assessee, we are satisfied that the assessee has explained the delay with sufficient cause. Now advertent to merits of the case. Now advertent to the merits of the case.

6. Ground No. 1 (a) (b) relates to validity of reopening based on invalid reasons. Before us Ld.AR of the assessee has filed copy of reasons recorded as provided to the assessee. For appreciation of facts, the reasons recorded are extracted below :

REF ; YOUR ATTACHMENT LETTER UPLOADED ON 02.02.2022

2. As per the information received from Insight Portal in respect of PARIN SEVANTILAL SHAH. The Sale value during the year as Fictitious Profits in Equity/Derivative Trading of Rs. 41349716 /-.

Sr. No.	Name of the assessee	PAN	Amount (Rs.)
1.	PARIN SEVANTILAL SHAH	ABIPS4450K	41349716

HIMANSHU KUMAR  
CENTRAL CIRCLE 1(2), MUMBAI

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7. On perusal of assessment order, we find that similar reasons recorded is extracted on Pg. No. 2 of assessment order. We find that case of the assessee for A.Y. 2013-14 was reopened on basis of aforesaid reasons recorded.

Admittedly the case of the assessee was reopened being six years from the end of relevant assessment year. There are no reasons recorded as to how the assessing officer came to the conclusion that the assessee earned fictitious profit. No material information is recorded in the reasons recorded. Even source of information of insight portal is recorded in the reasons. There is no allegation in the reason recorded that there is escarpment of income on part of assessee in not disclosing all material necessary for assessment. There is no independent application of mind by assessing officer on the alleged insight information. It looks that the reopening was made in a haste manner. The Id CIT(A) also overlooked that facts that information in the insight portal per se cannot be treated tangible material in absence of further inquiry.

8. We find that Hon'ble Apex Court in ITO vs. Lakhmani Mewal Das 103 ITR 437 SC held that the power under section 147 is no doubt are wide, but at the same time it cannot be said to be a plenary power. The words in statute are "reasons to believe" and not "reasons to suspect". The assumption of jurisdiction under section 147 must only on the basis of existence of cogent materials. The existence of cogent material must necessarily be real and effective. Secondly, there must be a nexus between the materials as well as the belief of income having escaped the assessment. There should be reflection a definite application of mind by the assessing officer to reach an inference based on materials justifying that the income has escaped assessment. The whole exercise under section 147 is mainly based on facts that there must be one assessment and one assessment alone on the income.

9. In our view mere suspicion on doubt in mind of the assessing officer does not entitled him to reassessed income under section 147. We are conscious of the fact that in Raymond Woolen Mills Ltd. vs ITO 236 ITR 34 wherein it was held that sufficiency or correctness of the material is not need to be considered at the stage of reopening. However on perusal of reasons recorded its clear that there is no application mind by assessing officer as to how he has come to a conclusion that assessee has shown a fictitious profit and equity/derivative training. Thus in our consideration view reasons recorded are absolutely vague and consequently reassessment proceeding initiated on such reasons recorded is invalid and passing on assessment order is void ab-initio. Thus, the assessee succeeded in ground No 1 (a) & 1(b).
10. Considering the facts that we have allowed legal ground of appeal, hence adjudication on merit have become academic.
11. In the result, the appeal of the assessee is allowed.

Order pronounced on 08/10/2025 in open court.

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

**Sd/-**  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Mumbai; Dated 08/10/2025  
Disha Raut, *Steno*

Copy of the Order forwarded to:

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

BY ORDER,

Asstt. Registrar)  
**ITAT, Mumbai**