

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

**BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER  
AND  
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

**ITA No.1883/Del/2025  
[Assessment Year: 2013-14]**

A.T. Invofin India Private Limited, A-60 Naraina Industrial Area-1, New Delhi-110028	Vs	DCIT, Central Circle-26, Income Tax Office, Jhandewalan Extn., Delhi-110055
<b>PAN-AAACA8248B</b>		
Appellant		Respondent

Assessee by	Shri Salil Kapoor, Adv. Shri Sumit Lachandani, Adv. and Ms. Ananya Kapoor, Adv.
Revenue by	Shri Manish Gupta, Sr. DR

<b>Date of Hearing</b>	<b>18.09.2025</b>
<b>Date of Pronouncement</b>	<b>26.11.2025</b>

**ORDER**

**PER ANUBHAV SHARMA, JM,**

This appeal has been preferred by the assessee against order dated 27.01.2025 of the learned Commissioner of Income Tax (Appeals)-29, New Delhi, in Appeal No.CIT(A), Delhi-29/10127/2012-13, arising out of order dated 10.03.2022 passed u/s 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') by the DCIT, Central Circle-26, Delhi, pertaining to Assessment Year 2013-14.

2. At the time of hearing, the Id. Counsel for the assessee has primarily argued on grounds no.2 to 4 questioning the assumption of jurisdiction u/s 148 of the Act and which as per Id. Counsel for the assessee was nothing but a case of change of opinion. It was contended that the assessment in this case of assessee was completed u/s 143(2) of the Act and the notice of reopening dated 30.03.2021 was issued after four years and proviso to section 147 was applicable without the attributing any failure on the part of the assessee should disclose full and correct particulars, the reopening was bad.

3. The Id. DR has primarily defended the addition on the basis of merits alleging that it is the penny stock and fictitious entity. On request of Id. DR, an opportunity for furnishing submissions were given, which are reproduced below:-

***Subject: Written submission in the above appeals, in addition to oral arguments - Reg.***

*In the above appeal, in addition to the oral arguments of the undersigned before the Hon'ble Bench, the relevant judgments of Hon'ble Supreme Court, and Hon'ble High Courts, which favour the Revenue are summarized as hereunder and may kindly be considered. While deciding the issue of addition made by the AO regarding claiming bogus long term capital gain/loss, the tests relating to the transaction in a penny stock the following judicial pronouncements of the Hon'ble Supreme Court and the Hon'ble High Courts, may kindly be considered while deciding the judicial basis of the issue:-*

*1. On the issue of fictitious loss from trading in equities, we have examined the following judgments:*

(i) *In Pooja Ajmani V/s ITO, ward20(4) New Delhi (2019) 106 taxmann.com65(delhi) the Hon'ble tribunal held that:*

*“tax planning may be legitimate provided it is within the framework of law and any colorable device cannot be part of the tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by dubious methods.”*

*Addition was confirmed on the issue of bogus capital loss claimed by the assessee.*

(ii) ***High court of Calcutta in the case of PCIT v/s Swati Bajaj (2022) 139 taxman.com352 held that***

*"where assessee earned LTGC on sale of shares and AO denied said claim and made additions u/s68 on the ground that assessee invested in shares of penny stock companies which provided bogus LTCG, since assessee failed to establish genuineness of rise of price of shares within a short period of time that too when general market trend were recessive additions made u/s 68 were justified."*

(iii) ***Supreme court of India in the case of Suman Poddar v/s ITO (2019)112taxmann.com330(SC) held that***

*"where high court upheld Tribunals order holding that assessee claim for exemption under section 10(38) could not be allowed because share transaction were bogus as company "C" whose shares were allegedly purchased was a penny stock, SLP filed against said order was to be dismissed."*

(iv) ***Honble ITAT "A" bench Kolkatta in the case of Narayan supplies pvt. Ltd v/s ITO ward 6(3) Kolkata held that***

*“order passed by the assessing officer is confirmed because transactions made by the assessee are actually money laundering, purchase and sale of shares of the penny stock was done only for the purpose of getting laundered money into bank accounts in the form of sale proceeds for further transfer to recipients.*

***On the issue of human probability, the legal view of the Hon. SC was as under:***

(v) ***"Sumati Dayal v. Commissioner of Income-tax [1995] 80 Taxman 89 (SC)"***

..12. This, in our opinion, is a superficial approach to the problem. The matter has to be considered in the light of human probabilities. The Chairman of the Settlement Commission has emphasised that the appellant did possess the winning ticket which was surrendered to the Race Club and in return a crossed cheque was obtained. It is, in our view, a neutral circumstance, because if the appellant had purchased the winning ticket after the event she would be having the winning ticket with her which she could surrender to the Race Club. The observation by the Chairman of the Settlement Commission that "fraudulent sale of winning ticket is not an usual practice but is very much of an unusual practice" ignores the prevalent malpractice that was noticed by the District Taxes Enquiry Committee and the recommendations made by the said Committee which led to the amendment of the Act by the Finance Act, 1972 whereby the exemption from tax that was available in respect of winnings from lotteries, crossword puzzles, races, etc., was withdrawn. Similarly the observation by the Chairman that if it is alleged that these tickets were obtained through fraudulent means, it is upon the allegor to prove that it is so, ignores the reality. The transaction about purchase of winning ticket takes place in secret and direct evidence about such purchase would be rarely available. An inference about such a purchase has to be drawn on the basis of the circumstances available on the record. Having regard to the conduct of the appellant as disclosed in her sworn statement as well as other material on the record an inference could reasonably be drawn that the winning tickets were purchased by the appellant after the event. We are, therefore, unable to agree with the view of the Chairman in his dissenting opinion. **In our opinion, the majority opinion after considering surrounding circumstances and applying the test of human probabilities has rightly concluded that the appellant's Claim about the amount being her winning from races is not genuine. It cannot be said that the explanation offered by the appellant in respect of the said amounts has been rejected unreasonably and that the finding that the said amounts are income of the appellant from other sources is not based on evidence.**

***In the present case, the A.O. had conducted detailed enquiry and analysis which revealed that :***

*The assessee had entered into pre fabricated share investment/trading of equities controlled by entry operators to book fictitious losses. The company whose shares were purchased/sold was having no worth due to weak financial base. During the year under consideration assessee booked fictitious capital loss of Rs.3,80,12,55%- (as per table shown in para -8 of the AO Order.) which was disallowed by the AO and amount of Rs. 3,80, 12,55%- was treated as income from other source. As per para-9 of the AO Order it is mentioned that assessee has declared loss of Rs.2,35,03,339 in its ITR, accordingly fictitious loss was calculated of Rs.3,80, 12,55%- (reference para 7,8 & 9 of the AO's order)*

*It was also unearthed during the investigation that beneficiaries have paid commission @6% for acquiring this fictitious LTCG resulting therein amount of Rs. 22,80,753/- (6% of Rs.3,80, 12,558/-) was treated as undisclosed expenditure u/s 69C for acquiring accommodation entry. (reference para 10 of the AO's order)*

*The Id CIT(A) has confirmed the addition by relying upon evidence gathered by the AO and legal position in the case of such a penny stock. (reference para 6.13 page 57 of Id. CIT(A)*

*During the course of hearing the Hon'ble member raised a query regarding calculation of Long Term Capital Loss. This issue has also been raised by the assessee before he Ld. CIT(A) as per ground no 5. The Ld.CIT(A) had adjudicated the same by directing the AO to verify the claim of the appellant (reference para 6.13 page 57). All other jurisdictional issues raised by the assessee have also been adjudicated by the Ld. CIT(A) in his order (reference para 6.6, page 53) against the assessee.*

*In view of the above facts and legal position order of the AO and Ld.CIT(A) may be upheld and contention of the assessee may be rejected.*

*Submitted for kind consideration of the Hon'ble Bench.”*

4. Now what comes up from the material on record and submissions is that the assessee had filed return of income of Nil with current year loss of

Rs.2,98,63,312/- and the case of the assessee was selected for compulsory scrutiny. The assessee company mainly engaged in the business of non-banking Finance company. The main objects of the company are to take investment in telecom sector and related ventures and to promote the formation and mobilisation of capital and investment on behalf of its promoters. Accordingly, the company has been managing investments on behalf of its promoters in shares of group companies and also realising income from sale and purchase of securities as well as from real estate operations/services. The assessment order u/s 143(3) was passed on 30.03.2016. Subsequently, a show-cause notice u/s 147 of the Act was issued. A copy of which is on record at page no.147. The approval taken for the issuance of show-cause notice is available at pages 143 to 146 of the paper book. As for convenience, we would like to reproduce the reasons

*Information has been received from DIT(Env.), Kolkata that the assessee company M/s A. T. Invofin India Pvt. Ltd. declared fictitious loss in equity/derivative trading amounting to Rs.11,27,433/- on transactions made by it in respect of shares of M/s Stampede Capital Ltd during the assessment year 2013-14. During the investigation it was found that contract note/bills for the purchase of shares were fabricated, shares were purchased through stock market by entry operator controlled entity immediately before the ultimate sales by the assessee/ beneficiary, transferred to the account of beneficiary within a few days of purchase by way of market transfers, using accounts controlled and managed by entry providers, from where it was sold within a few days. In this manner, the assessee's own unaccounted money is camouflaged as exempt Long Term Capital Gain and no tax was paid by it. Unaccounted money, in cash, is utilized for these arranged purchase of shares, from market. These shares are*

*transferred through one or a series of layers to the demat account of the beneficiary assessee. The beneficiary assessee sell the shares on market, paying STT and received sales consideration through banking channel. The entry providers arranged/furnished bogus, antedated contract notes, showing the purchases long time back on a fictitious date (at the then prevailing rates). The sales consideration is reduced by concocted cost of acquisition and the gain claimed as exempt. In case of loss, such loss is set off against the taxable profits. Thus, unaccounted money is brought into the books by fictitious and sham transactions and evading due taxes.*

2. *During the year under consideration, the assessee has entered into such transaction and earned long term/ short term capital gains/loss as under:*

<i>Company Name</i>	<i>PAN</i>	<i>F.Y.</i>	<i>Information Type</i>	<i>Information Values</i>
<i>Stampede Capital Ltd.</i>	<i>AAACB7421L</i>	<i>2012-13</i>	<i>Fictitious Loss in Equity/Derivative Trading</i>	<i>11,27,433</i>
<i>Atlanta Infra &amp; Finance Ltd.</i>	<i>AACCK4042R</i>	<i>2012-13</i>	<i>Fictitious Loss in Equity/Derivative Trading</i>	<i>2,37,97,500</i>
<i>Atlanta Infra &amp; Finance Ltd.</i>	<i>AACCK4042R</i>	<i>2012-13</i>	<i>Fictitious Loss in Equity/Derivative Trading</i>	<i>1,30,87,625</i>

### 3. *Escapement of Income in the case*

*From the above chart it is clear that the assessee company has declared fictitious loss of Rs. 11,27,433/- through the transaction made with M/s Stampeded Capital Ltd. and fictitious profit of Rs.3,68,85,125/- through M/s Atlanta Infra & Finance Ltd.*

4. *ITR for the A.Y. 2013-14 was filed by the assessee on 28/09/2013 declaring loss of Rs.2,98,63,312- and assessment u/s 143(3) was completed on 25/03/2016. However, the loss declared by the assessee shows that the income to the tune of Rs.3,80,12,558/- in respect of above mentioned transactions remained unattended. Therefore, I have reasons to believe that the assessee has failed to disclose fully and truly all material*

***facts which were necessary for completion of its assessment for the year under consideration.***

***Applicability of the provisions of section 147/151 to the facts of the case***

*In this case Return of income was filed for the year under consideration and assessment u/s 143(3) of the I.T. Act was passed on 25/03/2016. Since, 4 years from the end of the relevant year has expired in this case, the requirements to initiate proceeding u/s 147 of the Act are the reasons to believe that income for the year under consideration has escaped assessment owing to failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment for the assessment year under consideration. It is pertinent to mention here that reasons to believe that income has escaped assessment for the year under consideration have been recorded above.*

*It is evident from the above facts that the assessee had not truly and fully disclosed material facts necessary for his assessment for the year under consideration thereby necessitating reopening the case u/s 147 of the Act.*

*It may be stated that the amount of income escaping the assessment in this case is more than Rs. 1,00,000/- and period of four years has also expired. In view of the above facts, the matter is being submitted before the Pr. CIT Central -3, New Delhi for seeking necessary sanction within the meaning of sub-section (1) of section 151 of the Income Tax Act, 1961 for issue of notice u/s 148 of the I.T. Act 1961.*

5. It comes up that assessee's return of loss was filed on 28.09.2013 and assessment u/s 143(3) was completed on 25.03.2016. There upon an order u/s 154 was passed on 25.03.2016. Subsequently, the case of the assessee was selected for reassessment and a notice u/s 148 of the Act was issued on 30.03.2021. Now, the case of the assessee by way of various grounds is the challenge of the impugned order making additions on account of LTCG claim

u/s 10(38) of the Act and commission paid for acquiring such accommodation entry which has been upheld by the Id.CIT(A). The assessee's counsel alleges that the reopening itself was bad as it was not in accordance with the provisions of section 147 and section 148 of the Act. In this regard, it was specifically submitted that as the reopening was after four years, proviso to section 147 of the Act was applicable and nothing has been alleged against the assessee to show that there was any failure on the part of the assessee to disclose fully and truly all the particulars necessary for its assessment leading to alleged escapement of income.

5.1 The Id. DR has countered the same by submitting that merely disclosing all the facts is not sufficient if otherwise there is concealment of income and claim of bogus income.

6. In this context, we find that there was an information from the Investigation Wing, Calcutta about the assessee declaring fictitious loss in equity/derivative trading on transactions made by it in respect of shares of M/s Stampede Capital Limited during AY 2013-14. The AO examined the assessment record and found that the assessee has transacted in Stampede Capital Ltd. And Atlanta Infra and Finance Ltd., for which there was escapement of income.

7. When we go through the reasons copy of which is provided at pages 145 and 146 of the paper book, we find that after narrating the background of the reopening, the assessing officer concludes as follows:-

*“Applicability of the provisions of section 147/151 to the facts of the case*

*In this case Return of income was filed for the year under consideration and assessment u/s 143(3) of the I.T. Act was passed on 25/03/2016. Since, 4 years from the end of the relevant year has expired in this case, the requirements to initiate proceeding u/s 147 of the Act are the reasons to believe that income for the year under consideration has escaped assessment owing to failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment for the assessment year under consideration. It is pertinent mention here that reasons to believe that income has escaped assessment for the year under consideration have been recorded above.*

*It is evident from the above facts that the assessee had not truly and fully disclosed material facts necessary for his assessment for the year under consideration thereby necessitating reopening the case u/s 147 of the Act.*

*It may be stated that the amount of income escaping the assessment in this case is more than Rs.1,00,000/- and period of four years has also expired. In view of the above facts, the matter is being submitted before the Pr. CIT Central -3, New Delhi for seeking necessary sanction within the meaning of sub-section (1) of section 151 of the Income Tax Act, 1961 for issue of notice u/s148 of the I.T. Act 1961.”*

8. However, when we appreciate the material on record to find how justified is the finding of AO about the failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment, we find that at pages 120-121 of the paper book, there is a reply of the assessee filed during the assessment proceedings u/s 143(2) of the Act and the assessee had given complete details regarding the claim of long-term capital gain including the ledger of sale and purchase of shares of shares during the year with copy of

broker's contract note which are on record from paper book pages 122 to 136. To a specific query raised, the assessee's inventory of stock in trade was also provided during the assessment proceedings.

9. Then, the Id. counsel has submitted that the information was with regard to transacting in shares of M/s Stampede Capital Ltd., and Atlanta Infra & Finance Ltd., and the assessee has not at all transacted in Stampede Capital Ltd., and with regard to M/s Atlanta Infra & Finance Ltd., the assessee had details of the transactions in the form of Annexure-2 at the time of reassessment proceedings and copy of which is placed at page 175 of the paper book and the same show that the assessee had sold shares as well as purchased shares.

10. The reasons as available at page 147 of the paper book show that without specifically pointing out as to it was a long-term or short-term capital gain or capital loss, the AO has added both to make the additions. The Id.CIT(A) has dealt with this as a mere calculation error directing the AO to compute a disallowance afresh in para 6.13 of the impugned order. However, what is relevant is that throughout the stage of recording of reasons and approval, the AO has proceeded on an assumption that whatever information was received leads to escapement of income without there being any effort on the part of the AO to apply the mind and show as to how there was a failure on the part of the assessee to not fully disclose the facts leading to escapement of income.

11. The reliance of case law by ld. DR are all with regard to the merits of bogus long-term gain/loss in penny stock cases. However, with regard to the issue of wrongful assumption of jurisdiction beyond the scope of proviso to section 147 of the Act, the ld. DR has nothing to support on factual basis.

12. Resultantly, we are inclined to decide ground No 7 in favour of the assessee and remaining grounds become academic. Assumption of jurisdiction gets vitiated and consequently assessment order stands nullified. Accordingly, the appeal of the assessee is allowed.

13. The appeal of the assessee is allowed.

Order pronounced in the open court on 26<sup>th</sup> November, 2025.

**Sd/-**  
**[MANISH AGARWAL]**  
**ACCOUNTANT MEMBER**  
**Dated:** 26.11.2025

**Sd/-**  
**[ANUBHAV SHARMA]**  
**JUDICIAL MEMBER**

Rohit. Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. PCIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi