

**THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH "E" NEW DELHI**

**BEFORE SHRI SUDHIR KUMAR, JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

**ITA No.1035/Del/2025
&
C.O 118/Del/2025
Assessment Year: 2014-15**

Assistant Commissioner of Income Tax 201-202, 2 nd Floor CGO Complex Hapur Chungi Ghaziabad -201002	Vs.	Arun Kumar II-F-3 Nehru Nagar Ghaziabad 201001 Uttar Pradesh
PAN No. AEAPK1314B		
(Appellant)		(Respondent)

Appellant by	Ms. Ankush Kalra, Sr.DR
Respondent by	Dr. Rakesh Gupta, Adv Shri Somil Agarwal adv

Date of hearing	27.10.2025
Date of pronouncement	27.11.2025

ORDER

PER SUDHIR KUMAR JM:

The Revenue preferred the appeal, challenging the order dated 31-12-2024 passed by National Faceless Appeal Centre Delhi (in short

NFAC) passed assessment order dated 30-03-2022 of the Assessing Officer for A.Y. 2014-15 under the section 147 r.w.sc144B of the Income Tax Act, 1961(In short “the Act”). The assessee also filed the cross objection in the appeal.

2. The revenue following grounds in appeal:

1. On the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in deleting addition of Rs.57,06,000/- made by the AO by treating entire receipts from the sale of shares of M/s City Travel Solutions Ltd. as unaccounted income u/s 67 of the Act, without considering the fact that M/s City Travels Pvt. Ltd. was one of the identified penny stock company as established by the Investigation Wing of the Department which was used for providing accommodation entry and creation of bogus capital gains exempt u/s 10(38) of the I.T. Act,1961.

2. That the appellant craves leave to add modify amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.

3. The brief facts of the case are that the assessee filed his return of income for A.Y. 2014-15 on 16-09-2014 by declaring total income of

Rs.99,66,490/-. After that the assessee filed revised return of income on 30-03-2016 declaring total income at 99,66,490/-. The case of the assessee has been assessed u/s 143(3) of the Act on 27-10-2016. As per the information received from Dy. Director of Income tax (Inv.) Mumbai, the assessee during the financial year has made penny stock transactions of Rs.57,06,000/- which escapement of income has been done. A notice u/s 148 of the Act was issued on 30-03-2021 after obtaining necessary satisfaction of Principal Commissioner of income Tax Ghaziabad and approval as per the provision of section 151(2) of the Act and recording the reasons as per the provisions of section 147 of the Act. In the response of the notice the assessee filed his return of income and stated that he sold 19,000/- equity shares of M/s City Travels Solutions Ltd. on 06-03-2014 and 07-03-2014 for gross sale consideration of Rs.57,06,000/- through SEBI registered share brokers Reliance Securities Ltd, and after deducting brokerage, service tax and STT, net sale consideration of Rs.56,94,882/- was received and capital gain of Rs.45,08,090/- was taxed as short term capital gain. According to AO the transaction carried out by the assessee is a penny stocks and the assessee entered into a bogus transaction. After considering the submission submitted by the assessee the AO completed the assessment after making the addition of Rs.57,06,000/- under section 68 of the Act.

4. Being aggrieved with the order of the AO, the assessee filed the appeal before the Ld. CIT(A), who vide hid order dated 31-12-2024

partly allowed the appeal of the assessee. Aggrieved with the order of the Ld.CIT(A), the Revenue is in appeal before the Tribunal. The assessee also filed the cross objection in the above said appeal.

5. The Ld. DR submitted that as per the enquiry conducted by investigation wing of the Department and also from NSE, it had established that there were scrip which were merged by accommodation entry providers and were used by the assessee to route their undisclosed income through transaction in these penny stocks and to claim exempt Long Term Capital Gain as per the provisions of section 10(38) of the Act. She further submitted that M/s City Travel Solutions Ltd. was identified penny stock company by the Investigation Wing of the Income Tax Department which was used for such purpose. The sale of equity shares to the M/s City Travel Solution Ltd. by the assessee is bogus sale to claim the Long Term Capital gain.

6. The Ld. AR of the assessee submitted that the assessee has duly declared the STCG on sale of shares in the return of income and tax was paid by the assessee the same can't be taxed again. He further submitted that the purchase and sale of the shares were made prove through proper banking channel on recognized stock exchange through a SEBI registered Stock broker. The assessee had purchased the 19,000 shares of the M/s City Travel Solution Ltd. for an amount of Rs.11,86,972/- on 26-04-2013, which were sold on 06-03-2014 and 07-03-2014 for a total consideration of Rs.56,94,882/-. Since the

Capital Gain on the sale of the shares has been duly offered to tax by the assessee, the addition was rightly deleted by the Ld.CIT(A).

Reliance has placed on the followings decisions:

- (i) *Addl. CIT vs. Gurshant Rotary Compressor Ltd. . 15 DTR 429(DEL 'C) (TM)*
- (ii) *Eland International (P) Ltd. Vs. Dy.CIT, 26,DTR 113 (Del. 'C')*
- (iii) *CIT v. Vishal Exports Overseas Limited, Tax Appeal No. 2471 of 2009 Gujarat High Court.*

7.The Ld.CIT(A), partly allowing the appeal held that:

xiv. The appellant assessee has contended vide its grounds no.7 & 7 that..... Ld. Assessing Officer erred on the facts and in law by making addition of Rs.57,06,000/- under section 68 of the Income Tax Act, 1961 when said amount already declared as income and accordingly taxed after due verification....". And that, the "...ld. Assessing Officer erred on the facts and in law by making addition of Rs.57,06,000/- as long term capital gain when sale of shares wea duly accepted by Ld. Assessing Officer as short term capital after detailed inquiry/ investigation while completing the assessment under section 143(3) of the Income Tax Act,1961..."

Thus it is seen that, this has already been offered for taxation as STCG the appellant assessee for this A.Y.2014-15 and hence it cannot be taxed again.

xv. Thus from the perusal of the facts as per the assessment order and submission & documentary evidences provided by appellant assessee, this contention of the appellant holds strength in the eyes of this Appellate authority. Therefore, this Appellate authority is in the view that, the evidence provided by the appellant assessee in support of its

contentions are correct. The grounds of appeal no. 6&7 are allowed accordingly.

8. In the instant case the shares were sold through the banking channel on recognized stock exchange through a SEBI registered Stock broker. The assessee had furnished detailed information that was sought by the AO during the assessment. The assessee had offered the tax on the capital gain on the sale of the shares. The Ld. CIT(A), has examined the issue in the correct prospective and rightly deleted the additions towards the addition under section 68 of the Act made by AO. The reasoning and findings of the Ld. CIT(A), while granting relief is on proper appreciation of law expounded by the judicial dicta. We do not find any reasons to interfere with the findings of the Ld. CIT(A). The appeal of the Revenue is liable to be dismissed and dismissed accordingly.

Cross Objection No. 118/Del/2025

9. In the cross objection has filed on the following grounds:

- (i) *That the belief could not have been formed for escapement of income.*
- (ii) *That four weeks have not been granted to the assessee after the disposal of objections raised by the assessee as per law.*
- (iii) *That the assumption of jurisdiction u/s 147 is bad in law as the mandatory and statutory conditions of section 147 to 151 of the Act have not been complied.*

10. Ld. AR of the assessee submitted that re-opening is based on the change of opinion on the same facts. The issue on which basis the case was re-opened has been examined and accepted by the AO in the original proceedings u/s 143(3) of the Act.

11. Reliance has placed on the following decisions:

- (i) *CIT vs, Kelvinator of India Ltd. (2010) 320 ITR 561 Supreme Court Of India*
- (ii) *Godrej Agrovet Ltd. Vs. DCIT (2010) 323 ITR 97 High Court of Bombay*
- (iii) *Balkrishna Hiralal wani v. ITO (2010) 321 ITR 519 High Court of Bombay*
- (iv) *Cartini India Ltd. v. Addl. CIT (2009) 314 ITR 275 High Court Bombay*
- (v) *Praveen P. Bharucha v. DCIT (2012) 348 ITR 325 High Court of Bombay*
- (vi) *Purity Teachtexile (P) Ltd. v. ACIT (2010) 325 ITR 459 High Court of Bombay*
- (vii) *Carlton Overseas (P) Ltd. V.ITO (2009) 318 ITR 295 High Court of Delhi*
- (viii) *CIT v. Keane India Ltd. ITA 230/2012 dated 20-04-2012 High Court Of Delhi*
- (ix)

12. The Ld. DR relied the order of the AO. We have heard the parties and perused the material available on record. In the instant case the case was selected for scrutiny under CASS and the questionnaire was issued to the issued to furnish the details of the capital gain. After considering the submission of the assessee the ld.AO accepted the return of income furnished by the assessee without making any additions. The issue was duly examined by the AO during the course of original proceedings. Thus, the case of the assessee was re-opened on the change of opinion which is bad in law.

13. The ld. A.R of the assessee submitted that four week time was not allowed to the assessee after rejection of the objection of the assessee. The assessment is bad in law. He placed reliance on the following decisions:

- (i) *Asian paints ltd, Vs. DCIT (2008) 296 ITR 90 High Court of Bombay.*
- (ii) *Bharat Jayantilal Patel vs. Union of India (2015) 378 ITR 596 High Court of Bombay*
- (iii) *Aroni Commercial Ltd. Vs. DCIT (2014) 362 ITR 403 High Court of Bombay*
- (iv) *Hirachand Kanuga vs. DCIT (2015) 68SOT 205 ITAT Mumbai Bench*

14. In the case in hand notice u/s 142(1) of the Act was issued on 14-12-2021 & 20-01-2021 and the assessee was filed his reply on 22-01-2022. The Ld. AO had decided the objection by order dated 20-03-2022 and the impugned re-assessment order was passed on 30-03 2022 without leaving a period of four weeks. In the case of Asian Paints Ltd. V. Deputy Commissioner of income tax [2008] 296ITR 90 Bombay held that if the Assessing Officer does not accept the objection filed to notice under section 148, he shall not proceed further in the matter for a period of four weeks from the date of receipt of service of the said order on objection on the assessee. In this case the Hon'ble High Court directed to framed the rules and follow the procedure strictly.

15. Lastly, ld. AR submitted that the case of assessee was re-opened after the period of four years from the end of the relevant assessment year. The ld. AO has not pointed out in the reasons recorded as to what, was the failure of the assessee and which material facts were not disclosed, which makes the impugned reassessment bad in law. The assessee has disclosed fully and truly material fact in the return of income. The re-opening has been made without application of mind and independent verification of facts. Reliance placed on the following decisions:

- (i) *Haryana Acrylic Manufacturing Co. V. Commissioner of Income Tax & Anr. 308 ITR 38(Del)*
- (ii) *Wel Intertrade Pvt. Ltd. v. ITO 308 ITR 22 (Del)*
- (iv) *JSRS Udyog Ltd. and Anr v. ITO 313 321 (Del)*
- (v) *Sterlite Industries (India) Ltd. V. Assistant CIT & Anr (2008) 305 ITR 339(Mad)*
- (vi) *Idea Cellular Ltd. V. DCIT and others 301ITR 407 (Bom)*
- (vii) *Mimson textile Engineering Industries Ltd. (2013) 83 DTR 132 (Guj)*
- (viii) *Bombay Stock Exchange ltd. v. DDIT (2014) 361 ITR 160 (Bom)*
- (ix) *Pr. CIT v. Meenakshi Overseas (P) Ltd. (2017) 395 ITR 677 High Court of Delhi*
- (x) *Pr. CIT v. RMG Polyvinyl (I) Ltd. (2017) 396 ITR 05 High Court of Delhi*
- (xi) *Pr. CIT v. G & G Pharma India Ltd. (2015) 384 ITR 147 ,High Court Of Delhi*
- (xii) *G & G Pharma India Ltd. v. ITO (2015) 43 CCH 18 ITAT Delhi Bench.*

16. In the instant case the originally proceedings was concluded u/s 143(3) of the Act vide assessment order dated 27-10-2016 and the

case was re-opened after the four years from the end of the relevant assessment year. It is alleged that the assessee filed the reply before the AO stating that assessee has disclosed fully and truly all material fact in the return of income. From the perusal of the reasons recorded it reveals that merely on the basis of the information received from the portal the case was re-opened, and no independent enquiry was conducted by the AO. The assessee has shown the STCG in the return of income and offered the tax and the assessee has not claimed the exemption. The case of assessee was reopened on the basis of the change of opinion and without application of mind and any independent verification, which is bad in law and liable to be quashed and quashed accordingly.

17. In the result the appeal of the Revenue is dismissed and the cross objection of the Assessee is allowed.

Order pronounced in the open court on 27/11/2025.

Sd/-
(MANISH AGARWAL)
ACCOUNTANT MEMBER

Sd/-
(SUDHIR KUMAR)
JUDICIALMEMBER

Dated: 27 November,2025

“Neha, Sr. PS”

Copy forwarded to:

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

Asst. Registrar, ITAT, Delhi