

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

**BEFORE: SHRI ABY T VARKEY, JUDICIAL MEMBER**

**&**

**SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.1626/Mum/2022  
(Assessment Year : 2012-13)**

Mamta Lalit Jain 23A/606, Kalyan Road Ashok Nagar, Bhiwandi Thane-421 302	Vs.	ITO, Ward-1(2), Kalyan Mohan Plaza, Wayale Nagar Khadak Pada, Kalyan (W) Kalyan – 421 301
<b>PAN/GIR No.AARPJ1733E</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Ajay Singh
Revenue by	Shri. Shambhu Yadav
<b>Date of Hearing</b>	<b>05/12/2022</b>
<b>Date of Pronouncement</b>	<b>08/12/2022</b>

**अदेश / ORDER**

**PER M. BALAGANESH (A.M):**

This appeal in ITA No.1626/Mum/2022 for A.Y.2012-13 is preferred by the assessee against the order of the Commissioner of Income Tax, National Faceless Appeal Centre, Delhi (NFAC) (Ld.CIT in short), dated 11/05/2022.

2. The assessee has raised various grounds before us. But we find that assessee, vide grounds No.1 & 2 has challenged the validity of assumption of jurisdiction by the Ld.Assessing Officer (Ld.AO) under

section 147 of the Act. The other grounds raised by the assessee are on merits of the addition.

3. We have heard the rival submissions and perused the materials available on record. The assessee is an individual having income from House Property, Income from business, Income from capital gains and Income from other sources. The assessee is a regular investor in the share market since 2007 as stated by the Ld.AR. In the return of income filed on 12/09/2012 for A.Y. 2012-13, the assessee claimed long term capital gain exemption of Rs.3,00,809/- on sale of shares of M/s Gemstone Investment Ltd. The details of purchase and sale of shares are tabulated as under:-

Date	Qty	@	Amount	STT Paid	Payment Date	Cheque No.	Amount	Bank	DP Credit Date
27/03/2009	3000	24.50	73933.09	92	02/04/2009	371949	74262	ACBL	07/04/09
24/06/2009	1500	21	31708.82	39	03/07/2009	371952	32000	ACBI	06/07/09

Shares split from Rs.10 to Re.1 is from one share to ten shares effective from 13<sup>th</sup> August,2010. Thus, 4500 shares held were transferred in to new 45000 shares.

Sale:

Date	Qty	@	Amount	STT Paid	Payment Date	Cheque No.	Amount	Bank	DP Credit Date
02/05/2011	45000	9.1	409500	512	10/05/2011	079955	406500	HDFC Bhiwandi	02/02/11

The purchases of the aforesaid shares were made in A.Y. 2009-10 and 2010-11 through registered brokers and the same were duly dematted by the assessee. The payments were made by account payee cheques in online platform. The shares were sold in the secondary market pursuant to the share split, in the secondary market and sale proceeds were received by the assessee from the registered broker through account payee cheques. These facts are absolutely not in dispute. The assessee had furnished the statement of long term capital gains and short term capital gain, DEMAT statement, purchase and sale contract notes, broker ledger statement, bank statements of the assessee and evidence for split of shares.

4. The Ld.AO reopened the assessment after recording reasons wherein it was pointed out that he had received information from DDIT, Investigation Wing, Mumbai wherein Gemstone Investment Ltd scrip dealt with by the assessee was treated as a penny stock and assessee being one of the beneficiaries of exempt capital gain, income of the assessee had escaped assessment for which assessment was sought to be reopened. The reasons recorded by the Ld.AO are enclosed at pages 15 to 17 of the paper book:

"Reasons for re-opening of the investment in the case of Smt. Mamta Lalit Jain for A.Y. 2012-13 U/S 147 OF THE Act:

**1. Brief details of the assessee:**

*The assessee is an individual. The assessee has filed any return of income for AY 2012-13 and has shown income of Rs.3,00,590/- after claiming deduction of Rs.1,19,716/- under chapter VI A of the I.T. Act, 1961.*

**2. Brief details of information collected / received by the AO:-**

*As per information received from Director of Income Tax (Inv)-5(2), the assessee has sold shares of M/s Gemstone Investment Ltd (GIL) for Rs.4,09,500/-. The Dy.DIT(Inv) has further stated that M/s Gemstone Investment Ltd (GIL) is a penny stock and SEBI has banned trading in the said scrip.*

**3. Analysis of information collected / received:**

*From the information provided, it is seen that the assessee has received Rs.4,09,500/- on sale of shares of M/s Gemstone Investment Ltd (GIL). Further, from perusal of statements recorded u/s 131 of the Act by Dy.DIT(Inv), it is seen that the scrip has been utilized to route unaccounted income through sale of shares of M/s Gemstone Investment Ltd (GIL).*

**4. Enquiries made by the AO as sequel to information collected / received.**

*Information has been received on 12/03/2019 and accordingly, return of income has been downloaded and perused.*

**5. Findings of the A.O:**

*The assessee in his return of income for AY 2012-13, has shown income of R.46,200/- under the head income from house property, Rs.4,70,464/- under the head income from business and profession, Sale of shares of M/s Gemstone Investment Ltd (GIL) has not been offered for tax. Further, as*

*per report received and going through the statement recorded, it is concluded that the assessee has routed his unaccounted income of Rs.4,09,500/- through sale of shares of M/s Gemstone Investment Ltd (GIL).*

**6. Basis of forming reason to believe and details of escapement of income:-**

*Analysis of the information received, reveals that the assessee has routed his unaccounted income of Rs.4,09,500/- through sale of shares of M/s Gemstone Investment Ltd (GIL). In view of the above facts and material evidences, I have the reason to believe that assessee's income of Rs.4,09,500/- has escaped assessment.*

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

*In this case a return of income was filed for the year under consideration declaring total income at Rs.3,00,590/- but no scrutiny assessment u/s 143(3) of the Act, was made. Accordingly, in this case, the only requirement to initiate proceedings u/s 147 is reason to believe which has been recorded above in para no.6*

*It is pertinent to mention here that in this case the assessee has filed return of income for the year under consideration but no assessment as stipulated u/s 2(4) of the Act was made and the return of income was only processed u/s 143(1) of the Act. In view of the above, the provisions of clause (b) of Explanation 2 of section 147 of Income-tax Act, 1961 are applicable to facts of this case and the assessment year under consideration is deemed to be a case where income chargeable to tax has escaped assessment.*

*In this case more than four years have lapsed from the end of the assessment year under consideration. Hence, necessary sanction to issue the notice u/s 148 has to be obtained from the Pr.CIT-2, Thane as per the provisions of section 151 of the Income-tax Act, 1961.*

*In view of the above facts, it is requested that kind approval for issue of notice under section 148 in this case for the A.Y. 2012-13 may be accorded, if approved.*

Place : Kalyan  
Date 12.03.2019

Sd/-  
(RAKESH KUMAR)  
Income-tax Officer,  
Ward-1(2), Kalyan.

5. The Ld.AR also placed on record the copy of SEBI order dated 04/01/2016 passed under section 11(4) and 11B of the SEBI Act, 1992 in the matter of Gemstone Investments Ltd. This SEBI order is enclosed in pages 104 to 133 of the paper book. On perusal of the said order, we find that neither the assessee's name nor the share broker through whom assessee transacted was even mentioned in the list of parties as beneficiaries. The said SEBI order clearly indicates the list of parties who were involved in price manipulation by way of artificial rigging of prices. Nowhere the assessee's name or his broker's name is reflected thereon. No doubt, this scrip of Gemstone Investments Ltd may be a penny stock. But, still, the assessee cannot be faulted for each and every transaction carried out in the said scrip treating the said transaction as tainted transaction. From the perusal of the Income Tax return and computation of total income of the assessee, we find that assessee had made investments in various companies over the period of years. It is not that assessee had merely invested in Gemstone Investments Ltd (which is considered as a pennystock) and made gains in the form of exempt long term capital gains thereon. Moreover, we also find that the average price at which the assessee has bought is Rs.23 per share and the assessee had merely got an appreciation of 4.5 times on the sale price which, in our considered opinion, is a normal return expected by any legitimate investor in the share market. We further find that the information received from Investigation Wing by the Ld.AO vide letter dated 06/03/2019 was placed on record by the Ld.AR before us. On perusal of the said letter, we find that the Investigation Wing had only mentioned that the Ld.AO is advised to consider and examine all other relevant details and carry out his own independent enquiry and take necessary action as per law in respect of sale of shares of Gemstone Investments Ltd made by the assessee. The said information nowhere gives any mandate / authority to the Ld.AO to enable him to form a belief that

income of the assessee had indeed escaped assessment. It is not in dispute that other than the said letter dated 06/03/2019 received from Investigation Wing and SEBI's order, the Ld.AO did not have any information or material which would enable him to form a belief that income of the assessee had escaped assessment warranting reopening. Hence, this is a classic case where reopening has been made by the Ld.AO to make fishing and roving enquiries which, in our considered opinion, is not permissible in law. Our view is further fortified by the decision of Hon'ble Jurisdictional High Court in the case of PCIT vs Rajesh D Nandu (HUF) reported in 261 Taxman 110 (Bom)(HC) wherein it was held as under:-

*"7. There can be no dispute that in case where a return of income has been processed under [Section 143\(1\)](#) of the Act, the Revenue has a greater latitude in reopening an assessment. However, even in such cases, the reopening of an assessment can only be done if there is reason to believe that income chargeable to tax has escaped assessment. The reason recorded in support of the reopening notice must disclose the basis of the reasons to believe that income chargeable to tax has escaped assessment. The reasons must provide a link between the material available and the formation of reasonable belief that income chargeable to tax has escaped assessment. The reason to believe must be based on some material available with the Assessing Officer and no reasonable belief can be formed without some material to support the same.*

*8. We find that the impugned order of the Tribunal has correctly held that the reopening of the assessment cannot be for the purpose of fishing inquiry. The reopening of the assessment has to be based on same material which is available with the Assessing Officer which would give rise to reason to believe that the income chargeable to tax has escaped assessment. The reasons as recorded in support of the impugned notice to doubt the genuineness of the gift is not based on any material. At the highest, it is only a suspicion subject to enquiry. In fact, this is a case of fishing enquiry. Thus, there is no material available with the Assessing Officer to have the reason to believe that income chargeable to tax has escaped assessment. The view taken by the impugned order of the Tribunal cannot be found fault with."*

6. Hence, in view of the aforesaid observations, we have no hesitation in quashing re-assessment proceedings framed under section 147 of the Act, in the instant case. Since re-assessment is quashed on legal ground, there is no need to adjudicate the grounds raised by the assessee on merits and they are left open.

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

Order pronounced on 08/12 /2022 in the open court.

**Sd/-**  
**(ABY T. VARKEY)**  
JUDICIAL MEMBER

**Sd/-**  
**(M.BALAGANESH)**  
ACCOUNTANT MEMBER

Mumbai; Dated 08/12/2022  
Pavanan, Sr. PS

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(Sr. Private Secretary / Asstt. Registrar)  
ITAT, Mumbai