

**आयकर अपीलीय अधिकरण, 'सी' (SMC) न्यायपीठ, चेन्नई**

IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' (SMC) BENCH : CHENNAI

**श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष।**

[BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. No. 2780/CHNY/2017

निर्धारण वर्ष /Assessment year : 2014-2015

Mohanlal Chimnaji Jain,  
No.90/97, NSC Bose Road,  
Sowcarpet,  
Chennai 600 079.

**Vs.** The Income Tax Officer,  
Non Corporate Ward 5(3)  
Chennai 600 006.

[PAN AJYPJ 9818L]

**(अपीलार्थी/Appellant)**

**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by

: Shri. S. Sridhar, Advocate

प्रत्यर्थी की ओर से /Respondent by

: Shri. B. Sagadevan, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing

: 24-07-2018

घोषणा की तारीख /Date of Pronouncement

: 25-07-2018

**आदेश / ORDER**

This is an appeal filed by the assessee, which is directed against an order dated 04.10.2017 of Commissioner of Income-tax (Appeals)-5, Chennai.

**2.** Grounds taken by the assessee are reproduced hereunder:-

*"1. The order of The Commissioner of Income Tax (Appeals) 5, Chennai dated 4.10.2017 in I.T.A. No.153 /CIT(A)-5/2016-17 for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.*

*2. The CIT (Appeals) erred in sustaining the rejection of the claim for exemption u/s 10(38) of the Act in respect of the computation of Long Term Capital Gains without assigning proper reasons and justification.*

*3. The CIT (Appeals) failed to appreciate that the genuineness of the transaction routed through the recognized Stock Exchange and the payment of STT would vitiate the perverse findings of facts in para 6.3 & para 6.5 of the impugned order while consequently vitiate the decision to deny the exemption sought for u/s 10(38) of the Act.*

*4. The CIT (Appeals) erred in enhancing the assessment in treating the entire sale proceeds of M/s Ashika Credit Capital Ltd. in view of wrong presumption of facts in para 6.7 of the impugned order without assigning proper reasons and justification.*

*5. The CIT (Appeals) failed to appreciate that the enhancement of the assessment in this regard was wrong, erroneous, unjustified, incorrect and not sustainable in law.*

*6. The Commissioner of Income Tax (Appeals) failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law.*

*7. The Appellant craves leave to file additional grounds/arguments at the time of hearing".*

**3.** Grounds indicate that assessee is aggrieved on treatment of gains arising from sale of 3500 shares of one M/s.Ashika Credit Capital Ltd. Assessee had treated gains from the sale of shares as long term capital gains, whereas Id. Assessing Officer had considered M/s.Ashika Credit Capital Ltd to be a penny stock and took the claim as bogus. Id. Assessing Officer held that the gains claimed had to be assessed under the head "income from other sources". Id. Commissioner of Income Tax (Appeals) on the other hand, enhanced the income assessed under the head income from other sources. According to him, Id. Assessing Officer only considered the gain arising from bogus sale of the shares, whereas the whole consideration shown as received on sale of the shares was assessable under the head "income from other sources".

**4.** Now before us, Id. Authorised Representative strongly assailing the orders of the lower authorities submitted that assessee had acquired shares of M/s.Ashika Credit Capital Ltd through a recognized stock exchange and not through any off market deal. As per the Id. Authorised Representative, Id. Commissioner of Income Tax (Appeals) committed an error when he mentioned at para 6.3 of its order that shares were purchased through off market deals and not through a recognized stock exchange. Further, as per the Id.

Authorised Representative, Id. Assessing Officer had relied on reports of the Investigation Wing, of Income Tax Department, Kolkatta to hold that shares of M/s.Ashika Credit Capital Ltd was a penny stock and used for generating bogus claim of long term capital gains. As per the Id. Authorised Representative this report was never put to the assessee and assessee was deprived of an opportunity for rebutting the findings of Investigation Wing.

**5.** Per contra, Id. Departmental Representative submitted that assessee could not show any evidence why the value of the equity shares of M/s.Ashika Credit Capital Ltd had exponentially increased in a very short period of time. As per the Id. Departmental Representative, assessee claimed shares to have been purchased in May, 2012 and sold in October 2013, and the price more than doubled. As per the Id. Departmental Representative, this claim was rightly considered as bogus by the lower authorities.

**6.** I have considered the rival contentions and perused the orders of the authorities below. Contention of the Id. Authorised Representative is that shares of M/s.Ashika Credit Capital Ltd was acquired through recognized stock exchange and was not through any off market deal. Further, according to the Id. Authorised Representative report of Investigation Wing, Income Tax Department,

Kolkatta on which reliance was placed by the lower authorities was never put to the assessee. I find that shares of M/s.Ashika Credit Capital Ltd was considered by Id. Assessing Officer to be a penny stock based on a report received from the Investigation Wing of Income Tax Department, Kolkatta. This is clear from the para 3.1 of the assessment order which is reproduced hereunder:-

*"In this connection there was a fact finding reports from the Investigation Wing, Income Tax Department, Kolkatta, wherein it that the shares of M/s. Ashika Credit Capital Ltd (Scrip Code No.590122) was identified one of the BSE listed penny stock which have been used for generating bogus LTGG and as per the report the following finding were made".*

There was no other evidence with the Revenue to show that purchase and sale of the shares were bogus and only done with the intention of generating long term capital gains for claiming exemption u/s.10(38) of the Income Tax Act, 1961 (in short "the Act"). I am of the opinion that assessee ought have been given a fair chance for rebutting the findings of the Investigation Wing, Income Tax Department, Kolkatta on which reliance was placed by the Id. Assessing Officer for disbelieving the transactions claimed in the shares of M/s.Ashika Credit Capital Ltd. I therefore set aside the orders of the lower authorities and remit the case back to the file of the Id. Assessing

Officer for consideration afresh in accordance with law, giving fair opportunity to the assessee to rebut any finding or any material which is sought to be used against him.

7. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced on Wednesday, the 25th day of July, 2018, at Chennai.

Sd/-  
(अब्राहम पी. जॉर्ज)  
**(ABRAHAM P. GEORGE)**  
लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated: 25<sup>th</sup> July, 2018.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant   | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT           | 6. गार्ड फाईल/GF        |