

**IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI**  
**BEFORE SHRI AMARJIT SINGH, JM AND SHRI MANOJ KUMAR**  
**AGGARWAL, AM**

आयकर अपील सं/ I.T.A. No.6444/Mum/2019

(निर्धारण वर्ष / Assessment Year: 2015-16)

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|--|-----------------------|--|
| Jay Hansraj Chheda<br>Room No.61, 4 <sup>th</sup> Floor,<br>Vasant Villa, Behnama Hall<br>Lane Prarthna Samaj,<br>Mumbai-400006. | <b>बनाम/</b><br>Vs.   | ITO, Ward-19(2)(1)<br>Matru Mandir, Room<br>No.221, Tardeo Road,<br>Mumbai-400007. |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AJLPC9910H  |                       |  |
| (अपीलार्थी /Appellant)   | ..                    | (प्रत्यर्थी / Respondent)  |
| Assessee by:   | Shri Manoj Pandit     |  |
| Revenue by:  | Ms. Usha Gaikwad (DR) |  |

सुनवाई की तारीख / Date of Hearing: 28/07/2021

घोषणा की तारीख /Date of Pronouncement: 03/09/2021

**आदेश / O R D E R**

**PER AMARJIT SINGH, JM:**

The assessee has filed the present appeal against the order dated 26.07.2019 passed by the Commissioner of Income Tax (Appeals)-30, Mumbai (hereinafter referred to as the “CIT(A)”) relevant to the A.Y.2015-16.

**2. The assessee has raised the following grounds: -**

“1. In law and on facts as well as in circumstances of the appellants case, the Commissioner of Income Tax (Appeals)-30 has erred in not quashing the order passed by the AO.

2. The Learned CIT(A)-30 has erred in upholding that the LTCG disclosed are not genuine and represent undisclosed income of the



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*appellant and that he has resorted to prearranged method to evade taxes through LTCG, although the appellant has submitted all the relevant documents to show that the purchase and sale of shares were genuine transactions.*

3. *The Ld. CIT(A)-30 erred in confirming that the appellant has indulged in bogus transactions by indulging in penny stock shares of M/s. Pine Animation Limited.*

4. *The Learned CIT(A)-30 has erred in not observing that the Ld. AO has made the addition only on the basis of the information received from Kolkata wing (which spells out the modus operandi), although the AO has not brought any material/evidence to prove that the appellant in specific, has indulged in any bogus transaction, of whatsoever nature.*

5. *The Learned CIT(A)-30 erred in confirming the following allegations leveled by Ld. AO without providing any opportunity of cross examination to your appellant.*

*(a) The appellant has indulged in accommodation entries and has converted his cash and claimed a LTCG (exempt from tax).*

*(b) Shares of M/s. Pine Animation Ltd are in nature of penny stock and has wrongly relied on impugned statement of brokers, dealers and dummy directors.*

6. *The Ld. CIT(A)-30 has erred in confirming the erroneous conclusion of the Ld. AO that the source of cash deposits is not established and that the documents showing the genuineness of transactions ie. Cash account, bank account, purchases & sales accounts being on record has been ignored and formed opinion to conclude that assessee has indulged in penny stock transactions and is ineligible for exemption for LTCG under the Income Tax Act, 1961.*



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7. *In law and in the facts and circumstances of the appellant case, the learned CIT(A)-30 has grossly erred in concluded that the Ld. AO has rightly made the additions in the returned income of the appellant.”*

**3.** We have heard the arguments advanced by the Ld. Representative of the parties and perused the record. The Ld. Representative of the assessee has argued that the CIT(A) has decided the matter of controversy in absence of the assessee and without giving an opportunity of being heard to the assessee in accordance with law, therefore, the finding of the CIT(A) is not justifiable, hence, is liable to be set aside in the interest of justice. However, the Ld. Representative of the Department has refuted the said contention. On appraisal of the order of the CIT(A) dated 26.07.2019 passed by the CIT(A), we find that the CIT(A) has decided the matter of controversy in absence of the assessee/Representative of the assessee without giving an opportunity of being heard to the assessee in the accordance with law. A proper and reasonable opportunity is required to be given to the assessee before the deciding the matter of controversy in accordance with law.

**4.** For this proposition we place reliance upon the following case laws.

(1) CIT Vs. Premkumar Arjundas Luthra (HUF) (2017) 154 DTR (Bom) 302

(2) CIT Vs. S Chenniappa Mudaliar (1969) 74 ITR 1 (SC)

**5.** Accordingly in the interest of justice, we remit the issue raised in the appeal to the file of the Ld. CIT(A). Ld. CIT(A) is directed to consider the issue afresh and pass an order on the merits of the case after giving after giving a proper opportunity of being heard to the assessee in accordance with law. Therefore, in the said circumstances, we are of the view that the



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order of the CIT(A) is not liable to be sustainable in the eyes of law, therefore, we set aside the finding of the CIT(A) on all the issues and restore the matter before the CIT(A) to decide the matter afresh by giving an opportunity of being heard to the assessee in accordance with law.

6. In the result, the appeal filed by the assessee is hereby allowed for statistical purposes.

Order pronounced in the open court on 03/09/2021

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 03/09/2021

Vijay Pal Singh (Sr. PS)

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai