

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

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.7136/M/2019
Assessment Year: 2011-12**

Smt. Manisha Nikunj Mittal, B-202, Cross Gate Bldg., 4 th Cross Road, Mumbai – 400 053 PAN: ABMPM 5594L	Vs.	Income Tax Officer- 24(2)(4), Pratyakshakar Bhavan, Bandra Kurla Complex, Bandra East, Mumbai – 400051
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Reepal Tralshwala, A.R.
Revenue by : Ms. Smita Verma, D.R.

Date of Hearing : 25.08.2021
Date of Pronouncement : 26.10.2021

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the assessee against the order dated 27.09.2019 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2011-12.

2. The ground No.1 raised by the assessee is not pressed by the assessee at the time of hearing and accordingly the same is dismissed.

3. The issue raised in ground No.2 is against the confirmation of addition of Rs.3,01,204/- by Ld. CIT(A) as made by the AO

under section 68 of the Act towards the sale consideration of 20,755 shares of M/s. SVC Resources Ltd. by the assessee.

4. The facts in brief are that assessee filed the return of income on 10.10.2011 declaring an income of Rs.5,54,510/- which was processed under section 143(1) of the Act. Thereafter, the case of the assessee was reopened under section 147 of the Act after AO received information from DDIT(Inv.), wing that assessee has undertaken transactions during the year in penny stock of M/s. SBC Resources Ltd. Accordingly, the case of the assessee was re-opened u/s 147 of the Act by issuing notice under section 148 of the Act on 30.03.2018. During the course of assessment proceedings, the AO found that assessee has sold 20755 equity shares of M/s. SBC Resources for a consideration of Rs.3,01,204/- which according to the investigation wing was a penny stock used for obtaining bogus long term capital gain and the same was claimed as exempt under section 10(35) of the Act. Thereafter, the AO discussed the modus operandi and history of the penny stock company and finally added a sum of Rs.3,01,204/- as unexplained income by giving a finding that though the transactions were done through recognized stock exchange and payments were made by cheques but even then in view of the background of the company the transactions can not be treated as genuine.

5. In the appellate proceedings the Ld. CIT(A) affirmed the order of the AO by dismissing the appeal of the assessee by upholding the addition made under section 68 of the Act by the

AO of Rs.3,01,204/- by recording a finding that the said company was not having a sound business results and was a penny stock company.

6. After hearing both the parties and perusing the material on record, we find that the assessee has traded in these stocks on the recognized exchange. We note that these shares were sold on recognized stock exchange over a period of 15 days. The total number of shares sold were 20755 commencing from 27.01.2011 to 15.02.2011 for a total consideration of Rs.3,01,204/-. The AO has given a detailed chart showing date of sale, quantities of share sold, name of the purchasers and their PAN numbers. We find that assessee has debited a loss on the sale of these shares of Rs.10,414/-. We also note that AO issued notice under section 133(6) of the Act to various purchasers, however, these are not responded by them. We have perused the order of authorities below and found that no specific defect or deficiency has been pointed out in the dealing of these shares on the recognized stock exchange. We have failed to understand as to why the assessee has indulged into purchases and sale of shares which has resulted into loss of Rs.10,414/-. The assessee has filed all the evidences in the form of proof of payments, contract notes, statement of D-mat account etc. before the authorities below. Under these circumstances, we do not subscribe to the conclusion reached by the Ld. CIT(A) on this issue and accordingly direct the AO to delete the addition as made under section 69 of the Act by setting aside the order of Ld. CIT(A). The ground no. 2 is allowed.

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

Order pronounced in the open court on 26.10.2021.

**Sd/-
(Mahavir Singh)
VICE PRESIDENT**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 26.10.2021.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.