

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” Bench, Mumbai
Before Shri Shamim Yahya, Accountant Member

I.T.A. No. 6333/Mum/2019
(Assessment Year 2011-12)

ITO-12(1)(4) Room No.145A, 1 st Floor Aaykar Bhawan Mumbai-400 020	Vs.	Chamunda Finstock Pvt.Ltd. Flat No.3, Ground Floor Asha Deep Bldg., Goras Wadi Maldad, Mumbai-400 064 PAN : AACCC8422H
(Appellant)		(Respondent)

Assessee by	Rajesh Kothari
Department by	Ms. Smita Verma
Date of Hearing	11.10.2021
Date of Pronouncement	13.12.2021

ORDER

Per Shri Shamim Yahya (AM) :-

This appeal by the revenue is directed against the order of learned Commissioner of Income Tax (Appeals)-20 dated 04.06.2019 and pertains to assessment year 2011-12. The issue raised in the Ld.CIT(A) erred in deleting the addition on account of unexplained cash credit of Rs. 1,71,895/-

2. Brief facts of the case are that for the AY 2011-12, the appellant filed its return of income on 30.09.2011 declaring loss of Rs. 2,81,533/-. The return was processed u/s. 143(1) of the Act. Subsequently, the AO received information from DDIT(Inv.) As per the information received, the appellant had traded in penny stocks share namely Swarnasarita gems Ltd. (Formerly known as Shyam Star gems Ltd.) and claimed to have incurred a loss of Rs. 1,71,895/-Based on information received, the AO reopened the assessment. Eventually on order u/s. 143(3) r.w.s. 147 of the Act

was passed on 29.12.2018 determining the total income of the appellant at Rs. 1,77,050/-.

3. The AO in the assessment order referred to the investigation wing report and referred to modus operandi of such transactions. Referring to the above, AO held that assessee has shown in return of income the sale and purchase of shares of Shaym star Gems ltd. Without any reference to the assessee's name in the above report referred by him, he proceeded to hold that the entire transactions of Rs. 1,71,895/- is to be added u/s. 68.

4. Upon assessee's appeal Ld.CIT(A) noted that assessee has submitted that the appellant is engaged in the business of trading in shares; that he traded in the shares of Shyam Star Gems Ltd. in the normal course of its business; that it had purchased and sold 8750 shares of Shyam Star gems Ltd. and earned profit of Rs. 987/-; that the AO has considered only part of the sales in his assessment order; that the appellant claimed neither short term capital gain nor long term capital gain; that the very meagre profit was earned which was offered to tax in the return of income.

5. Considering the above Ld.CIT(A) deleted the additions holding as under:-

“I find from the details filed by the appellant that the facts of the present case are totally different from the cases mentioned in the report of the Investigation Wing of Kolkata. In this case, the appellant has claimed neither long term capital gain nor short term capital gain. Nor has the appellant claimed business loss on sale of the share. I also find that there is no unusual difference between the purchase price and sale price of the shares. Therefore, in my view, the AO has erred in holding that the appellant was a beneficiary of rigging of share prices; that the appellant's transactions were governed by factors other than business consideration. In my view, the AO has not been able to establish his contention that the purchases/ sales under consideration were bogus. I also find the computation of total income filed by the appellant that the appellant has not claimed any benefit of exemption or loss or lower tax rate relating to the transactions in shares of Shyam Star gems Ltd. that the appellant had earned profit of Rs. 987/- from its transactions in shares in Shyam Star Gems Ltd. which

was shown as business income. Therefore, I find the appellant's claim that the sum of Rs.1,71,895/- the represents sale proceeds of shares in Shyam Star Gems Ltd. acceptable. Therefore, I hold that the AO erred in treating the sum of Rs.1,71,895/- credited in appellant's book as unexplained cash credit. Accordingly, I direct the AO to delete the addition of Rs.1,71,895/-.”

6 Against the above order revenue is in appeal before us.

7. I have heard both the parties and perused records. As noted above, the AO has made the additions without any application of mind. As against the gain of Rs. 987/- on the said share transactions, without taking into account in these aspects, the AO has added the entire transactions of Rs. 1,71,895/- as unexplained cash credit. The Ld.CIT(A) is quiet correct in giving the finding that the modus operandi and the report referred by the AO are totally irrelevant and not applicable on the facts of this case. Hence, I do not find any infirmity in the order of the Ld.CIT(A). Accordingly, I uphold the same.

8. In the result, this appeal by the revenue stands dismissed.

Pronounced in the open court on 13.12.2021

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 13/12/2021

Thirumalesh, Sr.PS

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai