

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

I.T.A. No. 1459/Mum/2020  
(Assessment Year 2013-14)

ITO-26(2)(5) Room No.319, 3 <sup>rd</sup> Floor Kautilya Bhawan BKC, Bandra(E) Mumbai-400 051	Vs.	Ramesh Chandra Jain Office No.20, 2 <sup>nd</sup> Floor 563, New Mill Road Opp. Jain Mandir Kurla West Mumbai-400 020  PAN : AACPJ9459N
(Appellant)		(Respondent)

Assessee by	None
Department by	Shri Abhirama Karthikeyan
Date of Hearing	14.12.2021
Date of Pronouncement	16 .12.2021

O R D E R

Per Shri Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals)-38 dated 17.12.2019 and pertains to assessment year 2013-14.

2. Grounds of appeal read as under:-

1. "Whether on the facts and in the circumstances of the case and In law, the id. CIT(A) erred in deleting the disallowance of Rs. 51,395/- made u/s. 68 of the I. T. Act without appreciating the facts brought out by the AO in the assessment order for A. Y. 2013-14?"

2. "Whether on the facts and in the circumstances of the case and in law, the id. CIT(A) erred in not considering that the addition was made on the basis of information received from DDIT(Inv.), Unit - 3(2), Kolkata with regard to bogus Short Term Capital Gain/ bogus Short Term Capital Loss and bogus Business Loss through trading of shares of penny stocks including M/s, Global Market Ltd. ?"

3. "Whether on the facts and in the circumstances of the case and in law, the id. CIT(A) has erred in not considering the fact that the assessee himself has agreed for addition of Rs. 51,395/- during the course of assessment proceedings ?"

3. In this case information was received from DDIT(Inv) Kolkata about penny stocks transaction entered into by the assessee. AO examine the issue. The AO made impugned the additions by holding as under:-

During the course of proceedings the assessee submitted computation of income, tax audit report and copy of transaction statement of showing holding of unsold shares of Global Capital Markets Ltd. The assessee purchased 4000 shares for total amount of Rs 67,725/-. These shares were subsequently merged to 400 shares out of which 200 shares were sold for Rs 51,395/-. The balance shares of 200 is unsold as en date. The assessee put forth the argument that the shares were purchased online and not through preferential allotment. Notice u/s 133(6) was issued to the BSE and as per the report received tie entered into transactions as mentioned below:

Qty	Qty	Rate	Trade value	Trade value	Buy/Sell
	1500	15.66	23490		Buy
	1200	14.89	17868		Buy
	300	14.89	4467		Buy
	500	21.90	10950		Buy
	500	21.90	10950		Buy
	4000		67725		
100		246.05		24605	Sell
50		267.89		13395	Sell
50		267.89		13395	Sell
200				51395	

During the course of proceedings the assessee was asked to show cause why the addition of Rs 51,395/- being sale transaction value Global Capital Market Ltd should not be made, The assessee agreed to the addition of Rs 51,395/-.

4. Against the above order, assessee appeal before the Ld.CIT(A). Ld.CIT(A) accepted the assessee's submissions that AO has made the additions without any application of mind and that no penny stocks transaction was entered into by the assessee. The Ld.CIT(A) has concluded as under:-

“Before the AO in the assessment proceedings and in the appellate proceeding, the appellant claimed that he has sold 200 shares for Rs.51,241/- which was purchased by him for a purchase consideration of Rs.35,412/-. The appellant submitted that he has earned Rs.15,829/- as income which has been offered by him as income in the Return filed for assessment year under consideration. On perusal of the assessment order it is also seen that the AO has issued Notice u/s.133(6) to the BSE and as per the report received the BSE, appellant entered into trading transactions in the scrip of aforesaid company. However, *no* discrepancy is observed by the AO in the materials on record relating to the said trading activity of the appellant with reference to the information collected from the BSE. Therefore, there is considerable merit in the contention of the appellant that the said shares were purchased in the normal course out of the professional income earned by him. It is an admitted fact that only part of the equity shares of the said scrip were sold in the impugned assessment year and appellant earned some gain, which is reflected in the income declared.

Considering the aforesaid submissions, I am of the view that the appellant has made investment in the shares in the normal course of the business and out of the funds available out of his regular and disclosed source of income as some of the equity shares are still lying in appellant's DMAT account. There is no finding and no material on record that the appellant has business relation with either the promoters or any person connected with the said group. The appellant further submitted documents such as broker's note, ledger account of the broker, statement of gain, DMAT account statement etc. From the above it is noticed that appellant does not appear to intend to earn exempt income in the form of STCG/LTCG, of the scrip he has traded in. in view of the fact that the purchase and sale of said equity shares are supported by documentary evidences and based on the fact that no defect is detected in the material gathered from the BSE, the addition made is not sustainable and justified. Hence, the AO is directed to delete the addition.”

5. Against the above order, revenue is in appeal before ITAT.

6. I have heard the Ld. DR and perused the record. I note that Ld.CIT(A) has given an absolutely opposite finding than that by the AO. When the Ld.CIT(A) is accepting submissions which are quite contrary to that before the AO, more so when the addition has been made by the AO on agreed basis, it was incumbent upon the Ld.CIT(A) to ask for the remand report from the AO for the new submissions made before him. In my considered opinion, there is obvious violation of Rule 46A. In the interest of the justice, I remit the issue to the file of the AO. AO is directed to consider the issue afresh in light of the new facts submitted before the Ld.CIT(A). Needless to add assessee should be granted adequate opportunity of being heard.

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

Pronounced in the open court on 16 .12.2021

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 16/12/2021

*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