

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
" SMC" BENCH, AHMEDABAD
(CONDUCTED THROUGH VIRTUAL COURT AT AHMEDABAD)

BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT,
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 1650/AHD/2019
निर्धारण वर्ष/Asstt. Year: 2011-2012

I.T.O., Ward-4(1)(1), Ahmedabad.	Vs.	M/s TBS Metal Pvt. Ltd., 1 st Floor, 311/317, Kanji Mansion, S.V.P. Road, Charni Road, Mumbai-400004. PAN: AALCS1862L
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(Applicant)		(Respondent)
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Revenue by	:	Shri Kamlesh Makwana, Sr. D.R
Assessee by	:	Shri Jignesh Parikh, A.R

सुनवाई की तारीख / **Date of Hearing** : **11/11/2021**
घोषणा की तारीख / **Date of Pronouncement**: **09/12/2021**

आदेश / ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Revenue against the order of the Learned Commissioner of Income Tax (Appeals)-8, Ahmedabad, dated 30/08/2018 arising in the matter of assessment order passed under s. 143(3) r.w.s. 147 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2011-2012.

2. The Revenue has raised the following grounds of appeal:

Whether the Ld.CIT(A) was correct in deleting the addition of unaccounted and unexplained cash credit u/s.68/69 of the Income Tax Act, 1961 on account of accommodation entry as penny stock amounting to Rs.30,09,487/-

On the facts and circumstances of the case, Ld.CIT(A) ought to have upheld the order of the Assessing Officer.

It is therefore, prayed that the order of Ld.CIT(A) may be set aside and that of the Assessing Officer be restored.

3. The only issue raised by the Revenue is that the learned CIT (A) erred in deleting the addition made by the AO for ₹ 30,09,487/- under the provisions of section 68/69A of the Act.

4. The facts in brief are that the assessee in the present case is a private limited company and engaged in the business of trading, imports, exports of all kind of ferrous and non-ferrous metal. The AO during the assessment proceedings found that the assessee has carried out the trading in the scripts of the company namely M/s Swarnsarita Gems Ltd which was a penny stock company and engaged in providing accommodation entries in the form of long-term capital gain/short-term capital loss. This information was received by the AO from DDIT (Inv.) Unit-7(4) Mumbai that the impugned company was engaged in providing the accommodation entries. The AO further found from the information forwarded that the assessee has carried out the transactions in the scripts of the impugned company for ₹ 30,09,487/- which was treated as unexplained cash credit and investments under the provisions of section 68/69A of the Act. Thus, there was an addition made by the AO for ₹ 30,09,487/- to the total income of the assessee.

5. Aggrieved assessee preferred an appeal to the learned CIT (A).

6. The assessee before the learned CIT (A) contended that it has not carried out any trading in the scripts of the company namely M/s Swarnsarita Gems Ltd. In support of his contention, the assessee has filed the audited financial statements

and the bank statements etc. The assessee also contended that all these submissions were duly made before the AO during the assessment proceedings but AO without considering the same has made the addition. The learned CIT (A) called for the remand report and after considering the same deleted the addition made by the AO by observing as under:

In the submission filed before the AO, the appellant has categorically stated that during the FY 2010-11 relevant to AY 2011-12, there is no purchase and sale of arty shares / scrip including that "Swarnasarita Gems Ltd.". In support, the reference of the audited accounts of FY 2010-11 was given, wherein, there was opening stock of Rs. 466.50 as on 01/04/2010 and the same was closing stock as on 31/03/2011. Further, in the Balance Sheet as at 31/03/2011 also there is opening stock and closing stock of shares of Rs. 466.50 only. This fact has not been disputed or denied by the AO either in the assessment order or in the remand report. The AO has made the impugned addition of Rs. 30,09,487/- while observing that the appellant has not filed the required details as per the show cause notice dated 28/1/2018. However, it is an undisputed fact verifiable from the record that during the course of assessment proceedings, the appellant has filed the details on the merits of the case vide submission dated 03/10/2018 and again 26/10/2018. In the remand report, the AQ has not denied this fact. In my directions under section 250 (4) of the Act to the AO, it was specifically directed that in case he (AO) has any material in his possession to show that appellant has traded in penny stock Swarnasarita Gems Ltd. during the year, to supply a copy of the same to the appellant, seek appellant's comments and then furnish his report on the same. However, from the perusal of the Remand Report duly forwarded by the Range Head, it is seen that nothing has been mentioned in this regard. In fact appellant has in its letter 3/10/2018 and subsequent submissions pleaded before the AO that they have not carped out any transaction in the said scrip during the year, out AO neither supplied them a copy of the evidence, nor accepted their plea or brought out any fact to the contrary in the impugned assessment order. Also on being specifically directed by the undersigned nothing is brought on record to demonstrate that appellant has indeed traded in the said scrip namely "Swarnasarita Gems Ltd. and the statement of the appellant to the contrary is false. The impugned assessment order also does not mentioned any specific details of purchase and sale of the shares of M/s. Swarnasarita Gems Ltd., by the appellant. From these facts it is clear that there is no evidence that appellant has either purchased or sold the impugned shares leave alone the accommodation entry through the same. It follows, then, that there is no justification for making the impugned additions. Hence, the same is deleted. AO is directed to delete the same. Ground No.1 & 2 of the appeal are allowed.

7. Being aggrieved by the order of the learned CIT (A), the Revenue is in appeal before us.

8. Both the learned DR and the learned AR before us vehemently supported the order of the authorities below as favourable to them.

9. We have heard the rival contentions of both the parties and perused the materials available on record. There was no evidence brought on record by the

Revenue suggesting that the assessee has carried out any transactions in the scripts of M/s Swarnsarita Gems Ltd. Accordingly, the question of making any addition to the total income of the assessee does not arise in the given facts and circumstances. Hence, we do not find any reason interfere in the finding of the learned CIT (A). Accordingly, we uphold the same. Hence the ground of appeal raised by the Revenue is dismissed.

10. In the result, the appeal filed by the Revenue is **dismissed**.

Order pronounced in the Court on 09/12/2021 at Ahmedabad.

**Sd/-
(RAJPAL YADAV)
VICE PRESIDENT**

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

(True Copy)

Ahmedabad; Dated
Manish

09/12/2021