

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No.7436/Del/2018
Assessment Year: 2015-16

Shubham Garg KU-153, Vishakha Enclave Pitampura Delhi-110088 PAN No.AAEPG2659P	Vs	Asstt. Commissioner of Income Tax Circle – 63 (1) New Delhi-110002
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Sanjay Kumar, Advocate Sh. Aakarsh Garg, Advocate
Respondent by	Sh. Umesh Takyar, Sr. DR

Date of hearing:	29/03/2022
Date of Pronouncement:	31/03/2022

ORDER

PER N. K. BILLAIYA, AM:

This appeal filed by the assessee is preferred against the order of the CIT(A)-20, New Delhi dated 28.09.2018 for A.Y.2015-16.

2. The grievance of the assessee read as under :-

1.1 BECAUSE selection of case through CASS being based on instructions issued by CBDT under section 119 of the Income Tax Act, 1961, hereinafter referred to as "Act", not being based on the opinion expressed by the Assessing Officer in due discharge of his judicial authority to do so, it deserved to be held that no notice under section 143(2) had been issued and the assessment order dated 30.12.2017 stated to have been passed under section 143(3) is wholly illegal.

1.2 BECAUSE owing to vital deficiency in the proceedings caused by non-issuance of a valid notice under section 143(2), it be held that variation between the returned income and 'assessed income' was wholly illegal and unauthorized too.

WITHOUT PREJUDICE TO THE AFORESAID

2.1 BECAUSE the "CIT(A)" has erred in law and on facts in sustaining the addition of Rs. 5,46,096/- under section 68 of the Act by treating the income declared by the assessee under the head "Short-term capital gain" as bogus. (Tax effect Rs. 84,372/-)

2.2 BECAUSE the transactions resulting in short-term capital gain, apart from being in the normal course were verifiable from Stock Exchange and stood supported by the contract notes issued by the brokers (with whom the appellant had dealt) and such contract notes not being found to be false, fabricated or non-existent, the short-term capital gain as made by the **appellant** could not have been treated differently than what had been shown by it.

2.3 BECAUSE in any case, addition made and sustained by the authorities below is wholly vitiated, as the same is solely based on extraneous consideration/ presumption of bad faith, which is not permissible in law.

2.4 BECAUSE the case laws referred to and relied upon by "CIT(A)", while upholding the treatment of "short-term capital gain" as bogus are wholly distinguishable on facts and the inference drawn on the basis of such case laws, cannot be sustained either on facts or in law.

3.1 BECAUSE the "CIT(A)" has erred in law and on facts in sustaining the addition of Rs. 16,383/- under section 69C of the Act, being the amount which the appellant would have paid as commission @ 3% without any evidence and on presumption only. (Tax effect Rs. 5,063/-)

4.1 BECAUSE the order appealed against is contrary to the facts, law and principles of natural justice.

3. The solitary issue is the addition of Rs.5,46,096/- u/s. 68 of the Act by treating the income declared by the assessee under the head "Short-term capital gain" as bogus.

4. During the course of the scrutiny assessment proceedings the AO noticed that on an investment of Rs.1896429/- the assessee has earned gain of Rs.540096/- from the transaction in the shares of 1. M/s. Pearl Electronics 2. M/s. Pearl Agriculture 3. M/s. Parag Shilp.

5. Drawing support from some report of investigation wherein in respect of penny stock, the AO formed a belief that the assessee has indulged in activities for getting accommodation entries in the form of gains in penny stock of the aforesaid scrips. The AO concluded as under :-

View of the above discussions, the case can be concluded as below:-

- 1. M/s Pearl Elec., Pearl Agri. And PS IT Infra are penny stock companies. (Para 2 & 3)*
- 2. The assessee could not clearly explain why he invested in this company. Assessee was the beneficiary of bogus Capital Gain scam. In the instant case, the assessee could not convince how he came to know about the company or on which basis he decided to invest in these companies.*
- 3. The assessee did not know anything about the financials of this company and his incapability of explaining investment in these companies which lacked promising and strong financials even when he has been making investments in shares on regular basis is not tenable. This clearly shows that acquiring shares of M/s Pearl Elec., Pearl Agri. and PS IT Infra was a predetermined action of the assessee with a specific intention implying that STCG earned is not genuine.*

4. *The share prices of these companies are being manipulated to make bogus gain/loss which can clearly be seen from the investigation and analysis made by the AO and further supported by the Investigation done by Investigation wing Kolkata available in Investigation report by Pr. DIT (Inv), Kolkata.*
5. *The buyers of the shares sold by the assessee were in collusion with the assessee as discussed above in point 5.*
6. *Contract notes are not enough. The assessee was asked to prove the genuineness of the transaction, only stating that the transactions were made through recognised stock exchange and STT had been paid is not sustainable.*

6. The AO further observed that such transactions are carried out on a commission basis and made further addition of 3% of the gains and made addition of Rs.16383/- .

7. The assessee carried the matter before the CIT(A) but without any success.

8. Before us the counsel for the assessee vehemently stated that the assessee is a habitual investor in shares since last 20 years and has invested in more than 300 shares. It is the say of the counsel that all the shares have been purchased from registered brokers namely SMS Global Securities Limited and Religare Securities Limited. It is the say of the Counsel that during the year under consideration the assessee has earned short term capital gains from more than 150 shares and the AO has not drawn any adverse inference in respect of such shares. The Counsel further stated that the assessee has also earned long term capital gains in more than 65 shares and such long term

capital gains have been allowed to be exempt from tax u/s. 10 (38) of the Act. The Counsel further stated that the AO and the CIT(A) have grossly erred in selecting three scrips out of several 100 treating them as penny stock.

9. The DR strongly supported the findings of the AO and read the relevant part of the Assessment Order.

10. We have given a thoughtful consideration to the orders of the authorities below and have carefully perused the documentary evidences brought on record. On perusal of the computation of income which is at pages 11 to 21 of the paper book show that the assessee has shown short term capital gains from more than 150 shares totaling to Rs.5364891/- . The AO has treated only three shares as bogus shares on which the gain is only Rs.546096/-. We further find that the assessee has shown long term capital gains of Rs.2611089/- from sale of more than 50 shares. This gain has been claimed to be exempt from tax u/s. 10 (38) of the Act. All the shares have been purchased from two brokers namely SMC Global Securities Limited and Religare Securities Limited. We find that none of these brokers was involved in the so called penny stock operation. There is nothing on record to show that these brokers have indulged in clandestine activities in providing accommodation entries in the garb of capital gains from sale of shares. No evidences have been brought

on record by the AO who has simply believed on the investigation report of some investigation wing based in Kolkata.

11. Incidentally the assessee has paid 15% tax on short term capital gain and the AO has disallowed the same and added u/s. 68 by putting the tax liability @ 30%. As mentioned elsewhere the assessee has also paid tax on short term capital gains of Rs.5364891/- which has been accepted by the AO. We fail to understand what benefit the assessee would drive by trading in the alleged penny stock for a paltry sum of Rs. 5 lacs.

12. Considering the facts of the case in totality we do not find any merit in not treating the short term capital gain as such. We accordingly direct the AO to treat the gain of Rs.546096/- as short term capital gains. Having held so, we direct the AO to delete the addition of Rs.16383/-. The appeal of the assessee is allowed.

Order pronounced in the open court on 31.03.2022.

Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

NEHA

Date:-31.03.2022

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
 ITAT NEW DELHI

Date of dictation	29.03.2022
Date on which the typed draft is placed before the dictating Member	29.03.2022
Date on which the typed draft is placed before the Other member	29.03.2022
Date on which the approved draft comes to the Sr.PS/PS	29.03.2022
Date on which the fair order is placed before the Dictating Member for Pronouncement	29.03.2022
Date on which the fair order comes back to the Sr. PS/ PS	29.03.2022
Date on which the final order is uploaded on the website of ITAT	31.03.2022
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	