

**IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI**

**BEFORESHRI VIJAY PAL RAO, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.277/Mum/2021
(A.Y. 2015-16)**

Jt. Commissioner of Income-Tax (OSD), Central Circle-3(1) Room No. 1924, 19 th Floor, Air India Building, Nariman Point, Mumbai – 400 021	Vs.	M/s Venus International 6/18, Sanjay Mittal Estate, Sir M.V. Road, Andheri East, Mumbai - 400059
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AACFV3053C		
Respondent	..	Appellant

Appellant by :	Shri Milind Dattani
Respondent by :	Shri S.N.Kabra

Date of Hearing	05.04.2022
Date of Pronouncement	06.04.2022

आदेश / O R D E R

PER AMARJIT SINGH, AM:

The solitary ground of appeal of the revenue is directed against the order of ld. CIT(A) in deleting the addition of Rs.6,97,000/- on account of disallowance on sale of shares to M/s First Financial Services Ltd.

2. The fact in brief is that the assessee filed its return of income on 15.09.2015 declaring a total income of Rs.18,89,900/-. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was

issued on 28.07.2016. During the course of assessment the A.O noticed that assessee has shown Short Term Capital Gain of Rs.1,95,500/- arising out of purchase and sale of shares of M/s First Financial Services Ltd. During the year under consideration the assessee has purchased shares of a company known as M/s First Financial Services Ltd, penny stock company, for a consideration of Rs.5,01,500/- on 13.08.2014 and has sold it for gross consideration of Rs.6,97,000/- on 22.08.2014 resulting in earning short term capital gain. In fact, the assessee has purchased 2,50,000 shares of this company @ Rs.10.3 per shares on 12.08.2014 and 1,50,000 shares at the rate of Rs.10.53 per shares on 13.08.2014 and subsequently, sold 50,000 share as mentioned above. The remaining shares were remained with the assessee company as unsold during the year under consideration. The assessing officer observed that Directorate of Income Tax (Investigation) Kolkata has made investigation in respect of scheme of providing accommodation entry in shares of penny stock companies and the shares of M/s First Financial Services Ltd. were a part of the various penny stocks which were manipulated by the brokers for offering fancy returns to their clients/beneficiaries to the extent of 10 to 20 times the investment. Therefore, the assessing officer held that assessee was also a beneficiary of such share manipulation. He has completed the assessment in the case of the assessee vide order u/s 143(3) dated 28.10.2017 after making addition of Rs.6,97,000/- being a sale proceeds on sale of 50,000 shares of M/s First Financial Services Ltd.

3. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has allowed the appeal of the assessee holding that assessee has made a short term capital gain of Rs.1,95,000/- and there was no evidence of

involvement of the assessee in manipulation of any transaction of such shares sold during the year under consideration.

4. During the course of appellate proceedings before us at the outset the ld. Counsel of the assessee submitted that assessee has not made any long term capital gain/short term capital loss, therefore, assessee's case is covered by the CBDT Circular No. 17/2019 dated 08.08.2019 applying of monetary limit for filing the appeal by the department from Income Tax Appellate Tribunal.

On the other hand, the ld. D.R supported the order of the assessing officer.

5. Heard both the sides and perused the material on record. Without reiterating the facts as elaborated above the tax effect involved in this appeal of the revenue is Rs.2.36 lac which is evidently less than of Rs.50 lac i.e monetary limit for filing appeal by the revenue as specified in Circular No. 17/2019, dated 08.08.2019. During the course of appellate proceedings the ld. Counsel of the assessee submitted that the appeal of the revenue is covered by the tax effect and exception to the monetary limit issued vide Circular No. 23/2019 along with office memorandum dated 16.09.2016 are not applicable because in the case of the assessee, no long term capital gain/short term capital loss was claimed from impugned shares transactions. With the assistance of the ld. Representative we have perused the copy of the office memorandum dated 16.09.2019 placed in the paper book and same is reproduced as under:

"Subject: -Special Order of cases involving bogus Long Term Capital Gains (LTCG)/Short Term Capital Loss (STCL) through penny stocks from monetary limits Specified in any Circular issued under Section 268A of the Income-tax" Act, 1961-reg

The undersigned is directed to refer to Circular No. 23 of 2019 dated 6th September, 2019 and to say that by virtue of powers of the Central Board of Direct Taxes u/s 268A of Income-tax Act, 1961, the monetary limits fixed for filing appeals before ITAT/HC and SLPs /appeals before Supreme Court shall not apply in case of assesses claiming bogus LTCG/STCL through penny stocks and appeals/SLPs in such cases shall be filed on merits.”

After taking into consideration the office memorandum dated 16.09.2016 as supra we observe that it is categorically specified in the office memorandum that monetary limit fixed for filing appeal before ITAT/HC & SLPs/Appeals before SC shall not apply in case of assessee claiming Long Term Capital Gain/Short Term Capital Loss through penny stocks and appeals/SLPs in such cases shall be filed on merit. Since, in the case of the assessee it is undisputed fact that assessee has shown Short Term Capital Gain of Rs.1,95,500/- on total sale consideration of Rs.6,97,000/- on the sale of 50,000 shares during the year under consideration and assessee has not claimed any Short Term Capital Loss, therefore we find merit in the submission of the assessee that this case of the assessee is not covered by the office memorandum dated 16.09.2019 which is specifically pertained to Short Term Capital Loss. Therefore, we don't find any merit in appeal of the revenue and the same stand dismissed.

6. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 06.04.2022

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai, Dated 06.04.2022

PS: Rohit

आदेश की प्रतिलिपि ढ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार / BY ORDER,
सत्यापित प्रति //True Copy//

(Asst. Registrar)
ITAT, Mumbai