

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
ITA No. 177/SRT/2020 (AY: 2011-12)
(Hearing in Virtual Court)**

I.T.O. Ward-1(3)(7), Surat.	Vs.	Shri Krunal Chandrakant Parmar, 152, Dipmala Near Kesarba School, B/h Ram Nagar, Rander Road, Palanpur Patiya, Surat. PAN : AOOPP 9749 R
APPELLANT		RESPONDEDNT

Department by	Shri J.K. Chandnani, Sr. D.R.
Assessee by	Ms. Ekta Singhavi, CA
Date of hearing	09/05/2022
Date of pronouncement	09/05/2022

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. The appeal filed by the Revenue is directed against the order of the Commissioner of Income Tax (Appeals)-3, Surat [in short 'Id. CIT(A)] dated 17/03/2020 for the Assessment Year (A.Y.) 2011-12. The Revenue in its appeal has raised the following grounds of appeal:

- “1. *Whether on the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) is justified in deleting the addition of Rs. 17,03,063/- made on account of investment by assessee in penny stock merely because the evidence of purchase and sale of shares was sufficient to prove any sham transaction ignoring that the transactions in every penny stock looks genuine and complete in paper by virtue of its modus operandi?*
2. *Whether on the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) is justified in deleting the addition of Rs. 17,03,063/- made on account of investment in penny stock by ignoring the fact*

that the assessee has introduced his own unaccounted money by way of investment in the penny stock?

3. *Whether on the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) is justified in deleting the addition made on account of brokering charges up to Rs. 17,030/- on the penny stock investment as the entire transactions were found not genuine?*
 4. *It is therefore, prayed that the order of the Id. CIT(A) may be set aside and that of assessing officer may be restored to the above extent.*
 5. *The appellant craves leave to add, alter, amend and/or withdraw any ground(s) of appeal either before or during the course of hearing of the appeal.”*
2. Brief facts of the case are that the assessee is individual and no return of income was filed by the assessee for the assessment year (A.Y.) 2011-12. The Assessing Officer received information from investigation wing of revenue that the assessee has deposited cash of Rs. 19,22,925/- in bank account maintained with City Cooperative Bank Ltd.. The assessee has also made share transaction of Rs. 65,68,82,063/- and received fees of Rs. 12,76,687/-. The Assessing Officer was also have one more information from Directorate of Investigation that the assessee made share transaction of Rs. 17,03,063/- with M/s CCL Inter Ltd. during the relevant financial year. M/s CCL Inter Ltd. was found to be a penny stock company who were involved in generating bogus entries of long term capital gain/loss throughout country. On the basis of such information, the Assessing officer issued notice to the assessee dated 07/03/2018. No compliance was made to the said notice as recorded by the Assessing Officer. The Assessing officer on the basis of such information, recorded the reasons that the income of assessee has escaped assessment and accordingly notice under Section 148 of the Income Tax Act, 1961

(in short, the Act) dated 28/03/2018 was issued to the assessee. In response to notice under Section 148, the assessee filed return of income for the A.Y. 2011-12 on 26/11/2018 declaring income of 10,04,209/-. In the return of income, the assessee was shown income from business of Rs. 7,65,046/- and capital gains of Rs. 2,39,163/-. Reasons recorded were provided to the assessee. The Assessing officer after serving statutory notices, proceeded to assessment. The Assessing officer recorded that he was having information that assessee is one of the beneficiary who was taken entries of long term capital gain/loss through organized racket. The assessee availed entry on transaction of share of M/s CCL Inter Ltd.. In response to notice U/s 133(6) of the Act, the National Stock Exchange (NSE), Mumbai was also confirmed that the assessee has made trading in the script of CCL Inter Ltd. On the basis of such information, the Assessing Officer issued show cause notice to the assessee as to why the accommodation entries of transaction of shares of Rs. 17,03,063/- should not be added to the income of the assessee.

3. The assessee filed its reply and contended that the assessee has made transaction through his broker BP Equities Pvt. Ltd. and furnished the details of sale and purchase in the following manner:

Script Name	Date	Purchase Quantity	Purchase Rate	Purchase Amount	Sale Quantity	Sale Rate	Sale Amount
CCL Inter Ltd.	20.08.2010	6762	155.62	1050561.23	6762	155.63	1052363.97
CCL Inter Ltd.	23.08.2010	140	155.10	21713.4	140	157.98	22117.05
CCL Inter Ltd.	26.08.2010	4100	139.54	572123.02	4100	142.07	582487
Total		11002		1644397.64	11002		1656968.02

4. The assessee further stated that he has received total profit of Rs.12,570/- only on the transaction of scrip of CCL Inter Ltd. The Assessing Officer recorded that the assessee failed to prove that transaction in scrip of CCL Inter Ltd. is genuine. The Assessing Officer on the basis of information from investigation wing, made addition of Rs. 17,03,063/- and further added 1% of commission thereby made total addition of Rs. 17,20,093/-.
5. Aggrieved by the additions made by the Assessing Officer, the assessee filed appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee filed detailed written submissions. The submissions of the assessee are recorded in para 4 of order of Id. CIT(A). In the written submission, the assessee reiterated the submission made before the Assessing Officer. The assessee also explained that the transaction in the scrip of CCL Inter Ltd. were carried out through registered stock broker on the floor of exchange. The broker viz. BP Equities Pvt. Ltd. is a registered broker with BSE, Mumbai. Copy of contract note of transactions containing full value of purchase and sales, Security Transaction tax (STT), brokerage and other charges were levied. The transactions were transacted through bank. The Assessing officer failed to take into consideration that not only the assessee traded legitimately and lawfully but also settled via bank transactions. The assessee traded total scrip of 11002 shares on an intraday basis. No delivery of shares were taken or held for a long time with the intention of rising of prices or holding on the basis of insider information. The shares were sold with a very small profit ranging between Rs. 0.36 to Rs. 2.53/- per share which amounts to

percentage of gain of merely 1.8%. No material information was found by Assessing Officer against the assessee. There is no allegation that the assessee was dealing in bogus capital gain. Complete details were furnished to the Assessing officer. The Assessing officer made additions by disregarding the purchase amount duly put to the record by the assessee. The additions are baseless. For the addition on account of commission, the assessee stated the fact that the addition made on the transaction of CCL Inter Ltd. is unjust and baseless. The assessee has not entered into any sort of malicious arrangement to take any bogus claims of capital gain, accordingly, the addition of commission/brokerage @ 1% is also baseless and unjustified.

6. The Id. CIT(A) after considering the submissions of assessee recorded that the Assessing officer on the basis of information received from Directorate of Investigation held that the assessee is one of the beneficiary who had made transaction of sale and purchase of shares of CCL Inter Ltd.. The assessee in its reply stated that he has entered into transaction of purchase and sale of shares of CCL Inter Ltd and provided the details which has been recorded by the Assessing Officer in para 4.1 of the assessment order. The assessee further stated that he earned total profit of Rs. 12,570/- which has been disclosed in the return of income. The assessee claimed that the transactions were entered through registered broker i.e. BP Equities Pvt. Ltd. on electronic platform of BSE. These are intraday transactions, on which STT/brokerage was paid and payment has been received and paid through banking channel. The Id. CIT(A) held that in such

situation when the transactions were transacted through registered broker on electronic platform of recognized stock exchange and payments were made through banking channel. There is no reason to hold that the transactions made by the assessee as non-genuine and the Assessing Officer was not justified in making addition of transaction value. The assessee earned profit of Rs. 12,570/- which has been disclosed in the return of income. There is no evidence that the assessee earned any exempt income like long term capital gain or any accommodation entry through these transactions and deleted the addition of Rs. 17,03,063/-. Since the substantial addition was deleted by treating it genuine, consequently, the addition of brokerage of 1% was also deleted. Aggrieved by the order of Id. CIT(A), the Revenue is in further appeal before this Tribunal.

7. We have heard the submissions of learned Senior departmental representative (Id. Sr. DR) for the Revenue and the Ld. Authorised Representative (AR) for the assessee and have gone through the orders of the authorities below. The Id. Sr. DR for the Revenue submits that the assessee made transactions in the scrip of CCL Inter Ltd. which were part of racket for generating bogus entry of long term capital gain. The assessee is one of the beneficiary who has availed the entries of Rs. 17,03,063/- in the form of long term capital gain. The Assessing officer after giving opportunity of hearing, made addition of Rs.17,03,063/-. The Id. CIT(A) deleted the addition by considering it a genuine transaction. The Id. SR. DR submits that the order of Id. CIT(A) may be reversed by restoring the order of Assessing Officer.

8. On the other hand, the Id. AR of the assessee submits that the appeal of the Revenue is not maintainable as the tax effect involved in the present appeal is admittedly less than the monetary limit of Rs. 50.00 lacs for filing appeal before the Tribunal, as determined by the Central Board of Direct taxes (CBDT) in its circular No. 17/19 dated 08/08/2019. The Assessing Officer made addition of about Rs. 17.00 lacs and 1% of commission thereon which were deleted by the Id. CIT(A). Thus, by no stretch of imagination, the tax effect can exceed the monetary limit for filing appeal before the Tribunal. The alleged information was received from Directorate of Investigation which is not an external agency but internal department of Revenue and the case of assessee does not fall within the exception clause of Circulars of CBDT.
9. The Id. AR of the assessee further submits that even on merit, she has a good case. The assessee made intraday transaction through registered broker in BSE, Mumbai in scrip of CCL Inter Ltd. The assessee provided details of scrip, rate of purchase and number of scrip and the same were sold on the same day i.e. the assessee transacted in an intraday transaction. The assessee earned profit of Rs. 12,570/- only. No long term capital gain as considered and added by the Assessing Officer was earned by the assessee. The total value of transaction was Rs. 16,50,968/- only which includes the profit. The Assessing Officer made additions without verification of facts The Id. CIT(A) appreciated the fact and deleted the entire addition. The Id. AR for the assessee accordingly submits that she has a good case on merit as well.

10. We have considered the rival submissions of both the parties and have gone through the orders of the authorities below. We find that before the Assessing Officer, the assessee furnished details of dates of purchase, number of scrip, rate of purchase price and the total amount of purchase. The assessee also stated that the scrips were sold on the same day itself i.e. on 20/08/2010, 23/08/2010 and 26/08/2010 and earned profit of Rs. 12,570/-. We find that the Assessing officer has not investigated the facts disclosed by the assessee, rather made addition simply on the basis of alleged information received from Directorate of Investigation. The Assessing officer also made addition of commission/brokerage @ 1% of alleged consideration of Rs. 17,03,063/- without any evidence. Before the Id. CIT(A), the assessee reiterated the submissions that the assessee transacted on electronic platform through registered broker and made intraday transaction. The Id. CIT(A) on appreciation of fact, find that the Assessing Officer is not justified in making total addition of transacted value. The assessee earned profit of Rs. 12,570/- which has been disclosed in the return of income filed. The Id. CIT(A) also held that the assessee has not received any benefit of exempt income in the form of long term capital gain or any accommodation entry and deleted the substantial addition as well as the addition made on alleged brokerage.
11. We find that the Id. CIT(A) granted relief to the assessee after proper appreciation of facts. No contrary facts or law is brought to our notice by the Id. Sr. DR to take other view, therefore, considering the totality of the facts and circumstances, we do not find any reason to deviate from the findings so recorded by the Id. CIT(A)

which we affirms the order of Id. CIT(A) on merit. Considering the facts we have dismissed the appeal of revenue on merit, therefore, the other submissions of the Ld. AR of the assessee about the non-maintainability of appeal due to low tax effect, has become academic.

12. In the result, the grounds of appeal raised by the revenue are dismissed.

13. In the result, appeal of the Revenue is dismissed.

Order pronounced on 09/05/2022, in open court and result was also placed on notice board.

Sd/-
(Dr. ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 09 /05/2022

**Ranjan*

Copy to:

1. Assessee –
2. Revenue -
3. CIT(A)
4. CIT
5. DR
6. Guard File

By Order

Sr. Private Secretary, ITAT Surat