

THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" Bench, Mumbai  
Shri B.R. Baskaran (AM)

I.T.A. No. 1857/Mum/2021 (A.Y. 2015-16)

Ravi R. Cunha 2E Sundatta Mount Pleasant Road Malabar Hill Mumbai-400 006.  PAN : AAAPC8436E (Appellant)	Vs.	ITO, Ward- 19(3)(1) Matru Mandir Tardeo Road Mumbai-400 007.  (Respondent)
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Assessee by	Shri Jitendra Singh
Department by	Ms. Naina Krishnakumar
Date of Hearing	21.07.2022
Date of Pronouncement	26.07.2022

ORDER

The assessee has filed this appeal challenging the order dated 13.8.2021 passed by learned CIT(A)-National Faceless Appeal Centre, Delhi and it relates to A.Y. 2015-16.

2. The assessee is aggrieved by decision of learned CIT(A) in confirming the assessment of long term capital gain on sale of shares as income of the assessee treating it as bogus in nature and also in assessing the commission expenditure thereon.

3. Facts relating to the issue and receipt in brief. The assessee filed its return of income for the year under consideration declaring total income of Rs.8,00,190/-. The Assessing Officer reopened the assessment by issuing notice under section 148 of the I.T. Act, on noticing that the assessee has sold shares of M/s. Prerna Infra build Ltd. and earned long term capital gain thereon, which was claimed to be exempt. The above said M/s. Prerna Infra build Ltd. was found to be a penny stock and hence the Assessing Officer took

the view that the long term capital gain declared by the assessee on sale of shares of the above said company is bogus in nature. Hence the AO reopened the assessment. The assessee had declared long term capital gain of Rs.2,36,753/- on sale of above said shares. The Assessing Officer assessed the same as income of the assessee under section 68 of the Act as unexplained receipt. Besides the above, the Assessing Officer also added 2% of the long term capital gain as expenses incurred by the assessee on payment of commission to the entry provider. The Learned CIT(A) also confirmed the same.

4. The Learned AR submitted that the assessee purchased 7500 equity shares of M/s. Prerna Infrabuild Ltd., on 29.9.2011 through M/s. Shailesh Merchant Stock Brokers Pvt. Ltd. Total amount paid for the above said purchases was Rs. 2,32,000/- and the same was paid through bank account maintained by the assessee with ICICI bank. On purchases of the above said shares, they were duly transferred to the Demat account of the assessee. The Learned AR further submitted that the assessee held these shares for a period of about 33 months and sold them on 11.8.2014. The sale proceeds were also received through banking channels only. The transaction of sales have been done through reputed brokers and the shares have been delivered from the demat account of the assessee. The Learned AR further submitted that the price movement of the shares of M/s. Prerna Infrabuild Ltd., was not volatile, as it is normally found in the cases of other penny stocks. Inviting my attention to the details of shares price movement given at page No. 8 & 9 of the paper book, the learned AR submitted that there was no unusual movement in the price of this share. Accordingly, the learned AR submitted that the assessee has purchased and sold these shares in the normal course of his investment activity. Accordingly, he submitted that there is no reason to suspect long term capital gain earned by the assessee on sale of shares of the above said company. Accordingly, he prayed for the deletion of the addition made by the Assessing Officer.

5. On the contrary, the learned DR supported the order passed by learned CIT(A).

6. Having heard the rival contentions, I am of the view that there is merit in the submissions made by Ld A.R. As noticed earlier, the assessee has purchased these shares on September 2011 and sold the shares in August, 2014. During this period of about 33 months, the assessee has held the shares in its Demat account. The purchase and sales have been routed through bank accounts. Further learned AR also pointed out that the share price movement was not abnormal in respect of shares. There is no allegation that the assessee was also part of alleged rigging of shares. Under these set of facts, I am of the view that there is no reason to suspect long term capital gain declared by the assessee. Accordingly I set aside the order passed by learned CIT(A) and direct the Assessing Officer to accept long term capital gain declared by the assessee and also delete the commission expenses estimated by him.

7. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 26.07.2022.

Sd/-

(B.R. BASKARAN)  
ACCOUNTANT MEMBER

Mumbai; Dated : 26/07/2022

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//

*PS*

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai