

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'B' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
and  
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA No.594/Del./2020  
(ASSESSMENT YEAR : 2011-12)**

ACIT, Circle 7 (1), vs. Decent Financial Services Pvt. Ltd.,  
New Delhi. A – 86, DDA Shed,  
Okhla Indl. Area, Phase – I,  
New Delhi – 110 020.

**(PAN : AAACD2899P)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Amit Sharma, Advocate  
REVENUE BY : Shri Yogesh Kumar Nayyar, Sr. DR

Date of Hearing : 01.11.2022  
Date of Order : 07.11.2022

**ORDER**

**PER SHAMIM YAHYA, ACCOUNTANT MEMBER :**

This appeal by the Revenue is directed against the order of the Id.

CIT (A)-3, New Delhi dated 04.11.2019 for the assessment year 2011-12.

2. The ground of appeal taken by the Revenue reads as under :-

“On the facts and in circumstances of the case and in law, the CIT (A) has erred in deleting the addition of Rs.3,46,569/- on account of commission paid for obtaining bogus capital gain u/s 69C of the Act.”

3. Brief facts of the case are that in the assessment order, Assessing Officer noted that assessee company is engaged in the business of

purchase/sale of shares and securities and classified as investments or stock-in-trade in the financial statement. AO referred to information received in this regard and was of the opinion that shares/stocks traded were falling under the category of penny stocks. After having held so, AO noted that assessee has shown these as business transactions and offered the receipts as business income. So, AO did not make any further addition to this count as business income. However, he added certain percentage of the income as commission in obtaining bogus penny stock income and added an amount of Rs.3,46,569/- as commission paid. Penalty proceedings were also started on this.

4. Assessee filed an appeal before the Id. CIT (A) challenging both the validity of reopening as well as merits of the case. Ld. CIT (A) after discussing elaborately held that the reassessment proceedings were void and liable to be quashed. Ld. CIT (A)'s order in this regard can be read as under :-

““In view of the above facts, it is observed that the AO had recorded the reasons for reopening of assessment in haste and hurried manner without any application of mind which is clearly evident from the fact that while recording the reasons for reopening of assessment, the AO has not made efforts to examine whether the income which is alleged to have escaped assessment, has been shown in the ITR or not. In view of the facts of the case and the legal position as laid down by the various decisions referred above and in the written submissions filed by the AR, it is found that the AO had issued the notice u/s 148 of the Act without any application of mind to form a belief that there has been escapement of income and thus the

reassessment proceedings are bad in law and are liable to be quashed. Accordingly, the reassessment proceedings are held to be void and the same are quashed. The ground nos.2 & 4 of the appeal are thus, allowed.”

5. As regards the merits of the case regarding addition of commission income, Id. CIT (A) deleted the same by observing that AO has not brought on record any evidence for any such commission paid. He noted that the assessee has contended that expenses like brokerage, transaction charges, service tax and other charges incurred by the assessee have been properly recorded in the books of account and the same has been duly audited. Ld. CIT (A) accepted the assessee's contention that this addition was without any basis and he directed the AO to delete the same.

6. Against this order, Revenue is in appeal before us. We have heard both the parties and perused the record.

7. As is evident from the grounds of appeal, the Revenue has only challenged the merits of the addition and has not challenged the Id. CIT(A)'s order wherein he has held that the reassessment proceedings are void and are thus quashed. In absence of taking any ground in this regard, this appeal by the Revenue on the merits is liable to be dismissed as infructuous.

8. Furthermore, Id. Counsel of the assessee has submitted that tax effect in this case is below the limit fixed by the CBDT for filing the appeals before the ITAT. As the issue relating to penny stock and hence

comes under the exception clause issued by the CBDT, Id. Counsel of the assessee referred to ITAT, Ahmedabad Bench decision in the case of ITO vs. Palak Chinubhai Patel (2022) 137 taxmann.com 194 (Ahmedabad-Trib.) for the proposition that when the penny stocks have been shown as business income, the exceptions as provided by CBDT circular does not apply. We may gainfully refer to the Head Note of the aforesaid decision as under :-

“Section 268A of the Income-tax Act, 1961 - Filing of appeal or application for reference by income-tax authority (Circular No. 23 of 2019) - Assessment year 2011-12 - Whether Circular No. 23 of 2019 dated 6-9-2019 read with Office Memorandum dated 16-9-2019, shall apply when assessee has earned/claimed bogus L TCG/STCL through penny stocks - Held, yes - Whether however, there is nothing to suggest that Circular read with Memorandum would apply with equal force even if assessee had shown sale and purchase of such alleged penny stocks as 'income from business or profession' in its return of income - Held, yes - Whether therefore, where assessee had filed return of income declaring income from sale of shares under head 'income from business or profession' and had not declared any income/loss under head 'capital gains' and total tax effect from assessment framed during year was below prescribed limit for filing appeals before Tribunal, case of assessee did not fall within exceptions as provided by CBDT Circular No. 23 of 2019 dated 6-9-2019 read with Office Memorandum dated 16-9-2019 and therefore, impugned appeal filed by revenue deserved to be treated as withdrawn on account of low tax effect - Held, yes [Para 8] [In favour of assessee]

Circulars and Notifications: CBDT Circular No. 17 of 2019 dated 8-8-2019, Circular Number 23 dated 6-9-2019 and Office Memorandum F. No. 279/MISC.IM-93/2018-IT J(PT.), dated 16-9-2019”

9. Be as it may, as we have already noted that Id. CIT (A) quashed the assessment on the invalidity of reopening, the appeal by the Revenue without challenging the same has no legs to stand. Hence this appeal stands dismissed.

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

**Order pronounced in the open court on this 7<sup>th</sup> day of November, 2022.**

**Sd/-  
(YOGESH KUMAR US)  
JUDICIAL MEMBER**

**sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

**Dated the 7<sup>th</sup> day of November, 2022  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-3, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**