

आयकर अपीलिय अधिकरण
मुंबई पीठ "एस एम सी", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
आअसं. 2272/मुं/2021 (नि.व 2011-12)
ITA NO.2272/MUM/2021(A.Y 2011-12)

Income Tax Officer – 19(2)(4),
Room No.217, 2nd Floor,
Matru Mandir, Grant Road,
Mumbai 400 007

..... अपीलार्थी /Appellant

बनाम Vs.

Shri Prakash Chandra Surajmal Gandhi,
41, Ashutosh Co-Op Society,
38A, Nepeansea Road, Mumbai 400 006
PAN: AACPG-9520-B

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Ms. Beena Santosh

प्रतिवादी द्वारा/Respondent by : Shri A.K. Vaidyalingan

सुनवाई की तिथि/ Date of hearing : 03/08/2022

घोषणा की तिथि/ Date of pronouncement : 31/10/2022

आदेश/ ORDER

This appeal by the Revenue is directed against the order of Commissioner of Income Tax(Appeals) National Faceless Appeal Centre, Delhi [in short 'the CIT(A)'] dated 05/10/2021 for the assessment year 2011-12.

2. The Revenue is in appeal against the order of CIT(A) in deleting the addition of Rs.27,31,200/- on account of sale consideration received on sale of shares of Action Financial Services Limited. The Assessing Officer made addition of the entire sale consideration of shares as unexplained income under section 68 of the Income tax Act, 1961 [in short 'the Act'].

3. Shri A.K. Vaidyalingan appearing on behalf of the assessee submitted that the assessee is an individual. During the period relevant to assessment year under appeal, the assessee had sold the shares of M/s. Action Financial Services Limited and had suffered long term capital loss of Rs.86,238/-. The assessee had purchased shares of M/s. Action Financial Services Limited over a period of time starting from Financial Year 2005-06 onwards. Thereafter, the assessee sold the aforesaid shares in the Financial Year 2007-08. The short term capital gain on sale of shares was offered to tax. The major chunk of shares were sold by the assessee in financial year 2008-09, wherein the assessee had made long term capital gain. The Id. Authorized Representative of the assessee pointed that the Revenue has not raised any doubt on the purchase of shares. It is only the sale of shares which has been doubted by the Assessing Officer. The Assessing Officer in reassessment proceedings made addition of the entire sale proceeds under section 68 of the Act. Aggrieved by the assessment order dated 28/12/2018 passed under section 143(3) r.w.s. 147 of the Act, the assessee filed appeal before the CIT(A). The CIT(A) vide impugned order deleted the addition. The Id. Authorized Representative of the assessee vehemently defended the impugned order and prayed for dismissing the appeal of Revenue.

4. Per contra, Ms. Beena Santosh representing the Department prayed for reversing the findings of CIT(A) and upholding the addition made by Assessing Officer under section 68 of the Act. The Id. Departmental Representative submitted that the scrips in which the assessee had traded are penny stock.

5. Submissions made by rival sides were heard, orders of authorities below examined. The solitary issue in the appeal is whether the share sold by the assessee during the period relevant to assessment year under appeal are in the nature of penny stock. The assessee had purchased shares of M/s. Action Financial Services Limited for Rs.28,17,438/- and sold the same for Rs.27,31,200/-. In the process of purchase and sale of aforesaid shares, the assessee suffered marginal loss of

Rs.86,238/-. From perusal of the assessment order it clearly emanates that the Assessing Officer has raised no doubt over the purchase of shares of M/s. Action Financial Services Limited. It is only the sale of shares which has been doubted by the Assessing Officer. In the impugned order the CIT(A) has given categorical finding that the shares sold in the period relevant to the assessment year under appeal were purchased by the assessee between October, 2007 and January 2008. The shares were purchased through Shreepati Holdings Finance Private Limited. The purchases were made through banking channels and Securities Transaction Tax was duly paid. The sales were also effected in similar manner. In the process of sale and purchase of shares M/s. Action Financial Services Limited, the assessee suffered minor long term capital loss of Rs.86,238/-. It is not the case of Revenue that the loss declared by the assessee in the impugned assessment year is a result of systematically generated transactions to avoid payment of tax. Thus, in peculiar facts of the case the miniscule loss suffered by the assessee on the transaction of purchase and sale of shares cannot be termed as penny stock transaction. I find no reason to interfere with the findings of CIT(A) on this issue. Ergo, the impugned order is upheld and appeal by the Revenue is dismissed being devoid of any merit.

Order pronounced in the open Court on Monday the 31st day of October, 2022.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 31/10/2022
Vm, Sr. PS (O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)/
Sr.Private Secretary
ITAT, Mumbai