

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

BEFORE SHRI AMIT SHUKLA, JM

आयकरअपीलसं./ I.T.A. No. 1817/Mum/2022
(निर्धारणवर्ष / Assessment Year: 2012-13)

ITO-26(2)(1), Kautilya Bhavan, Room No. 315, 3 rd floor, Bandra Kurla Complex, Bandra (east), Mumbai-400 051	बनाम/ Vs.	Narendra Bhabutmal Mehta, 402, Navare Appt. Swami Vallabhdas Sion West, Mumbai-400 022
स्थायीलेखासं ./जीआइआरसं ./PAN No. ADXPM3744P		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Narendra Mehta, Ld. AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Ms. Neeta Jeph, Ld. DR
सुनवाईकीतारीख/ Date of Hearing	:	01.09.2022
घोषणाकीतारीख / Date of Pronouncement	:	30.11.2022

आदेश / O R D E R

Per Amit Shukla, Judicial Member:

The aforesaid appeal has been filed by the revenue against the impugned order dated 12.03.2022, passed by National Faceless Appeal Centre (NFAC), Delhi for the quantum of assessment passed u/s 147/144 for AY 2012-13.

2. In various grounds of appeal, revenue has challenged the deletion of addition of Rs. 1,19,200/- made u/s 69 of the Act on account of transaction of share of M/s Nivyah Infrastructure & Telecom Services Ltd which was penny stock.

3. The facts in brief are that, AO received information that assessee has claimed purchase and sale totaling to Rs. 1,19,200/- in the scrip of M/s Nivyah Infrastructure & Telecom Services Ltd., which was a penny stock company and based on this information, assessee's case was reopened u/s 147, because, according to the AO and information received from DGIT (Inv.), Mumbai, assessee was also one of the beneficiary in the said scrip. Ld. AO without noting the facts of the case, and simply based on certain general observation of modus operendi in such cases, has treated the entire sale transaction of scrip of Rs. 1,19,200/- as bogus and added u/s 68 of the Act and also imputed notional commission @ 3% on account of such accommodation entry.

4. Ld. CIT(A) has deleted the additions after observing as under:-

5.1. Ground 1 *pertains to the addition made by the AO u/s 69 of the Act. The AO has made the said addition based on the findings*

of the Investigation Wing, Mumbai that the script M/s. Nivyah Infrastructure & Telecom Services Ltd., (Nivyah) in which the Appellant has done trading is a penny stock. The Investigation Wing, Mumbai had carried out a detailed investigation and it was unearthed that Nivyah is a penny stock which has been used by the brokers, promoters/directors of the company, hawala operators etc., to provide accommodation entry to the beneficiaries either in the form of artificial gains (mainly long term capital gains which are exempt from taxation) or artificial losses which are set off against genuine profits thus reducing the taxable income of the beneficiaries. Thus, the beneficiaries either bring their unaccounted money through artificial long term capital gains without paying any taxes or reduce their tax burden by taking artificial losses. The beneficiaries are required to pay certain commission / brokerage for availing such accommodation entries.

I find from the order that the AO has made the additions u/s 69 of the Act without taking into consideration the submissions made by the AO and without carrying out any investigation in the assessment proceedings and simply relying on the report shared by the Investigation Wing, Mumbai. The AO has mentioned at para 6 of the assessment order that the Appellant has not filed any details in response to the show cause letter dated 09/12/2019. This is factually not correct. The Appellant has submitted reply to the show cause letter vide submission dated 13/12/2019 [Document ID: ITBA/AST/F/147(SCN)/2019-20/1021965656(1)].

In the column 'Response/Remark' the Appellant has submitted that;

'Dear Sir, As per your notice no. ITBA/AST/F/147(SC N)/2019-20/1021965656(1) dt.09.12.19 I Narendra Mehta doing actual trading with my broker INDIA ADVANTAGE SECURITIES PVT.LTD. This is not a dummy bills, I am attaching a Contract Notes received from my Broker.'

The Appellant has submitted contract note and BSE bills (Evidence in investment in capital gains scheme account) as attachments with the above submissions. I also find that the Appellant has made following submission during the assessment proceedings:

1. Document ID: ITBA/AST/F/142(1)/2019-20/1021201191(1) in response to notice issued u/s 142(1) dated 27/11/2019. The Appellant has submitted bank account statements, capital gain or loss statement, transaction statement, others as attachment to the above submission.

The AO has not considered these submissions and has proceeded to add Rs.1,19,200/- u/s 69 of the Act and Rs.3,576/- u/s 69C of the Act.

The Appellant has submitted details of purchase and sale of shares of Nivyah in the assessment proceedings along with all the supporting documents. These details were furnished online. The Appellant has furnished the acknowledgment of the same in the present proceedings. As per the details so furnished the Appellant has incurred loss of Rs.7,079/- on the sale of such shares. This

fact was not considered by the AO at all. The AO has simply considered the sale consideration and ignored the purchase cost paid by the Appellant. Since no gains have accrued to the Appellant on the sale of Nivyah, the question of making any addition u/s 69 does not arise at all. Section 69 states that;

"69. Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year."

*Therefore, section 69 cannot be applied for making any addition in the hands of the Appellant on the basis of the facts of the case. The AO is, therefore, directed to delete the said addition made u/s 69 of the Act. **Thus, the ground is allowed.***

5.2. *Since **ground 2** is linked to the Ground 1 above which I have allowed, therefore, Ground 2 is also **allowed.***

5. After hearing both the parties and on perusal of the findings given in the impugned order as well as material referred to before me, it is seen that assessee had purchased shares from M/s Nivyah Infrastructure & Telecom Services Ltd. on 30.06.2011 at Rs.

1,25,850/-, whereby assessee has bought 2000 shares of the said company. The said shares were sold on the very next day i.e. 01.07.2011 at the sale value of Rs. 1,18,771.73/-. Thus, there was a short term capital loss of Rs. 7,079/-. The Ld. AO has treated the entire sale consideration as income u/s 68 of the Act treating as if it was a long term capital gain. Before us, Ld. Counsel submitted that neither the assessee had made any payment nor has received any amount and it was the nature of speculation loss and there was no delivery of shares.

6. From the perusal of the assessment order, I find that AO has neither verified the documents which was filed before him nor he has taken consideration into the vital fact that the purchase and sale happened within a day and incurred short term capital loss of Rs. 7,079/-. Further, there is no set off of loss by the assessee either in this year or also in the subsequent year. Therefore, I do not find any infirmity in the order of Ld. CIT (A), accordingly the same is confirmed.

7. In the result, the appeal filed by the revenue stands **dismissed.**

Orders pronounced in the open court on 30th November, 2022.

Sd/-
(Amit Shukla)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 30.11.2022
Sr.PS. Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai