

IN THE INCOME TAX APPELLATE TRIBUNAL
“GUWAHATI BENCH, GAUHATI
VIRTUAL HEARING AT KOLKATA

**Before Shri Rajpal Yadav, Vice-President
and Shri Manish Borad, Accountant Member**

I.T.A. No.328/GTY/2019
Assessment Year: 2014-15

Ajay Kumar Tantia, Kolkata.....Appellant

7B, Ground Floor,
Kiran Shankar Roy Road,
Kolkata-1.

[PAN: ABKPT3130B]

vs.

ITO, Ward-4(1), GuwahatiRespondent

Appearances by:

Shri S. P. Bhati, FCA, appeared on behalf of the appellant.

Shri Amit Kumar Pandey, JCIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : January 31, 2023

Date of pronouncing the order : February 06, 2023

ORDER

Per Manish Borad, Accountant Member:

This appeal at the instance of the assessee pertaining to the Assessment Year (in short “AY”) 2014-15 is directed against the order of the Commissioner of Income Tax (Appeals), Guwahati-2, Guwahati [in short ld. “CIT(A)”] dated 31.05.2019 which is arising out of the order u/s 143(3) of the Assessing Officer dated 23.12.2016.

2. The assessee in this appeal has taken the following grounds of appeal:

“1. For that the learned/CIT (Appeals) is not justified in upholding addition of Rs.10,23,486/- made by A.O under the head Income from Other Sources ignoring the losses suffered in same script and from same Broker.

2. For that the learned CIT (Appeals) is not justified in rendering her judgement without considering materials available on record on the basis of which your Appellant has returned income under the head Capital Gain Short Term Rs. (-)12,985/-

3. *For that the learned CIT (Appeals) is not justified in upholding the addition on the basis of "Preponderance of Probabilities" ignoring the materials available on record.*

4. *The Appellant craves the leave to take Additional Grounds at the time of hearing of Appeal."*

3. The assessee has taken the following additional grounds of appeal:

"1. For that the Learned Assessing Officer is not justified in making addition of Rs.10,23,486/- u/s 68 of the Income Tax Act 1961 when admittedly such amount has not been credited in books of accounts."

4. The brief facts of the case are that the assessee is an individual and engaged in the business of trading of chemicals. Income of Rs.6,26,020/- declared in the return of income filed on 09.10.2014 for assessment year 2014-15. Subsequently, the case selected for scrutiny through CASS. Notices u/s 143(2) and 142(1) duly served upon the assessee. Various details as called for by the Assessing Officer were duly filed by the assessee. The Assessing Officer noticed that the assessee has incurred short-term capital loss of Rs.12984/- from purchase and sale of penny stock companies. The scrips were identified by the ld. Assessing Officer as penny stock on the basis of information received by the Investigation Wing of the Income Tax Department in various cases. The ld. Assessing Officer observed that in one script, the assessee has earned short-term capital gain and in other two scrips had incurred losses. However, the Assessing Officer only took note of the sale consideration received in case of GCM Securities Ltd. in which assessee earned short-term capital gain and made an addition u/s 68 of the Act at Rs.1023486/- and assessed the income at Rs.16,49,510/-.

5. Aggrieved, the assessee preferred appeal before the ld. CIT(A) who failed to give a relief. The ld. CIT(A) mainly discussed the issue of bogus long-term capital gain and cited various judgments and confirmed the action of the Assessing Officer.

6. Aggrieved, the assessee is now in appeal before this Tribunal. The ld. counsel for the assessee referring to main grounds as well as additional ground stated that the short-term capital loss was incurred from purchase and sale of alleged penny stock companies and the ld. Assessing Officer ought to have given the set off of loss against profits rather than picking the sale consideration of only one company namely GCM Securities Ltd. dealing in which gave profits (short-term capital gain) to the assessee.

7. On the other hand, the ld. DR vehemently argued supporting the order of the lower authorities.

8. We have heard the rival contentions and perused the records before us. The assessee is aggrieved with the findings of both the lower authorities confirming the addition u/s 68 of the Act at Rs.10,23,486/-. We notice that the assessee dealt into three scrips namely GCM Securities Ltd., UNNO Ltd. and Nikki Global Ltd. There is no doubt at the end of both the parties that the three scrips are penny stock companies and the capital gain arising from trading of such scrips is bogus. In assessee's case, short-term capital gain of Rs.904490/- from sale of 6000 equity shares of GCM Securities in which sale consideration at Rs.1023469/- and the cost of equity shares was Rs.120000/-. As regards other two scrips namely Unno Ltd. and Nikki Global Ltd., are concerned the sale consideration is of Rs.589923/- and cost price is of Rs.1508241/-, thus there is a short-term capital loss of Rs.917476/-. The net short-term capital loss comes to Rs.12985/-. However, the ld. Assessing Officer has only picked up one penny stock scrip namely GCM Securities in which the assessee earned short-term capital gain and made an addition u/s 68 of the Act for a sale consideration of Rs.10,23,486/-. Such action of the Assessing Officer is not justified and he ought to have given set off of short-term capital loss

earned from dealing in penny stock companies against the profit earned from another penny stock company. The assessee is not disputing that he has dealt in penny stock company but since in some penny stock company it has incurred loss and in some it earned profit, only the net result of such trading or transaction needs to be brought to tax.

9. We, therefore, are of the considered view that if the effect/set off of short-term capital loss is given against the short-term capital gain, all arising from dealing in penny stock company, the result is short-term capital loss of Rs.12985/- and the same should have been adopted by the Assessing Officer. Therefore, the addition in the hands of the assessee should be restricted only to claim of bogus short-term capital loss of Rs.12,985/- since it has been arrived from dealing in penny stock companies and such short-term capital loss is bogus in nature. Therefore, against the addition of Rs.10,23,485/- made by the Assessing Officer, we sustain the addition of Rs.12,985/- being bogus short-term capital loss and partly allow the claim of the assessee. In the result, effective grounds raised by the assessee are partly allowed as per terms indicated hereinabove and other grounds being general in nature need no adjudication.

10. In the result, the appeal of the assessee is partly allowed.

Kolkata, the 6th February, 2023.

Sd/-
[Rajpal Yadav]
Vice-President

Sd/-
[Manish Borad]
Accountant Member

Dated: 06.02.2023.

RS

Copy of the order forwarded to:

1. Ajay Kumar Tantia, Kolkata
2. ITO, Ward-4(1), Guwahati
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches