

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "A" BENCH: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &
SHRI M BALAGANESH, ACCOUNTANT MEMBER**

ITA No.303/Del/2020

[Assessment Year : 2016-17]

Abhik Finance Pvt.Ltd., 2/3-A, Aravali View, Rail Vihar, Sector-56, Gurgaon, Haryana-122002. PAN-AABCA8567A	vs	ACIT, Circle-1(1), New Delhi.
APPELLANT		RESPONDENT
Appellant by	None	
Respondent by	Shri P Praveen Sidharth, CIT DR	
Date of Hearing	11.04.2023	
Date of Pronouncement	17.04.2023	

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee for the assessment year 2016-17 is directed against the order of Ld. CIT(A)-1, New Delhi dated 15.11.2019.

2. The assessee has raised following grounds of appeal:-

1. *"On the facts and circumstances of the case and in law, Ld. Commissioner of Income Tax (Appeals) erred in dismissing the appeal without appreciating the fact that the source of source of Share Capital was duly explained with tax returns, computation of Income and bank Statements.*
2. *On the facts and circumstances of the case and in law, Ld. Commissioner of Income Tax (Appeals) erred in dismissing the appeal without appreciating the fact that there is no definition of "Penny stocks" in the Income Tax Act. There is no provision u/s 10(38) of Income Tax act barring exemption on capital gain arising from penny stocks.*

3. *On the facts and circumstances of the case and in law, Ld. Commissioner of Income Tax (Appeals) erred in dismissing the appeal without appreciating the fact that the assessment of individual providing share capital was not under the jurisdiction of present Ld. Commissioner of Income Tax (Appeals).*
4. *On the facts and circumstances of the case and in law, Ld. Commissioner of Income Tax (Appeals) erred in dismissing the appeal without appreciating the fact that the assessee has already established. the identity, genuineness and creditworthiness of the parties to whom shares were allotted.*
5. *On the facts and circumstances of the case and in law, Ld. Commissioner of Income Tax (Appeals) erred in dismissing the appeal without appreciating the fact that the persons to whom shares were allotted are directors of the company only.*
6. *On the facts and circumstances of the case and in law, Ld. Commissioner of Income Tax (Appeals) erred in dismissing the appeal without appreciating the fact that the sufficient evidences was placed on record to satisfy parameters of section 68 of Income Tax Act in the case of present assessee only.*
7. *On the facts and circumstances of the case and in law, Ld. Commissioner of Income Tax (Appeals) erred in dismissing the appeal by going beyond the jurisdiction and assessment of income of shareholders of the assessee company.*
8. *The appellant craves to amend, alter, add or delete all or any of the above grounds of appeal.”*

3. At the time of hearing, no one attended the proceedings on behalf of the assessee. It is seen from the record that neither any one has been attending the proceedings since 28.06.2022 nor any request has been filed for adjournment of hearing of appeal on behalf of the assessee. Under these facts,

the appeal is taken up for hearing in the absence of the assessee and is being disposed off on the basis of material available on record.

4. Facts giving rise to the present appeal are that in this case, the assessee filed its return of income, declaring total loss of INR 17,23,48,440/- on 15.10.2016. The case was selected for scrutiny assessment and the assessment was framed u/s 143(3) of the Income Tax Act, 1961 ("the Act") vide order dated 30.12.2018. The Assessing Officer ("AO") noted that during the year, the assessee had introduced share capital from the Directors of INR 13,93,70,000/-. The assessee could not satisfactorily explain the source of such capital and he made addition u/s 68 of the Act.

5. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, sustained the addition and dismissed the appeal of the assessee.

6. Aggrieved against the order of Ld.CIT(A), the assessee has preferred the appeal before the Tribunal.

7. Apropos to Grounds of appeal, Ld. CIT DR opposed the grounds of appeal and supported the orders of the authorities below.

8. We have heard Ld. CIT DR and perused the material available on record and gone through the orders of the authorities below. The Ld.CIT(A) has given a finding on fact by observing as under:-

7.2. "During the course of appellate proceedings, the appellant has furnished the computation of total income of MrAnujNagpal, Mrs AnuNagpal and AnujNagpal (HUF) for 2014-15, AY 2015-16 & AY

2016-17. The information contained therein has been compiled as under:

Ms.AnuNagpal

Sl.No.	A.Y.	Long Term Capital Gain Shown in ITR	Long Term Capital Claimed as exempt u/s 10(38)	Name of the Shares
1	2014-15	1,69,17,563/-	1,69,17,563/-	(i) Blazon Marble (ii) Eco friendly Food Processing Park Ltd.
2	2015-16	12,11,14,844/-	12,11,14,844/-	(i) Eco friendly Food Processing Park Ltd. (ii) Mahadushi International Trade
3	2016-17	3,75,64,073/-	3,75,64,073/-	Eco friendly Food Processing Park Ltd.

Mr.AnujNagpal

Sl. No.	A.Y.	Long Term Capital Gain Shown in ITR	Long Term Capital Claimed as exempt u/s 10(38)	Name of the Shares
1	2014-15	2,49,09,200/-	2,49,09,200/-	(i) Blazon Marble (ii) Eco friendly Food Processing Park Ltd.
2	2015-16	18,59,60,538/-	18,59,60,538/-	(i) Eco friendly Food Processing Park Ltd. (ii) Mahadushi International Trade Ltd. (iii) Shubham Granites (iv) Shubham Granites (v) Surya Marketing Ltd
3	2016-17	3,41,93,427/-	3,41,93,427/-	(i) Eco friendly Food Processing Park Ltd.

Directorate of Income Tax (Investigation) has carried out investigation on bogus Long Term Capital Gains through listed penny stocks. It has been reported that (i) Blazon Marble Ltd, (ii) Eco friendly Food Processing Park Ltd and other companies are penny stocks. Considering the details submitted by the appellant company, it is evident that Mr AnujNagpal, Mrs AnuNagpal& AnujNagpal(HUF) have introduced unaccounted money in the form of bogus Long Term Capital Gains through listed penny stocks. Thus the source of the source of share capital in the present case is the bogus Long Term Capital Gains introduced through listed penny stocks. Considering the facts of the case, the first proviso to section 68 clearly applicable to the facts of the present case. Accordingly, the addition of Rs. 13,93,70,000/- u/s 68 is upheld in the present case. Ground No.2, 3, 4, 5 & 6 are decided against the appellant.”

7.3 Ground No.1 & 7 are general in nature and do not require any adjudication.”

8.1. The assessee has not brought any material to rebut the findings of lower authority and to substantiate its claim regarding the impugned addition. In the absence of such material, we do not see any reason to interfere in the findings of Ld.CIT(A), the same is hereby, affirmed. Grounds raised by the assessee are hence, dismissed.

9. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open Court on 17th April, 2023.

Sd/-

**(M BALAGANESH)
ACCOUNTANT MEMBER**

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

** Amit Kumar **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI