

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

**BEFORE SHRI PRASHANT MAHARISHI, AM AND  
MS. KAVITHA RAJAGOPAL, JM**

ITA No. 4969/Mum/2014  
(Assessment Year: 2005-06)

ACIT/DCIT-24(3) Mumbai-400 051	Vs.	Shri Arvind Jain Prop. Indra Constructions 23/26, Vijaya Vila, Jawahar Nagar, S. V. Road, Goregaon (W), Mumbai-400 063
PAN/GIR No. AAAPJ 9438 Q		
<b>(Appellant)</b>	:	<b>(Respondent)</b>
<b>Assessee by</b>	:	None
<b>Revenue by</b>	:	Shri Manoj Kumar Sinha
<b>Date of Hearing</b>	:	02.03.2023
<b>Date of Pronouncement</b>	:	20.04.2023

**ORDER**

**Per Kavitha Rajagopal, J M:**

This appeal has been filed by the Revenue, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2005-06.

2. The Revenue has challenged this appeal on various grounds where the Id. CIT(A) has deleted the impugned addition made by the Assessing Officer (A.O. for short) on long term capital gain (LTCG for short) as unexplained cash credit u/s. 68 of the Act.

3. Since there was no representation on behalf of the assessee inspite of several opportunities, we hereby proceed to dispose of this appeal by hearing the learned

Departmental Representative (ld. DR for short) for the Revenue and on perusal of the materials available on record.

4. The brief facts are that the assessee is a proprietor of M/s. Infra Constructions which is engaged in the business of Civil Contractor mostly with Mumbai Municipal Corporation. The assessee filed his return of income dated 31.10.2005, declaring total income of Rs.37,81,071/-. The assessee's case was selected for scrutiny and the assessment order dated 30.03.2007 was passed by the A.O. by determining the total income at Rs.40,97,152/-. The assessee's case was reopened for the reason that the assessee had declared LTCG of Rs.55,11,494/- and had claimed the same as exempt income. As per the information from DDIT(Investigation), the assessee is said to have shown sale proceeds of shares in the scrips of Rama Krishna Fincap Ltd. as LTCG which according to the Investigation Report was a penny stock and that the assessee was one of the beneficiary of accommodation entries. The SEBI's order dated 09.11.2009 is also corroborated with the fact that the scrip of Rama Krishnan Ltd. through broker M/s. Basant Parewal & Co. was said to be penny stock.

5. The assessment order u/s. 143(3) r.w.s. 147 of the Act dated 21.03.2013 was passed by the A.O. determining the total income at Rs.96,08,565/- by making an addition of Rs.55,11,494/- as unexplained cash credit u/s. 68 of the Act.

6. The assessee was in appeal before the ld. CIT(A) as against the impugned order. The ld. CIT(A) deleted the impugned addition on the ground that the A.O. did not have any material on record to conclude the transaction to be bogus and that the A.O. has failed to carry out any investigation and had merely relied on the report of ADIT(Inv.).

The Id. CIT(A) further held that the broker involved in the sale and purchase of the said share has not given any statement which is against the impugned transaction and that mere violation of bye laws of SEBI cannot be treated as bogus. The Id. CIT(A) relied on the decision of the Hon'ble Jharkhand High Court's decision in the case of *CIT vs. Arun Kumar Agarwal HUF* 10 taxmann 205 where in case of no corroborative evidence, addition cannot be made as undisclosed income on the profit on sale of shares. The Id. CIT(A) deleted the said addition on these grounds.

7. The Revenue is in appeal before us, challenging the order of the Id. CIT(A).

8. We have heard the Id. DR and perused the materials available on record. It is observed that the Revenue has recalled the decision of the Tribunal dated 18.09.2017, which had deleted the impugned addition on the ground that the A.O. has failed to prove the said transaction as bogus and merely because the share broker involved in the impugned transaction had violated the SEBI Regulations, the same cannot be treated as bogus transaction. It is also observed that the Revenue has recalled the order on the ground that the Id. CIT(A) has not addressed the findings given by the SEBI for the purpose of adjudicating this issue. The Id. DR stated that the assessee has not made compliance before the Id. CIT(A) and hence not furnished any documentary evidence to support his claim. On perusal of the records, we are of the considered opinion that the assessee has failed to submit the evidence supporting his claim neither before the A.O. nor before the Id. CIT(A). The assessee has also failed to appear before us. We deem it fit and proper to remand this issue back to the file of the A.O. for the purpose of detailed verification on the impugned transaction made by the assessee through the broker M/s.

Basant Periwal & Co. Mere reliance on the fact that the said broker has not stated anything adverse to the assessee, is not sufficient to hold the transaction to be genuine. The assessee is directed to discharge the primary onus casted upon him before the A.O. by furnishing the relevant documentary evidences in support of his claim without any further delay. The A.O. is directed to decide the issue on merits after giving opportunity of hearing to the assessee. Hence, this issue is remanded back to the file of the A.O.

9. In the result, the appeal filed by the Revenue is allowed for statistical purpose.

*Order pronounced in the open court on 20.04.2023*

Sd/-

(Prashant Maharishi)  
Accountant Member

Mumbai; Dated : 20.04.2023

Roshani, Sr. PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

Sd/-

(Kavitha Rajagopal)  
Judicial Member

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai