

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" BENCH MUMBAI**

**BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &  
SHRI S RIFAUH RAHMAN, ACCOUNTANT MEMBER**

**ITA No. 873/Mum/2023  
(Assessment Year: 2012-13)**

Manish Bachubai Dani 702, Prakash Tower, Opp Raja Hotel, Shankarrao Chowk, Kalyan(W)- 421301, Maharashtra.	<b>बनाम/ Vs.</b>	NFAC, No-245-A, North Block, New Delhi, Delhi-110001.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABHM0031L</b>		
(अपीलार्थी /Appellant)		(प्रत्यर्थी / Respondent)

**ITA No. 1022/Mum/2023  
(Assessment Year: 2012-13)**

ITO, Ward 3(2), 2 <sup>nd</sup> Floor, RaniMansion, Murbad Road, Kalyan(W)-421301, Maharashtra.	<b>बनाम/ Vs.</b>	Manish Bachubai Dani 702, Prakash Tower, Opp Raja Hotel, Shankarrao Chowk, Kalyan(W)- 421301, Maharashtra
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABHM0031L</b>		
(अपीलार्थी /Appellant)		(प्रत्यर्थी / Respondent)

Appellant/Respondent by :	Mr. Ajay Singh.AR
Respondent/Appellant by :	Ms. Kavita Kaushik.DR

सुनवाई की तारीख / Date of Hearing	14/06/2023
घोषणा की तारीख /Date of Pronouncement	28/06/2023

आदेश / ORDER

**PER PAVAN KUMAR GADALE - JM:**

The Cross Appeal is filed by the assessee and revenue against the order of the National Faceless Appeal Centre (NFAC), Delhi / CIT(A), Mumbai.

ITA No. 873/Mum/2023, A.Y 2012-13. (Assessee Appeal)

The assessee has raised the following grounds of appeal:

*Addition of Rs.1,45,000/- u/s. 69A of the Act:*

*1. The CIT(A) NFAC erred in upholding the addition of Rs.1,45,000/- being cash deposit in bank account on a new assumption and presumption that the appellant might have received cash of Rs. 1,45,000/- from stock broker and the same is deposited in the bank.*

*2. The CIT(A) failed to appreciate the fact that the cash deposit in the bank of Rs. 1,45,000/- was out of income from iron scrap business of Rs. 1,94,800/- which is shown in the return of income year after year and never disputed by AO.*

*3. The appellant craves leave to add, alter or delete any grounds of appeal.*

2. The brief facts of the case are that, the assessee has filed the return of income for the A.Y 2012-13 on 26.07.2012 disclosing a total income of Rs. 2,98,350/- and the return of income was processed u/s 143(1) of the Act. Whereas the Assessing Officer (A.O) has received information that the assessee traded in the scrip's of a penny stock company M/s Diamant Infrastructure Ltd at BSE and the income was not offered in the return of income filed. Therefore the AO has reason to believe that the income has escaped assessment and issued notice u/s 148 of the Act. In response to notice,

the assessee has filed the return of income for A.Y 2012-13 on 28.11.2019 disclosing a total income of Rs.2,98,350/-, subsequently the A.O has issued notice u/s 143(2) and 142(1) of the Act. In response to notices, the assessee has filed the details and submissions electronically vide letter dated 27.11.2019 highlighting the nature of business, trading details at BSE, copy of return of income and computation of income.

3. Further it was submitted that the assessee is not a regular trader of shares and incurred loss in the trading of shares and the assessee has disclosed short term loss of Rs. 1,98,324/- while filing the return of income in response to notice u/s 148 of the Act. Whereas on perusal of the data, the AO found that the assessee has traded in scrip of M/s Diamant Infrastructure Ltd and sale consideration being Rs.1,50,250/-.The AO has dealt on the search report, facts, data, statements recorded and is of the opinion that the assessee has not substantiated the claim with proper evidences and the assessee has not explained the sources of transactions and dealt at Para 4.3 of the order and made an addition of Rs.1,50,250/- U/sec68 of the Act. On the second disputed issue, the AO found that there are some cash deposits in the bank account of the assessee and the explanations were called. Since the assessee has deposited the cash in the bank account and was not recorded in the books of accounts, the AO has made an addition u/s 69A of

the Act of Rs.1,45,000/- and assessed the total income of Rs. 5,93,600/- and passed order u/s 143(3) r.w.s 147 of the Act dated 13.12.2019.

4. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) considered the grounds of appeal, submissions of the assessee and findings of the AO has granted relief in respect of sale of shares, by observing that the loss on sale of shares in the return of income was claimed by the assessee and it was not set off nor carry forwarded. Whereas the CIT(A) has sustained the addition of cash deposits in the bank and partly allowed the assessee appeal. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Honble Tribunal.

5. At the of hearing the Ld. AR submitted that, the CIT(A) has overlooked the submissions and information filed in the course of proceedings and the nature of the business of the assessee. Whereas the cash deposits made by the assessee in the bank account pertaining to income receipts from scrap business which the assessee has been offering from the earlier years. The Ld. AR substantiated the submissions with the factual paper book and judicial decisions and prayed for allowing the assessee appeal. Contra, the Ld. DR supported the order of the CIT(A) on this disputed issue and submitted that the revenue has also filed cross appeal.

6. We heard the rival submissions and perused the material on record. The sole grievance of the assessee that the CIT(A) has erred in sustaining the addition of cash deposits in the bank account of Rs.1,45,000/- irrespective of the fact that the assessee was engaged in the business as scrap dealer and the amount deposited in the bank was out of the scrap sales. The Ld. AR has referred to statement of income at page 2 of the paper book where the assessee has disclosed under Income from other sources i.e other income from of business of Iron scrap of Rs.1,94,800/-.The contentions of the Ld. AR that, the assessee has discontinued the business subsequently and the cash deposits in the bank represents the scrap sales receipts. Further the Ld. AR submitted that the iron scrap business was continued from earlier year and referred to submissions made before the AO and the written submissions made before the CIT(A) in the paper book. Prima-face we find that the assessee has disclosed the other income from business of iron scrap in the computation of income filed which cannot be disputed and such receipt of income was not utilized as a source for expenditure or Asset purchase other than bank deposits. Therefore considering the facts and circumstances, we set-aside findings of the CIT(A) on this disputed issue and direct the assessing officer to delete the addition and allow the ground of appeal in favour of the assessee.

1022/Mum/2013, A.Y 2012-13(Revenue Appeal)

7. The revenue has raised the grounds of appeal as under:

*1. On the facts and in circumstances of the case and in law, the CIT(A) has erred in giving relief to the assessee despite confirming in para 6.2 on pages 5 & 6 of his order that the share prices were rigged resulting in loss to the assessee which was compensated in the form of cash payment to the assessee.*

*2. It is humbly requested that present appeal is being filed in accordance with the CBDT's Circular 23 of 2019 dated 06.09.2019. Therefore, the order of the CIT(A) may be vacated & that of the Assessing Officer may be restored.*

*3. The appellant craves leave to add, amend or alter any ground/grounds which may be necessary*

8. The Ld. DR submitted that the CIT(A) has erred in granting relief to the assessee by deleting the addition of the A.O though the assessee has made share transactions in the penny stock and overlooked the findings of the assessment proceedings. Contra, the Ld. AR submitted that the assessee has not claimed set off of loss nor carry forward for subsequent years. Further the Hon'ble Tribunal in respect of transactions of the same scrip has granted relief to assessee in the similar case. The Ld.AR relied on the order of the CIT(A) on this disputed issue.

9. We heard the rival submissions and perused the material on record. The sole disputed issue as envisaged by the Ld. DR that the CIT(A) has erred in granting relief to the assessee irrespective of the fact that the assessee was engaged in the penny stock share transactions. Whereas the Ld.AR submitted that the assessee is only a investor and

the assessee has purchased the shares at very high value and has sold shares on stock exchange for Rs.1,50,250/- and has incurred loss. The Ld.AR referred to the decision of the Hon'ble Tribunal in respect of same scrip trading and granting relief to the assessee in the case of Nischit Ramchandra Shah Vs. ITO ITA No. 1116/Mum/2022 A.Y 2012-13 dated 04.11.2022 observed at Page 5 Para 5 of the order read as under:

*5. Having heard the rival submissions and perused the materials available on record, we are of the considered opinion that the AO has reopened the assessee's case based on the information received from the investigation wing. It is pertinent to point out that the assessment order in the present case does not have any mention about the independent inquiry that was conducted by the AO relevant to the impugned transaction. It is also observed that the AO has failed to examine the alleged Directors of M/s. Diamant Infrastructure Limited as to the nature of business carried out by the said company nor has the AO examined the alleged brokers involved in the impugned transactions. We would like to place our reliance on the decision cited by the assessee in the case of DCIT Vs. Sunita Khumka ITAT, (Cul.) (2016) ITRV-ITAT-CUL.-057 which held that the transaction cannot be held to be bogus merely on the basis of suspicion or surmise and that the AO has to substantiate his finding by bringing material on record to prove collusion/connivance between the broker and the assessee for introducing unaccounted money. We would also like to place our reliance on the decision of Hon'ble jurisdictional Bombay High Court in the case of Commissioner of Income Tax-13 Vs. Shyam R. Pawar wherein it was held that where D-MAT account and contract note showed details of share transaction, and AO had not proved said transaction as bogus, capital gain earned on said transaction could not be treated as unaccounted income u/s 68. It is pertinent to point out that we have also considered the recent decision of Hon'ble Calcutta High Court in the case of Principal Commissioner of Income Tax Vs. Swati Bajaj*

*on similar issue which held that the AO should conduct enquiry on the impugned transaction to substantiate that the claim of the assessee for LTCG/STCL is non genuine and further held that the AO can rely on circumstantial evidence based on the doctrine of preponderance of probabilities in such cases where it is beyond the reach to carve out direct evidences. But, in the present case we find that the AO has made no enquiry other than relying on the report of the investigation wing and the steep increase in the price of the shares. We are of the considered opinion that the AO should have done a further analysis and enquired into the genuineness of the alleged transaction. We place our reliance for this proposition on the decision of the Hon'ble Apex Court in the decision of Principal Commissioner of Income Tax Vs. NRA Iron and Steel Private Limited (2019) 412 ITR 161 (SC). In the present case in hand the assessment order is flawed by lack of enquiry by the AO.*

*6. From the above observation and by respectfully following the decision cited above, we hereby direct to delete the addition made u/s 68 of the Act.*

*7. In the result, the appeal filed by the assessee is allowed.*

10. We find that the share transactions made by the assessee is similar to the above decision in which the shares were purchased and sold. Whereas the CIT(A) has granted relief observing at Para 5.2 of the order as under:

*5.2 The addition made by the Assessing Officer and the submissions of the appellant have been perused. It is to note that the loss on sale of shares was in the return of income neither been claimed by the appellant for set off against other income nor claimed to carried forward to be set off against future capital gains. Therefore, no addition is mandated on this ground and therefore the addition made is deleted. Hence, Ground No.1 is allowed*

Whereas the Ld. DR could not controvert the findings of the CIT(A) with any new material or cogent evidence on the

disputed issue to take different view. We considered the facts, circumstances, submissions and ratio of judicial decisions as discussed above are of the view that the CIT(A) has passed a reasoned order on the disputed issue in granting relief to the assessee. Accordingly, we do not find any infirmity in the order of the CIT(A) on this disputed issue and uphold the same and dismiss the grounds of appeal of the revenue. .

11. In the result, the appeal filed by the assessee is allowed and the appeal filed by the revenue is dismissed.

Order pronounced in the open Court on 28.06.2023

Sd/-

Sd/-

**(S RIFAUH RAHMAN)**  
**ACCOUNTANT MEMBER**

**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

Order pronounced in the open court on 28.06.2023.

Mumbai, Dated 28/06/2023

KRK, PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

1.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार ( Asst. Registrar)  
आयकर अपीलीय अधिकरण, मुम्बई / ITAT, Mumbai