

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH :C: DELHI)**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
&
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 26/Del/2021
Assessment Year: 2011-12**

DCIT, Circle 43(1), New Delhi (PAN:AEWPK0416L)	Vs.	Krishan Kumar, 289, Deepali Enclave, Pitampura, New Delhi-1100 02
(Appellant)		(Respondent)

Present for:

Department by : Shri G.R. Nirwan, Sr. DR
Assessee by : Shri Arun Jain, CA

Date of Hearing : 19.09.2023
Date of Pronouncement : 19.09.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the Department is against the order of learned Commissioner of Income-Tax(Appeals)-14, New Delhi in appeal no.300/18-19/CIT(A)-14, New Delhi vide Order dated 17.09.2020 against the assessment order of DCIT, Circle 40(1), New Delhi passed under Section 143(3)/147 of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 24.12.2018 for assessment year 2011-12.

2. Grounds taken by the Department are reproduced as under:
 1. Whether on facts and circumstances of the case, the CIT(A) has erred on facts in deleting the addition of Rs.58,17,415/- made by the AO.

2. The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of the appeal.

2.1 Perusal of Form No.36 reveals that the tax effect in the present appeal is of Rs.17,97,581 on an addition of Rs.58,17,415. Specific query was raised by the Bench on the learned Sr. DR as to applicability of CBDT Circular no.17/2019 dated 08.08.2019.\

2.2 Learned Sr. DR submitted that the present appeal is in respect of Long Term Capital Gain earned by the assessee on sale of shares of Nouveau Multimedia Ltd. which has been treated as a penny stock. Learned Assessing Officer has held the transaction in these shares as bogus or sham by way of taking accommodation entry. Therefore, the issue in the present appeal is covered in the exception clause of the said CBDT Circular and thus has to be dealt with on merit of the case.

3. In this respect, learned counsel for the assessee placed on record a recent decision of ITAT, Delhi in the case of DCIT vs. Rajesh Aggarwal in ITA No.28/Del/2021 dated 28.06.2023 wherein identical facts and issue have been dealt with. The learned counsel for the assessee

submitted that in the case of Rajesh Aggarwal, similar transactions were undertaken. In the said decision, a letter from the learned Assessing Officer i.e. ITO, Ward 43(6), Delhi dated 07.12.2022 confirmed that Nouveau Global Ventures Ltd. is not a penny stock and, therefore, the case is not recommended for further appeal. The said letter from the decisions of Shri Rajesh Aggarwal (supra) is reproduced for ease of reference:

“To

The Sub Registrar,
ITAT, Flo, Lak Nayak han CWing Khan Market
New Delhi

Dated: 07.12.2022

Madam Sir,

SUB: Appeal in the case of Sh. Ankit Agarwal -ITA 73/D/2021 for AY2011-12 IPAN AJAPA7220M) Reference: letter F.No.SR(DR)/A Bench/Del/2022-23 dated 06.09.2022 received from O/o SR. DR. ITAT, A Beach, New Delhi

Kindly refer to the above mentioned subject.

2. *In this regard it as submitted that considering the tax effect i.e. Rs 10,36,590/- which is below the limit prescribed for filing appeal in the light of circular no. 17 of 2016 F. No 279/Misc. M-142/2007-ITJ (Pt.) dated 08.08.2019 issued by CBDT and decision of Hon'ble ITAT, Bench- G Delhi wherein it has held in its order vide ITA No. 8701/DEL/2019 dated 29.06.2020 in the case of Suresh Kumar Aggarwal Vs ACIT, CC-25, New Delhi that M/s Nouveau Global Ventures Ltd. is not a penny stock, this case is not recommended for further appeal.*

This issue with the approval of PCTT-15, New Delhi.

Yours faithfully,

Sd/-

(Jitender Pal)

Income Tax Officer
War 43(6), Delhi”

4. It was pointed out by the learned counsel that name of the company mentioned in the letter is Nouveau Global Ventures Ltd. whose earlier name was Nouveau Multimedia Ltd. The fact of change in name of the company is noted by the Coordinate Bench in the decision of Rajesh Aggarwal (supra) in para4. Thus, in the present case, it is not a transaction of shares in penny stock and, therefore, not covered by the exception clause of the aforesaid CBDT Circular.

5. Considering the above facts and the decision of Shri Rajesh Aggarwal (supra), present appeal by the Revenue is dismissed owing to the low tax effect. However, liberty is granted to the Revenue, if the learned Assessing Officer finds that appeal is not hit by the aforesaid CBDT Circular, he may approach the Tribunal in accordance with the appropriate provisions of law.

6. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 19.09.2023.

Sd/-
(Chandra Mohan)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 19th September, 2023
Mohan Lal

Copy forwarded to:

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

By Order

Assistant Registrar
ITAT, Delhi Benches, New Delhi