

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.2301/Mum/2023
(A.Y. 2011-12)**

| | | |
|---|------------------------|---|
| Dy. Commissioner of Income-tax, Central Circle-2(1), Old CGO Building, 804, 8 th Floor, M.K. Road, Mumbai – 400020 | Vs. | Mr. BhupeshHarishchandraRathod, Flat No. 1, A Wing, Labh Niwas, 4 th Khetwadi, Khetwadi, Mumbai – 400004 |
| स्थायी लेखा सं./जीआइआर सं./ | PAN/GIR No: AACPR3785K | |
| Appellant | .. | Respondent |

| | |
|-----------------------|------------------|
| Appellant by : | Ajeya Kumar Ojha |
| Respondent by : | AnantShejale |
| Date of Hearing | 18.10.2023 |
| Date of Pronouncement | 23.10.2023 |

आदेश / O R D E R

Per Amarjit Singh (AM):

This appeal filed by the revenue is directed against the order passed by the ld. CIT(A)-48, Mumbai dated 25.04.2023 for A.Y. 2011-12. The revenue has raised the following grounds before us:

“Whether on the facts and circumstances of the case and in law, the ld. CIT(A) erred in allowing the appeal of the assessee without going into the merits on additions as it was evident that assessee had taken accommodation entry in the form of penalty stock.”

2. Fact in brief is that assessee filed return of income on 14.7.2011 and declared total income of Rs.880,080/-. Subsequently, the assessing officer received information from the DDIT, Thane, that assessee has

traded in the penny stock scripts of M/s KCL Infra Project Ltd.(KCL IPL) of RS.568, 331/- to the tune of Rs.255,695/-. On the basis of information the case was reopened u/s 147 of the Act. The assessing office passed order u/s 143(3) r.w.s 147 of the Act on 22.12.2018 by making addition of Rs.184,895/- (comprising total loss of Rs.114,555/- and total profit of Rs.70,340/-) to the total income of the assessee u/s 68 of the Act.

3. The assessee filed the appeal before the Id. CIT(A). The Id. CIT(A) has partly allowed the appeal of the assessee by directing the assessing officer to verify all the detail in respect of trading in penny stock script traded by the assessee for the financial year 2010-11 and calculate net profit/loss derived by the assessee from the same. The AO was directed to restrict the addition to the extent of net profit/loss derived by the assessee only.

4. Heard the Id. D.R and perused the material on record. During the course of assessment the assessing officer observed that assessee has booked both loss/profit by trading in penny stock script as under:

Loss booked by assessee from penny stock

| <i>Sr. No.</i> | <i>Scrip Name</i> | <i>Loss (in Rs.)</i> |
|----------------|--------------------|----------------------|
| 1. | Comfort Intech | 105115 |
| 2. | KCL Infra Projects | 7880 |
| 3. | SVC Resources | 1560 |
| | <i>Total</i> | <i>114555</i> |

Profit booked by assessee from penny stock

| <i>Sr. No.</i> | <i>Scrip Name</i> | <i>Profit (in Rs.)</i> |
|----------------|---------------------|------------------------|
| 1. | Comfort Intech | 63765 |
| 2. | KCL Infra Project | 6575 |
| | <i>Total profit</i> | <i>70340</i> |

Therefore, the assessing officer added both the total loss of Rs.114,555/- and total profit of Rs.70,340/- amounting to

Rs.184,895/- as unexplained cash credit u/s 68 to the total income of the assessee. In view of the facts as discussed in the findings of the Id. CIT(A) we find that AO has incorrectly made addition u/s 68 of the Act in respect of both profit and loss booked by the assessee in trading the scripts as discussed above in this order. We consider that Id. CIT(A) has rightly held that only the net profit/loss derived by the assessee from the same is required to be added to the total income of the assessee. Therefore, we don't find any reason to interfere in the finding of Id. CIT(A). Accordingly, all the ground of appeal of revenue are dismissed.

5. In the result, the appeal of the revenue is stand dismissed.

Order pronounced in the open court on 23.10.2023

Sd/-

(Kuldip Singh)
Judicial Member

Sd/-

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 23.10.2023

Rohit: PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.