

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL
MEMBER**

&

SMT. RENU JAUHRI, ACCOUNTANT MEMBER

**ITA No. 3580/Mum/2023
(A.Y. 2014-15)**

Income Tax Officer Room No. 713, Kautilya Bhavan, Income Tax Office, Bandra Kurla Complex, Bandra (E), Maharashtra-400051	Vs.	Mukesh Pruthviram Chouhan 305, Dhobhighat, Suratbai Chawl, Chincholi Phatak, Malad(E), Maharashtra-400097
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AEUPC2821B		
Appellant	..	Respondent

Appellant by :	None
Respondent by :	Shri Nagnath Pasale

Date of Hearing	30.05.2024
Date of Pronouncement	25.06.2024

आदेश / O R D E R

PER RENU JAUHRI [A.M.] :-

This appeal is filed by the assessee against the order of the Learned Commissioner of Income-tax (Appeals), Mumbai-41/National faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”] dated 07.08.2023 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for Assessment Year [A.Y.] 2014-15.

2. The grounds of appeal of the revenue are as under:



- a. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in ignoring the fact that mentioning the section 69A instead of section 69 is only an inadvertent error committed at the end of the AO and thus cannot vitiate the addition"*
- b. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made by the AO ignoring the fact that the AO had clearly specified the section under which Addition has been made and it is only in the computation of income that the inadvertent error by the AO has been made.*
- c. *"On the facts and in the circumstances of the case, the Ld. CIT(A) erred in allowing the appeal of the assessee on the ground of mentioning wrong section of addition in the computation of income, without appreciating the fact that in the body of the order the AO has elaborately discussed the addition with proper section."*
- d. *"On the facts and in the circumstances of the case, the Ld. CIT(A) erred in allowing the appeal of the assessee without appreciating its own order in the case of the assessee for A.Y. 2011-12, 2012-13 and 2013-14 in which also the addition was made on the identical issues i.e. addition on sale proceeds of the share in the scrip Splash Media (SMIL)."*

3. The brief facts of the case are as under:

- a. The assessee filed return of income for AY 2014-15 declaring total income of Rs. 3,00,180/-. The case was selected for scrutiny and notices were issued by the AO, based on the information available on record that the assessee had done transactions in penny scripts share name Splash Media (scrip code 512048) amounting to Rs. 42,47,000/-. The assessee's statement was recorded u/s 131 of the Act wherein he admitted transactions of shares but could not give



exact details. Subsequently, the assessee appeared and stated that all the transactions in the said scrips were done by one Mr. Kataria in his name for which the assessee was assured to be given Rs. 2000 per month. However, the assessee could not submit complete details of Mr. Kataria e.g. full name, address, contact number, name of broker wherein his account was opened, details of bank account used for such transactions etc. Subsequently, the assessee vide letter dated 26.12.2016 informed the AO as under:

"I would like to inform you that I have no idea about the share of sold/purchased of M/s. SMIL (Scrip code: 512048). I already told you in my transaction on behalf of me without my concern. I have only idea about my demat account which is with NIRMAL BANG SECURITIES and I'm enclosing copy for the same for your reference. Mr. Popatlal Kataria also operated demat account on behalf of me and he's giving commission of Rs. 2,000/- per month to me and I have shown in my income also for the same assessment year."

- b. In view of the above facts, the AO treated the sum of Rs. 42,47,000/- as unexplained investment and added the same u/s 69 of the Act. However, while computing the income, relevant section has been erroneously mentioned as 69A instead of 69.
- c. The assessee filed an appeal before the Ld. CIT(A) who issued several notices to the assessee but no compliance was made.



Accordingly, the CIT(A) proceeded to decided the issue on merits. He further observed that the AO had stated in his order that assessee had sold penny stock shares of M/s. Splash Media for Rs. 42,47,000/- and AO had never stated that the assessee was found to be owner of any money, bullion, jewellery or other valuable article. The first condition of section 69A of the Act fails. Accordingly, the Ld. CIT(A) held that the addition cannot be made u/s 69A of the Act, hence appeal of the assessee was allowed.

- d. Aggrieved with the order, the revenue is in appeal before us. The case was fixed for hearing on 25.04.2024 but no compliance was made by the assessee. The case was again fixed for hearing on 21.05.2024 and 30.05.2024 but none appeared for the assessee on any dates. Accordingly, we proceed to decide the case as under:
- i. With regard to the low tax effect involved, it has been clarified by the Ld. DR that even though tax effect involved was Rs. 18,51,790/- which is below the prescribed limit of Rs. 50,00,000/- vide CBDT Circular No. 17/2019 dated 08.08.2019 but the case falls within the exceptions provided in Board's Circular No. 23/2019 dated 06.09.2019.



- e. The impugned addition was made on the basis of detailed investigation report accompanied by the Investigation Wing and after making necessary enquiries and recording of assessee's statement by the AO.
- f. The Ld. CIT(A) deleted the addition simply for the reason that while computing the total income, section has been erroneously mentioned as 69A even though the correct section 69 was mentioned in the body of the order. We feel that the decision of the Ld. CIT(A) is not justified, especially in view of the fact that for the earlier years viz. for AYs 2011-12, 2012-13 and 2013-14 also, the additions made on identical issue were sustained by him/his predecessor. Accordingly, the AO's order making addition u/s 69 of Rs. 42,47,000/- is hereby upheld.
4. In the result, the appeal filed by the revenue is allowed.

Order pronounced in the open court on 25.06.2024.

Sd/-

NARENDER KUAMR CHOUDHRY
(JUDICIAL MEMBER)

Sd/-

RENU JAUHRI
(ACCOUNTANT MEMBER)

Place: Mumbai

Date

25.06.2024

ANIKET SINGH RAJPUT/STENO

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



ITA No.3580/Mum/2023
A.Y.2014-15
Mukesh Pruthviram Chouhan

5. गार्ड फाईल / Guard file.

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

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