

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER  
AND  
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No.4574/Mum/2023  
Assessment Year: 2013-14**

<b>ACIT-42(1)(1),</b> Room No.702, 7 <sup>th</sup> Floor, Kautilya Bhavan, BKC, Bandra (E), Mumbai - 400 051	Vs.	<b>Shri Ajay Ravindra Shah,</b> 401, Ishwar Apts, Ashok Nagar Cross Road, Kandivali East, Mumbai - 400 101 <b>PAN: AAGPS8690G</b>
(Appellant)		(Respondent)

**Present for:**

Assessee by : None

Revenue by : Shri Nagnath Pasale, D.R.

Date of Hearing : 28 . 05 . 2024

Date of Pronouncement : 31 . 07 .2024

**O R D E R**

**Per : Narender Kumar Choudhry, Judicial Member:**

This appeal has been preferred by the Revenue against the order even dated 25.10.2023, impugned herein, passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2013-14.

**2.** Despite sending notice for the date of hearing on 28.05.2024, the Assessee neither appeared nor filed any adjournment, hence, we are constrained to decide this appeal ex-parte.

**3.** In the instant case, the Assessee had purchased the shares of Dhanus Technologies on a consideration of 23,53,987/- and subsequently sold the same at Rs. 18,38,095/- and consequently claimed the short-term loss.

**4.** The Assessing Officer (AO), vide assessment order dated 23.03.2016 under section 143(3) of the Act, has made the addition of Rs.42,13,042/- (Rs.23,53,987/- + Rs. 18,38,095/-) as artificial long term/short term capital gains/losses earned on total sales/purchase consideration, as well as commission of Rs.20,960/- payable on such entries, by holding the same as un-explained cash credits under section 68 of the Act.

**5.** The Assessee being aggrieved challenged the said addition before the Ld. Commissioner, who vide impugned order, deleted the additions of Rs.23,53,987/- {being payment made by the Assessee for purchase of shares of Dhanus Technologies, as not credited in the books of account} and Rs.20,960/- {which was made by the AO on account of commission earned}, however, affirmed the addition of Rs.18,38,095/- on account of sale of such shares.

**6.** The Revenue Department, being aggrieved with the deletion of the aforesaid additions of Rs. Rs.23,53,987/- and Rs.20,960/-, is in appeal before us.

**7.** We have heard the Ld. DR and perused the material available on record. We observe that the Ld. Commissioner before deleting the addition of Rs.23,53,987/- not only considered the aspect that this amount pertains to the purchase of shares and not credited in the books of account but in fact recorded as debit and even otherwise profit element can only be subjected to addition but not the entire purchase and sale transactions, but also taken into consideration the non-application of parameters of section 68 of the Act to the case in hand and therefore consciously taken the decision for deletion of this addition in hand, hence in our considered view, decision of the Ld. Commissioner for deletion of addition in hand, requites no inference.

**7.1** Coming to the second addition of Rs. 20,960/- as deleted by the Id. Commissioner. Admittedly this addition was made by the AO on account of alleged commission paid by the Assessee to the facilitators like Shri Amit Dalmia and Shri Subrata Haldar, whereas the Ld. Commissioner thoroughly considered the statements of facilitators like Shri Amit Dalmia and Shri Subrata Haldar and the provisions of section 68 of the Act and then only deleted the addition, hence on the deletion of addition under consideration also, no interference is warranted.

**7.2** In overall consideration, as the impugned order do not suffer from any perversity, impropriety and/or illegality, hence no interference is warranted. Consequently, the appeal filed by the Revenue is liable to be dismissed.

- 8.** In the result, the appeal filed by the Revenue stands dismissed.

**Order pronounced in the open court on 31.07.2024.**

**Sd/-  
(RENU JAUHRI)  
ACCOUNTANT MEMBER**

**Sd/-  
(NARENDER KUMAR CHOUDHRY)  
JUDICIAL MEMBER**

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.