

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "H(SMC)", MUMBAI

BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

I.T.A No.2876/Mum/2024  
(Assessment Year: 2011-12)

<b>Rajkumar Mittal, HUF</b> A-22, Mandhana Manor 18, Moghul Lane, Mahim (W) Mumbai-400 016 <b>PAN : AAAHR1863A</b>	vs	<b>Income Tax Officer-22(3)(6)</b> <b>Piramal Chambers, Dr SS Rao Marg</b> <b>Lal Baugh, Parel, Mumbai-400 012</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by : Mr. Himanshu Gandhi  
Respondent by : Shri Mehul Jain (SR. DR.)  
  
Date of hearing : 21/08/2024  
Date of pronouncement : 22/ 08/2024

**ORDER**

**PER ANIKESH BANERJEE, J.M:**

Instant appeal of the assessee was filed against the order of the Learned National Faceless Appeal Centre (NFAC), Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2011-12, date of order 13.02.2023. The impugned order was emanated from the order of the Ld. Income-tax Officer, Ward-21(3)(1), Mumbai, (in short, the Ld.AO) passed under section 143(3)r.w.s. 147 of the Act, date of order 26/12/2018.

2. The assessee has raised the following grounds of appeal:-

*"1. On the facts and circumstances of the case and law, the Ld, CIT(A) erred in confirming the validity of reassessment proceeding under section 147 of Income Tax Act, 1961.*

*2. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming addition of Rs. 100017 under section 68 of Income Tax Act, 1961*

*3. On the facts and circumstances of the case and law, the Ld. CIT(A) failed to consider that appellant had neither claimed any long term capital gain exemption u/s 10(38) nor the purchases were off market. Appellant had earned the short-term capital gain on sale of shares which is taxable in nature and already offered for tax.*

*4. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming addition of Rs.5000 under section 69C of Income Tax Act, 1961 on allegation that appellant had paid commission for obtaining the accommodation entry of share capital gain.*

*5. On the facts and circumstances of the case and law, the Ld. CIT(A) failed to consider that appellant had neither claimed any commission expenses nor obtained any accommodation entry of share capital gain.*

*6. Appellant craves leave to add further grounds or to amend or alter the existing grounds of appeal on or before the date of hearing."*

3. The instant appeal of the assessee was filed with delay of 37 days. The assessee is a senior citizen and slow in the regular day to day work. The affidavit was filed by the Ld.AR stating all facts and the reason for the delay is explained. There is a sufficient cause for condoning the delay of 37 days. The Id.DR had not made any objection for condonation of delay. Accordingly, the delay for 37 days is condoned and the appeal is admitted for adjudication.

4. The brief facts of the case are that the assessee has sold share of “M/s SVC Resources Ltd”, total amount of Rs.1,17,000/- during the impugned assessment year. The assessee purchased the share amount of Rs.87,000/- on dated 08/01/2010 through market and sold the said share on dated 30/04/2010. The assessee earned the short-term capital gain amount to Rs.13,000/- and declared in the return of income, filed U/s 139 of the Act. But the Ld.AO treated this income as a long-term capital gain by selling pennystock. So, the entire gross receipt was added back under section 68 of the Act and 5% of the gross receipt which works out amount to Rs.5,000/- was added back under section 69C of the Act with the total income of the assessee. The aggrieved assessee filed an appeal before the Id. CIT(A). The Id.CIT(A) upheld the assessment order. Being aggrieved on the appeal order the assessee filed an appeal before us.

5. We have considered the rival submissions and perused the documents available on the record. The Ld.AR filed a written submission which is kept in the record (APB). The Ld.AR submitted that the assessee has made the transaction in the nature of short term capital gain. The total transaction was made at Rs.1,00,017/- and the assessee's holding was less than one year. So the gain was declared as short term capital gain in the return of income. In this respect, the assessee submitted ROI for A.Y. 2011-12 **APB pages 1 to 21**. The assessee made the submission before the revenue authorities which is annexed in **APB pages 23 to 40**.

5.1. The Ld.DR argued and fully relied on the orders of the revenue authorities. The Ld.DR had not made any objection to the submission of the assessee.

5.2. So, the entire addition was made on the wrong assumption of facts. The Ld.AO treated the entire transaction as long-term capital gain and added back under section 68& 69C by treating this transaction as pennystock. Secondly, the purchase value was not deducted from during calculation of the gain. We set aside the impugned appealed order. The declared short term capital gain cannot be treated as long term capital gain. Accordingly, the entire addition amount to Rs.1,00,017/- and Rs.5,000/- are hereby deleted. The appeal of the assessee succeeds.

6. In the result, the appeal of the assessee bearing **ITA No.2876/Mum/2024** is allowed.

Order pronounced in the open court on 22<sup>nd</sup> day of August 2024.

(GAGAN GOYAL)  
ACCOUNTANT MEMBER  
Mumbai, दिनांक/Dated: 22/08/2024  
Pavanan

(ANIKESH BANERJEE)  
JUDICIAL MEMBER

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्डफाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar), ITAT, Mumbai