

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

**BEFORE SHRIANIKESH BANERJEE, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**I.T.A No.2055/Mum/2024  
(Assessment Year: 2012-13)**

<b>Income-tax Officer 30(1)(1)</b> Kautilya Bhavan, BKC, Mumbai-400 051	<b>vs</b>	<b>Vivek Ranjit Tanna</b> 57/59, Kazi Sayed Street Garud Chambers, 1 <sup>st</sup> Floor Masjid (West), Mumbai-400 003 <b>PAN : AAAPT9579K</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>

**C.O. No.155/Mum/2024  
(Arising out of I.T.A No.2055/Mum/2024)  
(Assessment Year : 2012-13)**

<b>Vivek Ranjit Tanna</b> 57/59, Kazi Sayed Street Garud Chambers, 1 <sup>st</sup> Floor. Masjid (West), Mumbai-400 003 <b>PAN: AAAPT9579K</b>	<b>vs</b>	<b>Income-tax Officer 30(1)(1)</b> Kautilya Bhavan, BKC, Mumbai-400 051
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by : Ms. Foram Jatin Solanki, CA  
Respondent by : Shri Mehul Jain (SR. DR)  
  
Date of hearing : 19/08/2024  
Date of pronouncement : 21/ 08/2024

## **ORDER**

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

Instant appeal of the revenue and the cross objection filed by the assessee 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 2012-13, date of order 22.02.2024. The impugned order was emanated from the order of the Ld. Income-tax Officer-17(3)(5), Mumbai passed under section 143(3) read with section 147, date of order 22/12/2019.

2. The following grounds are taken by the parties:-

### **Revenue's appeal**

*"1. "Whether on the facts and in circumstances of the case and in law, the Ld.CIT(A) erred in restricting the addition to Rs. 94,950/- on account of sale of shares without appreciating the fact that the transaction was pre-arranged as well as sham and was carried out through penny scrip company."*

*2. "Whether on the facts and in circumstances of the case and in law, the Id. CIT(A) has erred in restricting the addition to Rs. 4,747/- on account of commission paid to entry providers in penny stock scrip."*

*3. "Whether on the facts and in circumstances of the case and in law, , the Id. CIT(A) failed to appreciate the fact that the entry providers have accepted to providing accommodation entries in the form of LTCG/STCG in the statement recorded during the course of search. "*

*4. The appellant craves leave to amend or alter or add a new ground which may be necessary."*

## **Assessee's Cross Objection**

### **“GROUNDS FOR CROSS OBJECTION:**

- Under the facts and circumstances of the case and in law, the Income Tax Officer Ward 30(1)(1) has erred in filing an appeal before ITAT.
- Please refer to Circular No. 5/2024, wherein there is a monetary limit for filing a departmental appeal before ITAT. Monetary limit set is Rs. 50,00,000/- (Rs. Fifty Lakhs Only) for filing an Appeal before ITAT.

### **Relief Claimed:**

*The Appeal filed by Income Tax Officer Ward 30(1)(1) should not be entertained and considered.*

*The assessee craves the right to add, amend, alter, modify or redraft any or all grounds of the appeal at the time of hearing.”*

3. We heard the rival submission and considered the documents available in record. The addition was made on the basis of earning of short-term capital gain amount to Rs.2,22,950/- and Rs.11,147/- being 5% on Rs.2,22,950/- which is treated as commission provided to the entry operator. The grievance of the Learned Assessing Officer was that the assessee has transacted penny stock in respect of the shares of “M/s Divine Multi Media (India) Ltd” which is not a genuine transaction. So the entire short term capital gain amount to Rs.2,22,950/- was added back under section 68 and the calculated commission amount of Rs.11,147/- was added back under section 69C of the Act. The assessee filed an appeal before the Id. CIT(A) and the Id.CIT(A) had accepted the submission of the assessee and allowed the benefit of invest in the purchase of Shares amount to Rs.1,28,000/- on dated 31/12/2010 and the addition was restricted to Rs.94,950/- . The relevant paragraph of the appeal order, page 13 is reproduced as below: -

*“This is a case where investigations were carried out and the modus operandi was unearthed. The appellant has not been able to rebut the findings and documentary evidence brought on record by the AO. In view of the same the sale proceeds received by the appellant are nothing but unaccounted money received by the appellant through colorful device. However, it is seen that the appellant has paid Rs.1,28,000/- for purchase of this share. The entry in the bank statement dated 31.12.2010 reveals payment of Rs.1,28,000/- to Dani Shares & Stock Pvt. Ltd. In view of the above, the addition is restricted to Rs.94,950/-. The commission paid to the entry operator is also reduced proportionately and restricted to Rs.4,747/-. In view of the above the appeal is partly allowed.”*

4. The cross objection was filed by the assessee on the basis of circular No.5/2024 dated 15/03/2024 issued by the CBDT. The assessee filed the cross objection only that the quantum of addition is below the monetary limit as directed in the above said circular.

The Id. DR argued and relied on the assessment order.

We find that the Id.CIT(A) correctly allowed the deduction of purchase of shares amount to Rs.1,28,000/- which was invested by assessee himself. The Id. CIT(A) has reasonably restricted the addition amount to Rs.94,950/- as STCG gain and also the commission is restricted amount to Rs.4,747/-. The order of the Ld.CIT(A) is justified. We are not interfering in the impugned appeal order. Accordingly, the grounds taken by the revenue is dismissed. On the other hand, the cross objection of the assessee is infructuous in this issue.

5. In the result, appeal of the revenue bearing **ITA No.2055/Mum/2024** is dismissed and assessee's **cross objection No.155/Mum/2024** is dismissed as infructuous.

Order pronounced in the open court on 21<sup>st</sup> day of August 2024.

Sd/-

(GAGAN GOYAL)  
ACCOUNTANT MEMBER  
Mumbai, दिनांक/Dated: 21/08/2024  
Pavanan

sd/-

(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

