

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH MUMBAI
BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No.1268/MUM/2024
Assessment Year: 2015-16

| | | |
|--|-----|--|
| Deputy Commissioner of Income Tax, Central Circle – 2(4), Mumbai | Vs. | Renudevi Hisaria, 74/80, 3 rd floor, Souri Building, Babu Genu Road, Kalbadevi, Mumbai – 400 002 (PAN : AABPH1487R) |
| (Appellant) | | (Respondent) |

Present for:

Assessee : Shri Neelkanth Khandelwal, Advocate

Revenue : Smt. Mahita Nair, Sr. DR

Date of Hearing : 02.07.2024

Date of Pronouncement : 27.09.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the Revenue is against the order of Ld. CIT(A)-48, Mumbai, vide order no. ITBA/APL/M/250/2023-24/1059314386(1), dated 03.01.2024, against the assessment order passed by the Deputy Commissioner of Income Tax, Central Circle – 2(4), Mumbai, u/s. 147 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 23.03.2022 for Assessment Year 2015-16.

2. Grounds taken by the Revenue are reproduced as under:

i) "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made by the AO on account of commission paid by assessee, which is consequential to addition of bogus LTCG on penny stock made by the AO in assessee's case".

ii)"Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not considering the fact that vide order dated 09.12.2019 passed u/s 153A r.w.s 143(3) the AO has rightly disallowed the bogus LTCG on penny stock claimed as exempt by the assessee based on the detailed enquiry conducted during the search proceedings u/s 132 on 16.11.2017".

3. In the present appeal, Revenue is aggrieved by deletion of addition made on account of commission paid by the assessee which is consequential to addition to bogus long term capital gain on alleged penny stock. In this respect at the outset, ld. Counsel for the assessee submitted that the Coordinate Bench of ITAT, Mumbai in assessee's own case for the year under consideration i.e., AY 2015-16 in ITA No. 1287/Mum/2021 had deleted the addition in quantum on the legal issue of there being no incriminating material found during the course of search relating to alleged bogus long term capital gain on penny stock. Ld. AO had made addition towards commission by taking 3% on the total sales value of Rs.96,29,100/- which comes to Rs.2,88,873/-. According to the ld. AO, assessment was initially completed by making addition of Rs.96,29,100/- u/s. 68 of the Act towards long term capital gain on penny stock. However, no addition was made in respect of commission which according to him must have been given to the broker on sale of such bogus shares. Re-assessment proceedings u/s. 147 was initiated for the same and accordingly the addition was made.

3.1. As noted above, the original assessment in which addition towards bogus long term capital gain was made on the penny stock had been quashed by the Co-ordinate Bench. The addition of commission in the present case by way of undertaking re-assessment u/s.147 of the Act does not have legs to stand on. The addition of commission is

consequential to the addition towards long term capital gain on the alleged penny stock which has been quashed.

4. Ld. CIT(A) has taken note of the decision of the Co-ordinate Bench as stated above in para 8.4 and 8.5 of the impugned order and thus delete the consequential addition of Rs.2,88,873/- made by the ld. AO in the impugned order passed u/s. 147. In the given set of facts which are undisputed, we do not find any reason to interfere with the findings given by the ld. CIT(A) in this respect. Accordingly, the grounds taken by the Revenue in this respect are dismissed.

5. In the result appeal of the Revenue is dismissed.

Order pronounced on day of 27 September, 2024 under Rule 34 of
The Income Tax (Appellate Tribunal) Rules, 1963

Sd/-
(Satbeer Singh Godara)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 27 September, 2024

MP, Sr.P.S.

Copy to :

- 1 The Appellant
- 2 The Respondent
- 3 DR, ITAT, Mumbai
- 4 Guard File
- 5 CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai