

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

**SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 4254/MUM/2023
(Assessment Year: 2014-15)**

Daksha Abani Das,

A-504, Remi Bizcourt, 5th Floor,
Shah Industrial Estate, Veera Desai Road,
Near Veera Desai Police Station,
Andheri West, Mumbai – 400053
Maharashtra
[PAN:AACPD7043G]

..... **Appellant**

Income Tax Officer

Ward 9(3)(1), Mumbai

Aayakar Bhavan,
New Marine Lines
Mumbai – 400 020. Maharashtra.

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Rajesh Shah
For the Respondent/Department : Shri R. R. Makwana

Date

Conclusion of hearing : 11.07.2024
Pronouncement of order : 07.10.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Assessee has challenged the order, dated 27/09/2023, passed by the National Faceless Appeal Centre (NFAC), Delhi, [hereinafter referred to as the '**CIT(A)**'], whereby the Ld. CIT(A) had dismissed the appeal preferred by the Assessee against the Assessment Order, dated 19/10/2016, passed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the **Act**') for the Assessment Year 2014-15.

1. The Appellant has raised following grounds of appeal :

- "1. On the facts and in the circumstances of the case, CIT(A) erred in confirming the addition of Rs.24,13,537.*
- 2. a). On the facts and circumstances of the case, CIT(A) erred in confirming the addition of Rs.24,13,537 as a Income though the said amount is a long term capital gain which is exempt. The additions were made without proper application and appreciation of facts and documents available before the authorities.*
b). The learned CIT(A) did not consider the detailed submission made and the documents filed during the proceedings.
- 3. On the facts and circumstances of the case and in law, the CIT(A) erred in not considering the various judgments of the Tribunals which were directly having the same facts and also dealt with the company which the AO treated as a Penny Stock.*
- 4. The appellant craves leave to add, amend, modify, cancel and or substitute any of the grounds of the appeal."*

2. The relevant facts in brief are that the assessee, an individual, filed the return of income for the A.Y. 2014-15 on 30/07/2014. The case of the appellant was selected for regular scrutiny. The Assessing Officer completed the assessment vide order dated 19/10/2016 by making an addition of INR 24,13,537/- under Section 68 of the Act, being the sale consideration received by the Appellant from transfer of shares of M/s. Sunrise Asian Limited during the relevant previous year. The Assessing Officer was of the view that the Appellant had derived bogus Long Term Capital Gain income by trading in shares of a penny stock to claim the benefit of Long Term Capital Gains exemption under Section 10(38) of the Act

3. Being aggrieved, the Appellant preferred the appeal before the CIT(A) which was dismissed vide order dated 27/09/2023.
4. The Appellant is now in appeal before the Tribunal on the grounds reproduced in paragraph 2 above.
5. We have heard the rival submission, perused the material on record and examined the position in law as contended by both the sides.
6. On perusal of the assessment order we find that the Assessing Officer has concluded that the Appellant has indulged into manipulated trading in a penny stock company. However, there is no material on record to support the aforesaid finding. The sole basis of arriving at the aforesaid conclusion is the rise in the quoted price of the script and variation in delivery volumes as per Bombay Stock Exchange (BSE) and the data available on the website of moneycontrol.com available in public domain. The Assessment Order does not make reference to any information received from the investigation wing, or report of investigation wing to show that the Appellant was beneficiary of long-term capital accommodation entry. There is also no discussion regarding the operator of the script, entry provider, or exit provider. Though the names of the stock broking firms involved in the sale transactions have been stated, there are no allegations against them. Further, the Assessment Order makes no reference to any inquiry/investigation carried out by the Assessing Officer.
 - 6.1. During the course of hearing, the Learner Departmental Representative had placed reliance in the decision of the Mumbai Bench of the Tribunal in the case of Aakriti Ketan Mehta Vs. ITO

Ward 35(1)(1), Mumbai, pronounced on 31/01/2024. This decision is not applicable to the facts of the present case in view of the facts stated hereinabove. On the other hand we find that the judgment of the Hon'ble Delhi High Court in the case of Pr.CIT -12 Vs Smt. Krishna Devi & Ors:[2021] 431 ITR 361 (Delhi)[15/01/2021], cited on behalf of the Appellant, applies to the facts and circumstances of the present case. We find that in identical facts and circumstances the Hon'ble Delhi High Court had rejected the approach adopted by the assessing officer in that case as flawed observing that the assessing officer had, in that case, concluded that the assessee had arranged to convert uncounted money by taking factitious long term capital gains accommodation entry in a pre-planned manner without bringing on record any material to support the same purely on the basis of conjecture and surmise. In the case of Chirag Tejprakash Dangi, Mumbai Vs. Income Tax Officer, Ward 26(1)(5) [ITA No. 3256/Mum/2022, Dated 20/02/2024], the Mumbai Bench of the Tribunal had relied upon the aforesaid judgment of the Hon'ble Delhi High Court while deleting similar addition and allowing appeal of the assessee in that case.

- 6.2. In our view, in the present case also the findings returned by the Assessing Officer are based upon mere conjecture and surmise. The conclusion drawn by the Assessing Officer that the Appellant has undertaken a pre-arranged transaction to earn fictitious long term capital gains to take benefit of long term capital gains exemption under Section 10(38) of the Act is not supported by any material on record. In the aforesaid facts and circumstances the addition of INR 24,13,537/- made by the Assessing Officer cannot be sustained and is, therefore, deleted. Accordingly,

Ground No. 1 & 2(a) raised by the Appellant are allowed while Ground No. 2(b) and 3 are dismissed as being infructuous.

7. In result, in terms of paragraph 6 above, the present appeal by the Assessee is allowed.

Order pronounced on 07.10.2024.

Sd/-
(Narendra Kumar Billaiya)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 07.10.2024
MP, LDC

आदेश की प्रतिलिपि अग्रेषित/ Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण , मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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