

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI

**BEFOR SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
MISS PADMAVATHY S. ACCOUNTANT MEMBER**

I.T.A No.584/Mum/2025 -A.Y. 2012-13

I.T.A No.609/Mum/2025 -A.Y. 2013-14

Shri Jatin Shantilal Shah 501, Saumitra CHS, 295/A Bhimani Street, Matunga CR, Mumbai-400 019 PAN: AACPS6128D	vs	Incometax Officer-20(2)(1), Mumbai Room No.216, 2 nd Floor, Piramal Chambers, Lalbaug, Parel, Mumbai- 400 012
APPELLANT		RESPONDENT

Assessee by : Shri N R Agarwal / Ms. Jenisha Shah

Respondent by : Ms. Kavitha Kaushik (SR DR)

Date of hearing : 10/03/2025

Date of pronouncement : 12/03/2025

ORDER

PERBENCH:

The instant appeals of the assessee were filed against the order of the National Faceless Appeal Centre, Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Years 2012-13 and 2013-14, date of both the orders 28.11.2024. The impugned orders were emanated from the order of the Ld. Income-tax Officer 20(2)(1), Mumbai (in short, 'the A.O.') passed under section 143(3) read with section 147 of the Act for A.Y. 2012-13 order passed on 28/12/2019 and for A.Y. 2013-14 order passed on 31/03/2022 under section 147 r.w.s. 144B of the Act by the National Faceless Assessment Centre, Delhi.

2. Both the appeals have same nature of facts and have common issue. Therefore, both the appeals were heard together and are disposed of by this common order. **ITA No. 584/Mum/2025** is taken as lead case.

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

ITA 584/Mum/2025 (AY 2012-13)

"1. The Learned AD and CIT (A) grossly erred in making addition of Rs. 1,63,64,358 being 3 percentage as commission income deemed to have earned by the assessee by providing voluminous transactions without giving any justification for the same and treated the whole transaction as exit provider.

2. The Learned CIT (A) while deciding did not consider the iconic case of Mukesh Chokshi Vs. Dy. Commissioner of Income Tax-Central Circle-46 in various cases (ITA No. 833-839/MUM/2013) for AY 2004-05 to 2010-11. Mumbai Tribunal has held that the entire transaction in various companies where there are third party credits, debits, cash deposits, cash withdrawals, etc and which are considered accommodation entries, the income thereon is to be charged at the rate of 0.15 percentage of all transactions. The CIT(A) also erred in not considering Judgements by the Honourable Mumbai Tribunal in case of M/s. Mihir Agencies P Ltd V/s. ACIT ITA No. 2692/M/2013, Dy. Commissioner of Income Tax v/s. M/s. Goldstar Finvest Pvt. Ltd. ITA No. 2699/MUM/2013 and Honourable Bombay High Court decision in case of Principal Commissioner of Income Tax 14 v/s. Alagh Securities Pvt. Ltd. ITA No. 886/MUM/2012.

3. The learned CIT (A) erred in passing the appellate order U/s. 250, without granting a proper opportunity to represent and erred in passing the ex-parte order.

4. The learned AO and CIT (A) erred in not considering loss of Rs. 3,76,80,032 being current year's loss returned by the assessee in return filed for AY 2012-13 in response to notice u/s 148. The learned AO and CIT

(A) further erred in also not considering loss of AY 2011-12 of Rs. 1,73,70,096.”

3. The brief facts of the case are that the assessee's case was reopened under section 147 of the Act by issuing the notice under section 148 of the Act related to the transactions of penny stockshare during impugned assessment year. The assessee had entered these share transactions belonging to the company, "Nivyah Infra & Tel. Service Ltd" amount to Rs.34,37,500/- and on verification of the same it was found that the assessee had entered transactions of purchase and sale of penny stock scrip such as Gemstone International and Nivyah Infrastructure for an amount of Rs.2,13,93,693/-. The assessment was completed, and assessee accepted that assessee acted as an exit provider and giving the accommodation entry to different beneficiaries related to the shares of the two parties, "M/s Gemstone International" and "Nivyah Infrastructure and "M/s Nivyah Infrastructure". The assessee accepted that the assessee had made the transaction only providing such accommodation entry in exchange of percentage. During, assessment Ld. AO found that the assessee had made transaction total amount of Rs, 54,54,78,584/- as exit provider. Finally, the assessment was completed and the Ld. AO has considered the rate of percentage from @3% on total transaction of Rs.54,54,78,584/- which comes to Rs.1,63,64,358/-. The said commission amount of Rs. 1,63,64,358/- was added back with the total income of the assessee. The aggrieved assessee filed an appeal before the Ld. CIT(A) and requested that the said percentage of commission should be restricted to 0.15% instead of 3%. The assessee relied on the order of the ITAT, Mumbai Bench. Finally, the Ld. CIT(A) had rejected assessee's claim and upheld the impugned assessment order. Being aggrieved on the appeal order, the assessee filed an appeal before us.

4. The Ld. AR submitted a written submission, which has been placed on record. The Ld. AR contended that the assessee engaged in transactions involving penny stocks, with

the total transaction value for alleged A.Y. 2012-13 amounting to Rs.54,54,78,584/-, a fact duly accepted by the assessee. However, the Ld. AO levied a commission at the rate of 3%, which the Ld. AR argued to be unjustified.

In support of his contention, the Ld. AR relied on the decision of the co-ordinate bench of the ITAT, Mumbai, in the case of **M/s Mihir Agencies P. Ltd. vs. ACIT, OSD-1, Mumbai, ITA No. 2692/Mum/2013**, pronounced on **02/11/2017**, wherein the bench took the view that the commission should be restricted to 0.15%. In the present case, the Ld. AO rejected the assessee's books of account and estimated the commission rate at 2%, which the bench has previously restricted to 0.15%.

The Ld. AR further relied on the consistent view taken by the co-ordinate benches of ITAT, including:

ITAT, Mumbai Bench "B" in **Mr. Mukesh Chokshi vs. DCIT, Circle 46, Mumbai, ITA Nos. 833 to 839/Mum/2013**, pronounced on **04/05/2016**; and

ITAT, Mumbai Bench "G" in **M/s Goldstar Finvest Pvt. Ltd. vs. ACIT, Central Circle-46, Mumbai, ITA No. 7426/Mum/2013**, pronounced on **28/04/2023**, where the commission rate was similarly restricted to 0.15% on the transaction value. Accordingly, the Ld. AR submitted that the commission rate should be determined in line with the settled judicial precedent and restricted to 0.15%.

5. The Ld.DR argued and fully relied on the order of the revenue authorities.

6. We have heard the rival submissions and examined the documents available on record. In our considered view, we find that the Ld. AO had applied a commission rate of 3%, which was upheld by the Ld. CIT(A). During the appeal proceedings, the assessee placed reliance on the decision of the co-ordinate bench of the ITAT, which had adjudicated that the applicable commission rate should be 0.15% on the total sales and purchases, i.e., the total transaction value.

Upon perusal, we find that the issue in question is covered by the decision of the co-ordinate bench, and we accordingly follow the orders of the ITAT, Mumbai Bench. The

Ld. DR was unable to furnish any contrary judgment to rebut the submissions made by the Ld. AR. Consequently, the addition of Rs.1,63,64,358/- made by the Ld. AO is deleted, and we uphold the commission rate at 0.15% on the total transaction value.

Accordingly, the assessee's appeal is allowed.

ITA No. 609/Mum/2025 (A.Y. 2013-14)

With respect to the issue concerning the commission rate, the bench has adjudicated the matter in favor of the assessee. Thus, the decision rendered in ITA 584/Mum/2025 shall be applied *mutatis mutandis* and followed accordingly.

However, regarding the total turnover for A.Y. 2013-14, the Ld. AR has pointed out that an amount of Rs.63,49,611/- does not pertain to penny stock transactions, and hence, the commission as an exit provider would not be applicable to this portion of the transaction. Accordingly, we remit the matter to the file of the Ld. AO for verification of these transactions as claimed by the assessee. The Ld. AO is directed to allow the benefit of exclusion for transactions not related to penny stocks, after conducting proper verification.

8. Accordingly, both the appeals of the assessee in **ITA No.584 & 609/Mum/2025** are allowed.

Order pronounced in the open court on 12th day of March 2025.

Sd/-

(MISS PADMAVATHY S.)
ACCOUNTANT MEMBER
Mumbai, दिनांक/Dated: 12/03/2025
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**