

आयकर अपीलीय अधिकरण, "एस.एम.सी" न्यायपीठ, कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, KOLKATA

श्री जार्ज माथन, न्यायिक सदस्य के समक्ष ।

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER

ITA No.1594/KOL/2024

(निर्धारण वर्ष /Assessment Year : 2012-2013)

JCIT(IN-SITU), Circle-4(1), Kolkata	Vs	M/s Alosha Marketing Pvt. Ltd. 62A, Hazra Road, Kolkata
PAN No. :AACCA 1930 G		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
राजस्व की ओर से /Revenue by	:	Shri S.B.Chakraborty, Sr. DR
निर्धारिती की ओर से /Assessee by	:	Ms. Priyanka Salarpuria, AR
सुनवाई की तारीख / Date of Hearing	:	01/07/2025
घोषणा की तारीख/Date of Pronouncement	:	01.07.2025

आदेश / O R D E R

This is an appeal filed by the revenue against the order of the Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, dated 29.01.2024 passed for the Assessment Year 2012-2013.

2. Shri S.B.Chakraborty, Id.Sr. DR appeared on behalf of the revenue and Ms. Priyanka Salarpuria, Id. AR appeared on behalf of the assessee.

3. The appeal of the revenue is delayed by 117 days. In this regard the revenue has filed an application for condonation of delay stating sufficient reasons for delay which are plausible and not found to be false. Thus, the delay of 117 days in filing the present appeal by the revenue is condoned and the appeal is admitted for hearing.

4. The revenue in its appeal has raised the following grounds :-

- 1. The delay in filing appeal before the Hon'ble ITAT against the order of the Ld. CIT(A), NFAC is occurred due to large number of time barring cases u/s 148A of the I.T.Act 1961 and system problem which may kindly be condoned.*
- 2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A). NFAC has erred in deleting the addition*

made through disallowance of Rs 31,33,000/- by the appellant on the bogus transaction of shares of M/s Scan Steels Ltd. Known as penny scrip?

3. *That the department craves leave to add, alter or modify any grounds of appeal in the course of Appellate Proceedings.*

5. At the time of hearing, Id. Sr. DR was requested to show how the grounds raised by the revenue had any applicability to the findings of the Id. CIT(A) in para 5 of his order, wherein the Id.CIT(A) has categorically held as follows :-

I have perused the assessment order and the submissions filed by the assessee. In ground no 1 to 6, the assessee challenged the validity of re-opening notice u/s 148 and the reassessment order u/s. 147 of the Act. The assessee in its submission reiterated the facts presented before the AO that 20,000 shares of M/s Scan Steels Ltd were purchased for Rs. 26,02,174/- in FY 2010-11 and later sold in for F.Y. 2011-12 for Rs. 31,28,002/- for a profit of Rs. 5,67,002/-. In effect, the assessee submitted that there was no claim of long term capital gain or short term capital loss in the return of income.

On perusal of records and income computation, it is found that there was no LTCG or STCL on sale of shares of M/s Scan Steels Ltd in the impugned year. Rather, the net profit of Rs. 5,67,002/- earned on sale of shares was offered as business income. Hence, there is no basis for re-opening the case u/s 147 when the assessee did not claim any benefit through bogus LTCG u/s 10(38) or setting of business income against bogus STCL as highlighted in the Investigation report.

As far as the addition u/s 68 is concerned, the AO did not dispute the fact that 20000 shares of M/s Scan Steels of value Rs 25,61,000 was already appearing as opening stock in the books of the assessee as on 01.04.2011 and the same was sold for Rs 31,28,002 in AY 2012-13. The income of Rs. 5,67,002 on sale of such shares was offered to tax. Therefore, the conclusion of the AO that the assessee introduced the unaccounted income through fictitious share transactions in the impugned year is not tenable. The grounds of appeal filed by assessee are allowed.

In result, the appeal is allowed.

6. Ld.Sr. DR was unable to dislodge any of the findings of fact as arrived at by the Id. CIT(A). This being so, as admittedly there is no claim u/s.10(38) of the Act made by the assessee and the findings of fact as arrived at by

the Id.CIT(A) have not been dislodged by the revenue, I have no reason to interfere in the findings of fact recorded by the Id.CIT(A).

7. In the result, appeal of the revenue stands dismissed.

Order pronounced in the open Court on 01/07/2025.

Sd/-

(जार्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य / JUDICIAL MEMBER

कोलकाता Kolkata; दिनांक Dated 01/07/2025

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR,
ITAT, Kolkata
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)
Income Tax Appellate Tribunal, Kolkata