

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI “A” BENCH: NEW DELHI**

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT &  
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

**ITA No.3335/Del/2024  
[Assessment Year : 2016-17]**

Ashok Kumar Jain B-185, Ashok Nagar, Ghaziabad-201001 (U.P.) <b>PAN-AERPJ7210E</b>	vs	DCIT, Central Circle-1, RTO Compound, Noida, U.P.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Shri Raghav Goel, CA & Ms. Arushi Goel, CA	
<b>Respondent by</b>	Shri Krishna Kumar Ramawat, Sr.DR	
<b>Date of Hearing</b>	03.12.2025	
<b>Date of Pronouncement</b>	06.02.2026	

**ORDER**

**PER MANISH AGARWAL, AM :**

The present appeal is filed by assessee against the order dated 30.05.2024 by Ld. Commissioner of Income Tax (A)-3, Noida [“Ld. CIT(A)”] in Appeal No. CIT(A), Kanpur-4/10889/2015-16 passed u/s 250 of the Income Tax Act, 1961 [“the Act”] arising out of assessment order dated 26.05.2023 passed u/s 143(3)/147 of the Act pertaining to Assessment Year 2016-17.

2. Brief facts of the case are that an information was received on ITBA System dated 12.03.2021 which was uploaded by DDIT (Inv.), Unit-6(3), New Delhi that assessee had obtained bogus Long Term

Capital Gain (“LTCG”) in the scrip of M/s. Achal Investment Ltd. during the year under appeal. In view of the above information, the case of the assessee was re-opened for the year under consideration and notice u/s 148 was issued to the assessee company on 30.06.2021 after taking prior approval from Competent Authorities. Thereafter, reassessment proceedings were initiated and AO made the additions of INR 1,19,63,230/- in respect of sale transaction of penny stock of M/s Achal Investments Ltd. treated as bogus and INR 3,58,890/- in respect of commission @ 3% on INR 1,19,63,230/- is treated as unexplained expenditure. Finally, the AO assessed the income of the assessee at INR 1,37,16,250/- vide assessment order dated 26.05.2023 passed u/s 143(3)/147 of the Act.

3. Against the said order, assessee filed an appeal before Ld. CIT(A) who vide order dated 30.05.2024, dismissed the appeal of the assessee.

4. Aggrieved by the order of Ld. CIT(A), assessee is in appeal before the Tribunal by taking following grounds of appeal:-

1. *“That the Learned Commissioner of Income Tax (Appeal) erred in law as well as on fact in making addition of Rs. 1,19,63,230/- u/s 68 of the Income Tax Act by treating the entire sale proceeds of listed shares of M/s Achal Investments Ltd as bogus which is based merely on assumptions and which is totally unjustified and baseless.*
2. *That the Learned Commissioner of Income Tax (Appeal) erred in law as well as on fact in making addition of Rs. 3,58,890/- u/s 69C of the Income Tax Act by assuming that the assessee has paid commission for arranging the entry and treated as unexplained expenditure which is based merely on assumptions and is totally unjustified and baseless.*

3. *That the Learned Commissioner of Income Tax (Appeal) erred in law as well as on fact by not giving any opportunity of being heard or cross examining the findings of the Investigation Wing of the Department which is formed as the base to proceed with the whole case.*
4. *That the Learned Commissioner of Income Tax (Appeal) has not considered the appellants submissions/evidences in respect of claim of exemption of u/s 10(38) on long term capital gain on sale of listed equity shares, which is illegal and unjustified.*
5. *That the Learned Commissioner of Income Tax (Appeal) while passing the order has not considered the various binding judgments by Honorable Courts and Tribunals as cited by the Appellant during the course of proceedings.*
6. *That the Learned Commissioner of Income Tax (Appeal) wrongly proposed to initiate the penalty proceedings u/s 271(1)(b) & 271(1)(C) of the I.Tax Act.”*

5. Ld.AR for the assessee submitted that claim of the assessee is that AO has made the addition by treating the capital gains declared from the sale of scrip of M/s. Achal Investment Ltd. of INR 1,19,63,230/- as unexplained credit u/s 68 of the Act and further, made addition of INR 3,58,890/- being commission @ 3% for arranging such accommodation entries, without providing any opportunity to cross-examine the witnesses which action was confirmed by Ld. CIT(A). The assessee further claimed that all the details with respect to the purchases and sales, were filed before the AO and further requested for the cross-examination of the witnesses of the Revenue however, the said opportunity was not given and therefore, requested that the additions be deleted.

6. On the other hand, Ld. Sr.DR for the Revenue supported the orders of the lower authorities.

7. Heard the contentions of both parties and perused the material available on record. AO had made the addition on account of LTCG declared by the assessee from the sale of shares of M/s. Achal Investment Ltd. which was treated as penny stock by the AO based on the inquiries and investigations carried out by the Investigation Wing of the Department. The assessee claimed that all the evidences were field to prove the LTCG as genuine however, no opportunity was provided by the AO of the persons based on whose statements, genuine transaction was alleged as sham transaction. In view of the these facts, and in the larger interest of justice, we set aside the orders of the lower authorities and remand the matter back to the file of the AO with the directions to provide an opportunity to the assessee for cross-examination of the witnesses of the Revenue i.e. persons whose statements are relied upon for holding the transaction of sale of scrips of M/s. Achal Investment Ltd. in the hands of the assessee as bogus. With these directions, all Grounds of appeal raised by the assessee are allowed for statistical purposes.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 06.02.2026.

**Sd/-**

**(MAHAVIR SINGH)  
VICE PRESIDENT**

**Date- 06.02.2026**

*\*Amit Kumar, Sr.P.S\**

**Sd/-**

**(MANISH AGARWAL)  
ACCOUNTANT MEMBER**

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2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT
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ASSISTANT REGISTRAR  
ITAT, NEW DELHI