

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad SMC Bench, Hyderabad
(Through Video Conferencing)
Before Smt. P. Madhavi Devi, Judicial Member

ITA No.1680/Hyd/2019		
Assessment Year: 2011-12		
Shri Kamal Kishore Soni Hyderabad PAN:ADVPS0004Q (Appellant)	Vs.	Income Tax Officer Ward 7(3) Hyderabad (Respondent)
Assessee by:	Sri Bupesh Kumar Dand	
Revenue by:	Smt.Kanika Agarwal, DR	
Date of hearing:	08/04/2021	
Date of pronouncement:	15/04/2021	

ORDER

This is assessee's appeal for the A.Y 2011-12 against the order of the CIT (A)-3, Hyderabad, dated 19.09.2019.

2. Brief facts of the case are that the assessee, an individual, deriving income (i) from capital gains from trading in shares; and (ii) income from other sources, filed his return of income for the A.Y 2011-12 admitting total income of Rs.1,61,414/-. Thereafter, the Assessing Officer received information from the Dy. Director of Income Tax (Inv.) Unit-3(2) Mumbai, vide letter dated 16.03.2018 that the assessee had traded in penny scrip M/s. Rockon Fintech (earlier known as Insutech India) with the sale value of the shares at Rs.2,78,753/-. In view of the above, the Assessing Officer had reason to believe that the income chargeable to tax has escaped assessment within the meaning of section 147(b) of the I.T. Act. He therefore, initiated re-assessment proceedings by issuance of a notice u/s

148 and called for certain details. The Assessing Officer observed that the Director (Inv.) Kolkata carried out a country wide investigation to unearth the organized racket of generating bogus entries of Long Term Capital Gains (LTCG) which is exempt from tax and the modus operandi adopted by the operators was to make the beneficiary buy some shares of a pre-determined penny stock company controlled by them and that these shares are transferred to the beneficiary at a very nominal price and subsequently sold for high price whereby the beneficiary claims the LTCG arising therefrom as exempt from tax. The Assessing Officer observed that the share price pattern of Rockon Fintech started escalating during the financial year 2010-11 and there was a sharp fall in financial year 2011-12. Therefore, he was of the opinion that this a penny stock company and the assessee was asked to explain the source of investment in the shares of this company. The Assessing Officer observed that the sources of investment for purchasing the shares have not been explained by the assessee. He therefore, brought the sum of Rs.2,35,644/- to tax as unexplained investment in penny stock. Aggrieved, the assessee preferred an appeal before the CIT (A), who confirmed the order of the Assessing Officer and the assessee is in second appeal before the Tribunal by raising the following grounds of appeal:

“1. The Order passed by the Commissioner of Income Tax (Appeals) is erroneous in law and on facts of the case.

2. (a) The learned CIT (Appeals) erred in sustaining the addition of RS.2,35,644/. without appreciating the fact that no such investment was made in the alleged Penny Stock.

(b) The learned Commissioner of Income Tax (Appeals) erred in Sustaining the said addition of RS.2,35,644/. towards Unexplained Investment in the so called

Penny Stock without going through the Written submissions made before him.

(c) The learned Commissioner of income Tax (Appeals) erred in Sustaining the addition of Rs.2,35,644/. without appreciating the fact that the Assessing Officer had show caused the figure at RS.2,78,753/. as information obtained from Investigation wing.

3. Any Other ground/s that may be Urged at the time of hearing”.

3. The learned Counsel for the assessee submitted that the assessee is a trader in shares and he utilizes the sale consideration of one share for purchase of another share. He submitted that it is only the shares of Rockon Fintech which has been considered as penny stock and the Assessing Officer has not doubted any other transaction. He submitted that the assessee had duly admitted other STCG and LTCG from the sale of shares and has never claimed it as exempt from tax. Thus, he submitted that the addition of Rs.2,35,644/- as unexplained investment in penny stock is not warranted.

4. The learned DR, on the other hand, supported the orders of the authorities below.

5. Having regard to the rival contentions and the material on record, I find that the assessee has made the investment in the shares of Rockon Fintech in the year 2008-09 whereas the report of the investigation wing is dated 16.3.2018. Therefore, the argument of the assessee's counsel that the assessee could not have known that Rockon Fintech is a penny stock company in the year of purchase of shares is quite acceptable. It is also seen from the Paper Book filed by the assessee that the assessee has been engaged in the trading of shares of a number of companies and

Rockon Fintech is not only one company whose shares the assessee has traded in. Further, it is also seen that the assessee has sold all of his shares and has incurred loss of Rs.506/- on the sale of shares of M/s. Rockon Fintech while short term capital gain of Rs.20,770/- was admitted in the I.T. return of the assessee along with other income. Thus, according to him, even if there has to be any disallowance, it can be of Rs.506/- only and not the entire value of purchase of shares of the said company at Rs.2,35,644/-. I am convinced with the argument of the assessee that the shares were purchased as long as back in the year 2008 and sold immediately thereafter and the assessee has incurred a loss and only such amount can be disallowed. On going through the assessment order as well as the order of the CIT (A), I find that that the main reason for the disallowance is that the Rockon Fintech is a penny stock company and the assessee has invested in penny stock. None of the authorities below have verified the sources for the investment. From the details filed by the assessee before this Tribunal, it appears, that the assessee has used the sale consideration (after sale of other shares) for purchase of shares of Rockon Fintech and immediately thereafter, on sale of the said shares, the assessee has utilized the said sale consideration for purchase of other shares. Further, the assessee has not made any gain from sale of those shares, nor has he claimed any exemption u/s 10(38) of the Act. Therefore, I am convinced that the intention of the assessee was not to make any gain out of purchase and sale of shares of penny stock company. Thus, no disallowance can be made, leave alone the disallowance of value of shares invested.

6. In the result, assessee's appeal is allowed.

Order pronounced in the Open Court on 15th April, 2021.

Sd/-

**(P. MADHAVI DEVI)
JUDICIAL MEMBER**

Hyderabad, dated 15th April, 2021.

Vinodan/sps

Copy to:

S.No	Addresses
1	Sri Kamal Kishore Soni, 15-2-134 Majarakgunj, Hyderabad
2	Income Tax Officer Ward 7(3) Hyderabad
3	CIT (A)-3, Hyderabad
4	Pr. CIT -3, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order