

IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” BENCH, MUMBAI  
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER  
ITA No.2400/Mum/2023  
(A.Y: 2011-12)

ITO, Ward – 2(1), Room No. 25, B-Wing 6 <sup>th</sup> Floor, Ashar IT Park Wagle Industrial Estate, Thane (W)-400604, Maharashtra.	Vs.	Shri RajendraHastimal Mehta (HUF), Flat No.101/102, C-62, Sector-5, Shanti Nagar, Mira Road (E), Thane-401107, Maharashtra.
PAN/GIR No. : AAAHR4446M		
Appellant	..	Respondent

Assessee by :	Shri.Rajendra.H.Mehta.AR
Revenue by :	Shri .G.J. Ninawe.Sr. DR

Date of Hearing	31.10.2023
Date of Pronouncement	06.11.2023

आदेश / O R D E R

**PER PAVAN KUMAR GADALE JM:**

The revenue has filed the appeal against the order of the National Faceless Appeal Centre (NFAC) Delhi/CIT(A) passed u/sec143(3) r.w.s 147 and U/sec 250 of the Act.

The revenue has raised the following grounds of appeal:

- 1. On the facts and in circumstances of the case and in law, the CIT(A) erred in directing the Assessing Officer to treat the transaction relating to penny stock as genuine by ignoring the findings of the Assessing Officer.*

*2. On the facts and in circumstances of the case and in law, the CIT(A) erred in not appreciating the fact that transactions made by the assessee in penny stock are sham transactions entered only to give colour of genuineness and therefore, these transactions cannot be believed as genuine which was upheld by the Hon'ble Apex Court in the case of SEBI Vs Rakhi Trading Pvt. Ltd. in Civil Appeal No. 1969 of 2011.*

*3. It is humbly requested that present appeal is being filed in accordance with the CBDT's Circular 23 of 2019 dated 06.09.2019. Therefore, the order of the CIT(A) may be vacated & that of the Assessing Officer may be restored.*

*4. The appellant craves leave to add, amend or alter any ground/grounds, which may be necessary.*

2. The brief facts of the case are that, the assessee is engaged in the business of share trading and also earn commission income. The Assessing Officer (AO) has received information from the DDIT Mumbai that the assessee has entered into share transactions of M/s Rockon Fintech Ltd of Rs.4,28,690/- and M/s Vax Housing Finance Corp Ltd of Rs. 4,77,941/-. The AO found that the assessee has not filed the return of income and therefore has a reason to believe that the income has escaped assessment and issued notice

u/sec 148 of the Act. The AO has considered the facts and submissions in respect of the shares in the assessment proceedings and income details declared by the assessee. Further the AO has observed that the assessee has obtained bogus short term capital gains/loss on the share transactions. The return of income was filed by the assessee in compliance to notice U/sec 148 of the Act disclosing a gross total income of Rs.154,741/- and after claiming the deduction u/sec Chapter VIA of Rs. 99,696/- and the total income was determined of Rs.55,050/-. Whereas the AO has dealt on the transactions of the purchase and sale of shares of M/s Rockon Fintech Ltd, where the assessee has earned a profit of Rs.73,586/- and similarly in respect of purchase and sale of Shares of M/s Vax Housing Finance Corporation Ltd, the assessee has incurred Loss of Rs.42,138/- and after claim of setoff of loss with the short term capital gains, the net income of Rs.31,448/- was offered for taxation. The AO dealt on the various facts of transactions and the price trend on stock exchange, the report of the kolkata investigation wing and has doubted the earning of Short Term Capital Gains. The A.O

observed that there is a no correlation of the price rise and fall of the share price and was not satisfied with the explanations and material information and came to a unilateral conclusion that transactions are not genuine and made addition of short term capital gains as unexplained cash credit u/sec 68 of the Act of Rs.73,586/- and rejected the short term loss earned of Rs.42,138/- and assessed the total income of Rs.1,70,774/-and passed the order u/sec 143(3) r.w.s 147 of the Act dated 27.12.2018.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has considered the grounds of appeal, submissions of the assessee, statement of facts and findings of the AO and dealt on the information/ submissions and deleted the addition and partly allowed the assessee appeal. Aggrieved by the CIT(A) order, the revenue has filed an appeal before the Honble Tribunal.

4. At the time of hearing, the Ld. DR submitted that the CIT(A) has erred in not considering the findings of the AO, where the assessee has traded in the shares which are

bogus transactions and cannot be accepted. The Ld. DR emphasized that the shares were purchased and sold with an intention to claim the accommodation entry benefit and supported the order of the Assessing Officer and prayed for allowing the revenue appeal.

5. Contra, the Ld. AR submitted that the assessee has not claimed the exemption u/sec 10(38) of the Act and has offered profit on sale of shares as business income and the assessee has incurred loss in trading of other shares and has set off against the profit and the balance profit was offered for taxation. The Ld.AR has substantiated the submissions with the factual paper book and relied on the order of the CIT(A).

6. Heard the rival submissions and perused the material on record. The sole matrix of the disputed issue as envisaged by the Ld. DR that the CIT(A) has erred in granting relief to the assessee irrespective of the fact that the AO has dealt on the factual aspects and price trend of shares. Whereas the Ld. AR contended that the assessee has not claimed the exemption u/s 10(38) of the Act and the Ld.AR emphasized on the written submissions filed in the appellate proceedings placed at page 42 to 50 of the paper

book considered by the CIT(A) and granted relief. At this juncture, it is appropriate to refer to the findings of the CIT(A) in deleting the additions dealt at Page 12 Para 5.2 of the order read as under:

*“5.2 Decision:*

*I have perused the assessment order, grounds of appeal and submission filed by the appellant During the course of re-assessment proceedings the AO had received information from Investigation wing Mumbai that the Appellant had acquired 20100 shares of M/s. Rockon Fintech Ltd, one of the penny stock company engaged in providing accommodation entries on 6/10/2010 and 7/10/20210 for Rs.4,29,729/-. Similarly, the Appellant had acquired 7885 shares of M/s.Vax Housing Finance, one of the penny stock company engaged in providing accommodation entries on 4/10/2010 to 29/10/20210 for Rs.519362/-. On the basis of detailed information received from the Investigation wing and after carrying out the verification with information available in his possession, the AO found that the appellant had not filed return of income for YA 2011-12. Therefore the case was re- opened u/s 147 after following the prescribed procedure as per the Income tax Act and had issued notice u/s 148 During the course of re-assessment proceedings the AO noted that Directorate of Investigation Kolkata had carried out a country-wide investigation to unearth the organized racket of generating bogus entries of long term capital gain which is exempt from tax. During the investigation it was found that the operators of the racket make the beneficiary buy some shares of a predetermined penny stock company controlled by them. These shares were transferred to the beneficiary of a very nominal price mostly off-line through preferential allotment or off- line sale to save STT The beneficiary holds the shares for one year, the statutory period after which LTCG is exempt u/s*

10(38) of the income tax Act, 1961 In the meantime the operators rig the price of the stock and gradually raise its price many times, often 500 to 1000 times This is done through low volume transaction indulged in by the dummies of the operator at a pre-determined price When the price reaches the desired level the beneficiary who bought the shares at a nominal price are made to sell it to a dummy paper company of the operator For this, unaccounted cash is provided by the beneficiary which is routed through a few layers of paper companies by the operator and finally is parked with the dummy paper company that will buy the shares Therefore the AO asked the Appellant to furnish certain details to prove the genuineness of the share purchase transactions of the companies mentioned above. The reply submitted by the Appellant was not found satisfactory by the AO hence he treated entire amount of Rs.1,15,724/- as unexplained credit u/s 68 of the Act after detailed discussion in para 2 to 14.3 of the assessment order.

During the course of appellate proceedings the Appellant submitted that the purchases were made through recognized stock exchange BSE and sales were also made through recognized stock exchange. Further the net profit earned from the short term capital gain is offered for taxation and no exemption u/s 10(38) has been claimed.

I have considered the facts of the case and that the appellant has claimed any exemption u/s 10(38) and the net profit earned during the span of 2 to 3 months has been offered for taxation Thus I find force in the submission filed by the appellant

*Therefore the addition made by the AO is not justified and the same is deleted Thus ground No. 1 to 5 raised by the appellant are allowed.”*

7. The Ld.AR submitted that the assessee has offered profit on sale of shares as business income and the assessee has incurred loss in trading of other shares and has claimed set off against the profit and the balance profit was offered for taxation. Whereas the transactions of purchase and sale of shares are through the SEBI registered stock broker on the BSE and was subjected to Securities Transaction Tax (STT). The assessee has substantiated the shares trading with the contract notes placed at page 54 to 67 of the paper book. Further the assessee has substantiated the facts before the lower authorities and the AO has not conducted any independent investigation and made additions on presumptions and conjectures. The CIT(A) has dealt on the facts, provisions of law and deleted the additions. The Ld. DR could not controvert the findings of the CIT(A) with any new cogent material or information to take different view. Accordingly, there is no infirmity in the



order of the CIT(A) on the disputed issue and uphold the same and dismissed the grounds of appeal of the revenue.

8. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 06.11.2023.

Sd/-  
(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

Mumbai, Dated 06.11.2023

KRK, PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. The CIT (Judicial)
4. The PCIT
5. DR, ITAT, Mumbai
6. Guard File

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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( Asst. Registrar)  
ITAT, Mumbai