

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
DELHI BENCH: 'SMC' NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

ITA No.9581/Del/2019  
Assessment Year: 2015-16

Aditya Saraf HUF, B-45, Inderpuri, New Delhi	<b>Vs.</b>	ITO, Ward-50(5), New Delhi
<b>PAN :AAKHA2655P</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	None
Respondent by	Sh.Om Prakash, Sr. DR

Date of hearing	30.05.2022
Date of pronouncement	10.06.2022

**ORDER**

This is an appeal by the assessee against order dated 15.10.2019 of learned Commissioner of Income Tax (Appeals) -17, New Delhi, for the assessment year 2015-16.

**2.** When the appeal was called out for hearing, none appeared for the assessee. On perusal of record, it is observed, this appeal was earlier fixed for hearing on 25.03.2021, 15.06.2021, 01.09.2021, 30.11.2021, 02.03.2022, however, on none of these dates, either the assessee appeared or filed any application seeking adjournment. Even today, when the appeal was called for hearing,

none appeared for the assessee. It is also noticed that the hearing notice issued through seed post to the assessee in the address for communication given in form 36 was served on the assessee which is evidenced by the postal acknowledgment kept on record. Even, the orders passed by the Bench of 30<sup>th</sup> November, 2021 and 2<sup>nd</sup> March, 2022, were uploaded in the official website. Thus, it has to be assumed that the assessee had sufficient notice of the proceeding before the Tribunal. In spite of this, since the assessee has not cared to appear before the Tribunal to represent its case, it has to be presumed that the assessee is not serious in pursuing its appeal. Since, sufficient opportunity has been granted to the assessee, I am of the view that the assessee does not deserve any further opportunity to represent its case. Accordingly, I proceed to dispose of the appeal ex-parte qua the assessee after hearing the learned Departmental Representative and based on the materials on record.

**3.** Grounds raised by the assessee relate to addition of Rs.29,18,507/- made under section 68 of the Act and further an amount of Rs.30,689/- made under section 69C of the Act.

**4.** Briefly the facts are, the assessee is a resident Hindu Undivided Family (HUF). For the assessment year under dispute,

the assessee filed its return of income on 31.08.2015 declaring income of Rs.6,27,900/-. The return of income filed by the assessee was selected for scrutiny to examine the genuineness of the long term capital gain offered and claimed exempt under section 10(38) of the Act. In course of assessment proceeding, the Assessing Officer noticed that during the year under consideration, the assessee stated to have sold 6000 equity shares of M/s. Esteem Bio Organic Food Processing Ltd. for a consideration of Rs.29,18,507/-. On further verification, he found, the assessee had purchased the shares earlier at nominal price of Rs.25 per share for a total consideration of Rs.1,50,000/-. Whereas, at the time of sale of shares, the price has increased astronomically by almost 1945%. Further, he found that as per investigation conducted by Investigation Wing of the department at various places, it was found that this company is a penny stock company. Thus, based on such information available on record, he called upon the assessee to explain, why the long term capital gain offered should not be treated as unexplained cash credit under section 68 of the Act. Though, the assessee offered some explanation to claim that the share transaction was genuine, however, the Assessing Officer was unconvinced. Ultimately, he proceeded to complete the

assessment by treating the long term capital gain of Rs.29,18,507/- as unexplained cash credit under section 68 of the Act. Further, he added back an amount of Rs.30,689/- as commission paid to avail the bogus long term capital gain. The additions so made by the Assessing Officer were also confirmed by learned Commissioner (Appeals).

**5.** I have heard learned Departmental Representative and perused the materials on record. On a careful reading of the orders passed by the departmental authorities, it is observed, as per the investigation conducted in relation to the shares of the company, on which, the assessee offered long term capital gain, it was found that it is a penny stock company. It was also found that due to price manipulation and rigging, there was astronomical increase in the price of the shares. As it appears from the facts on record, the assessee has not furnished any strong evidence before the departmental authorities to rebut the adverse materials brought on record by the department. Even before me, the factual position remains unaltered as the assessee neither appeared nor placed contrary materials for enabling me to disturb the finding of the departmental authorities.

**6.** In view of the aforesaid, I do not find any merit in the grounds raised by the assessee. Accordingly, they are dismissed.

**7.** In the result, the appeal is dismissed.

***Order pronounced in the open court on 10<sup>th</sup> June, 2022***

**Sd/-**  
**(SAKTIJIT DEY)**  
**JUDICIAL MEMBER**

Dated: 10<sup>th</sup> June, 2022.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi