IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 638 OF 2025

Principal Commissioner of Income-Tax-19, Mumbai … Appellant

Versus

Ashok Jasraj Jain, HUF … Respondent

Mr. Siddharth Chandrashekhar, for Appellant.

CORAM : M.S. Sonak &
Advait M. Sethna, JJ.

DATED : 20 November 2025

PC: -

1. Heard M. Chandrashekhar for the Appellant.

2. The tax effect in this Appeal is less than Rs. 2 crores, i.e. Rs. 52,85,712/-. However, Mr Chandrashekhar submits that this Appeal falls within the exceptions carved out in the CBDT Circular.

3. Without going into the issue of whether this Appeal falls within the exceptions carved out in the CBDT Circular, we have heard Mr Chandrashekhar on the merits of the Appeal.

4. Mr Chandrashekhar submits that this is a case of manipulation in penny stocks and therefore, this Appeal may be admitted on the substantial questions of law formulated in paragraph 5 of the Appeal memo.

5. In paragraph 5 of the Appeal memo, the Revenue has formulated several questions. However, only question 5(b), which is transcribed below, needs to be considered in the first instance:-

> *"5(b) Whether on the facts and circumstances of the case the tribunal erred in holding reassessment proceedings to be invalid on the ground that assessment was reopened on the basis of suspicion without appreciating the fact that the assessee bought and sold the penny stock- MKEL under a planned modus operendi to rig the price of the scrip to claim LTCG."*

6. Admittedly, this is a case of reassessment. Therefore, if we were to agree with the Tribunal that this was not a fit case for reopening of the assessment, then there would be no occasion to consider the other questions formulated in paragraph 5 of the Appeal memo. Unless this jurisdictional threshold is crossed, no occasion would arise to consider the matter on the merits.

7. Regarding the reopening of the assessment, the ITAT has found several deficiencies in compliance with jurisdictional parameters.

8. The ITAT has found that the reopening was based upon patently incorrect information. The Assessing Officer, without independent verification or independent application of mind, proceeded to reopen the assessment based upon the information received. The patent errors are set out in paragraph 8.1 of the ITAT's impugned order.

9. Secondly, the Assessing Officer has referred to the SEBI's suspension of trading in certain shares. However, there was no material, and in any event, the Assessing Officer has not adverted to any material suggesting that trading in the shares of MKEL, [with which we are concerned], was indeed suspended by the SEBI.

10. Thirdly, the Tribunal has recorded that this was a case in which the assessment was sought to be reopened solely on suspicion. This aspect has been discussed in some detail in paragraphs 8.3 to 8.8 of the Tribunal's impugned Judgment and Order. The Tribunal has also relied on decisions of this Court holding that the assessment cannot be reopened merely on suspicion. This Court has held that the jurisdictional parameter for reopening of assessment is "reason to believe" and not "reason to suspect".

11. We see no error in the Tribunal's reasoning when it faults this entire exercise of reopening the assessment. Accordingly, question 5(b), as proposed by Mr Chandrashekhar, will have to be decided against the Revenue. Once this is decided against the Revenue, there would be no need to address the remaining questions in this Appeal.

12. For the above reasons, we dismiss this Appeal without any order for costs.

(Advait M. Sethna, J.) **(M.S. Sonak, J.)**