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SAYALI DEEPAK UPASANI

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

INCOME TAX APPEAL NO. 659 OF 2025

Pr. Commissioner of Income Tax 17 Mumbai …Appellant

Versus

Kishore Hargovind Patel HUF …Respondent

Mr Ravi S. Rattesar, for Appellant

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

DATED: 26 NOVEMBER 2025

PC:-

1. Heard Mr. Rattesar for the Appellant.

2. The tax effect in this Appeal is Rs.15,22,393/- when the ceiling prescribed by the CBDT Circular is Rs.2 Crores. However, Mr. Rattesar submits that the case is concerned with Penny Stock and therefore, would fall within the exceptions carved out under the CBDT Circular. Without going into the issue as to whether this case falls within the exceptions, we have heard Mr. Rattesar on merits.

3. Mr. Rattesar submits that the Assessee purchased shares of M/s. Karma Ispat, later Karma Industries Ltd, in January 2010 @ 29.62 per share and sold the same in May 2010 @ 245 to 275 i.e. at approximately 10 times the purchase price.

He submitted that the Assessee even stated to the Tax Authorities that he understands little about transacting in shares. Mr. Rattesar submits that from these facts, the only inference to be drawn is that the Assessee was involved in Penny Stock transactions and the Assessee's claim under Section 10 (38) of the IT Act was correctly denied.

4. Accordingly, Mr. Rattesar submitted that this Appeal be admitted on the substantial questions of law formulated in the memo of Appeal.

5. We have considered Mr. Rattesar's submissions. We have also perused the material on record, including the ITAT's findings in the impugned order.

6. The ITAT in paragraph 5 of the impugned order has held that the Assessee's lack of knowledge in dealing with shares cannot be the sole factor for declining the claim under Section 10 (38) of the Act or for raising suspicion or doubts against the Assessee. The ITAT has noted that there are no allegations against the Assessee or its broker qua the Revenue regarding the shares. The Assessee had dealt in such shares on the stock exchange's online platform.

7. The ITAT also noted that as of the date of the ITAT's order, the company M/s. Karma Ispat, later Karma Industries Ltd, was still in existence, and its existence is reflected on the website of the Ministry of Corporate Affairs.

8. Based on the above factors, the ITAT held that the Assessee had discharged its onus under Section 68 of the IT Act and, therefore, no addition was warranted.

9. All the above are findings of fact and/or inferences based upon such facts. Such findings or the inferences drawn therefrom cannot be regarded to be perverse.

10. Accordingly, we are satisfied that the questions proposed in the Appeal memo do not arise. This Appeal is an invitation to reassess the material on record and to differ with the ITAT's factual findings. Such an exercise is not undertaken in an Appeal under Section 260A of the IT Act, given its restrictive parameters.

11. The ITAT has also relied upon this Court's decision in the case of **PCIT v. Indravadan Jain HUF, ITA 454 of 2018, decided on 12 July 2023**[1]**,** by observing that in almost similar facts and circumstances, the addition made on account of an alleged bogus claim under Section 10 (38) was deleted.

12. Accordingly, we are satisfied that this Appeal involves no substantial questions of law. The Appeal is dismissed without any costs order.

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

1 [2023] 156 Taxmann 605 (Bombay)