

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI

BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER

ITA No. 2050/MUM/2014
(Assessment Year : 2005-06)

Pradip Himatlal Mehta,
C/o. B.c.Parekh (CA), 413, Kailash Plaza,
Vallabh Baug Lane, Ghatkopar East,
Mumbai 400 075
PAN: AADPM 9110G

... Appellant

Vs.
The Income Tax Officer – 13(1) (4),
Mumbai.

.... Respondent

Appellant by : Shri Atin Mehta
Respondent by : Shri Vishwas Jadhav

Date of hearing : 09/12/2015
Date of pronouncement : 29/02/2016

ORDER

The captioned appeal is preferred by the assessee and is directed against the impugned order dated 01/11/2013 of CIT(A)-24, Mumbai, pertaining to the assessment year 2005-06, which in turn has arisen from an order passed by the Assessing Officer dated 29/12/2011 under section 143(3) r.w.s. 147 of the Income Tax Act, 1961(in short "the Act").

2. The only dispute raised by the assessee in this appeal is with regard to an addition of Rs.3,14,300/- made by the income tax authorities on the ground of bogus short term capital gain.

3. In brief, the relevant facts are that assessee is an individual, who was deriving income from shares of partnership firm, capital gain and income from other sources. The assessee filed a return of income for the assessment year 2005-06 originally on 21/12/2005 declaring an income of Rs.31,700/-. Subsequently, on the basis of information received from the Investigation Wing of the Department that in the case of one M/s. Goldstar Finvest Pvt. Ltd., it came to light that the aforesaid concern and its group entities were engaged in the business of fraudulent billing activities and in the business of providing bogus speculation profit/loss, short term and long term capital gain/loss, etc. The list obtained from such group included the name of the assessee. On the strength of statement on oath recorded of one Shri Mukesh Chokshi, Director of one of the group concerns of M/s. M/s. Goldstar Finvest Pvt. Ltd. group, the assessment of the assessee was also re-opened on the ground that certain income assessable to tax had escaped assessment. In this light, it was noticed that in the original return of income filed, assessee had declared short term capital loss on sale of shares of M/s. Buniyad Chemicals Ltd., which was also a concern belonging to M/s. M/s. Goldstar Finvest Pvt. Ltd. group. In para-5 of the impugned assessment order, the Assessing Officer has noted that in response to the notice issued under section 148 of the Act the short term capital loss incurred on account of sale of shares of M/s. Buniyad

Chemicals Ltd., was offered to tax. This aspect of the matter is not the subject matter of controversy before me.

3.1 However, the dispute before me is with respect to charge made by the Assessing Officer that assessee had also effected the sale of 7000 shares of one M/s. Talent Infoways Pvt. Ltd. for a consideration of Rs.3,14,300/-, which was also a concern belonging to M/s. Goldstar Finvest Pvt. Ltd group. The Assessing Officer further stated that the information received from the Investigation Wing of the Department included the statement of Shri Mukesh Choksi, wherein he had accepted purchase and sale of the above scrips of the assessee. Before the Assessing Officer, the assessee denied any purchase and sale of shares of M/s. Talent Infoways Pvt. Ltd. However, the explanation of the assessee has been rejected and an amount of Rs.3,14,300/- was added to the total income of the assessee.

3.2 Before the CIT(Appeals) the assessee repeated his pertinent plea to the effect that he had not undertaken any purchase and sale of the shares of M/s. Talent Infoways Pvt. Ltd. and the same was also evidenced by the material on record. While doing so, the CIT(Appeals) noted that the addition of Rs.3,14,300/- is justified "*not on the basis of reasons given in the assessment order*" but on the basis of his own examination of assessee's bank account. In this manner, the assessee is in further appeal before the Tribunal.

4. Before me, Ld. Representative for the assessee has vehemently pointed out that no purchase and sale of the shares of M/s. Talent Infoways Pvt. Ltd. has been undertaken by the assessee and the same

has been corroborated by Shri Mukesh Choksi also, while being examined in the course of the impugned assessment proceedings by the Assessing Officer on 25/11/2011, a copy of such statement recorded under section 131 of the Act has been placed in the Paper Book at pages 54 to 55.

5. On this aspect of the matter, the Ld. Departmental Representative has not made any specific argument other than reiterating the stand of the Assessing Officer, which I have adverted to in the earlier paras.

6. Quite clearly, in an answer to Question No.6, during the course of the examination on 25/11/2011, Shri Mukesh Chokshi confirmed that no purchase or sale of shares of M/s.Talent Infoways Pvt. Ltd. was undertaken by the assessee. He has also corroborated that in the absence of any transaction of sale and purchase of shares of M/s.Talent Infoways Pvt. Ltd. having taken place, consequently no payment was given or received from the assessee on this count. I find no justification for the Assessing Officer to impute a transaction to the assessee, especially when the facts clearly bring out that no such transaction was entered into by the assessee. The CIT(Appeals) has affirmed the addition, though he noticed that the addition is not justified "*on the basis of the reasons given in the assessment order*". In my considered opinion, the aforesaid inference of the CIT(Appeals) ought to have prevailed with him to delete the addition, rather than sustaining it. The reason advanced by the CIT(Appeals) to sustain the addition which is enumerated in para 4.3.2 of his order is based on mere surmises and conjectures and does not prove that any such transaction was

entered by the assessee. Therefore, in view of the facts and evidence on record, there is no material to suggest that assessee had entered into the purported purchase and sale of the shares of M/s. Talent Infoways Pvt. Ltd. and thus, the impugned addition is unsustainable. Accordingly, the order of the CIT(Appeals) is set aside and the Assessing Officer is directed to delete the addition of Rs.3,14,300/-.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 29/02/2016.

Sd/-
(G.S. PANNU)
ACCOUNTANT MEMBER

Mumbai, Dated 29/02/2016

Vm, Sr. PS

Copy of the Order forwarded to :

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai