

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

BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER

ITA No. 2260 /MUM/2015
(Assessment Year : 2004-05)

Navinchandra Jethabhai Vira,
701/702, Silver Court, 7th Floor,
BPS Compound, Devi Dayal Road,
Mulund (West), Mumbai 400 080
PAN: AAAPV 5558J

... Appellant

Vs.

The Income Tax Officer, Ward 23(3)(1),
Pratyakshakar Bhavan, BKC,
Bandra (E), Mumbai 400 051

.... Respondent

Appellant by : Shri Bhadresh Doshi
Respondent by : Shri Vishwas Jadhav

Date of hearing : 17/12/2015
Date of pronouncement : 22/07/2016

ORDER

The captioned appeal filed by the assessee pertaining to assessment year 2004-05 is directed against an order passed by CIT(A)-40, Mumbai dated 06/02/2015, which in turn arises out of an order passed by the Assessing Officer under section 144 r.w.s. 148 of the Income Tax Act, 1961 (in short 'the Act') dated 01/12/2011.

2. In this appeal, the substantive dispute raised by the assessee is in respect to an addition of Rs.12,49,664/- made by the Assessing Officer by treating the long term capital gain as an unexplained cash credit within the meaning of section 68 of the Act.

3. In brief, the relevant facts are that assessee is an individual, who filed the return of income for assessment year 2004-05, declaring an income of Rs.1,12,869/-. The said return was processed under section 143(1) of the Act, wherein the returned income was accepted. Subsequently, the Assessing Officer received an information emanating from a search in the case of Mahasagar Securities Pvt. Ltd. and other concerns belonging to one Mukesh Choksi Group of cases. The said search revealed that bogus long term capital gains entries were given to various persons. A list of clients who had obtained such accommodation entries, which was seized from the premises of Mahasagar Securities Pvt. Ltd., included the name of the assessee. It was noticed that assessee had undertaken purchase and sale of shares of M/s. Buniyad Chemicals Ltd. through broking concern M/s. Gold Star Finvest Pvt. Ltd., which was also a concern belonging to the Mukesh Choksi Group of cases. In view of such information, the assessment of the assessee for the instant assessment year was reopened by issuance of notice under section 147/148 of the Act. In the ensuing assessment, it was noticed by the Assessing Officer that assessee had declared long term capital gain on sale of shares of M/s. Buniyad Chemicals Ltd. of Rs.12,29,664/-, which was claimed as exempt. Notably, the assessee-individual had purchased 4800 and 8000 shares of M/s. Buniyad Chemicals Ltd. on 05/04/2002 and 14/05/2002, respectively for a total cost of Rs.1,02,064/-. Such shares were sold on 28/03/2003 and 18/06/2003 for a total consideration of Rs.13,31,729/-, thereby resulting in long term capital gain of Rs.12,29,664/-. In the impugned assessment, Assessing Officer has considered the gain of Rs.2,29,664/- as

unexplained within the meaning of section 68 of the Act primarily for the reason that the investigation in the Mahasagar Securities Pvt. Ltd. group cases revealed that the trading undertaken in the shares of M/s. Buniyad Chemicals Ltd. was mere accommodation entries. Further, the Assessing Officer also made an addition of Rs.1,02,064/- representing the cost price of such shares. According to the Assessing Officer, the said amount was also an unexplained cash credit under section 68 of the Act.

4. In appeal, before the CIT(A), the assessee assailed the action of the Assessing Officer. The CIT(A) sustained the addition of Rs.12,29,664/- for the reason that there was no material to say that the long term capital gains declared by the assessee were genuine. Against such action of the CIT(A), assessee is in further appeal before the Tribunal. At this stage, it is notable that so far as the addition of Rs.1,02,064/- made by the Assessing Officer as unexplained cash credit under section 68 of the Act is concerned, the CIT(A) deleted the same on the ground that such cost price of shares was paid in the earlier assessment year of 2003-04, wherein similar addition made by the Assessing Officer was deleted by the Tribunal.

5. Before us, Ld. Representative for the assessee pointed out that the purchase of the shares was undertaken in the assessment year 2003-04 and such purchase can be considered to be fully explained because the addition made in assessment year 2003-04 has been deleted by the Tribunal vide its order in ITA No.7090/Mum/2012 dated 18/01/2013. Apart therefrom, it has also been pointed out that in the case of Ravindra Kumar Toshniwal in ITA No.5302/Mum/2008 the

Tribunal had considered similar circumstances, where the sale transactions in M/s.Buniyad Chemicals Ltd. undertaken through the Mahasagar Securities Pvt. Ltd. group concerns have been considered to be genuine. It was also pointed out that the said decision of the Tribunal has since been affirmed by the Hon'ble Bombay High Court in its order dated 5/1/2012, copy of which was also placed on record. Besides, reliance was placed on the following decisions of the Tribunal wherein, similar objections raised by the Revenue based on the search in the case of Mukesh Choksi and its associate concerns have been considered and found untenable with regard to the transactions undertaken in the shares of various concerns including that of M/s. Buniyad Chemicals Ltd.:-

1. Satish M. Doshi HUF, ITA No.2329/Mum/2009 dated 12/10/2011
2. Mayur M. Shah (HUF), ITA No.2390/Mum/2013 dated 10/07/2013
5. On the other hand, Ld. Departmental Representative has primarily reiterated the stand of the Assessing Officer, which is to the effect that the investigation in Mukesh Choksi Group cases revealed that accommodation entries were provided with respect to the dealings in various shares including that of M/s. Buniyad Chemicals Ltd.
6. I have carefully considered the rival submissions. In sum and substance, the dispute in this appeal arises out of the action of the Assessing Officer in treating the long term capital gain disclosed by the assessee on the sale of shares of M/s. Buniyad Chemicals Ltd., as unexplained credit under section. 68 of the Act. In the case of Mayur M. Shah HUF(supra), the Tribunal was considering a similar situation,

where the purchase and sale of shares in Buniyad Chemicals Ltd. was held unexplained and bogus by the Revenue. In the said case, purchase and sale transactions were carried out through a concern, M/s. Gold Star Finvest Ltd., which is an associate concern belonging to Mukesh Choksi Group of cases. In the said case also the charge made against the assessee was that Mukesh Choksi and associates concerns were providing accommodation entries by issuing bogus bills in the name of various entities including M/s. Gold Star Finvest Ltd. In the present case also, the sale and purchase of shares of M/s. Buniyad Chemicals has been undertaken through M/s. Gold Star Finvest Pvt. Ltd. and the charge made against the assessee is also on the same line as was in the case of Mayur Shah (HUF) (supra). In the case of Mayur Shah (HUF) (supra), the Tribunal referred to earlier decisions in the cases of Ravindra Kumar Toshniwal (supra) and Mukesh R. Marolia (supra) and held that the transactions in the shares of Buniyad Chemicals undertaken through M/s. Gold Star Finvest Pvt. Ltd. could not be considered as bogus. The Tribunal also noticed that the decision in the case of Mukesh R. Marolia (supra) as well as in the case of Ravindra Kumar Toshniwal (supra) had since been affirmed by Hon'ble Jurisdictional High Court also.

6.1 In my view, the facts and circumstances in the instant case are similar to those considered in the aforesaid precedents and, therefore, I find no reason to uphold the stand of the Revenue. Taking into consideration the aforesaid precedents, which have been rendered under similar circumstances, I hold that the transactions of sale and purchase of shares in the present case cannot be considered as bogus

so as to justify the treatment of long term capital gain of Rs.12,29,664/- as unexplained credit under section 68 of the Act. Thus, the order of the CIT(A) is set-aside and the Assessing Officer is directed to delete the addition of Rs.12,29,664/-.

7. The assessee has also raised another Ground challenging the validity of reopening of assessment under section 147/148 of the Act, which was not pressed at the time of hearing and is accordingly dismissed.

8. In the result, appeal of the assessee is partly allowed, as above.

Order pronounced in the open court on 22/07/2016.

Sd/-

(G.S. PANNU)
ACCOUNTANT MEMBER

Mumbai, Dated 22/07/2016

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