



आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'के' मुंबई

IN THE INCOME TAX APPELLATE TRIBUNAL

"K" BENCH, MUMBAI

श्री राजेंद्र, लेखा सदस्य एवं श्री शक्तिजीत दे, न्यायिक सदस्य के समक्ष

BEFORE SHRI RAJENDRA, ACCOUNTANT MEMBER AND

SHRI SAKTIJIT DEY, JUDICIAL MEMBER

आयकर अपील सं. / ITA no. 3909/Mum./2015

(निर्धारण वर्ष / Assessment Year : 2005-06)

Razakali A. Karmali
A-404, Payal Co-operative Hsg. Society
Near Aga Khan Building, Versova
Andheri (W), Mumbai 400 059
PAN - ADHPK1539J

..... अपीलार्थी /
Appellant

v/s

Income Tax Officer
Ward-9(2)(3), Aayakar Bhawan
101, M.K. Road, Mumbai 400 020

..... प्रत्यर्थी /
Respondent

निर्धारिती की ओर से / Assessee by : Shri Parth Shah
राजस्व की ओर से / Revenue by : Shri Sujit Banger

सुनवाई की तारीख /
Date of Hearing - 20.10.2016

आदेश घोषणा की तारीख /
Date of Order - 28.10.2016

आदेश / ORDER

शक्तिजीत दे, न्यायिक सदस्य के द्वारा /
PER SAKTIJIT DEY, J.M.

Captioned appeal at the instance of the assessee is directed against the order dated 2nd March 2015, passed by the learned Commissioner (Appeals)-39, Mumbai, for assessment year 2005-06.

2. The only issue in dispute in the present appeal relates to the addition of ₹ 5,88,635, as unexplained income by the Assessing Officer which was subsequently enhanced to ₹ 11,98,519 by treating the share transaction as bogus.

3. Brief facts are, the assessee is an individual. Originally, the assessee filed his return of income on 25th July 2005, declaring total income of ₹ 1,49,210. A search and seizure operation under section 132, was carried out in the case of Mahasagar Securities Pvt. Ltd. On the basis of information obtained as a result of search indicating that the company and its related companies including Alliance Intermediaries Pvt. Ltd., were engaged in providing bogus bills of transaction in shares and securities, the Assessing Officer re-opened the assessment in the case of the assessee under section 147 of the Act alleging that the assessee had entered into share transactions through Alliance Intermediaries Pvt. Ltd. In the course of assessment proceedings, the Assessing Officer called for details of share transactions and after examining the same, as well as computation of income filed by the assessee noticed that the assessee has shown short term capital gain of ₹ 8,43,404 on sale of 50,000 shares of Karuna Cables Ltd. which the assessee claimed to have purchased through Alliance Intermediaries and Network Pvt. Ltd. on 12th August 2004 and has sold them through Advani Share Brokers Pvt. Ltd. on

two dates i.e., 25,000 shares on 15th February 2005 and 25,000 shares on 28th February 2005. On examining the demat account of the assessee, he found that the shares were delivered / credited into assessee's demat account on 8th February 2005 and 26th February 2005. However, while computing the capital gain the assessee has taken the cost of acquisition on 12th August 2004, at a purchase value of ₹ 3,55,115 by adopting the rate of ₹ 7.10 per share on the plea that purchase is an off market transaction. The Assessing Officer did not accept the claim of the assessee on the basis that Alliance Intermediaries Network Pvt. Ltd. indulged in bogus contract note. He observed, assessee has availed such bogus contract note for the purchase done by him on 8th February 2005 and 26th February 2005, so as to claim false cost of acquisition of shares as on 12th August 2004. After recording the statement from the assessee under section 131, the Assessing Officer ultimately held that the actual capital gain earned by the assessee and chargeable to tax at concessional rate is only ₹ 2,54,769 as against ₹ 8,43,404, declared by the assessee. He, therefore, treated the differential amount of ₹ 5,88,635 as unexplained income of the assessee and added back to the total income.

4. Being aggrieved of such addition, assessee preferred appeal before the learned Commissioner (Appeals). The learned Commissioner (Appeals) after considering the facts and material on

record was of the view that entire share transaction of the assessee is bogus, hence, he issued a notice for enhancement stating that amount of ₹ 11,98,519 claimed to have been received from sale of shares is to be treated as income from undisclosed source. Though, the assessee objected to proposed enhancement, however, the learned Commissioner (Appeals) on the basis of information obtained as a result of search conducted in the case of Mahasagar Securities Ltd., held that entire sale consideration of ₹ 11,98,519 is to be treated as income from undisclosed sources. Since the Assessing Officer has already added an amount of ₹ 5,88,635, he directed the Assessing Officer to add the balance amount of ₹ 6,09,884.

5. Learned Authorised Representative submitted before us that the first appellate authority on misconception of facts has enhanced the assessment. Reiterating the stand taken before the Departmental Authorities, learned Authorised Representative submitted, though, the assessee had purchased the shares through Alliance Intermediaries Pvt. Ltd. on 12th August 2004, they were actually delivered to the demat account in February 2005. Learned Authorised Representative submitted, all documentary evidences such as purchase bills, ledger account in book of brokers, sales bills, contract note for sale of shares and cheques issued and demat account copies were submitted before the Assessing Officer in the course of assessment proceedings.

Therefore, share transactions entered into by the assessee being supported by valid document any evidence cannot be treated as bogus.

6. Learned Departmental Representative on the other hand relied upon the observations of the learned Commissioner (Appeals).

7. We have considered the submissions of the parties and perused the material available on record. From the observations of the learned Commissioner (Appeals) in Para-5.6 of the impugned order, it is evident that one of the reasons on which the learned Commissioner (Appeals) came to his conclusion was no broker note was issued by Alliance Intermediaries Pvt. Ltd. However, on a perusal of the facts recorded by him in Para-5.3 of the impugned order, we have noted that in the course of assessment proceedings, the assessee had produced copy of purchase bills, contract note of purchase of shares, ledger account in books of broker, sales bills, contract note for sale of shares, cheques issued and demat account copy before the Assessing Officer. Thus, finding given by the learned Commissioner (Appeals) in Para-5.6 is contrary to the facts recorded in Para-5.3 of the order. Moreover, it is not disputed that the share transactions have been duly recorded in the demat account of the assessee and supported by other documentary evidences also. Therefore, only because in the case of a third party, some incriminating material was found, on that basis alone

the share transactions of the assessee cannot be held to be non-genuine, unless, there are strong evidences brought on record to establish such fact. In the present case, neither the Assessing Officer nor the learned Commissioner (Appeals) have been able to establish the fact of non-genuine share transaction by bringing positive evidence on record. In view of the aforesaid, we do not see any reason to sustain the addition of ₹ 11,98,590 as undisclosed income of the assessee and direct the Assessing Officer to accept the short term capital gain as declared by the assessee in the computation of income.

8. In the result, appeal is allowed.

Order pronounced in the open Court on 28.10.2016

Sd/-

राजेंद्र,

लेखा सदस्य

RAJENDRA

ACCOUNTANT MEMBER

MUMBAI, DATED: 28.10.2016

Sd/-

शक्तिजीत दे,

न्यायिक सदस्य

SAKTIJIT DEY

JUDICIAL MEMBER

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

(Dy./Asstt. Registrar)
ITAT, Mumbai