

THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Before Shri B.R. Baskaran (AM)

I.T.A. No. 7118/Mum/2016 (Assessment Year 2006-07)

Mr. Ravishankar R. Singh B-207, Blue Nile Pacific Enclave, Hiranandani Gardens, Powai Mumbai-400 077. PAN : AMRPS6416P (Appellant)	Vs.	ITO 21(3)(4) Mumbai (Respondent)
--	-----	--

Assessee by	Shri K. Kotresh
Department by	Shri Ram Tiwari
Date of Hearing	20.9.2017
Date of Pronouncement	27.9.2017

ORDER

The appeal of the assessee is directed against the order dated 30-08-2016 passed by Ld CIT(A)-38, Mumbai for assessment year 2006-07 confirming the assessment of short term capital gain of Rs.8.83,570/- arising on sale of shares. Though the registry has noted that the appeal is barred by limitation by 37days, we notice that the assessee has furnished a certificate obtained from the office of Ld CIT(A) for the date of service of notice, as per which the appeal is within the time limit.

2. I heard the parties and perused the record. The AO reopened the assessment of the year under consideration upon receiving information that the assessee has availed bogus entries of capital gains from companies belonging to Mukesh Chokshi group. In the search conducted, Shri Mukesh Choksi had admitted that he and his group of companies are engaged in providing only accommodation bills. The AO noticed that the assessee has purchased shares of M/s Sundaram Multi Ltd on 04-07-2005 and M/s Aptech Limited on 10-02-2006 through M/s Alliance Intermediaries and Network P Ltd. However the payment was made by the assessee only on 25.02.2006.

Both the above said shares have been sold on 07.03.2006 and 27.03.2006 respectively. The assessee generated short term capital gains of Rs.8,83,570/- in these transactions and offered the same in his return of income by paying tax at concessional rate.

3. Since the payment for purchases have been belatedly and since the transactions of purchases and sales have been entered though the Mukesh Choksi group of companies, the AO treated the transactions as sham and accordingly assessed short term capital gains of Rs.8,83,570/- as income from unexplained sources. The Ld CIT(A) also confirmed the same.

4. The Ld A.R submitted that the Mukesh Choksi Group was operating into the shares of penny stocks like Talent infoway, Buniad Chemicals etc. However, the assessee herein has purchased shares of companies which are listed in the stock exchanges and still traded therein. He submitted that the consideration for purchase and sale of shares have been routed through banking channels and further the stocks have entered into the depository account of the assessee. Accordingly he submitted that there is no reason to suspect the genuineness of purchase and sale of shares. He further submitted that the AO has simply relied upon the statement given by Shri Mukesh Choksi, without considering the evidences/documents furnished by the assessee. The Ld A.R submitted that the shares were purchased and sold by the assessee through M/s Alliance Intermediary and the cancellation of its registration would not affect, otherwise genuine transaction of purchase and sales. Accordingly he submitted that the order passed by Ld CIT(A) was not justified.

5. On the contrary, the Ld D.R placed strong reliance on the order passed by Ld CIT(A).

6. Having heard rival submissions, I am of the view that there is merit in the contentions of the assessee. The assessee has purchased shares, which were not considered to be shares being operated by Mukesh Choksi group.

The purchased shares have entered into the depository account of the assessee, which fact proves the genuineness of purchases. Further the payment for purchases has been given by way of cheque and hence the genuineness of payments also stand proved. The delivery of shares on their sale, has been made from the depository account, meaning thereby, the genuineness of sales also stand proved. The sale consideration has been received through banking channels, meaning thereby, the genuineness of receipt of sale consideration also stands proved. It is not the case of the AO that the price of purchase/sales was not in tune with market rates. The assessee has furnished evidences to support the claim of purchase and sales in the form of broker notes, the bank statements and de-mat statements. In my view, these documents sufficiently prove the genuineness of purchase and sale of shares.

7. On the contrary, the tax authorities have simply placed reliance on the statement given by Shri Mukesh Choksi. When the documentary evidences, that too external evidence, support the case of the assessee, I find no reason in placing reliance solely on the general statement given by Shri Mukesh Choksi. The cancellation of registration of the broker license of M/s Alliance Intermediary, in my view, would not nullify the evidences furnished by the assessee, since the payments and delivery of shares have been proved. As contended by Ld A.R, the assessing officer has not brought any material on record to disprove the evidences furnished by the assessee.

8. In view of the foregoing discussions, I am of the view that there is no reason to suspect the genuineness of purchase and sale transactions of shares. Accordingly I set aside the order passed by Ld CIT(A) and direct the AO to assess the impugned income as short term capital gains.

9. In the result, the appeal filed by the assessee is allowed.

Order has been pronounced in the Court on 27.9.2017.

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 27/9/2017

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//

PS

BY ORDER,
(Dy./Asstt. Registrar)
ITAT, Mumbai