

आयकर अपीलीय अधिकरण “एक-सदस्य मामला” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI

श्री शमीम याहया, लेखा सदस्य के समक्ष ।
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No. 2917/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2007-08)

Shri Madan Gupta HUF Room No. 2, Shinde Chawl, M. D. Road, Kandivli (E), Mumbai-400 101	बनाम/ Vs.	ITO-33(2)(3), Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AACHG 4833 R		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	Shri Kiran S. Mehta
प्रत्यर्थी की ओर से/Respondent by	:	Ms. Hemalatha
सुनवाई की तारीख / Date of Hearing	:	31.08.2017
घोषणा की तारीख / Date of Pronouncement	:	01.11.2017

आदेश / ORDER

Per Shamim Yahya, A. M.:

This Appeal by the assessee is directed against the Order by the Commissioner of Income Tax (Appeals)-45, Mumbai (‘CIT(A)’ for short) dated 20.01.2017 and pertains to the assessment year (A.Y.) 2007-08.

2. The grounds of appeal read as under:

1) In the facts and circumstances of the case and in law the learned CIT (A) erred in not holding that the reassessment made u/s 147/148 was bad in law and was otherwise time barred.

- 2) It is also submitted that the learned CIT(A) erred in not holding that reassessment made without dealing with the objections raised by the Appellant on merits would render the impugned reassessment bad in law.
- 3) In the facts and circumstances of the case and in law the learned CIT (A) erred in confirming the additions of Rs. 1,53,448/- made u/s 68. It is submitted that the Appellant had discharged the onus place on it u/s 68 and hence no addition was justified u/s 68.
- 4) WITHOUT PREJUDICE TO THE ABOVE GROUND, IT IS RESPECTFULLY SUBMITTED THAT THE LEARNED AO ERRED IN NOT HOLDING THAT THE LONG TERM CAPITAL GAINS EMBEDDED IN THE AFORESAID SALE PROCEEDS RECEIVED FROM ALLIANCE INTERMEDIARIES AND NETWORK PVT. LTD. WERE (A) EXEMPT U/S 10 AND IN ANY EVENT (B) COULD BE TAXED ONLY AS LONG TERM CAPITAL GAINS.
- 5) IT IS RESPECTFULLY SUBMITTED THAT THE LEARNED AO GRAVELY ERRED IN MAKING THE IMPUGNED ADDITION WITHOUT GIVING ANY OPPORTUNITY TO THE APPELLANT TO CROSS EXAMINE MR. MUKESH CHOKSEY ON WHOSE STATEMENT THE IMPUGNED ADDITION IS BASED. IT IS SUBMITTED THAT DENIAL OF THIS OPPORTUNITY TO CROSS EXAMINE IS A CLEAR CASE OF DENIAL OF JUSTICE AND IS BEYOND ALL THE TENATS OF NATURAL JUSTICE AND FAIR PLAY AND THIS DENIAL WOULD BY ITSELF VITIATE THE IMPUGNED ASSESSMENT.
- 6) THE LEARNED AO ERRED IN LEVYING INTEREST. U/S 234A/B/C. IT IS RESPECTFULLY SUBMITTED THAT NO SUCH INTEREST CAN BE LEVIED IN A REASSESSMENT MADE U/S 147/148 AND IN ANY EVENT THE INTEREST LEVIED IS GROSSLY EXCESSIVE.
3. The appeal in this case belongs to reopening of the case based upon fraudulent accommodation entry provided by Shri Mukesh Choksi and his associates. The reopening in this case was affirmed by the ld. CIT(A). The facts relating to reopening are as under:

The facts of the case are that the AO reopened the assessment after receiving specific information from the DGIT(Investigation) that the search & seizure action carried out in the case of M/s Mahasagar Securities Ltd.. During the course of search, Mr.Mukesh Choksi, proprietor, admitted that all the transactions carried out by his various companies were bogus and he had provided bogus speculation profit/loss, short term capital gain/loss, share

application money, commodities profit/loss from M/s Alliance Intermediaries & Network Pvt. Ltd., one of the group concerns of M/s Mahasagar Securities Pvt. Ltd.. On the basis of this information, assessment records of the assessee were verified and it was noticed that the assessee is one of the beneficiaries of such bogus purchases. Thereafter, the case was reopened by the AO after recording the reasons for reopening u/s 147 and issuance of notice u/s 148 and on the request of the assessee, the same were communicated to the assessee. The re-assessment proceedings were completed by the AO, after affording sufficient opportunities to the assessee. Hence, the AO was of the view that the re-assessment proceeding was valid and not bad in law as claimed by the assessee.

4. The Id. CIT(A) has confirmed the reopening by holding as under:

5.2 I have considered the stand of the AO and the submissions made by the appellant in this regard. It is contended that the order of the learned Assessing Officer had re-opened u/sj.48 on the mere information received from DGIT with a direction given by Addl.CIT to initiate proceedings u/s 148. These could not be the reasons for proceedings u/s 147/148. It is seen that the AO has followed the due procedure of law to reopen the assessment and valid notices were issued and served on the assessee and the reassessment proceedings were conducted. In view of this and having regard to the facts of the case it is seen that there is not much merit in the contention of the assessee and the reopening of the case is held to be valid. Accordingly, this ground of appeal is dismissed.

5. As regards the merits of the case, the Id. CIT(A) has confirmed the addition by holding as under:

6.2 I have gone through the assessment order and submissions made in this regard. The entire issue of addition made by the AO is arising out of treatment as bogus, the claim of short term capital gain of Rs.1,53,448/- arising out of purchase and sale of shares of Ind. Bank Mer. and M/s Paramount Communications. The AO treated the said transaction a mere accommodation entry and added amount of Rs.1,53,448/- as unexplained cash credit. It is noted the case is similar to many other cases which originated as a result of the search and seizure action in the case of Mukesh Choksi group. In the instant case the assessee had claimed to have made investment in shares which were purchased and held by the broker and not by the assessee prior to its sale. The shares were never transferred to the DMAT account of the assessee after the alleged purchase. There is no evidence as regards the payment made by the assessee for purchase of the shares on which long term capital gains was shown. This raises questions about the veracity of the claim of purchase of shares made by the

assessee more than one year in advance from the date of sale of shares. The transaction of purchase of shares in the name of assessee is not established.

6.3 It is seen that the AO has rightly concluded that the transaction stated to be entered by the assessee with M/s Alliance Intermediaries & Network Pvt. Ltd. was sham by means of obtaining bogus share purchase/sale bill. It is seen that the AO has rightly appreciated that transactions were not genuine and treated the amount as undisclosed investment since there is no record for purchase and sale of the shares on the name of the assessee from a recognised Stock Exchange. Having regards to the facts of the case the addition of Rs.1,53,448/- as unexplained cash credit made by the AO is found to be in order and is sustained in appeal.

7. Against this order, the assessee is in appeal before us.
8. Before the ITAT, the Id. Counsel of the assessee submitted that on identical addition, in the case of individual Shri Madan Gupta, this Tribunal has set aside the matter to the file of the Assessing Officer in ITA No.2244/Mum/2014 for assessment year 2005-06 vide order dated 28.09.2016 as regards to the merits of the addition.
9. Per contra, the Id. Departmental Representative submitted that this ITAT in ITA No. 6398/Mum/2012 for assessment year 2003-04 in the case of *Disha N. Lalwani vs. ITO* vide order dated 22.03.2017 has confirmed the reopening as well as the addition on identical facts in cases where similar accommodation entries were obtained from Shri Mukesh Choksi. He further submitted that this is a clear case of money laundering and the assessee should be held accountable properly for the money laundering activity it has engaged into.
10. I have carefully considered the submissions and perused the records. I find that the reopening in this case has been confirmed by the Id. CIT(A) by a well reasoned

order. The Id. Counsel of the assessee has not given any cogent reasoning as to why the reopening is not valid. I also note that in the individual's case referred by the Id. Ld. Counsel, the ITAT had noted that the issue of reopening had not been pressed. Accordingly, I find that the reopening in this case is justified and I affirm the order of Id. CIT(A). However, as regards the merits, since the ITAT in the case of same individual to which this HUF belongs has remitted the identical matter on merits to the file of the Assessing Officer, I deem it appropriate to remit the issue on merits to the file of the Assessing Officer following the precedence. The tribunal by remitting the matter had noted that various documentary evidences were furnished which have not been discussed by the Assessing Officer and Id. CIT(A) in their orders. Accordingly, on the same reasoning, I remit the issue on merits of the addition in this case to the file of the Assessing Officer. The Assessing Officer shall take into account the various documents submitted by the assessee and all the facts and circumstances of the case and thereafter pass the speaking order as per law, denovo.

11. In the result, this appeal by the assessee is partly allowed for statistical purposes.

परिणामतः निर्धारिती की अपील सांख्यकीय उद्देश्य के लिए आंशिक स्वीकृत की जाती है ।

Order pronounced in the open court on 01.11.2017

Sd/-

(Shamim Yahya)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 01.11.2017

व.नि.स./Roshani, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai