

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

Before Shri Mahavir Singh (JUDICIAL MEMBER)

AND

Shri G Manjunatha (ACCOUNTANT MEMBER)

I.T.A No.1738/Mum/2017)
(Assessment years: 2010-11)

ITO-4(1)(4), Mumbai	vs	M/s Clifton Securities Pvt Ltd (now known as Mohani Tea Leaves Pvt Ltd) Flat No.501, 5 th Floor, Sanna CHS Ltd, Saraswati Road, Off. Link Road, Santacruz (W), Mumbai-400 054 PAN : AAACC5995P
APPELLANT		RESPONDEDNT

Appellant by	Shri Rajat Mittal
Respondent by	Shri Neel Khandelwal

Date of hearing	15-11-2017
Date of pronouncement	29-12-2017

ORDER

Per G Manjunatha, AM :

This appeal filed by the revenue is directed against the order of the CIT(A)-9, Mumbai dated 29-12-2016 and it pertains to AY 2010-11.

2. The brief facts of the case are that the assessee company engaged in the business of trading in shares and securities filed its return of income for the assessment year 2010-11 on 29-10-2010 declaring total income of Rs.15,440. In this case, a letter dated 19-01-2012 was received from the Addl.CIT, Range-6, Kanpur communicating that M/s Clifton Securities Pvt Ltd has made investment of Rs.6.84 crores in share if M/s Mohani Tea Leaves Pvt Ltd,

Kanpur. Further, one more letter dated 28-01-2013 was received from the ITO, Wd.1(4), Gaziabad intimating that M/s Clifton Securities P Ltd has invested Rs.1 crore in purchase of shares of M/s MNR Share & Investments Pvt Ltd. On the basis of above information, the case has been reopened u/s 147 of the I.T. Act, 1961 after duly recording the reasons for reopening of assessment. Accordingly, notice u/s 148 dated 18-03-2013 was issued. In response to notice, the assessee through its authorised representative submitted a letter and stated that the original return filed on 28-09-2010 may be treated as return filed in response to notice u/s 148 of the Act. Thereafter, the AO has issued notice u/s 143(2) calling for various details for which the assessee has filed necessary documents with regard to the investments of Rs.6.84 crores in M/s Mohani Tea Leaves Pvt Ltd including balance-sheets as on 31-03-2010. As regards investment of R.1 crore in purchase of share of M/s MNR Share & Investments Pvt Ltd, only copy of bank statement has been filed showing that the assessee company has got Rs.1 crore through 4 cheques of Rs.25 lakhs each. In the meanwhile to verify the genuineness of the transactions, a notice u/s 133(6) of the Act was issued to M/s MNR Share & Investments Pvt Ltd calling for various details. However, the said letter was received back unserved with postal remark "left". Thereafter, M/s MNR Share & Investments Pvt Ltd vide letter dated 21-01-2014 submitted various details and confirmed investments in shares of company. The AO, after considering relevant informations and also taking into account the letter addressed by Gauhati Stock Exchange Ltd observed that

the investments in shares of M/s MNR Share & Investments Pvt Ltd was not disclosed in the books of account of the assessee. Accordingly made addition of Rs. 1 crore u/s 69 of the Income-tax Act, 1961 as unexplained investment. Aggrieved by the assessment order, the assessee preferred appeal before the CIT(A). Before the CIT(A), assessee has filed elaborate written submissions to argue that the AO was erred in making addition towards investment in M/s MNR Share & Investments Pvt Ltd for Rs.1 crore merely on the basis of non service of notice to the company ignoring subsequent letter addressed by M/s MNR Share & Investments Pvt Ltd confirming share transaction. The assessee further submitted that it has filed various details to prove investment in shares and also filed enough evidences to prove that the said shares has been sold within the same financial year through S.S. Securities. The AO, based on the subsequent letter issued by Gauhati Stock Exchange Ltd wherein it was stated that the membership of S.S. Securities was cancelled by SEBI wef 05-06-2012 which is not at all relevant to the issue as the assessee has purchased shares of M/s MNR Share & Investments Pvt Ltd in the assessment year 2010-11. The CIT(A), after considering relevant submissions of the assessee observed that the assessee has filed complete details in respect of investment in shares of M/s MNR Share & Investments Pvt Ltd and also sold the said shares in the same financial year through S.S. Securities. As a result, the investment did not appear in the balance-sheet of the assessee for the year ending 31-03-2010. The AO has made the addition purely on mistaken facts without appreciating the

issue that the assessee has sold the shares within the same financial year. The CIT(A) further observed that in view of the fact and all the details and documents, it is proved that investment in the shares of M/s MNR Share & Investments Pvt Ltd has been made through known source and that they have also been sold during the year which are duly reflected in the regular books of account. Thus, the addition made by the AO of Rs.1 crore requires to be deleted. Aggrieved by the order of CIT(A), the revenue is in appeal before us.

3. The Ld.DR submitted that the Ld.CIT(A) has erred in deleting the addition of Rs.1 crore made on account of unexplained investment in shares of M/s MNR Share & Investments Pvt Ltd without appreciating the fact that the said investment was not recorded in the books of account of the assessee. The Ld.CIT(A) deleted addition made by the AO by admitting additional evidence without confronting the same to the AO for his comments. Therefore, the addition made by the AO should be upheld.

4. On the other hand, the Ld.AR for the assessee submitted that the assessee has filed various details to prove investment in shares of M/s MNR Share & Investments Pvt Ltd which is evident from the fact that the CIT(A) has recorded a categorical finding in his order that the assessee has purchased and sold shares in the same financial year as a result investment in M/s MNR Share & Investments Pvt Ltd did not appear in the balance-sheet of the assessee for the year ending. The AO has misconstrued the facts to make the addition only on the basis of non appearance of investment in the balance-sheet without

appreciating the facts in right perspective that once the shares are sold in the same financial year, the question of disclosure of investment in the balance-sheet at the end of the year does not arise. The CIT(A) has rightly deleted addition made by the AO and his order should be upheld.

5. We have heard both the parties, perused the material available on record and gone through the orders of authorities below. The AO made addition towards investment in M/s MNR Share & Investments Pvt Ltd for Rs.1 crore on the ground that the said investment is not recorded in the books of account of the assessee. According to the AO, the assessee has failed to prove that the said amount is recorded in his books of account with any evidence. The AO further observed that even M/s MNR Share & Investments Pvt Ltd did not confirm investments made in shares of company which is evident from the fact that letter addressed to the company was returned back. Tthough M/s MNR Share & Investments Pvt Ltd has filed letter subsequently with all details, failed to adduce any reasons for non service of letters addressed at the earlier occasion. The AO further observed that the assessee claims to have sold shares in the same financial year through M/s S.S. Securities. However, the fact remains that Gauhati Stock Exchange confirmed that membership of S.S. Securities has been suspended. Therefore, the total sequence and events gave rise to a suspicion that investment in M/s MNR Share & Investments Pvt Ltd was not disclosed in the books of account of the assessee. It is the contention of the assessee that it has filed enough evidences to justify investments in shares of M/s MNR Share

& Investments Pvt Ltd and also filed enough materials to prove that the said shares have been sold in the same financial year. The AO has misconstrued the facts totally to come to the conclusion that the said investment is not recorded in the books of account of the assessee only on the basis of non disclosure of investment in the financial statements at the end of the financial year. The facts remains that once shares are purchased and sold in the same financial year, how investment in shares would reflect in the balance-sheet, at the end of the year. Therefore, the AO was incorrect in making the addition. The assessee has filed various details including ledger extract to prove that the payment for investment has been routed through Punjab National Bank and also the same has been sold o 22-09-2009. In this regard, filed copy of borker note issued by S.S. Securities. The assessee also filed return filed with ROC to prove the details of shareholders in the assessee company, as per which the name of assessee was appearing in the details of list of shareholders.

6. Having heard both the sides and considered material on record, we find force in the argument of the assessee for the reason that it has filed enough details to prove investment in shares of M/s MNR Share & Investments Pvt Ltd including bank statements, broker note, confirmation from M/s MNR Share & Investments Pvt Ltd, copy of their annual return filed with ROC and ledger extract. All these evidences go to prove an undoubted fact that the assessee has purchased shares on 25-06-2009 and sold the same shares on 22-09-2009. Since purchase as well as sale of shares happened in the same financial year, the

question of disclosure of investment in the balance-sheet of the assessee at the end of the financial year does not arise. The AO, without appreciating the fact simply made addition on the basis of non disclosure of investment in the balance-sheet of the assessee company and also on the basis of suspicion that the letter addressed to M/s MNR Share & Investments Pvt Ltd has been returned unserved. As regards letter addressed by Gauhati Stock Exchange Ltd, the facts that the said letter states that the membership of M/s S.S. Securities was suspended from 05-06-2012, which is irrelevant, as the purchase and sale of shares happened in the financial year relevant to AY 2010-11 and said letter does not speak anything about the membership of S.S. Securities during the relevant period. Therefore, we are of the considered view that the AO was incorrect in making addition towards investment in shares u/s 69 of the Act. The CIT(A), after considering relevant facts has rightly deleted additions made by the AO. We do not find any error in the order of the CIT(A); hence, we are inclined to uphold the findings of the CIT(A) and dismiss the appeal filed by the revenue.

7. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the open court on 29th December, 2017.

Sd/-

sd/-

(Mahavir Singh)	(G Manjunatha)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt : 29th December, 2017

Pk/-

Copy to :

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

/True copy/

By order

Asstt. Registrar, ITAT, Mumbai