

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री एम. बालगणेश, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2032/Mds/2017

निर्धारण वर्ष / Assessment Year : 2013-14

Shri Nirav Kumar Mahendra Kumar
Sapani,

M/s PASS ASSOCIATES,
No.90, Armenian Street, 4th floor,
"Orient Chambers",
Chennai - 600 001.

v.

The Deputy Commissioner of
Income Tax,
Non-Corporate Circle – 5(1),
Chennai.

PAN : AAQPS 8479 K

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.2033/Mds/2017

निर्धारण वर्ष / Assessment Year : 2013-14

Shri Kinner Prafulchandra Sapani,
M/s PASS ASSOCIATES,
No.90, Armenian Street, 4th floor,
"Orient Chambers",
Chennai - 600 001.

v.

The Deputy Commissioner of
Income Tax,
Non-Corporate Circle – 5(1),
Chennai.

PAN : AAHPS 0839 G

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellants by : Shri D. Anand, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri AR.V. Sreenivasan, JCIT

सुनवाई की तारीख/Date of Hearing : 17.01.2018

घोषणा की तारीख/Date of Pronouncement : 08.02.2018

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

Both the appeals of the independent assesseees are directed against the respective orders of the Commissioner of Income Tax (Appeals) -5, Chennai, dated 30.06.2017 and pertain to assessment year 2013-14.

2. Shri D. Anand, the Ld.counsel for the assesseees, submitted that the assesseees purchased 32,000 shares and 28,500 shares respectively of Sawaca Business Machine Ltd. through ASE Capital Markets Ltd., who are registered brokers of Stock Exchange Board of India. In fact, the shares were purchased in May, 2012. According to the Ld. counsel, both the assesseees purchased the shares at the rate of ₹78/- per share. In September, 2012, the shares were sold by the assesseees at the rate of ₹222.03 per share. Both the assesseees declared the profit on purchase and sale of shares under the head "short term capital gain" and paid the taxes also. However, according to the Ld. counsel, the Assessing Officer found that one Shri Chandrakanth Shah provided accommodation entry to some persons, therefore, the purchase of shares by both

the assessee is a bogus one, hence, the entire amount has to be taxed under the head "income from other sources".

3. Referring to the assessment order in the case of both the assesseees, more particularly pages 2 and 3, the Ld.counsel for the assesseees submitted that the purchase of shares was evidenced by Contract Note dated 21.05.2012. The shares were credited in the DEMAT account on 24.05.2012 in the case of former and on 23.05.2012 in the case of latter. According to the Ld. counsel, the payment of shares were made through electronic mode to ASE Capital Markets Ltd. The payment was also confirmed by ASE Capital Markets Ltd. and transactions were reflected in respective bank accounts. Similarly, according to the Ld. counsel, the sale of shares was also evidenced by Contract Note issued by ASE Capital Markets Ltd. and the transactions were duly reflected in the bank accounts and the payment was made by ASE Capital Markets Ltd. through banking channel, therefore, there is no role for Shri Chandrakanth Shah to play in the purchase and sale of shares by the assesseees. The assesseees have also filed copies of the Contract Note issued by ASE Capital Markets Ltd. for purchase and sale of shares and also the evidence to indicate the payment of assesseees at the time of purchase of shares which is reflected in

the bank statements and also the bank statements for receipt of sale consideration. The assesseees have also filed evidence for payment of security transaction tax. According to the Ld. counsel, all these documents were examined by the Assessing Officer as well as the CIT(Appeals), however, the same were rejected only on the ground that the assesseees purchased the shares off market. According to the Ld. counsel, the fact is that both the assesseees purchased through a broker recognised by the Security Exchange Board of India, therefore, it is obvious that the shares were purchased at the market rate through recognised security exchange. Moreover, the purchases were made at the market rate and it was sold at the market rate. Therefore, according to the Ld. counsel, the CIT(Appeals) is not justified in holding that the selling rate of the shares were artificially hiked.

4. On the contrary, Shri AR.V. Sreenivasan, the Ld. Departmental Representative, submitted that the copies of Contract Note evidenced for payment of security transaction tax and copies of bank statements before the Tribunal were not available before the Assessing Officer. Therefore, the Ld. D.R. submitted that the matter may be remitted back to the file of the Assessing Officer to consider the Contract Note, statements of bank accounts and

evidence for payment of security transaction tax in the case of both the assessees. When the attention of the Ld. D.R. was drawn to the assessment order where the Assessing Officer has clearly extracted the documents filed by the assessees to indicate the purchase of shares and sale of shares, the Ld. D.R. submitted that the matter may be decided on merit.

5. We have considered the rival submissions on either side and perused the relevant material available on record. The purchase of shares of Swaca Business Machines Ltd. by both the assessees was evidenced by way of Contract Note issued by the recognised stock broker ASE Capital Markets Ltd. It is not in dispute that ASE Capital Markets Ltd. is one of the recognised stock brokers by Security Exchange Board of India. The shares were also sold through ASE Capital Markets Ltd. The Contract Notes for purchase and sale of shares were filed by both the assessees before the Assessing Officer at the time of assessment proceeding. The assessment proceedings were completed on the ground that one Shri Chandrakant Shah provided accommodation entry to various persons. The question arises for consideration is whether the assessees' transaction in respect of purchase of shares and sale of shares through ASE Capital Markets Ltd. is a bogus transaction?

This Tribunal is of the considered opinion that when the fact that ASE Capital Markets Ltd. is a recognised stock broker is not in dispute and the assesseees have also purchased the shares at the market rate and sold the same at market rate through recognised stock broker of Security Exchange Board of India, it cannot be said that the transaction was a bogus one.

6. In the case of both the assesseees, the CIT(Appeals) proceeded as if the assesseees purchased the shares through off market. The material available on record clearly indicates that the shares were purchased and sold at the market rate through recognised broker of Security Exchange Board of India. When the assesseees established the fact that the shares were purchased on the market rate through recognised broker, it cannot be said that the price of the shares were artificially hiked for earning higher income. The Revenue authorities cannot ignore the material available on record merely because somebody has provided accommodation entry to somebody. The assessment proceeding being a judicial proceeding, the authorities below cannot take into consideration the extraneous matter, which is not relevant to the issue arises for consideration. When the fact that the purchase and sale of shares through recognised stock broker is established and the shares were

purchased and sold at market rate, this Tribunal is of the considered opinion that both the authorities below are not justified in disallowing the claim of the assesseees. Accordingly, orders of both the authorities below are set aside and the additions made by the Assessing Officer in respect of both the assesseees are deleted.

7. In the result, both the appeals filed by the assesseees are allowed.

Order pronounced on 8th February, 2018 at Chennai.

sd/-
(एम. बालगणेश)
(M. Balaganesh)
लेखा सदस्य/Accountant Member

sd/-
(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 8th February, 2018.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-5, Chennai-34
4. Principal CIT -9, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.