

IN THE INCOME TAX APPELLATE TRIBUNAL
“H” Bench, Mumbai
Before S/Shri B.R.Baskaran (AM) & Amarjit Singh (JM)
I.T.A. No. 3877/Mum/2016 (Assessment Year 2006-07)

ACIT 32(3) Room No. 108, 1 st Floor Building No. C-11 Pratyakshakar Bhavan Bandra Kurla Complex Bandra East Mumbai-40 0051. (Appellant)	Vs.	Shri Sandeep A. Shah 03, Ankur 7 th Road TPS Road Borivali West Mumbai-400 92. PAN : ALUPS8071J (Respondent)
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Assessee by	Shri Rajesh S. Kothari
Department by	Shri Saurabh Deshpande
Date of Hearing	3.5.2018
Date of Pronouncement	7.5.2018

ORDER

Per B.R. Baskaran (AM) :-

The appeal filed by the revenue is directed against the order dated 30-03-2016 passed by Ld CIT(A)-44, Mumbai and it relates to the assessment year 2006-07. The revenue is aggrieved by the decision of Ld CIT(A) in deleting the addition relating to unexplained investment in shares made by the AO in the reassessment proceedings.

2. The assessment of the year under consideration was completed by the assessing officer u/s 143(3) of the Act on 31.12.2008. The assessee had declared long term capital gains on sale of shares of Novogold Petro Resources Ltd, which was assessed as short term capital gain by the AO in the original assessment proceedings. In the re-opened assessment, the AO observed that the claim of purchase of shares in the immediately preceding year was not acceptable to him and hence took the view that the shares have been purchased on the date the shares were received in the de-mat account of the assessee. The AO treated the said value of purchase as unexplained investment and assessed a sum of Rs.13.47 lakhs.

3. The assessee had also declared short term capital gains on sale of shares of Reliance Capital Ltd and Reliance Natural Resources Ltd. The AO noticed that the assessee did not make payment for purchase of shares and the amount due from the assessee has been adjusted against the sale consideration of shares. Since the assessee did not make any payment to the broker for purchase of shares, the AO took the view that the assessee has purchased the shares through unexplained sources and accordingly assessed a sum of Rs.73.70 lakhs as unexplained investment.

4. The Ld CIT(A) deleted both the additions and hence the revenue has filed this appeal.

5. We heard the parties and perused the record. The first issue relates to the addition of Rs.13.47 lakhs relating to purchase of Novagold Petro Resources Ltd. We notice that the assessee has furnished copies of broker note, the details of payments made to the broker, copy of statement of account from the broker and also copies of Balance sheet as on 31.3.2005 to the assessing officer in order to show that the shares were purchased in the earlier year. The shares have been transferred to the De-mat account of the assessee subsequently and hence the AO has disbelieved the various documents furnished by the assessee. The AO has also observed that the name of the assessee is mentioned as "Sandip Shah" in the broker note, where as the name is written as "Sandeep Shah" by the assessee. Further the AO has also observed that the PAN number mentioned in the broker note is not that of the assessee.

6. The Ld D.R relied upon the observations made by the AO in this regard. However, it was explained to us by Ld A.R that the broker has committed a mistake in writing correct spelling of name and the PAN number mentioned in the broker note is that of the broker only. It was further submitted that the assessing officer has not disproved various documents furnished to him to prove the genuineness of purchases.

7. We find merit in the contentions of the assessee. The Ld CIT(A) has also observed that the assessing officer has taken cognizance of various evidences furnished by the assessee during the course of original assessment proceedings. We also notice that the assessing officer has not brought any material on record to disprove the evidences nor did he make any enquiry with the broker. The payment made by way of cash for purchase of shares cannot be a ground to disbelieve the purchases and even otherwise, the assessee has disclosed the purchases in his Balance sheet as on 31.3.2005. Hence it has to be construed that the assessing officer has made impugned addition only on surmises and conjectures, which is not sustainable. Accordingly we are of the view that the Ld CIT(A) has rightly deleted the addition of Rs.13,47,500/- and accordingly we affirm the same.

8. The next issue relates to the assessment of purchase of value of shares of Reliance Capital and Reliance Natural Resources Ltd as unexplained investment. The AO noticed that the assessee did not make payment towards purchase of above said shares and the amount due by the assessee has been adjusted by the Share Broker against the sale consideration. He also noticed that the shares have been received in the de-mat account of the assessee one day prior to the date of sale. He also noticed that the transactions of purchase and sale were off market transactions. Hence the AO assessed the sale proceeds of Rs.73,70,160/- as unexplained investment.

9. Before Ld CIT(A), it was submitted that the assessee has paid margin money of Rs.2.00 lakhs by way of cheque to the broker and on the basis of margin money so given, the assessee could purchase shares on credit. It was submitted that the purchase and sale of shares are evidenced by the broker notes. The Ld CIT(A) accepted the explanations of the assessee and accordingly deleted the addition of Rs.73,70,160/-.

10. We heard the parties on this issue and perused the record. We notice that the AO has not considered the fact that the assessee has paid margin

money of Rs.2.00 lakhs to the broker. On the strength of this margin money payment, the assessee has claimed to have purchased and sold the shares. We notice that the Ld CIT(A) has observed that the system of payment of margin money and the system of allowing transactions of purchase and sale of shares on credit on the strength of the margin money are very much prevalent practice in the share market. Accordingly the Ld CIT(A) has taken the view that there is no reason to disbelieve the sale of shares. We agree with the observations so made by Ld CIT(A). It is also a fact that the transactions of purchase and sale of shares have been routed through the De-mat account of the assessee. Though the shares have entered the de-mat account of the assessee belatedly, yet the fact remains that the assessee has produced evidences to prove the purchase of shares under the payment of margin money. Since the assessee has entered into share transactions as per prevalent practice, we do not find any reason to disbelieve the transactions. Accordingly we are of the view that the Ld CIT(A) was justified in deleting the impugned addition.

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

Order has been pronounced in the Court on 7.5.2018.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

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

Mumbai; Dated : 7/5/2018

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//

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BY ORDER,

(Senior Private Secretary)
ITAT, Mumbai