

IN THE INCOME TAX APPELLATE TRIBUNAL
“E” Bench, Mumbai
Before Shri B.R. Baskaran (AM)& Shri Pawan Singh (JM)

I.T.A. No. 1282/Mum/2015 (Assessment Year 2006-07)

Smt. Hasumati Mody 502, Avanti, B Wing Haridas Nagar Shimpoli, Borivali(W) Mumbai-400 066. PAN : AJSPM7935P	Vs.	ITO 25(2)(1) Mumbai.
(Appellant)		(Respondent)

Assessee by	Shri Bhupendra Shah
Department by	Shri V. Justin
Date of Hearing	6.6.2018
Date of Pronouncement	6.6.2018

ORDER

Per B.R. Baskaran (AM) :-

The appeal filed by the assessee is directed against the order dated 9.12.2014 passed by the learned CIT(A)-44, Mumbai and it relates to A.Y. 2006-07. The assessee is aggrieved by the decision of the learned CIT(A) in confirming the assessment of sales proceeds arising on sale of shares as income under the head Income from other sources, rejecting the claim of the assessee to assess the same as long term capital gain.

2. During the year under consideration, the assessee has sold 11000 shares of M/s. Osian LPG Bottling Ltd. (presently Nova Gold Ltd.) for a sum of ₹ 2,96,454/- on 5.5.2005. The assessee claimed that he has purchased the above said shares on 3.9.2003 and accordingly declared long term capital gain of ₹ 2,48,559/-. The assessee claimed long term capital gain as exempt u/s. 10(38) of the Act.

3. Subsequently, the Assessing Officer noticed that the assessee was one of the beneficiaries of share broker named Mr. Naredra Shah, who had admitted before tax authorities that he has given accommodation entries to various

persons in order to claim long term capital gain. Based on this information the Assessing Officer reopened the assessment of the assessee for the year under consideration.

4. The Assessing Officer noticed that the assessee has claimed to have purchased 15000 shares of Osian LPG Bottling Ltd. on 3.9.2003. The shares were purchased in physical form and payment was made by way of cash. Though the shares were purchased on 3.9.2003, they were dematerialized only on 1.3.2005. The assessee sold 4000 shares on 30.3.2005 falling in A.Y. 2005-06 and remaining 11000 shares were sold 5.5.2005, i.e. during the year under consideration. Since the assessee had purchased shares in off market in physical form by paying cash, the Assessing Officer took the view that the assessee has so planned its affairs to his advantage in order to capitalize the black money. Accordingly, he rejected the claim of long term capital gains and assess the sale value of ₹ 2,96,454/- as income under the head 'income from other sources'. The learned CIT(A) also confirmed the same and hence the assessee has filed this appeal before us.

5. The contention of the Ld A.R is that the purchase of shares has been accepted in AY 2004-05 by the AO. He further submitted the AO had made identical addition in AY 2005-06 with regard to sale of 4000 shares and the same was deleted by Ld CIT(A). He submitted that the shares were sold after dematerializing the same, meaning thereby the shares were in possession of the assessee. He submitted that the shares could not have been sold without purchasing the same.

6. On the contrary, the Ld D.R submitted that the assessee has claimed to have purchased the shares by paying cash that too in the off-market transaction. The shares were dematerialized only two months prior to the sale. Accordingly he submitted that the genuineness of purchase of shares was in doubt and hence the AO assessed the sale proceeds as income under the head income from other sources. He submitted that, in the alternative, the gains

should be assessed as Short term capital gain, since the shares have been dematerialized only on 01-03-2005.

7. We have heard the parties and perused the record. We notice from the observations made by Ld CIT(A) in the appellate order passed for AY 2005-06 that the AO had reopened the assessment of the AY 2004-05 also. It can be noticed that the assessee has claimed to have purchased the shares in AY 2004-05 only. The Ld CIT(A) has noticed that the assessing officer has accepted the purchases of shares in AY 2004-05 by not making any addition. Since the shares have been sold after dematerialization and since the purchases have been accepted, the Ld CIT(A) held in AY 2005-06 that the long term capital gain declared in that year on sale of 4000 shares should be accepted. The sale of 11000 shares was part of same lot of purchase, i.e., out of purchase of 15000 shares, 4000 shares were sold in AY 2005-06 and the remaining 11000 shares were sold in AY 2006-07, i.e., during the year under consideration.

8. Since the genuineness of purchase of shares was accepted in AY 2004-05 and further since the Ld CIT(A) has accepted the genuineness of sales in AY 2005-06, we are of the view that the long term capital gain declared by the assessee on sale of 11000 shares during this year needs to be accepted. There is no dispute with regard to the fact that the shares have been dematerialized and it could be dematerialized only if physical shares were available. Hence it can be inferred that the assessee was having physical shares in his hand. Hence the doubt should arise only in respect of date of purchases. As noticed earlier, the purchase of shares has been accepted in AY 2004-05 by the assessing officer. In our view, the said decision could not have been reviewed by the AO in AY 2006-07. Accordingly we are of the view that the long term capital gain declared by the assessee should be accepted. Accordingly we set aside the order passed by Ld CIT(A) on this issue and direct the AO to accept the long term capital gain declared by the assessee and accordingly delete the addition made by him.

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

Order has been pronounced in the Court on 6.6.2018.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

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

Mumbai; Dated : 6/6/2018

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//

BY ORDER,

PS

Senior Private Secretary
ITAT, Mumbai