

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” Bench, Mumbai
Before S/Shri B.R.Baskaran (AM) & Amarjit Singh (JM)
I.T.A. No. 6070/Mum/2016 (Assessment Year 2006-07)

Jaymin Kiritbhai Sanghvi A/32, Dhiraj Apartments 11, Poddar Road Mumbai-400 002. PAN : AOPPS5428H	Vs.	ITO 18(1)(5) 2 nd Floor Earnest House Nariman Point Mumbai-400021.
(Appellant)		(Respondent)

Assessee by	Shri Hitesh P. Shah
Department by	Ms. N. Hemalatha
Date of Hearing	28.6.2018
Date of Pronouncement	18.7.2018

ORDER

Per B.R. Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 5.7.2016 passed by the learned CIT(A)-29, Mumbai for A.Y. 2006-07 confirming the addition of ₹ 42.22 lakhs rejecting the claim of long term capital gains.

2. Facts relating to the issue are stated in brief. The assessee has filed his return of income for A.Y. 2006-07 declaring a total income of ₹ 6.55 lakhs. In the return of income, the assessee also declared long term capital gains of Rs.42.22 lakhs arising on sale of 2,50,000 shares of M/s. Prraneta Industries Ltd., and claimed the same as exempt u/s. 10(38) of the Act. The return of income was initially accepted but later on the Assessing Officer reopened the assessment by issuing notice u/s. 148 of the Act on 30.7.2009 in order to verify the correctness of the claim of long term capital gains referred above. The Assessing Officer noticed that the assessee had sold scrips of Kotak Mahindra, NIIT Ltd. and Steel Authority of India Ltd. on 27.4.2004 through M/s. DPS Shares and Securities P. Ltd. and the same has resulted in net gain of ₹ 47,133/-. On 29.4.2004, the assessee purchased 25,000 shares of M/s.

Prraneta Industries Ltd. for an amount of ₹ 47,040/-, which was adjusted against the profit earned by the assessee. The 25000 shares were converted into 250000 shares of Rs.1.00 each. The assessee sold all the shares and earned long term capital gain of Rs.42.22 lakhs. The AO conducted enquiries in this regard. The inquiry made by the Assessing Officer with Bombay Stock Exchange revealed that sale of shares of Kotak Mahindra, NIIT Ltd. on 27.4.2004 was genuine, but the BSE informed that there was no trading on 29.4.2004 in the shares of M/s. Prraneta Industries Limited. The Assessing Officer summoned the assessee and also authorized representative of M/s. DPS Shares and Securities P. Limited. A person named Mr. Rajkumar Masalia, Senior Accountant of M/s. DPS Shares and Securities P. Ltd., appeared before the Assessing Officer and confessed that the bills for purchase and sale of shares of M/s. Prraneta Industries Ltd. were not genuine and further submitted that they were given to the assessee for the purpose of providing accommodation entry. However, the assessee maintained his stand that the capital gains earned by him were genuine. The Assessing Officer accordingly, rejected the claim of long term capital gains and assessed the same as income of the assessee. The learned CIT(A) also confirmed the same. When the matter reached to the Tribunal, the assessee filed an affidavit of Shri Pratik C. Shah, who was director of M/s DPS Shares and Securities P. Limited, the share broker of the assessee. In the affidavit, the above said director confirmed the genuineness of the transactions entered by the assessee in the shares of M/s. Prraneta Industries Limited. Hence, the ITAT restored the matter to the file of the Assessing Officer for examining the claim of the assessee afresh by duly considering the additional evidences furnished by the assessee.

3. In the set aside proceedings, the Assessing Officer summoned Mr. Rajkumar Masalia (authorized representative of M/s DPS shares and securities P Ltd) again and recorded his statement on 20.3.2014. In his statement, Mr. Rajkumar Masalia confirmed that the transactions made with the assessee

were genuine. The Assessing Officer noticed that the payments against sale of shares have been received by the assessee from two concerns named M/s. T.R. Fabrics and M/s. V.N. Creations and not directly from the broker DPS Shares and Securities P. Limited. When questioned about the same, Mr. Rajkumar Masalia submitted that he does not remember as to how sale consideration was paid to the assessee.

4. The Assessing Officer, however, was not convinced with the affidavit, evidences and statement given by Mr. Rajkumar Masalia. The Assessing Officer had made enquiries with Bombay Stock Exchange (BSE) and the BSE had reported that there were no transactions in the shares of M/s prraneta Industries Ltd on 29-04-2004 (Date of purchase) and on 14.07.2005 (Date of sale), there was sale of 10,000 shares only. The AO placed reliance on the information so given by Bombay stock exchange. The Assessing Officer further noticed that the trading number and trading time of 10,000 shares reported by the Bombay Stock Exchange matched with the claim of sale of 2,50,000 shares held by the assessee. In view of the above said contradiction, the Assessing Officer rejected the claim of long term capital gains and assessed the same as income of the assessee in the set aside proceedings also. The learned CIT(A) also confirmed the same and hence the assessee has filed this appeal before us.

5. The Learned AR submitted that the assessee has purchased 25,000 (which was later split into 2,50,000 shares) shares of M/s. Prraneta Industries Ltd., out of gain made by him in the shares of Kotak Mahindra, NIIT Ltd. and Steel Authority of India Limited. He submitted that Shares so purchased were deposited in the demat account of the assessee prior to its sale on 14.7.2005. He submitted that demat account furnished by the assessee was not doubted by the Assessing Officer and the same shows receipt and delivery of shares in the dematerialized form. He also submitted that the transactions carried out in demat account also proves the fact that the assessee had in fact purchased

shares of M/s. Prraneta Industries Limited and sold the same. Accordingly he submitted that the tax authorities were not justified in doubting the genuineness of purchase and sale of shares. With regard to receipt of payment by way of cheques from two unrelated concerns, the learned AR submitted that the assessee had received cheques against outstanding dues and hence the assessee was not concerned with the sources from which cheques were received so long as payments were made on behalf of the DPS Shares and Securities P. Limited (stock broker). The Ld A.R further contended that the irregularities, if any, committed by the Share broker cannot disprove the genuineness of transactions entered by the assessee. The Learned AR placed reliance on the decision rendered by Hon'ble Bombay High Court in the case of CIT Vs. Shyam R. Pawar (2015) 229 Taxman 256, wherein Hon'ble Bombay High Court has held that where demat account and contract note showed details of share transaction and the Assessing Officer had not proved said transaction as bogus, capital gain earned on the said transaction could not be treated as unaccounted income u/s. 68 of the Act. Accordingly, learned AR submitted that there is no justification for rejecting the claim of long term capital gain when the assessee has furnished all documents supporting the claim of long term capital gain.

6. Learned DR, on the contrary, supported the order passed by Ld CIT(A). He further furnished an Adjudication Order No. EAD-2/Assessing Officer/43/2012 passed by Securities and Exchange Board of India (SEBI) and submitted that SEBI has confirmed the fact that there were irregularities in the trading in shares of M/s. Prraneta Industries Limited. Learned DR submitted that the order passed by SEBI confirmed the conclusion drawn by the Assessing Officer.

7. In the rejoinder, learned AR submitted that the SEBI has passed the order on 22.5.2012. Allegation was during the investigation period, i.e., from 10.1.2005 to 12.5.2005, the price of scrips of M/s. Prraneta Industries Ltd.had

fluctuated widely. The Learned AR submitted that the assessee has purchased shares on 27.4.2004 i.e. prior to investigation period and sold the same on 14.7.2005 i.e. after investigation period. Accordingly, learned AR submitted that the order passed by SEBI does not cover the period of transaction of purchase and sale undertaken by the assessee. He further submitted that the assessee has otherwise proved the genuineness of purchase and sale of shares.

8. We have heard the rival contentions and perused the record. We noticed that the assessee has furnished contract note in support of the transaction of purchase and sale of shares. We notice that the Shares purchased by the assessee have been dematerialized before its sale. The fact of dematerialization would prove that the shares were physically available with the assessee, which in turn, proves the factum of purchase of shares. Since, the shares have been sold through demat account, factum of sale of shares should not also be questioned.

9. We noticed that the tax authorities have mainly placed reliance on the report furnished by BSE. It is the fact that the assessee has not directly undertaken transactions on the platform of BSE, i.e., he has purchased and sold shares through an authorized broker named DPS Shares and Securities P. Limited. The above said broker has confirmed the genuineness of purchase and sale of shares by the assessee by filing an affidavit. In view of the affidavit so filed, Assessing Officer has examined the authorized person of DPS Share and Securities P. Limited, who has confirmed the genuineness of the purchase and sale of shares undertaken by the assessee. Further the shares have been dematerialized and they were sold in dematerialized form only. We notice that the Assessing Officer could not bring any material on record to disprove the affidavit as well as statement given by DPS Shares and Securities P. Limited and also the demat statement furnished by the assessee. From the point of view of the assessee, he has purchased and sold the shares through an authorized share broker, who has executed the transactions by furnishing

broker notes. The report given by BSE only shows that there may be some irregularities on the part of the share broker. In our view, such kind of irregularities, if any, committed by share broker cannot be a ground to suspect the genuineness of purchase and sale of shares undertaken by the assessee.

10. We noticed that the assessee has furnished copies of contract notes in support of the purchase and sale of shares. He has also furnished copies of demat account which shows entry and exit of shares. The assessee has also received payment towards sale of shares though it was received from two other persons on behalf of DPS Shares and Securities P. Limited. In our view, so far as the assessee is concerned, he has proved the genuineness of purchase and sale of shares of M/s. Prraneta Industries Ltd., and hence long term capital gains arising on sale of above said shares cannot be doubted with. We also noticed that the Assessing Officer did not make inquiries with regard to demat account furnished by the assessee and also could not disprove the affidavit filed and statement given by DPS Shares and Securities P. Limited. Hence, decision rendered by Hon'ble Bombay High Court in the case of Shyam R. Pawar (supra) fully supports the case of the assessee. Accordingly, we set aside the order passed by the learned CIT(A) and direct the Assessing Officer to accept the claim of long term capital gains of ₹ 42.22 lakhs and allow exemption u/s. 10(38) of the Act claimed by the assessee.

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

Order has been pronounced in the Court on 18.7.2018.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

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

Mumbai; Dated : 18/7/2018

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