

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "SMC", MUMBAI

Before Shri B.R. Baskaran, Accountant Member

ITA No.3878/Mum/2016
Assessment Year: 2008-09

Ms. Shikha Sanghvi, 603 Emp 18 Pluto, Thakur, Village Sector 2C, Kandivali (E), Mumbai- 400101. PAN: AGTPS7638F	Vs.	I.T.O., 25(3)(4), Mumbai
(Appellant/Assessee)		(Respondent/Revenue)

ITA No.3879/Mum/2016
Assessment Year: 2008-09

Hemanshu Sanghvi -HUF, 603 Emp 18 Pluto, Thakur, Village Sector 2C, Kandivali (E), Mumbai- 400101. PAN: AACHH6566C	Vs.	I.T.O., 25(3)(4), Mumbai
(Appellant/Assessee)		(Respondent/Revenue)

Appellant by: Shri Rajendra Jain, Id.AR
Respondent by : Shri Chaitnya Anjaria, Id.DR

Date of Hearing : 17.07.2019	Date of Pronouncement : 17 -07-2019
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ORDER

Per B.R. Baskaran, Accountant Member

The appeals filed by both the parties are directed against the orders dated 04-03-2016 passed by Ld CIT(A)-45, Mumbai in their respective hands and they relate to the assessment year 2008-09. Both the parties are

aggrieved by the decision of Ld CIT(A) in confirming the assessment of entire sale consideration received on sale of shares as income of the assessee(s).

2. Both the appeals were heard together, as the facts were identical and they are being disposed of by this common order for the sake of convenience.

3. I heard the parties and perused the record. The Ld A.R submitted that both the assessees have declared their short term capital gains on purchase and sale of shares through concerns belonging to Shri Mukesh Chocksy Group. Based on information received from the Investigation Wing of the department that Mukesh Chocksy Group was indulging in providing accommodation entries/payments and upon noticing that the assessees herein have had transactions with the above said group, the Assessing Officer re-opened the assessments of the year under consideration in the hands of both the parties. The AO rejected the claim of short term capital gains in the hands of both the assessees and treated the entire sale consideration as income of assessee(s) by way of unexplained cash credit transaction. The Ld CIT(A) confirmed the same.

4. At the time of hearing, the Ld A.R submitted that the transactions of purchase and sale of shares have been done through banking channels and hence it should have been accepted. He further submitted that, if at all anything is to be added, it is only the net gain arising out of such transaction. He submitted that the AO was not right in assessing the sale consideration as income of the assessees, instead of assessing the profit earned from the transactions.

5. The Ld. AR, in the alternative, submitted that both the assessees would be willing to forego the claim of short term capital gains, if addition is restricted to gain arising from the transactions, i.e., the difference between the sales value and purchase value.

6. I heard Ld D.R and perused the record. I find that there is merit in the alternative contentions of the Ld.AR. It is an admitted fact that the assessee(s) made payments for purchase of shares through banking channels and received payments on sale of shares also through banking channels. The assessee, in effect, has gained only the difference between receipt of money and payment of money. Since money transactions were for purchase/sale of shares, the net gain has been offered/declared as short term capital gains. If the Assessing Officer disbelieved the claim of purchase and sale of shares, then what is required to be taxed is only net gain received by the assessee. Accordingly, I find merit in the submissions of the assessee(s). Accordingly, I set aside the impugned orders passed by the Id. CIT(A) on this issue in the hands of both the assessees and direct the Assessing Officer to assess the net gain as income of assessees under the head 'income from other sources'.

7. In the result, the appeals of respective assesses are partly allowed.

Order pronounced on 17-07-2019

Sd/-

(B.R. Baskaran)
ACCOUNTANT MEMBER

Mumbai, Dated : 17th July,2019

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ITA No.3878/Mum/2016
ITA No.3879/Mum/2016
Shikha Sanghvi
Hemanshu Sanghvi-HUF

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Mumbai.
4. The CIT
5. The DR, 'B' Bench, ITAT, Mumbai BY ORDER

(AssistantRegistrar)
Income Tax Appellate Tribunal, Mumbai

		Date	Initial	
WHETHER DICTATION PAD ENCLOSED WITH THE FILE : Yes/No.				
1.	Draft dictated on	17.07.2019	Yes	Sr.PS
2.	Draft placed before author	17.07.2019 Matter Typed	P.P	Sr.PS
3.	Draft proposed & placed before the second member	17.07.2019	P.P	JM/AM
4.	Draft discussed/approved by Second Member			JM/AM
5.	Approved Draft comes to the Sr.PS/PS	17/07	PP	Sr.PS
6.	Date of pronouncement	17/7		Sr.PS
7.	File sent to the Bench Clerk	18/7	PP	Sr.PS
8.	Date on which file goes to the Head Clerk			
9.	Date of dispatch of Order			