

**आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH, CHENNAI**  
**श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष**  
**BEFORE SHRI DUVVURU RL REDDY, JUDICIAL MEMBER AND**  
**SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A.No.746 /CHNY/2019

(निर्धारण वर्ष / Assessment Year: 2012-13)

Shri Ashok Batuklal Makwana,  
Flat No.E062, Door No.49,  
DLF Commanders Court,  
Ethiraj Salai, Egmore,  
Chennai – 600 008.  
PAN: ADMPPM1490R

Vs The Income Tax Officer,  
Non-Corporate Ward 9(1),  
Chennai.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

&

आयकर अपील सं./I.T.A.No.747/CHNY/2019

(निर्धारण वर्ष / Assessment Year: 2015-16)

M/s. Ashok Makwana (HUF)  
Flat No.E062, Door No.49,  
DLF Commanders Court,  
Ethiraj Salai, Egmore,  
Chennai – 600 008.  
PAN: AAIHA5661B

Vs The Income Tax Officer,  
Non-Corporate Ward 9(1),  
Chennai.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : None

प्रत्यर्थी की ओर से/Respondent by : Shri Guru Bashyam, JCIT

सुनवाई की तारीख/Date of hearing : 26.06.2019

घोषणा की तारीख /Date of Pronouncement : 16.08.2019

**आदेश / ORDER**

**PER S. JAYARAMAN, ACCOUNTANT MEMBER :**

The above assessee filed these appeals against the orders of the Commissioner of Income Tax (Appeals)-10, Chennai in ITA

No.117 & 123/17-18/CIT(A)-10/2017-18 dated 31.12.2018 for the assessment years 2012-13 & 2015-16, respectively.

2. Shri Ashok Batuklal Makwana , the assessee, an individual & M/s. Ashok Makwana, the assessee, a HUF are doing business in share trading. The Assessing Officer received a report from the investigation wing of Kolkata, in which, inter alia, each of the assessee was specified as one of the parties who indulged in bogus / non-genuine long term capital gain from the transactions of alleged purchase and sale of shares of Essar India Ltd. Further, the shares of Essar India Ltd were found by them as penny stock company which has been used for generating bogus LTCG and the investigations revealed that a scheme was hatched by various players to obtain / provide accommodation of entry of bogus LTCG through manipulation of stock market. Therefore, the Assessing Officer re-opened and scrutinized assessment / scrutinized the assessment, as the case may be, and found that the respective assesseees purchased off market 4000 & 4200 shares, respectively, of M/s. Essar (India) Ltd., @ Rs.1per share, subsequently sold them on line through M/s. Sugal and Damani Share Brokers Ltd., for Rs.9,08,000/- and Rs.14,45,500/-, respectively, at an average rate

of Rs.227/- per share approx., disclosed Long Term Capital Gain in their respective return and claimed it as an exempt income U/s.10(38). The Assessing Officer examined the entire set of transactions in the background of the information received from the DIT(Inv), Kolkatta and upon such examination of facts and on detail analysis of the transactions held, inter alia, that the respective assessee has deliberately entered in to a sham transaction of purchase and sale of bogus shares with full knowledge of such transactions in view of the substantial gains shown on the sale of such penny stocks, within reasonably a short period so as to convert the unaccounted money into accounted money in the guise of exempt capital gains. Therefore, the Assessing Officer treated the entire sale at Rs.9,08,000/- & 14,45,500/-, in the respective hand as an unexplained credit U/s.68 and completed the respective assessment. Aggrieved, the respective assessee filed appeals before the CIT(A). The Ld CIT(A) dismissed those appeals. Against those orders, the respective assessee filed the above appeals.

3. At the time of hearing none was present on behalf of the respective assessee, although the notice of hearing was served on

the respective assessee on 17.05.2019 and the acknowledgement due is placed in the respective record.

4. The Ld. DR submitted that the issue under consideration in these appeals pertains to the determination as to whether the LTCG earned on the purchase and sale of shares of EIL and claiming it as an exempt income u/s10 (38) are genuine or not. In this regard, the Ld. DR submitted that the issues, findings and the out-come are being common in these cases, he took us though the following portion of the order of the Ld.CIT(A) in ITA No 117/ 17-18, which is extracted as under:-

*Purchase of shares:*

*5.3.5 It is the claim of the appellant that once the genuineness of the transactions in the form of DEMAT statements, Contract Notes and Bank statements are proved then the AO is not justified in disallowing the claim.*

*5.3.6 In this regard, it is seen that the initial purchase of shares of EIL were not made through BSE or NSE but were effected through off market route in paper form. No satisfactory explanation has been furnished with regard to the identity of the persons / broker / operators from whom the appellant has purchased these shares. The appellant is not in a position to substantiate that he has made any other purchases through this route and from these parties/broker in a regular manner. That is to say that except for the purchase of these shares, the appellant is unable to prove that he has made similar*

*such purchases through the same preferential route. The appellant was also unable to provide convincing reasons as to how it has identified a company/shareholder based at Kolkata for purchasing these shares when the appellant is based at Chennai. The appellant had also not substantiated as to how and why the shares of these particular companies were selected at random for investing off market without even knowing the financial credentials etc. to justify the investment say, on the basis of the level of risk involved or the level of return or on the degree of liquidity involved etc.*

*5.3.7 Since the shares of the said company have been specifically held by the investigation to be one of the penny stocks traded in, it is for the appellant to discharge his onus to establish the genuineness of purchases with respect to such scrip on the aspects as discussed above which he has failed to do so even during the course of appellate proceedings.*

*5.3.8 Further, the jurisdictional tribunal in the case of Heera Chand Kanunga Vs ITO in ITA Nos. 2786 & 2787/Chny/2017 vide its order dated 3-5-2018 has held that the assessee shall prove the transaction by providing all such evidence to substantiate the claim of exemption u/s 10(38) by producing the persons through whom the assessee has purchased and sold the shares, sub-brokers and the others in the chain who introduced the parties to assessee, whereas the appellant in the instant case has failed to substantiate his claim by not being able to establish the identities of the parties through whom purchased.*

*Sale of shares:*

*5.3.9 It is the claim of the appellant that the transactions are genuine since the sales were effected through recognized stock exchange at prices listed on the Exchange and that the STT has also been suffered on the transactions and also for the reason that the payments were*

*done through banking channels. The appellant however, failed to file the relevant documentary evidences in this regard.*

*5.3.10 From the submissions made, it is noticed that the appellant had disposed 4,000 shares of EIL at an average rate of approx. Rs. 227/- per share in the FY 2011-12 for a sum of Rs. 9,08,000/-. The stocks at the time of sale by the appellant were quoted at prices recording almost 22600% growth rate as compared with the purchase value of the share which is highly improbable in the normal course. Such abnormal movement of prices especially of companies whose volumes of business are unworthy of mention, establishes that the share prices have been artificially spiked and are not normal transactions. In fact the appellant was asked to prove with respect to any other shares traded by him as to whether he had offloaded such shares with such abnormal hike in price within a reasonably short span of time which the appellant was unable to prove/ establish. This clearly establishes that the probability of the appellant trading in these shares without colluding with any of the persons involved in the operations of jacking up the share price is either Nil or very remote.*

*5.3.11 Further, as regards the offloading of the same on the stock exchange is concerned also it is inexplicable as to how a rational person would buy these shares at an average rate of Rs. 227/- per share whose face value was only Re. 1/-, without the comfort of good published and researched financials of the companies unless the sale as well as the buyers are predetermined. These companies have not been established by the appellant to have a good financial standing in the market at the time of investment by the appellant. It is also noticed that the key financial figures/ratios of the companies were unfavourable and well below the industry standards.*

*5.3.12 It is to state in this regard that the Operating Revenue and Operating Expenditure of EIL depicts very poor operations being carried out by EIL. The value of the scrip was highly inflated with*

*respect to its book value. It is thus concluded against these facts that considering the financial and operating figures of EIL, the huge market capital of EIL and price/traded volumes in the scrip during the relevant periods was inflated and unrealistic.*

*5,3.13 This proves that such artificial increase in prices were stage managed through predetermined transactions amongst the members of the syndicate, The prices of the shares were thus clearly manipulated apparently to 227 times the purchase value only to provide bogus gains to the beneficiaries who approached such members, like the appellant In the instant case.*

*5,3,14 Further, the genuineness of sale of this company's scrip at such atypical price is also questionable from the timing of exit by the appellant. The decision to exit at a particular time when the price was at a particular level is not a natural event as is made out to be but comes across as a pre-determined event decided by the entry operators based on the amount of gains the appellant desired and his capacity to provide necessary financial resources to the extent.*

*5,3.15 Against this background, the appellant's attempts to establish The sale with abnormal increase in share price as a normal transaction and that too after a relatively shorter holding period is highly absurd and against human nature and the concept of human probabilities. It is thus a clear attempt and strategy by the appellant to make believe on the surface that the offloading of shares was based on the natural demand envisaged in the Stock exchange and that he was not manipulated.*

*5.3.16 Therefore, as against these wholesome facts, when such a large machinery is involved in accommodating the needs of the appellant, merely because the monies are paid and received through banking channels and that the shares were traded through stock exchanges through a broker does not lend any authenticity to the transactions more particularly when the modus operandi narrated by*

*the key persons during enquiries conducted by the Investigation Wing, Kolkata matched with the execution of the scheme of purchase and sale of the bogus penny stocks by the appellant in the instant case. In fact, it is noticed during the appellate proceedings that such bogus transactions were not confined to the appellant alone but has also been implemented by his other family members too who have also booked exempt profits of similar nature through the very same manipulative penny stocks modus operandi and interestingly for similar amounts.*

*5.3.17 Attention is drawn to the decision of the Hon'ble Madras High Court in the case of CIT vs. Krishnaveni Ammal reported in [1986] 158 ITR 826 (MAD.), wherein it was held that:*

*" when, there are other documentary evidence of corroborative value .... judicial body cannot act on such interested testimony of assessee alone ... "*

*5.3.18 Based on the discussion as above, these facts when viewed against the whole background of events as unfolded, apparently reinforce the modus operandi detailed by the AO that the appellant had made investment in these shares only with an intention to off load them at a later date for a substantial predetermined gain to be introduced into his books in the form of exempt LTCG. The modus operandi involved clearly proves that the penny stocks traded in by the appellant are manipulated to convert unexplained money into tax free profits.*

4.1 Thereafter, the Ld. DR submitted that after considering the facts and circumstances, supra, the Ld. CIT(A) relying on various Tribunal / High Court decisions viz.,

a) CIT vs. Krishnaveni Ammal, [1986] 158 ITR 826 (Mad)

- b) ITO vs. Ratnakar M. Pujari in ITA No.995/MUM/2012 dated 03.08.2016
- c) ITO vs. Shamim M. Bharwani in ITA No.4906/MUM/2011, [2016] 69 taxmann.com 65 (Mumbai – Trib)
- d) Arvind Bakrishna Goregonkar vs. ITO 21(2)(1), in ITA No.6717/Mum/2016 dated 03.01.2018
- e) Sanjay Bimalchan Jain, [2017] 5 TMI 983 dated 10.04.2017, Mumbai High Court
- f) Vidya Reddy, Chennai vs. ITO International Taxation, Ward 1(2) in ITA No.2016/CHNY/2017 dated 16.05.2018

held that the transactions involving purchase and sale of shares of Essar India Ltd., have been manipulated and the LTCG stated to have been earned from them are clearly bogus in nature and accordingly upheld the action of the Assessing Officer in the respective cases. Thereafter, the above assessee filed the impugned appeals before this tribunal. Since the findings recorded by the lower authorities are not challenged with relevant material by the respective assessee, the Ld. DR pleaded to dismiss these appeals.

5. We heard the Ld.DR and gone through the relevant material. The Assessing Officer received a report from the investigation wing of Kolkata, in which, inter alia, each of the assessee was specified as one of the parties who indulged in bogus / non-genuine long term capital gain from the transactions of alleged purchase and sale of shares of Essar India Ltd, which was found by them as penny stock company and a scheme was hatched by various players to obtain / provide accommodation of entry of bogus LTCG through manipulation of stock market for generating bogus LTCG . Therefore, the Assessing Officer re-opened and scrutinized assessment / scrutinized the assessment , as the case may be , and found that the respective assessees purchased off market 4000 and 4200 shares, respectively, of M/s. Essar (India) Ltd., @ Rs.1 per share, subsequently sold them on line through M/s. Sugal and Damani Share Brokers Ltd., for Rs.9,08,000/- and Rs.14,45,500/-, respectively, at an average rate of Rs.227/- per share approx., disclosed Long Term Capital Gain in their respective return and claimed it as an exempt income U/s.10(38). The Assessing Officer examined the entire set of transactions and held, inter alia, that the respective assessee has deliberately entered in to a sham transaction of purchase and sale of bogus

shares with full knowledge of such transactions in view of the substantial gains shown on the sale of such penny stocks, within reasonably a short period so as to convert the unaccounted money into accounted money in the guise of exempt capital gains. Therefore, the Assessing Officer treated the entire sale at Rs.9,08,000/- & Rs. 14,45,400/- as an unexplained credit U/s.68 and completed the respective assessment. Aggrieved, the respective assessee filed appeals before the CIT(A). Since, the right to exemption must be established by those who seek it, the onus therefore lies on the respective assessee. In order to claim the exemption from payment of income tax, the assessee had to put before the Income Tax authorities proper materials which would enable them to come to a conclusion. (35 ITR 312 (SC)). However, in these cases, it is seen from the orders of the Ld.CIT(A), supra, that the respective assessee has not placed relevant material and proved the genuineness of the impugned transactions. Although, an appeal against the above orders have been filed before this tribunal, even before us also, the respective assessee has not challenged the findings recorded by the lower authorities with relevant material and hence we dismiss these appeals.

6. In the result, the appeal filed by the each of the above assessee is dismissed.

Orders pronounced in the court on the 16<sup>th</sup> August, 2019 at Chennai.

Sd/-

(धुव्वुरु आर एल रेड्डी)

(Duvvuru R.L Reddy)

न्यायिक सदस्य/Judicial Member

Sd/-

( एस जयरामन )

(S. Jayaraman)

लेखा सदस्य /Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 16<sup>th</sup> August, 2019

**RSR**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त (अपील)/CIT(A)

4. आयकर आयुक्त/CIT

5. विभागीय प्रतिनिधि/DR

6. गार्ड फाईल/GF