

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH,
MUMBAI
BEFORE SHRI SHAMIM YAHYA, AM AND SHRI AMARJIT SINGH, JM

I.T.A. No. 4774/M/2018
(Assessment Year: 2015-16)

Shri Dilip Chheda. Chheda Sadan, Samel Pada, Opp. Mahakali Mata Mandir, Station Road, Nallasopara (W)-401203.	<u>बनाम/</u> Vs.	ITO Ward-4(1) A- Wing, 6 th Floor, Ashar IT Park, Road No. 16-Z, Wagle Indl. Estate, Thane-400604.
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स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AAUPC6800E

I.T.A. No. 4776/M/2018
(Assessment Year: 2015-16)

Shri Manoj Chheda Chheda Sadan, Samel Pada, Opp. Mahakali Mata Mandir, Station Road, Nallasopara (W)-401203.	<u>बनाम/</u> Vs.	ITO Ward-4(2) A- Wing, 6 th Floor, Ashar IT Park, Road No.16-Z, Wagle Indl. Estate, Thane-401203.
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स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AAUPC6808N

I.T.A. No. 4777/M/2018
(Assessment Year: 2015-16)

Smt. Heena Chheda Chheda Sadan, Samel Pada, Opp. Mahakali Mata Mandir, Station Road, Nallasopara (W)-401203.	<u>बनाम/</u> Vs.	ITO Ward-4(5) A- Wing, 6 th Floor, Ashar I.T. Park, Road No.16-Z, Wagle Indl. Estate, Thane- 401203.
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स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : ABUPC5841J

I.T.A. No. 4778/M/2018
(Assessment Year: 2015-16)

Smt. Bhavna Chheda Chheda Sadan, Samel Pada, Opp. Mahakali Mata Mandir, Station Road, Nallasopara (W)-401203.	<u>बनाम/</u> Vs.	ITO Ward-4(5) A- Wing, 6 th Floor, Ashar I.T. Park, Road No.16-Z, Wagle Indl. Estate, Thane- 401203.
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स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : ABUPC5840K		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	None	
Revenue by:	Shri Chaitanya Anjaria (DR)	

Date of Hearing: 27/08/2019
Date of Pronouncement: 28/08/2019

ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the above mentioned appeals against the different order passed by the Commissioner of Income Tax (Appeals)-3, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the assessment year 2015-16.

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2. The assessee has filed the present appeal against the order dated 19.06.2018 passed by the Commissioner of Income Tax (Appeals)-3, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the assessment year 2015-16.

3. The assessee has raised the following grounds: -

"1. The Ld. CIT(A) has erred in law and in facts by confirming the addition made by AO amounting to Rs. 21,92,278/- u/s 68 of the Income Tax Act, 1961 by holding that the Long Term Capital Gains earned by the appellant were bogus in nature and were merely accommodation entries without appreciating the fact that

a) the appellant had earned capital gains on shares listed on recognized stock exchange by paying the SIT and receiving the sale consideration through its bank accounts.



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b) The Ld. CIT(A) had simply relied on specific information/findings received from the Investigation Wing without verifying whether it is applicable to the assessee or not.

The Appellant craves leave to add to and/or amend and/or delete and/or modify and/or alter the aforesaid grounds of appeal as and when the occasion demands. u/s 68 of the Act. The appellant prays that no adverse view may please be taken.”

4. The brief facts of the case are that the assessee filed the return of income for the A.Y. 2015-16 on 30.09.2015 declaring total income to the tune of Rs.14,47,860/-. The case was selected for scrutiny under CASS for examining suspicious long term capital gain on share on the basis of inputs from Investigation Wing, Kolkata. The investigation carried out by the Directorate of Investigation, Kolkata has established that a racket generating bogus entries of Long Term Capital Gain which was claimed as exempt was busted. In this racket, the operators make the beneficiary to buy shares of a pre-determined penny stock company controlled by them. These shares were transferred to the beneficiary at a very nominal price through preferential allotment of off-line sale to save STT. The beneficiary holds the share for the statutory period and when the price reaches the desired level, the beneficiary who bought the shares at a normal price was made to sell it to a dummy paper company of the operator and claimed LTCG exemption u/s 10(38) of the Act. The appellant purchased 4000 shares for Rs.1,40,000/- of M/s. HPC Bio Ltd. (Penny Stock) through preferential offer and later on these shares were sold on various dates i.e. 3900 shares on 09.06.2014 for Rs.21,92,278/-. On analyzing the share transitions of M/s. HPC Bio Ltd., the AO noticed that the shares have been



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abnormally accelerated after a prescribed period of one year and sale value of shares were prearranged in the form of obtaining accommodation entry. The appellant statement u/s 131 of the Act was recorded. The appellant also submitted the general reply stating that the transaction was routed through stock exchange and payment was made by cheque, therefore, it should be treated as genuine. The AO rejected the claim and raised the addition of long term capital gain in sum of Rs.21,92,278/- u/s 68 of the Act. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who affirmed the addition, therefore, the assessee has filed the present appeal before us.

5. We have heard argument advanced by the Ld. Representative of the Department and has gone through the case carefully. The notice of the assessee was not served being the assessee left out the address disclosed. The CIT(A) has given the following findings as under: -

“5.0 Ground No.1 is directed against the addition of Rs.21,92,278/- treating the Long Term Capital Gain as unexplained cash credit and not allowing the claim of exemption u/s.10(38) of the Act.

(i) The Directorate of Investigation(Wing), Kolkata had carried out search and survey action, to unearth the organized racket of generating bogus entries of Long Term Capital Gain(LTCG) and claiming exemption u/s.10(38) of the Act. In this racket, the operators make the beneficiary to buy shares of a pre-determined penny stock company controlled by them. These shares are transferred to beneficiary at a very nominal price through preferential allotment of off-line sale to save STT. The beneficiary holds the share for the statutory period and when the price reaches the desired level, the beneficiary who bought the shares at a low or normal price, is made to sell at an exorbitant profit and claimed LTCG exemption u/s.10(38). The operators rig the price of the stock and gradually raise its price



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many times, often 500 to 1000 times. Accordingly, the AO denied the claim of long term capital gain of Rs.21,92,278/- and the same is added as unexplained cash credit u/s.68 of the Act.

(ii) From the findings of the Directorate of Investigation, Kolkotta, it cannot be denied that the appellant has purchased penny stock through operators/brokers and after rigging the price, the same was sold and also claimed L1CG exemption u/s.10(38) of the Act. The modus operandi carried out by these operators is in public domain and most importantly, SEBI and BSE have also taken action against such operators and barred these entities to trade in stock exchanges.

In the cases of penny stock including the Scrip of M/s.HPC 810 Ltd. a detailed enquiry was conducted on entry providers, riggers, beneficiaries etc, by the Directorate of Income-tax(Investigation) and found that several taxpayers had invested money in penny stocks, which are lowly priced stocks of companies with weak fundamentals through the operators, stock brokers and owners for raising bogus long term capital gains by artificially raising the share price for booking bogus claims of LTCL or STCL by various beneficiaries. The Bombay Stock Exchange, Disciplinary Action Committee passed the order and BSE vide its notice No.20150805-19 dated 05.08.2015 and notice No.20150806-15 dated 06.08.2015 suspended the trading of M/s.HPC BIO LTD for a period of 10 trading days.

(iii) In this regard, vide EFS Instruction No.53 of Directorate of System dated 08.03.2016 of CBDT issued instruction regarding the handling of Penny Stock cases (Suspect LTCL /STCL etc). Vide EFS Instruction under reference a new button 'Penny Stock' has been added on Individual Transaction Screen (ITS) to display information related to penny stock, which is enabled on the screen of the Assessing Officers(AOs). The crucial information has been provided to the AOs regarding the manipulative transactions carried out by the entry providers and riggers have been captured in the functionality, including the investigation report of the Kolkata Investigation Directorate.

(iv) The investigation of penny stock cases is carried out by various agencies like Directorate of Income-tax(Investigation), BSE, SEBI surveillance team etc. In fact, the crucial information obtained by the Directorate of Income-tax, (Investigation) found at the time of search and survey has been intimated and shared with SEBI and vice versa. As such, such rampant manipulations call for concerted and coordinated action by the various enforcing agencies concerned in this regard, SEBI's proactive role In the above context Is crucial and has also established the modus operandi carried out by the entry providers, and both SEBI as well as BSE. have tanned trading in these penny stock securities.



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Based on information received from the IT department and also through SEBI's own surveillance systems, SEBI, vide its order dated 29.06.2015 has found that M/s.HPC Bio Ltd.. is indulging in activities which are in contravention of SEBI Act and Rules. SEBI had passed orders under section 11(B) of the SEBI Act, 1992, in case of 13 such companies and debarred 1,336 entities and had suspended trading in the shares of 203 companies and reduced the price band of 168 companies to the lowest band.

(v) In the instance case, regarding the purchase and sale of M/s. HPC Bio Ltd. scrip, the AO has elaborately discussed from Para 9 to Para 18 in the assessment order. Even in the appellate proceedings, the AR of the appellant has only explained what was explained before the AO and has also not rebutted the findings made by the Directorate of Income-Tax(Investigation) Kolkata, SEBI surveillance team, and also, BSE has suspended the trading in the securities of the following companies including M/s. HPC Bio Ltd. (535217) in pursuance of the_ directions received from SEBI.

(vi) As discussed from Para 09, in the assessment order, the details of purchase and sale of shares of M/s. HPC Bio Ltd. are as follows- purchased 4000 shares for Rs.1,40,000/- on 07.03.2013 and sold 3900 shares on 09.06.2014 for Rs.21,92,278/- including the financial positions of the company starting from 2011-2012 to 2013-14 which clearly shows that the operators/entry providers in connivance with the main persons of company has rigged the share prices and the beneficiaries have booked bogus claim of LTCG exemption u/s.10(38) of the Act. M/s. HPC BIO LTD raised funds through series of preferential allotments. Once the company substantially increased its equity share capital base through preferential allotment and bonus issuances, the company came out with IPO in the year 2013 in the SME segment of BSE.

{vii} The appellant being very new to trading in penny stock and the earning of such huge income by a person not -known to such type of trading is against human probabilities, For, relied on the decision of Hon'ble Supreme Court in the case of Sumati Dayal Vs. CIT (Supra) reported in 214 ITR 801, the Hon'ble Supreme Court categorically observed that if there is sufficient indication based on the probabilities of an occurrence to disbelieve the statement made by the assessee, even when advanced with prima facie evidence, the AO may be justified in disbelieving the statement.

(viii) Lastly, the appellant did not ask for cross examination of the operators in appellate proceedings, as evident from the grounds of appeal filed before me. The operators who had given the statements u/s.131/132(4) have not retracted their statements and confirmed



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that the aforesaid transactions of accommodation entries. In this regard, the Hon'ble Supreme Court has observed in the case of CIT vs. Durga Prasad More (1971) 82 ITR 540(SC) to the effect that Science has not yet invented any instrument to test the reliability of the evidence placed before a court or tribunal. Therefore, the courts and tribunals have to judge the evidence before them by applying the test of human probabilities." Therefore, genuineness of transactions has to be examined in the light of the prevailing ground realities, therefore, in the case of the appellant the modus operandi of manipulation by the operators and others have been proved by Directorate of Investigation(Kolkata), SEBI and BSE.

Further reference may be made to another landmark judgment by the Hon'ble Supreme Court in the case of CIT v. Durga Prasad More (1971) reported in 82 ITR 540. The Hon'ble Apex Court observed that it is true that an apparent must be considered real until it is shown that there are reasons to believe that the apparent is not real. If all that an assessee who wants to evade tax is to have some recitals made in a document either executed by him or executed in his favour then the door will be left wide open to evade The Hon'ble Court also observed that the taxing authorities were not required to put on blinkers while looking at the documents produced before them. They were entitled to look into the surrounding circumstances to find out the reality of the recitals made in those document and the matter has to be considered by applying the test of human probabilities.

It was argued that the scrip in which investment was made by the appellant is admittedly a penny stock and the said stock by its very nature and functioning is mysterious. Normally, in the share market an investment is always made only in good stock and the good stock is identified in the market where it has sound fundamentals with a good target record of giving dividend over a period of time. The share in question it was argued is definitely not a stock in that category. The penny stock it was argued basically always exhibit a cyclic pattern where both the buyer and seller seek an advantage of an artificially created market situation to exploit and avoid taxation.

(ix) A reference may gainfully be made to the following judicial pronouncement of the Hon'ble Supreme Court. In the case of Mcdowell & Co. Ltd. v. CTO [1985] reported in 154 ITR 148, the Hon'ble Supreme Court held and observed as under:

"Tax planning may be legitimate provided it is within the framework of law. Colorable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honorable to avoid the payment of tax by resorting to dubious methods. It is the obligation of



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every citizen to pay the taxes honestly without resorting to subterfuges."

Reliance is also placed on the recent decision of the Hon'ble Bombay High Court in the case of Shri. Sanjay Bimalchand Jain L/H of Shantidevi Bimalchand Jain vs. The Pr. Commissioner of Income Tax-1, Nagpur & Another reported in ITA No.18/2017 order dated 10.04.2017 has upheld the decision of the Hon'ble ITAT in appellant's own case reported in ITA No.61/Nag/2013, A.Y.2006-07 order dated 18.07.2016. The Hon'ble High Court has decided in favour of the Revenue on penny stock addition, therefore, in principle, even in the case of the appellant is squarely applicable.

In view of the above stated facts, the addition made by the AO is confirmed as the appellant has claimed LTCG in a dubious manner as established by the Directorate of Investigation, Kolkata and further established at the time of assessment proceedings. Hence, the appeal of the appellant is dismissed."

6. On appraisal of the above mentioned finding, we noticed that the Directorate of Investigation (Wing), Kolkata had carried out, the investigation in which the M/s. HPC Bio Ltd. was found indulging in the activity in contravention of SEBI Act and Rules. SEBI had suspended the trading in the securities of M/s. HPC Bio Ltd. The financial position of the company was not good while purchasing the shares whereas the company was at giving after the expiry of one years the amount in sum of Rs.21,92,278/-. It also speaks that the said transaction is non-genuine. The CIT(A) has relied upon the number of decision to arrive at this conclusion that the transaction was bogus. Each and every aspects of the transaction has been properly dealt with. The reason for declining the claim of the assessee has duly been discussed which nowhere required to discuss again. Taking into account all the facts and circumstances of the case, we are of the view that the CIT(A) has decided the matter of



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controversy judiciously and correctly which is not liable to be interfere with at this appellate stage. Accordingly, we decided these issues in favour of the revenue against the assessee.

In the result, the appeal filed by the assessee is hereby ordered to be dismissed.

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7. The fact of the present case is quite identical to the facts of the case as narrated above while deciding the ITA. No.4774/M/2018 above therefore, there is no need to repeat the same. However, the figure is different. The finding given above while deciding the appeal bearing ITA. No.4774/M/2018 is quite applicable as mutatis mutandis in these cases also. Accordingly, these appeals are also being hereby dismissed on similar lines.

8. In result, appeals filed by the assessee are hereby ordered to be dismissed.

Order pronounced in the open court on 28/08/2019

Sd/-

(SHAMIM YAHYA)

लेखासदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated :28/08/2019

Sd/-

(AMARJIT SINGH)

न्यायिकसदस्य/JUDICIAL MEMBER

Vijay/Sr PS



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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त(अपील)/ The CIT(A)-
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापितप्रति //True Copy//

उप/सहायकपंजीकार

(Dy./Asstt.Registrar)

आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai