

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'D' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस. जयरामन, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1332/Chny/2018

निर्धारण वर्ष /Assessment Year : 2013-14

Shri Nilesh K. Shah,
No.253, New No.471,
Sydenhams Road, Choolai,
Chennai - 600 112.

v. The Assistant Commissioner of
Income Tax,
Non Corporate Ward 9(1),
Chennai - 600 034.

PAN : AASPS 3545 G

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri K. Balasubramanian,
Advocate

प्रत्यर्थी की ओर से / Respondent by : Shri S. Pandian, JCIT

सुनवाई की तारीख / Date of Hearing : 24.07.2019

घोषणा की तारीख / Date of Pronouncement : 11.10.2019

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals) -10, Chennai, dated 31.01.2018 and pertains to assessment year 2013-14.

2. Shri K. Balasubramanian, the Ld.counsel for the assessee, submitted that the assessee purchased shares of M/s NCL Research and

Financial Services Ltd. from stock exchange. According to the Ld. counsel, the shares were kept in the demat account for more than 15 months. Subsequently, the assessee sold the shares through stock exchange. According to the Ld. counsel, the assessee filed the copy of the Contract Note, statement of demat account, etc. before the Assessing Officer. However, the Assessing Officer found that M/s NCL Research and Financial Services Ltd. is a penny stock company on the basis of the information said to be obtained from online search. Referring to para 2.4 of the assessment order, the Ld.counsel submitted that based upon the information said to be found on online search, the Assessing Officer disallowed the claim of deduction under Section 10(38) of the Income-tax Act, 1961 (in short 'the Act') and made addition under Section 68 of the Act as unexplained credit. According to the Ld. counsel, the material found during the course of online search by the Assessing Officer was not furnished to the assessee. Therefore, the assessee had no occasion to explain the same.

3. Referring to the order of the CIT(Appeals), the Ld.counsel for the assessee submitted that M/s NCL Research and Financial Services Ltd. came to the adverse notice of SEBI in a penny stock scam and online trading was suspended. Therefore, according to the Ld. counsel, the CIT(Appeals) found that there was artificial increase in the price of

shares. However, the fact that the assessee purchased through online is not disputed. The assessee sold the shares through online is also not disputed. According to the Ld. counsel, it is not known when the SEBI suspended trading of shares of M/s NCL Research and Financial Services Ltd. The fact remains that M/s NCL Research and Financial Services Ltd. is one of the listed companies for trading in the SEBI platform. Therefore, according to the Ld. counsel, the observation of the CIT(Appeals) that the price of shares was artificially increased has no basis.

4. On the contrary, Dr. S. Pandian, the Ld. Departmental Representative, submitted that the assessee purchased the shares of M/s NCL Research and Financial Services Ltd. at price listed in Bombay Stock Exchange through brokers. According to the Ld. D.R., the assessee also disposed the shares of M/s NCL Research and Financial Services Ltd. at an average rate of ₹1,084/- per share in the months of November, 2012 and February, 2013. The purchase price of shares was admittedly ₹2/- per share. The sale price was apparently 54,100 times more than the purchase price / face value of the share. According to the Ld. D.R., this kind of increase is highly improbable in the normal course, therefore, it is obvious that the price of the shares was artificially

increased. Hence, the CIT(Appeals) has rightly confirmed the order of the Assessing Officer.

5. We have considered the rival submissions on either side and perused the relevant material available on record. The Assessing Officer appears to have made a search through online in respect of 20 companies said to be registered in the same address and in the same room. The assessee admittedly purchased the shares of M/s NCL Research and Financial Services Ltd. The face value of such share was ₹2/- per share. The assessee sold the shares at ₹1,084/- per share within a short span of 15 months. The question arises for consideration is when the assessee purchased the shares from stock exchange through broker and also sold the same, whether the assessee can be said to have manipulated the price of the shares? It is not known how the assessee is related to the promoters of the company or how the assessee involved in the manipulation / inflation of the price of shares at the time of sale. Whether there was any cartel formed to inflate the price of shares is also not brought on record.

6. When the assessee is a citizen of this country, invested in the shares of the company with an intention to earn profit on sale, can we say such an activity is illegal and prohibited by law? This Tribunal is of the considered opinion that mere investment in the shares and earning

profit on sale cannot be construed to be an illegal activity or prohibited by law. In fact, the law permits the citizens of this country to invest in the shares. The Assessing Officer claims that the price of the shares of M/s NCL Research and Financial Services Ltd. is inflated artificially so as to earn profit which is not possible in the normal trading activity. This fact has to be examined and brought on record how the assessee is involved in the promotion of the company or involved in inflating the shares of the company. If the assessee is a part of cartel in promoting the company and inflating the price of the shares artificially, then, naturally such profit cannot be allowed as exempted under Section 10(38) of the Act.

7. However, it is for the Assessing Officer to bring on record whether any such cartel was formed and whether the assessee was a party in inflating the price of the shares artificially. Moreover, the search said to be made by the Assessing Officer through online was not furnished to the assessee. In those circumstances, this Tribunal is of the considered opinion that the matter needs to be re-examined. Accordingly, the orders of both the authorities below are set aside and the entire issue raised by the assessee is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter in the light of the material that may be filed by the assessee after furnishing copies of the material said to be gathered by the Assessing Officer by search through online

and thereafter decide the issue afresh in accordance with law, after giving a reasonable opportunity to the assessee.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the court on 11th October, 2019 at Chennai.

sd/-

(एस. जयरामन)

(S. Jayaraman)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 11th October, 2019.

Kri.

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-10, Chennai-34
4. Principal CIT-7, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.