



ITA No.2841/Mum/2019
Manish Shantilal Shah
Assessment Year-2015-16

आयकर अपीलीय अधिकरण “डी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI

श्री शक्तिजीत दे, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE SHRI SAKTIJIT DEY, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No. 2841/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2015-16)

Manish Shantilal Shah B-53, 5 th Floor, Rustomjee Regal Adarsh Dughdalaya, Malad(W) Mumbai-400 064.	बनाम/ Vs.	ITO-30(2)(3) C-13, Room No.608, 6 th Floor Pratyakshkar Bhavan Bandra Kurla Complex, Bandra (E) Mumbai-400 051.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AADPS-7733-H		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Bharat K. Patel-Ld. AR
Revenue by	:	Shri Sunil K. Jha-Ld. DR

सुनवाईकीतारीख/ Date of Hearing	:	27/02/2020
घोषणाकीतारीख / Date of Pronouncement	:	11/03/2020

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member): -

1. By way of this appeal, the assessee challenges the exercise of revisional jurisdiction u/s 263 as exercised by Ld. Pr. Commissioner of Income-Tax-30 (Pr. CIT) vide order dated 07/03/2019.



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2. We have carefully considered the arguments advanced by both the representatives. We have also gone through the case records and impugned order. Our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

3.1 Upon perusal of case records, we find that the assessee being resident individual was assessed for year under consideration u/s 143(3) on 11/08/2017 accepting the returned income. During assessment proceedings, it transpired that the assessee sold 39000 shares of a scrip namely HPC Bio for Rs.22.83 Lacs and claimed Long-Term Capital Gains exempted u/s 10(38) for Rs.21.35 Lacs. Pursuant to investigation carried out by DGIT (Investigation), the said scrip was listed amongst 84 scrips through which accommodation entry of exempt Long-Term Capital Gains was provided to several beneficiaries, assessee being one of them. The assessee submitted that it declared the said gain under Income Disclosure Scheme, 2016 for taxation and exemption u/s 10(38) was no more applicable in the case of the assessee. Accepting the same, the assessment was framed by Ld.AO.

3.2 However, Ld. Pr.CIT, upon noticing that assessee offered income only to the extent of Rs.21.35 Lacs as against sale consideration of Rs.22.83 Lacs, show-caused assessee stating that the declaration to the extent of Rs.1.48 Lacs was not made. In other words, the Ld. Pr.CIT was of the opinion that the purchase value of shares of Rs.1.48 Lacs was to be disregarded and entire sale proceeds of penny stock was to be added to the total income.



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3.3 The assessee pointed out that correct cost of shares was Rs.1.40 Lacs as against sale proceeds of Rs.22.79 Lacs, however, in both the cases, the capital gain would remain at the same figure i.e. Rs.21.35 Lacs. The assessee drew attention to the fact that acquisition cost of Rs.1.40 Lacs was paid from assessee's capital account held with M/s King Enterprises. In support, requisite evidences were adduced. The attention was drawn to the fact that cost of Rs.1.40 Lacs was paid on 04/03/2013 vide cheque no. 61439 drawn on ICICI Bank. Therefore, the computation of capital gain was correct and the proposed action to tax the entire sale proceeds was uncalled for. However, not convinced, Ld. Pr.CIT opined that entire sale consideration was to be offered as income instead of Long-Term Capital Gains. Finally, terming the order to be erroneous and prejudicial to the interest of revenue, the order was set aside and Ld. AO was directed to reframe the assessment after providing proper opportunity of being heard. Aggrieved, the assessee is under further appeal before us.

4. Upon careful consideration of documents on record, we find that the assessee has subscribed to public issue of HPC Biosciences Ltd. by paying a sum of Rs.1.40 Lacs which was debited to assessee's capital account held with M/s King Enterprises. The said payment has been cleared from bank account on 07/03/2013. The shares were held since 15/03/2013 which is evident from Long-Term Capital Gain statement of assessee's broker. In the opinion of Ld. Pr.CIT, the cost of acquisition was also to be added to the income of the assessee. However, unless the said payment has certain element of undisclosed income, the same could not be said to be the



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undisclosed income of the assessee. The said cost of acquisition has been paid by the assessee in a public issue. The payment is well supported by documents on record. Therefore, there could be no occasion to term the order of Ld. AO as erroneous and prejudicial to the interest of the revenue within the meaning of Sec.263. We find the impugned order unsustainable and therefore, quash the same.

5. The appeal stands allowed in terms of our above order.

Order pronounced in the open court on 11th March, 2020.

Sd/-
(Saktijit Dey)
न्यायिक सदस्य / **Judicial Member**

Sd/-
(Manoj Kumar Aggarwal)
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 11/03/2020
Sr.PS:-Jaisy Varghese

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

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

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.