



ITA No.4319/Mum/2016
Neeta Ashok Shah
Assessment Year :2010-11

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

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No.4319/Mum/2016
(निर्धारण वर्ष / Assessment Year: 2010-11)

Smt. Neeta Ashok Shah B-601, Harmony Apartments Ashok C. Road, Opp. Damodarwadi Kandivali (East), Mumbai- 400 101	बनाम/ Vs.	ITO-33(2)(4) Room No.610, 6 th Floor C-12, Pratyakshkar Bhavan Bandra (East), Mumbai- 400 051
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. ARKPS-1661-E		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Sh. N.M. Porwal-Ld.AR
Revenue by	:	Ms. Jyoti Lakshmi Nayak- Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	06/02/2020
घोषणा की तारीख / Date of Pronouncement	:	05/05/2020

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1.1 Aforesaid appeal by assessee for Assessment Year [in short referred to as ‘AY’] 2010-11 contest the order of Ld. Commissioner of Income-Tax (Appeals)-45, Mumbai, [in short referred to as ‘CIT(A)’], dated 18/03/2016 on following grounds: -

1. The order passed by the learned Commissioner of Income Tax, Appeals - 45, Mumbai is erroneous, unjustified, unwarranted, bad in law and against the principles of natural justice.



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2. The learned Commissioner of Income Tax, Appeals-45, Mumbai erred in sustaining the addition of Rs.33,37,726/- u/s 68 of the Income Tax Act, 1961 made by the AO on the basis of "suspicion, surmises and conjectures being entire sale consideration of shares as income from undisclosed sources.

3. The learned Commissioner of Income Tax, Appeals-45, Mumbai failed to understand that the shares were sold through a reputed stock broking company viz. M/s Joindre Capital Services Ltd. and shares were delivered by the appellant from her d-mat account and payment against sale of shares was received from the said broking company.

4. Without prejudice to ground no. 2 & 3 above, the learned Commissioner of Income Tax, Appeals - 45, Mumbai erred in law in holding that to claim exemption u/s 10(38), the STT is required to be paid on both the arms of the transaction i.e. purchase and sale of shares.

5. The learned Commissioner of Income Tax, Appeals - 45, Mumbai failed to appreciate that the statement recorded of Shri Mukesh Chokshi is a general statement and the name of the appellant has not been mentioned specifically in the said statements and no opportunity of cross examination has been provided as held by the Hon'ble Supreme Court in the case of **Kishanchand Chellaram V. CIT**[1980] 125 ITR 713 (SC).

6. The learned Commissioner of Income Tax, Appeals - 45, Mumbai erred in sustaining the addition of Rs. 17,40,000/- u/s 68 of the Income Tax Act, 1961 made by the AO on the basis of suspicion, surmises and conjectures. on account of sale of jewellery despite the fact that that purchasing parties confirmed the purchase of jewellery and payment was received by account payee cheques & bank drafts.

7. The learned Commissioner of Income Tax, Appeals-45, Mumbai failed to understand that the delay in receipt of payment against sale of jewellery was beyond the control of the appellant and same should not have been made the basis for sustaining the said addition.

It is prayed that order of the learned Commissioner of Income Tax, Appeals -45, Mumbai be quashed and additions made of Rs. 33,37,726/- u/s 68 on account of sale of shares and Rs.17,40,000/- u/s 68 on account of sale of jewellery be deleted so as to meet the ends of justice.

As evident, the assessee is contesting the addition of Rs.33.37 Lacs u/s 68 and another addition of Rs.17.40 Lacs on account of sale of Jewellery which has been confirmed by Ld. first appellate authority.

1.2 We have carefully heard the rival submissions and perused relevant material on record including documents placed in the paper-book. The Ld. AR submitted that the factual matrix of gain on shares stood covered in assessee's favor by various decisions of this Tribunal.



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In particular, reliance has been placed on the decision rendered in the case of assessee's husband i.e. **Shri Ashok T. Shah vide ITA No.4318/Mum/2016 order dated 06/05/2019** for the submissions that similar issue of Long-Term Capital Gain on shares stood covered in assessee's favor. The copy of the order has been placed on record. It has been submitted that facts are *pari-materia* the same for this assessee. *Au Contraire*, Ld. DR pointed out various discrepancies in the financial statements of the assessee and submitted that the assessee miserably failed to prove that the shares were held as long-term capital assets. The Ld. DR also assailed the documentary evidences submitted by the assessee in support of sale of Jewellery transactions and pleaded for confirmation of impugned order. The Ld. AR controverted the same by submitting that the share transactions were well documented and financial statements were not part of assessment records which is evident from the fact that Ld.AO disregarded the Balance Sheets of the assessee as submitted during the course of assessment proceedings.

1.3 We have carefully considered all the submissions put forth before us. Our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

Addition u/s 68 for Rs.33.37 Lacs on account of Sale of Shares

2.1 Briefly stated, the assessee being *resident individual* was assessed for year under consideration u/s 143(3) r.w.s. 147 on 01/03/2013 wherein the income of the assessee was determined at Rs.53.97 Lacs after certain additions as against returned income of Rs.3.20 Lacs filed by the assessee on 17/05/2011 which was processed u/s 143(1). In the return



of income, the assessee had reflected Long-Term Capital Gains of Rs.28.94 Lacs on sale of 200 Shares of a scrip namely MMTC and the gains were claimed to be exempt u/s 10(38).

2.2 The assessee was subjected to reassessment proceedings pursuant to receipt of certain information that during search & seizure operations carried out by the department on 25/11/2009 in the case of *M/s Mahasagar Securities Private Limited* & its group concerns, it transpired that the assessee stood beneficiary of *bogus capital gains* on sale of 200 shares of a scrip namely *MMTC* for Rs.28.94 Lacs. It was alleged that the assessee obtained bogus purchase bills to acquire the shares of *MMTC* for Rs.4.43 Lacs. During the course of search proceedings, statement of *Shri Mukesh Chokshi*, who was stated to be managing all the group entities, was recorded wherein he admitted to have indulged in bogus billing activities. Accordingly, notice u/s 148 was issued on 10/10/2011 to the assessee which was followed by statutory notices u/s 143(2) & 142(1) wherein the assessee was asked to furnish the requisite details and other documentary evidences to substantiate the share transactions. The reasons leading to reopening were duly communicated to the assessee.

2.3 Upon perusal of details filed by the assessee, it was found that the assessee earned *Long-Term Capital Gains* of Rs.28.94 Lacs and claimed the same to be exempt. The details of the transactions were as follows: -



No.	Scrip Name	Quantity	Sale Value	Purchase Value	Gain
1.	MMTC (sold during April, 2009)	200	33.37 Lacs	4.43 Lacs	28.94 Lacs

The gains were claimed to be exempt u/s 10(38) while filing the return of income.

2.4 In response to notices, the assessee furnished copies of contract notes in support of the fact that the shares were purchased through *M/s Alliance intermediaries & Network Pvt. Ltd. [AINPL]* during AY 2008-09 which were stated to be sold during April, 2009. The assessee submitted broker note and holding letter from M/s AINPL. However, the assessee, in the opinion of Ld. AO, failed to bring on record any proof to establish that the shares were held for more than 12 months. It was noted that the shares were stated to be purchased from M/s AINPL whereas the same were sold through another broker namely M/s Joinder Capital Services Ltd. (JCSL). In order to verify the fact that the purchase transactions were routed through Bombay Stock Exchange Ltd. (BSE), the copies of contact notes were forwarded to BSE to confirm the said fact. In reply, it was submitted by BSE that M/s AINPL was neither a registered trading member nor a registered trade-broker affiliated to any trading member of the exchange.

2.5 Although the assessee reiterated that the transactions were genuine, however, disregarding the same, Ld. AO concluded that the assessee failed to prove the holding period of the shares and the evidences submitted in support of purchases were bogus. The Balance



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Sheet submitted by the assessee was disregarded upon noticing that the same did not form part of return of income filed by the assessee. It was also noted that the although the purchase were stated to be made during August, 2007, however, the bank statement of corresponding period did not show any such payment.

2.6 In the above background, the entire transaction was termed as an accommodation route through which the unaccounted money of the assessee was converted into accounted money in the garb of Long-Term capital gains (LTCG). Therefore, the sale amount of Rs.33.37 Lacs was treated as unexplained cash credit u/s 68 and added to the income of the assessee.

3.1 The Ld. CIT(A), while going through factual matrix, noted that M/s AINPL was not a sub-broker during the period 2007-2009 and it had not transacted through any stock exchange. The said entity, as per various decision of Tribunal, was accepted to be an entity engaged in providing accommodation entries. Further the provisions of Sec. 10(38) as introduced from AY 2005-06 mandated that the transactions should have been chargeable to securities transactions tax (STT) which would go against the argument of the assessee that the purchase of shares was through off-market purchases and therefore, the transactions had to attract STT. Since M/s AINPL was neither broker nor a sub-broker, the question of STT being paid to the exchange and ultimately to the treasury would be ruled out. Therefore, the stated addition was to be confirmed.



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3.2 It was also noted that the shares were de-matted only one or two days before they were sold. The purchase amount was fully paid after the sale of these shares. Therefore, the whole transactions reeks of arrangement made for accommodation entries. In the above background, the addition was confirmed.

Aggrieved, the assessee is under further appeal before us.

4. Upon due consideration, we concur with the submissions of Ld. AR that facts in the case of assessee's husband i.e. Shri Ashok T. Shah, were pari-materia the same. The said assessee, earned gain on sale of shares of MMTTC on identical set of facts. The coordinate bench of the Tribunal, vide ITA No.4318/Mum/2016 order dated 06/05/2019, allowed assessee's appeal by observing as under: -

6.1 Proceeding further on merits, the factual matrix is like that the assessee has purchased the stated scrips during AYs 2006-07 and 2007-08 from *M/s AINPL* which is evidenced by broker bill, contract notes, ledger extracts etc. and the delivery of the shares is stated to be taken in assessee's *demat* account. The payment of purchase of scrips has been made through banking channels as evident from assessee's bank statements, ledger confirmation etc. Upon perusal of financial statements, we find that the investment in the scrips was duly reflected by the assessee in its *Balance Sheet* as on 31/03/2006 & 31/03/2007, which is uncontroverted fact. The sale of scrips during impugned AY has taken place in stock exchange through an independent broker namely *M/s JCSL* and the delivery of the shares have been given from the assessee's demat account and the sale consideration has been received through banking channels. The assessee is in possession of broker bills & contract notes in respect to purchase as well as sale of these scrips. There is credit and debit of shares in assessee's demat account. The scrips are of reputed corporate entities like *IFCI, Indian Bank & Jai Corp.* Nothing on record establishes that the broker namely *M/s JCSL* was, in any manner, connected with the tainted group. Therefore, there could be no occasion to treat the sale transactions as *bogus transaction*. As a natural corollary, since there could be no sale of scrips without actual purchase of scrips, the purchase transactions could not be termed as *bogus transactions*.

6.2 The Ld. AO, in the process of making additions, has heavily relied upon the statement of *Shri Mukesh Chokshi* without bringing on record any cogent material to establish that the sale transactions carried out by the assessee though *M/s JCSL* were *bogus transactions*. In fact, the lower authorities, in our opinion, has missed out the fact that the sale transactions had taken place through an independent



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broker namely *M/s JCSL* and not through *M/s AINPL*. Another aspect is that additions have been made merely by relying upon third party statements which were never confronted to the assessee in violation of principle of natural justice.

6.3 The assessee, in our opinion, discharged the primary onus of proving the stated transactions by submitting purchases bills, contract notes of purchase of shares, holding letter from the broker, bank pass book evidencing payment through banking channels towards purchase of shares, copy of ledger account in the books of share broker, sales bills and sale contract notes issued by *M/s JCSL*, copy of ledger account in the books of *M/s JSCL*, delivery position and global net position demat report, bank pass book evidencing receipt of sale consideration through banking channels.

6.4 It is trite law that the additions could not be made merely on the basis of doubts, conjectures or surmises. Keeping in view the totality of facts & circumstances, we are inclined to delete the impugned additions of Rs.28,02,666/-. This ground stand allowed.

Similar are the facts in share transactions carried out by present assessee. We find that the sale transactions have taken place through an independent broker and the sale proceeds have been received through banking channels. The sale could not take place without making purchases thereof. The purchases were supported by contract notes, holding letter and the payment was through banking channels. The shares were credited in the demat account of the assessee. This is further fortified by the fact that the stated purchase transactions were doubted by Ld.AO in AY 2008-09 and the purchase value of shares of MMTC was added to the income of the assessee as unexplained cash credit. However, upon further appeal, Ld. CIT(A) deleted the same by observing that the assessee had discharged the onus by producing the brokers note and AO had not found any reason to doubt the same. Nothing was brought on record to show that these were false or untrue. The revenue's appeal, against the same, has already been dismissed by the Tribunal vide ITA No.7463/Mum/2014 order dated 20/06/2016 on



account of low tax effect. Therefore, the matter of purchase of shares has already attained finality in assessee's favor and hence, the purchase transactions were to be accepted as genuine and carried out in AY 2008-09 only. Under these circumstances, when the purchase of shares was to be accepted as genuine then the sale thereof could also not be doubted.

Respectfully following the ratio of above decision and on the given facts and circumstances, the impugned addition stand deleted. Grounds raised, in this regard, stands allowed.

Addition of Rs.17.40 Lacs on account of Sale of Jewellery

5.1 It transpired that the assessee reflected Long-Term Capital Gains (LTCG) on sale of old Jewellery for Rs.1.60 Lacs. The Jewellery was stated to be acquired in financial year 1986-87 at cost of Rs.3.50 Lacs. The indexed cost of the same was worked out to be Rs.15.80 Lacs against sale price of Rs.17.40 Lacs, thereby giving rise to LTCG of Rs.1.60 Lacs. The same was offered to tax in the return of income.

5.2 During assessment proceedings, the assessee explained that the assessee sold old scrap of jewelry and ornaments through its relatives. It was also submitted that the payment of Jewellery was not received during the year but receivables were shown in the Balance Sheet as *Sundry Debtors*. The final payment was stated to be received during May, 2011. However, upon perusal of assessee's submissions, Ld. AO held that the assessee could not establish the fact that it was in possession of Jewellery of this worth. No wealth tax return was ever filed and no valuation report was filed by the assessee in support of



possession of Jewellery. The copies of purchase bills were not provided. Therefore, the aforesaid claim was rejected and entire sale consideration of Rs.17.40 Lacs was brought to tax as unexplained cash credit.

6. During appellate proceedings, the assessee submitted the name and addresses of the persons to whom the Jewellery / ornaments were sold. The submissions were subjected to remand proceedings. Confirmatory notices u/s 133(6) were issued to all these parties, however, the same were returned back undelivered. The assessee could only produce confirmed copies of ITR etc. of the persons to whom the Jewellery was sold. Therefore, after due consideration, the action of Ld. AO was upheld by Ld. CIT(A). Aggrieved, the assessee is under further appeal before us.

7. It has been pleaded that the Jewellery was acquired by the assessee by way of customary gifts on the occasion of her marriage in 1982 and birth of her first child prior to 1986 and accordingly, the Jewellery would constitute *Streedhan* for the assessee. The said explanation would explain non-furnishing of purchases bills with respect to Jewellery. Keeping in view the status of the assessee, the said explanation could not be altogether brushed aside since the assessee, being a lady, as per the customs, would certainly acquire Jewellery in gifts on the occasion of marriage and on the occasion of the birth of a child. The said fact could be fortified with instruction No.1916 dated 11/05/1994 issued by CBDT which recognizes a fact that a married lady of reputed family could be expected to own 500 grams of ornaments and therefore the same need not be seized. This is coupled with the fact that



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the sale consideration has been received by the assessee through banking channels in subsequent financial years. Nothing on record would show that the said receipts have flown back to the purchaser of Jewellery. The assessee has placed on record financial statements of the three purchasers along with copies of their computation of income & Income Tax Returns. In their respective Balance Sheets, these purchase transactions have been recognized by the three purchasers and confirmation of account has also been placed on record. Therefore, keeping in view the fact of the case, the claim of the assessee was to be accepted. Therefore, we are inclined to delete the impugned additions and allow grounds raised by the assessee, in this regard.

8. Resultantly, the appeal stands allowed in terms of our above order. Order pronounced through circulation in Notice Board under Rule 34(4) of the Income Tax Appellate Tribunal Rules 1963 on 05/05/2020.

Sd/-

(Mahavir Singh)

उपाध्यक्ष / **Vice President**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 05/05/2020
Sr.PS, Jaisy Varghese



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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– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**