

आयकर अपीलीय अधिकरण “एक-सदस्यमामला” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI

माननीय श्री अमरजीत सिंह, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI AMARJIT SINGH, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing through Video Conferencing Mode)

आयकर अपील सं./ I.T.A. No.7155/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2007-08)

Income Tax Officer-28(3)(2) Room No.318, 3 rd Floor 6 th Tower Vashi Railway Station Complex Vashi-400 703	बनाम/ Vs.	Shraddha Doshi 3/11, Dhavalgiri Housing Society Sector-2, Opp. Hotel Abbot Vashi, Navi Mumbai-400703
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AHVPD-1376-Q		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Dr. P. Daniel-Ld. AR
Revenue by	:	Shri Sanjay J. Sethi-Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	07/07/2021
घोषणा की तारीख / Date of Pronouncement	:	12/07/2021

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by Revenue for AY 2007-08 contest the order of Ld. Commissioner of Income Tax (Appeals)-26, Vashi, Navi Mumbai [CIT(A)] order dated 25/09/2019 on following grounds of appeal.

- (1) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.11,15,541/- on account of undisclosed income being an accommodation entry in the form of bogus LTCG taken from Mahasagar Group, without appreciating the fact that parties

from whom these bogus LTCG were taken were proven accommodation entry providers.

(2) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is correct in stating the addition made by the AO was only based on statement of Mukesh Chokshi and that too for the A.Y. 2006-07 without appreciating the fact that the A.O. made independent enquiries and reached the conclusion that assessee had taken accommodation bills for LTCG and therefore treated the alleged LTCG of Rs.11,15,541/- as undisclosed income from undisclosed sources.

(3) The appellant prays that the order of Ld.CIT(A) on the above grounds be reversed and that of the Assessing officer be restored.

As evident, the revenue is aggrieved by deletion of addition of Rs.11.15 Lacs as made by Ld. Assessing Officer (AO) while framing the assessment.

2. We have carefully heard the rival submissions and perused relevant material on record including documents placed in the paper-book. Our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

3. The material facts are that the assessee being resident individual was assessed u/s. 143(3) r.w.s. 147 on 30/01/2015. The original return filed by the assessee was processed u/s 143(1). However, pursuant to search action by the department on accommodation entry provider Shri Mukesh Chokshi Group, it transpired that assessee made certain investment in the shares of an entity namely M/s Pace Electronics. The investment was made during AY 2006-07 through stock broking firm M/s Alliance Intermediaries & Network Pvt. Ltd. In this year, the investments were sold and the Long-Term Capital gains arising there-from were claimed as exempt from tax. The case for AY 2006-07 was reopened and the investments made by the assessee was added as unexplained investments which was accepted by the assessee.

Accordingly, the case was reopened for this year also as per due process of law and the assessee was directed to substantiate the sale transactions. The assessee submitted that additions were accepted in AY 2006-07 since the tax effect was small. However, going by the statement of Shri Mukesh Chokshi as made during search proceedings, the gains so earned were added to the income of the assessee as income from undisclosed sources.

4. During appellate proceedings, the assessee drew attention to the fact that sale of shares has taken place on stock exchange through independent share broking firm namely M/s Sushil Finance Consultants Ltd. The shares were delivered through demat account and the proceeds were received through banking channels. Therefore, the presumptions of Ld. AO were without any basis. Reliance was placed on various favorable decision of Tribunal rendered on similar factual matrix.

5. The Ld. CIT(A) concurred with assessee's submissions that the sale were duly supported by contract notes, bills, demat statements and bank passbook. The Ld. AO did not carry out any investigation to prove that the details in the contract notes / delivery bills were incorrect. The additions were made solely on the basis of statement of Shri Mukesh Chokshi. Therefore, the additions were not sustainable in law. Aggrieved, the revenue is in further appeal before us.

6. After going through assessment order as well as appellate order, we find that the sale transactions are duly supported by contract notes, bills, demat statements and bank passbook. The shares have been delivered from demat account and the

consideration have been received through banking channels. The sale has taken place on stock exchange through independent broking firm. All the evidences have not been controverted by Ld. AO. The whole basis of addition is the statement of Shri Mukesh Chokshi coupled with the fact that investment made by the assessee was accepted as unexplained investment in earlier years. However, no addition is sustainable merely on the basis of presumptions. It was incumbent on Ld. AO to dislodge assessee's documentary evidences. The failure to do so would result into the deletion of addition which has rightly been done by Ld. CIT(A) in the impugned order. Concurring with the findings of Ld. CIT(A), we dismiss the appeal.

7. Resultantly, the appeal stands dismissed.

Order pronounced on 12th July, 2021

Sd/- (Amarjit Singh)	Sd/- (Manoj Kumar Aggarwal)
न्यायिक सदस्य / Judicial Member	लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 12/07/2021
Sr.PS, Jaisy Varghese

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.