

**आयकर अपीलीय अधिकरण “एफ” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“F” BENCH, MUMBAI**

**माननीय श्री शक्तिजी दे, न्यायिक सदस्य एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON’BLE SHRI SAKTIJIT DEY, JM AND**  
**HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**  
**(Hearing Through Video Conferencing Mode)**

आयकर अपील सं./ I.T.A. No.7908/Mum/2019  
(निर्धारण वर्ष / Assessment Year: 2014-15)

<b>Shri Jitesh Banwari Bhargav</b> B/501, Pratik, JP Road Opp. Dhake Colony, D.N.Nagar, Andheri (W), Mumbai – 400 053	<b>बनाम/</b> <b>Vs.</b>	<b>ITO-24(2)(2)</b> Room No.514, 5 <sup>th</sup> Floor Piramal Chambers Parel, Mumbai - 400012
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. <b>AFVPB-3415-J</b>		
(पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	Shri Girish Dave-Ld. AR
<b>Revenue by</b>	:	Shri S.S.lyengar – Ld. DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	16/04/2021
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	12/07/2021

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by assessee for Assessment Year (AY) 2014-15 contest the order of Ld. Commissioner of Income Tax (Appeals)-36, Mumbai [CIT(A)], Appeal No.CIT(A), Mumbai-36/11235/2016-17 dated 07/11/2019 on following grounds of appeal: -

1. The order dated 07.11.2019 of the learned Commissioner of Income Tax (Appeals) {the CIT(A)} confirming the arbitrary, unjust and erroneous order of learned Assessing Officer (AO) is bad in law, arbitrary and unjust which requires to be reversed, cancelled and set aside.
2. The learned CIT(A) has erred in law and on the facts and in the circumstances of the case in upholding additions of Rs.2,36,02,476/- made by learned AO under Section 68 of the Income Tax Act, 1961 (the Act).

3. The learned CIT(A) has erred in law and on the facts and in the circumstances of the case in upholding additions of Rs.7,08,074/- made by learned AO under Section 69C of the Income Tax Act, 1961 (the Act).

4. The learned CIT(A) erred in law in calculating the Gross Tax in income computation form as Rs.73,25,977/- instead of Rs.72,77,383/-. Because of this, surcharge, education cess and interest are wrongly calculated.

5. The learned CIT(A) has erred in law and on the facts and in the circumstances of the case in upholding rejection by learned AO, of the claim of the income exempt under section 10(38) of the Act made by appellant in the return of income.

2. The Ld. AR, at the outset, relied upon the decision of Tribunal in the case of **Dipesh Ramesh Vardhan V/s DCIT (ITA Nos.7648/Mum/2019 & ors. Order dated 11/08/2020)** to submit that the facts as well as issues are identical in all respect. It has been submitted that this case law deals with gains arising out of sale of shares of an entity namely M/s Sunrise Asian Limited (SAL) which is similar to the issue in the present appeal. The Ld. DR relied on the orders of lower authorities.

3. We have carefully heard the rival submissions and perused relevant material on record including cited order of the Tribunal. Our adjudication to the subject matter would be as given in succeeding paragraphs.

### **Assessment Proceedings**

4.1 The assessee being resident individual was assessed u/s 143(3) on 29/12/2016 wherein it was saddled with impugned addition of Rs.236.02 Lacs u/s 68 on account of sale proceeds of certain shares. Another consequential addition of Rs.7.08 Lacs was made u/s 69C which was nothing but estimated expenditure of 3% allegedly paid by assessee in procuring the bogus long term capital gains.

4.2 It transpired that the assessee earned long-term capital gains (LTCG) of Rs.236.02 Lacs on sale of shares of an entity namely M/s Sunrise Asian Limited (SAL). The gains were claimed to be exempt u/s 10(38) of the Act. The 50000 numbers of shares of this entity were stated to be purchased by the assessee on 01/02/2012 at cost of Rs.10 Lacs which were ultimately sold during impugned financial year for aggregate sale consideration of Rs.246.02 Lacs giving rise to LTCG of Rs.236.02 Lacs in the hands of the assessee. However, this scrip was alleged to be a penny stock scrip, the prices of which were allegedly rigged to generate huge profits / losses through manipulate affairs. In the investigation carried out by the department, this scrip was found among those shares which were used to provide bogus LTCG to various beneficiaries. The investigation directorate carried out investigation into 84 penny stock including M/s SAL and rendered detailed findings which indicated generation of bogus LTCG/STCL entries. The modus operandi involving operators, intermediaries and the beneficiaries was detailed in the investigation report. One of such penny stock operators namely Shri Anuj Agarwal, in his statement, admitted that the shares of M/s SAL were used for providing accommodation LTCG. Similar statement was recorded from certain other persons which led Ld. AO to disbelieve the genuineness of gains earned by the assessee.

4.3 Based on the investigation report and data gathered in the case of assessee, it transpired that the assessee sold shares on various dates to number of buyers as detailed in para 7.1 of the order. Notices issued u/s 133(6) to all such purchasers were returned back in most of the cases. The analysis of financial statement of M/s SAL revealed that its financial

worth was insignificant which would not justify such abnormal increase in the price as shown.

4.4 It also transpired that the assessee initially purchased shares of an entity namely Santoshima Tradelink Limited (M/s STL) in offline mode from M/s Silverrice Multi Trading Pvt. Ltd. @Rs.20/- per share. M/s STL got merged into M/s SAL with the approval of Hon'ble Bombay High Court. Accordingly, new shares were issued to the assessee which were ultimately sold at abnormally high price. From trading pattern, it was observed that trades were executed with mutual understanding by placing simultaneous synchronized orders and the gains were arranged one. It was also noted that SEBI passed certain orders on the issue of manipulation of share market for providing accommodation entry of bogus LTCG. The action includes passing interim direction & suspension of trade etc.

4.5 However, the assessee, vide reply dated 26/12/2016 controverted the allegations of Ld. AO by submitting that it has duly furnished purchase & sale notes, demat account statement, Bank statement and documents relating to conversion of shares received by the assessee upon amalgamation of M/s STL & M/s SAL. The assessee also submitted that investigation carried out by the investigation wing was general in nature and do not cover the assessee in specific. It was also submitted that the shares were not sold to any direct parties but sold on stock exchange through registered broker namely M/s Trustline Securities Ltd. If any contrary confession made by any of these parties was used against the assessee, the opportunity to cross-examine such confessions need to be provided to the assessee.

4.6 However, rejecting all these submissions, Ld. AO concluded that the LTCG earned by the assessee were arranged one. The assessee could not prove unusual rise in share prices. All these transactions were closed circuit transactions and structured one. In statement u/s 131 given by the assessee, the assessee could not comment about performance of the company. The argument of cross-examination as sought by the assessee was to be rejected since the same was sought at the fag-end of the assessment which was nothing but to linger the assessment proceedings. Therefore, at this stage, the same could not be provided to the assessee. Finally, in the background of various judicial pronouncements, the LTCG of Rs.236.02 Lacs were added to the income of the assessee as unexplained cash credit u/s 68. The Ld.AO estimated another addition of expenditure @3% against these transactions.

### **Appellate Proceedings**

5.1 During appellate proceedings, the assessee assailed the additions by way of elaborate written submissions which have already been extracted in the impugned order. Drawing attention to the documentary evidences furnished by the assessee, the assessee denied having carried out any transactions with any such operator of penny stock. It was submitted that the shares were sold through stock exchange through registered brokers. To draw strength, reliance was placed on favorable judicial pronouncements. Various other arguments were also made to assail the action of Ld. AO.

5.2 The Ld. CIT(A), in para-4, noted that there was increase in price which was almost 472 times the price prevailing at the time of purchase. The rise in share price was not in accordance with any commercial

principles or market factors. The department recorded the statement of Shri Anuj Agarwal who was the main person and director of M/s SAL wherein it was admitted that the prices were rigged to provide benefit to number of persons on commission basis. The assessee was well aware of this fact and accordingly, placed the sale order on stock exchange through brokers. The allegations of Ld. AO were backed by the findings of investigation wing. The facts of the case were found to be similar to the decision of Hon'ble Bombay High Court in the case of **Sanjay Bimal Chand Jain V/s Pr. CIT (89 Taxmann.com 196; 10/04/2017)** wherein it was observed that assessee had indulged in dubious share transactions meant to account for the unaccounted income in the garb of long-term capital gains, The assessee did not tender any cogent evidence to explain as to how the shares of an unknown company worth Rs.5/- had jumped to Rs.485/- in no time. Finally, the assessee's appeal was not admitted. The ratio of decision of Hon'ble Supreme Court in **Sumati Dayal V/s CIT (214 ITR 801)** as well as in **Kanwar Natwar Singh** was also noted while adjudicating the issue.

5.3 It was further observed by Ld. CIT(A), in para-7.4, that the scrip dealt with by the assessee was identified as penny stock because the share prices were not based on business results but the same were inflated by insider's trading solely to generate bogus capital gains or losses. The assessee failed to adduce any plausible reason for unexpected escalation in the price of the scrip. Considering the various judicial pronouncements as enumerated in the impugned order, the gain earned by the assessee as well as estimated commission was rightly added to the income of the assessee. Accordingly, the action of Ld.AO in

making the additions was upheld. Aggrieved, the assessee is in further appeal before us.

### **Our Adjudication**

6. Having considered factual matrix as well as the orders of lower authorities, we find that the assessee has purchased certain shares of M/s STL in an off-market deal. These shares are stated to have been sold at stock exchange through registered stock broker. On the basis of the same, the assessee submits that there was no direct dealing with the purchaser of the shares. The assessee also denies having transacted with any of the penny stock operator as identified by the investigation wing. The assessee has also assailed the addition on the ground that opportunity of cross-examination has not been provided. On the other hand, it is the allegation of the revenue that the gains so earned by the assessee were pre-arranged one with the connivance of the penny stock operator and it was incumbent on the assessee to explain such a sharp rise in share prices within a short span of time particularly when the entity did not have any net worth to support such a sharp increase in the prices. Regarding cross-examination, it has been noted by Ld. AO that the same was demanded by the assessee at the fag-end of assessment proceedings and therefore, the same was nothing except to linger assessment proceedings. The Ld. AO as well as Ld. CIT(A) has relied upon various judicial pronouncements as enumerated in their respective orders. The Ld. CIT(A) has also relied upon the order of Hon'ble Bombay High Court in **Sanjay Bimal Chand Jain V/s Pr. CIT (supra)** which has not admitted assessee's appeal.

7. On the other hand, Ld. AR has primarily relied upon the order of coordinate bench of this Tribunal rendered in **Dipesh Ramesh Vardhan**

**& ors. V/s DCIT (ITA Nos.7648/Mum/2019 & ors. dated 11/08/2020)** to submit that the factual matrix is identical and the case deals with the same scrip. According to Ld. AR, this ratio of this decision would be applicable to the assessee.

8. Proceeding further, during hearing, a clarification was sought by the bench as to the outcome of the investigations carried out by SEBI in the case of this scrip. It was submitted by Ld. AR that there is no adverse finding in case of assessee and few other decisions has already considered the fact of the SEBI investigation. In this background, Ld. AR submitted that investigation would not impact the applicability of this decision to the fact of the case.

9. After due consideration of fact and circumstances as enumerated, the bench deem it fit to set-aside the findings of Ld. CIT(A) and restore the matter back to the file of Ld. CIT(A) for fresh adjudication after affording due opportunity of hearing to the assessee. The Ld. CIT(A) is directed to reconsider the factual matrix in terms of the cited decision of the co-ordinate bench of this Tribunal as relied upon by Ld. AR as well as also consider the events arising out of orders passed by SEBI in case of this scrip. All the issues are kept open. The grounds thus raised stands allowed for statistical purposes. In one of the grounds, the assessee has assailed the tax computations made by Ld. AO. For the same, it would be sufficient on our part to direct lower authorities to apply correct rates of tax to the income finally computed, as applicable.

10. The appeal stands allowed for statistical purposes.

*Order pronounced on 12<sup>th</sup> July, 2021*

**Sd/-**

**(Saktijit Dey)**

न्यायिक सदस्य / **Judicial Member**

**Sd/-**

**(Manoj Kumar Aggarwal)**

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.**