

आयकर अपीलीय अधिकरण “एफ” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“F” 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)

आयकरअपील सं./ I.T.A. No.4761/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2015-16)

Filpa Associates Flat No. 26(702), C-Wing, 7 th floor, Saibaba Enclave Tower, Bldg-3 Off S. V. Road, Near Citi Centre C D Baug Lane, Goregaon West, Mumbai-400 062	बनाम/ Vs.	ITO-31(1)(4) 6 th floor, Kautilya Bhavan, G Block, Bandra Kurla Complex Bandra East, Mumbai-400 051
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. AAAAF-1651-K		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Hitesh Shah– Ld. AR
Revenue by	:	Ms. Usha Gaikwad– Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	28/07/2021
घोषणा की तारीख / Date of Pronouncement	:	02/08/2021

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. In this appeal for Assessment Year (AY) 2015-16, the assessee is aggrieved by confirmation of certain addition u/s 68 for Rs.50,105/-.
2. The Ld. AR submitted that the addition represent cost price of shares sold by the assessee. The Ld. AR submitted that Long-Term Capital gain arising on sale of share was declared by the assessee under Income Disclosure Scheme, 2016. However, Ld. AO made further

addition on account of purchase price paid by the assessee to acquire the shares. It has been submitted that the case is squarely covered in assessee's favor by the decision of this Tribunal in **Manish Shantilal Shah V/s ITO (ITA No.2841/Mum/2019 dated 11/03/2020** wherein the bench has quashed the revisional proceedings u/s 263 on the same very issue. The Ld. DR submitted that the appeal was dismissed by Ld. CIT(A) for want of condonation of delay.

3. Upon perusal of impugned order, it could be seen that the appeal was filed by assessee before learned first appellate authority on 16/09/2017 as against stipulated date of 27/08/2017. Thus there was a delay of 20 days. The reason adduced was that the assessee was not able to upload Form 35. It was only when the request was made through *E-Nivaran*, the error got resolved and Form 35 could be uploaded on 16/09/2017. The explanation was sought to be substantiated by the fact that the appeal fees was already paid on 26/08/2017. However, Ld. CIT(A) chose not to condone the delay. Aggrieved, the assessee is in further appeal before us.

4. We find that the explanation furnished by the assessee regarding late filing of appeal was plausible one since the appeal filing fees was paid well before the last date of filing the appeal. Nevertheless, the issue on merit, is squarely covered in assessee's favor by the cited decision of the Tribunal wherein the bench quashed the revisional proceedings u/s 263 by observing as under: -

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 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.

We find that the facts are similar here. The assessee has paid the purchase cost of Rs.50,105/- by cheque as margin money which has been adjusted against the sale proceeds of shares. Therefore, the undisclosed income would be the gains earned by the assessee and not the sale proceeds unless it was shown that the cheque paid by the assessee had element of income. In the absence of such a fact forthcoming in the assessment order, the addition would be unsustainable. Therefore, by deleting the impugned addition, we allow the appeal.

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

Order pronounced on 2nd August, 2021.

Sd/-

(Amarjit Singh)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 02/08/2021
Sr.PS, Dhananjay

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.