

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F": NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER**

ITA No.760/Del/2018  
Asstt. Year: 2014-15

Rajesh Katyal C-654, New Friends Colony, New Delhi-110 065 PAN AAEPK4668G	Vs.	DCIT, Circle 1 Gurgaon.
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by:	Shri Vinod Bindal, CA
Department by :	Ms. Shivani Bansal, Sr. DR
Date of Hearing	15/09/2021
Date of pronouncement	22/09/2021

**ORDER**

**PER AMIT SHUKLA, J.M.**

The aforesaid appeal has been filed by the assessee against impugned order dated 20.12.2017, passed by Ld. CIT(Appeals)-3, Gurgaon for the quantum of assessment passed u/s 143(3) for the assessment year 2014-15 on the following grounds of appeal:-

1. *"The CIT(A) has erred in law and on the facts in confirming the addition of Rs.49,50,000/- by treating the said amount of sale proceeds of the 45,000 equity shares of Emporis Projects Ltd. as an unexplained cash credit u/s 68 of the Act merely on surmises by ignoring the evidences on record. The addition so made is*

*illegal, against the provisions contained in the Act, bad in law and hence liable to be deleted.*

2. *The CIT(A) erred in law and on facts in confirming the action of the assessing officer to treat the said sale proceeds of the equity shares as assessable u/s 115BBE of the Act which is against the fundamental principles of law. Thus, the said directions should be reversed.*
3. *The CIT(A) erred in law and facts in not giving directions to carry forward the long term capital loss as per the law. The said directions should be given as consequential to the above grounds of appeal.*
4. *The appellant craves the leave to add, substitute, modify, delete or amend all or any of the grounds of appeal either before or at the time of hearing.”*

2. The facts in brief qua the issue involved are that the assessee had purchased 45000 shares of M/s. Emporis Projects Ltd. in the financial year 2010-11 at the face value of Rs. 110/- per share by way of subscription. Entire shares of 45000 were sold on 19.11.2013 to one, M/s. Virat Vintrade (P) Ltd. Kolkata for the same consideration of Rs. 110/- per share amounting to Rs. 49,50,000/-. Thus, shares were purchased and sold at same price. In response to the show cause notice issued by the AO, the assessee vide reply dated 22.9.2016 furnished a photo copy of the physical form of the share certificates issued by M/s Emporis Projects Ltd. dated 31.03.2011 showing Shri Rajesh Katyal as share holder of 45000 share certificates. The assessee also furnished a copy of sale bill no. 1/13-14 dated 08.11.2013 issued by the assessee to M/s Virat Vintrade (P) Ltd., Kolkata for sale of 45000 equity shares of M/s Emporis Projects Ltd, @ Rs. 110/- per share. The assessee claimed that this sum of Rs.

49,50,000/- has been received by him through RTGS in his bank account with PNB No. 5221 on 19.11.2013 and furnished a copy of his bank account in support of his contention.

3. Thereafter again vide letter dated 15.12.2016 assessee submitted the following explanation/documentary evidence to substantiate the sale of the shares :-

- i) *“payment for the shares was made directly to the company on 03.02.2011 from my saving account no. 5221 with PNB Delhi:*
- ii) *the shares were subsequently allotted to me by the company on 31.03.2011:*
- iii) *the shares were sold to M/s Virat Vintrade Pvt. Ltd [PAN: AAECV0871D) a company on the records of Registrar of companies, Kolkata and which has filed its financials up to 31.03.2016 as per the records;*
- iv) *the sale consideration was received on 19.11.2013 from the above company vide RTGS into my saving account no. 5221 with PNB*
- v) *the transaction was duly disclosed and incorporated in my income tax return for the AY2014-15.*

*In view of the above it is absolutely incorrect to state that the transaction is dubious in nature merely on the ground that 'address could not be located' by the postal department*

*I had in my reply dated 22.09.2016 submitted the copy of share certificate and invoice raised for sale at S.No.5 while copy of my bank pass book showing receipt of sale amount was submitted vide reply dated 22.09.2016 S. No.26 Annex-7. The confirmation of sale of share from M/s Virat Vintrade Pvt Ltd is enclosed herewith as Annexure-IV.*

*The assesses also submitted a copy of the confirmation from M/s Virat Vintrade (P)Ltd.”*

4. However, the Ld. AO has made the addition disbelieving the sale transaction on following ground which has been captured by the Ld. CIT(A) in the impugned order :-

*“4.1.1The AO has made the addition on following grounds;*

- i) During the year under consideration, appellant had sold shares of M/s Emporis Projects Ltd. for a sum of Rs. 49,92,000 and no Capital Gain from the sale of these shares was disclosed by the appellant.*
- ii) It was submitted by the appellant during assessment proceedings that in Financial Year 2010-11, he had purchases 45,000 shares of M/s Emporis Projects ltd @ 110 per share and these shares were sold on 22.11.2013 to M/s Virat Vintrade (P) Ltd. Kolkata for a consideration of Rs. 49,92,000.*
- iii) During the assessment proceedings, the appellant failed to prove N the genuineness of this share sale transaction in view of the sale of shares of a listed company shown to have been made in physical form instead of DEMAT and to a company in Kolkata.*
- iv) Following observations were made by the AO after making enquiries of the sale transaction of the shares shown in Return of Income.*
  - a) The confirmation letter from company to whom shares were sold was undated and on computer generated letter.*
  - b) The address of the company on confirmation letter could not be located by the postal authorities.*
  - c) Copy of the Bank Account of M/s Virat Vintrade [P] Ltd. Kolkata was not filed by the appellant.*

- d) *The company M/s Emporis Projects Ltd. whose shares were claimed to be sold by the appellant is listed in BSE vide security code 531470 as a Finance Company.*
- e) *Further, investigation from BSE revealed that as on 08.11.2013, i.e. the date on which 45,000 shares of this company were claimed to have been sold by the assessee, the price of shares of the company was listed at BSE at Rs. 1.02 only as against Rs. 11 claimed by appellant as the selling price.*
- f) *In fact, during the entire month of November 2013, the price range of the said share fluctuated around-Rs. 1 per share.*
- g) *Further, there was trading volume of only 4326 shares on 08.11.2013 as seen from the Stock Exchange records, although the appellant had claimed to have sold 45000 shares on this date.*
- h) *The AO confronted the appellant during the assessment proceedings with regard to the above facts noted and as to why this transaction amounting Rs.49,92,000 shown to have received on share transaction may not be treated as unexplained credit u/s 68 and taxed accordingly.*
- i) *The appellant in response did not give any reply to the discrepancies noted and submitted that the entire transaction has been made through banking channels and hence remains verified.*
- j) *It was held by the AO that transaction through banking channel is not enough to prove the genuineness of transaction unless corroborated by further evidences.*
- k) *In view of the facts of the case, it was held by the AO that it was not a genuine transaction and held as sham transaction. Therefore, Rs. 49,92,000 credited in the Bank Account of the*

*appellant was held as unexplained cash credit u/s 68 of the Act and added to the income of the appellant.”*

5. Ld. CIT(A) also confirmed the said addition mainly on the ground that, firstly, the assessee has claimed to sell the share of M/s. Emporis Projects Ltd. @ Rs. 110/- per share, whereas in the Bombay Stock Exchange the quoted price of the said scrip as on 22.11.2013 was at Rs. 1.02 per share. Thus, he held that it is not a genuine share transaction; and secondly, merely because transaction was through banking channel does not prove the genuineness of the transaction and the address of the company who has remitted the amount could not be located by the postal authorities at the given address. Thus, he confirmed the order of the AO holding it to be a bogus transaction.

6. We have heard the rival submissions and also perused the relevant material placed on record before us and also the relevant finding given in the impugned orders. Undisputedly assessee had purchased 45000 shares of 'M/s. Emporis Projects Ltd.' through banking channel in the financial year 2011-12 by way of initial subscription for which assessee had paid amount of Rs. 40,50,000/- from his saving bank account with Punjab National Bank through Cheque No. 739375, a copy of which has been placed in the paper book at page 28 which was also filed before the AO vide letter dated 19.10.2016. These shares were also reflected in the balance sheet as on 31<sup>st</sup> March, 2012 which is evident from the copy of audited balance sheet appearing from pages 20 to 23 of the paper book, which reflects addition during the year and investment in M/s. Emporis Projects Ltd. Shares was shown at Rs. 49,50,000/-. The physical form of the shares certificate issued by M/s. Emporis Projects Ltd. dated 31.3.2011 which showed that assessee was shareholder of 45000 shares and same was also filed before the authorities below. Thus, this proves

that assessee had purchased shares and was in possession of the share certificates which duly disclosed in the balance sheet. After two years the assessee had sold the shares vide sale bill No. 1/13-14 dated 8.11.2013 to M/s. Virat Vintrade (P) Ltd., wherein the entire 45000 equity shares of M/s. Emporis Projects Ltd. was sold. It was sold at the same price of Rs. 110 per share. The amount of sale consideration was credited in the bank account of assessee with Punjab National Bank on 19.11.2013 through RTGS. In support of copy of copy of bank statement which was filed before the authorities below, copy of which has been placed on the paper book before us at page 26. Further, confirmation has also been filed as admitted by the AO by the purchaser giving entire details of the purchases made by the said company.

7. Before us Ld. Counsel referring to all these documents submitted that this company still exists and is in the records of Registrar of companies, Kolkata and has been regularly filing its financials and complying with the statutory requirements up to 31<sup>st</sup> March, 2016. Merely because letter written to M/s. Virat Vintrade (P) Ltd. on 1.12.2016 requiring it to confirm the transaction was not served through postal, that does not mean that the company was nonexistent, when under the statutory records it was still active and complying with all the statutory records. He further submitted that here in this case it is not a case of any bogus purchase and sale of shares to through any entry provider because all the documentary evidence and purchase and sale has been shown directly from the parties through banking channels. Here in this transaction there is no benefit which has incurred to the assessee either in purchase or sale which is normally a case routed through bogus entry provider.

8. On the other hand, Ld. Dr relied upon the order of the Ld. CIT(A) and submitted that the entire transaction of sale is not only doubtful and dubious, because while the share has been sold @ Rs. 110/- per share when in the stock exchange quoted price of Rs. 1.02. This fact coupled with the inquiry by the AO that the letter sent by him returned unserved. Thus, it is a clear cut case of bogus transaction.

9. Here in this case, the shares have been purchased @ Rs. 110/- per share in the year 2011 and it has been sold after two years exactly at the same rate. Once the purchase of shares have been accepted and duly disclosed in the books of accounts in the early years which is also evident from the physical certificate of the shares; and then how the sale of very same shares at the same rate can be held to be bogus. There is no information or material on record that the purchaser who has bought the shares has denied the transaction or there was any inquiry in the case of purchaser that why he has paid the sale price of the shares at the same rate of subscription when the listed price on the date of sale was Rs. 1.02/-. The apparent transaction fully supported by documentary evidences cannot be disbelieved merely on some hypothetical premise that why someone will buy a share at such a low price. There is no gain which has accrued to the assessee nor there any big loss, except for minor cost of indexation in computation of capital gains. We agree with the contention of the Ld. Counsel that merely because the speed post sent by the AO to the purchaser company could not be served that does not mean said company is a non entity or nonexistent especially when under the statutory record and the records of Registrar of companies it was still active and was complying with all the statutory requirements under the Companies Act. The bank statement clearly reveals that the money has been received through RTGS from the bank account of the purchaser and duly confirmed by the purchaser company who has given confirmation

letter filed before the AO and also placed before us. Apart from that, the sale bill and the copy of share certificates clearly show that the shares which were possessed by the assessee had duly been sold to the said party and it is not the case of the AO that these shares are still lying with the assessee. Apparently, without any adverse material or inquiry on record that purchaser is non genuine or purchaser has stated anything against the assessee or it has been found in any of the inquiry that the transaction is not genuine. Prima facie there has to be some kind of benefit to the assessee in such dubious transaction or there is some information that any unaccounted money has been converted into sale transaction and is appearing as credit in the books of assessee where such allegations are made against the assessee. If at all there is any loss then it could be in case of purchaser in this case and not the assessee. Accordingly, we do not find any justifiable reason for confirming the addition consequently the same is directed to be deleted.

10. In the result appeal of the assessee is allowed.

Order pronounced in the Open Court on 22<sup>nd</sup> September, 2021.

**sd/-**

**(B.R.R. KUMAR)**  
**ACCOUNTANT MEMBER**

Dated: 22/09/2021

***Veena***

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

**sd/-**

**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

ASSISTANT REGISTRAR

ITAT, New Delhi