

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “SMC” MUMBAI**

**BEFORE SHRI S. RIFAUR RAHMAN (ACCOUNTANT MEMBER) AND
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No.8059/MUM/2019
(Assessment Year: 2011-12)**

Harinder Kawaljit Singh Chadha
201/2A, Horizon View, Seven
Bungalows, Versova,
Andheri West
Mumbai – 400 061

Income Tax Officer-24(2)(1)
Vs. Piramal Chambers Lower Parel,
Mumbai – 400 012.

PAN No. ABGPC3910J

(Assessee)

(Revenue)

Assessee by : Shri Ashok Taparia, A.R
Revenue by : Shri Sanjay J. Sethi, D.R

Date of Hearing : 03/08/2021
Date of pronouncement : 29/10/2021

ORDER

PER RAVISH SOOD, J.M:

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-36, Mumbai dated 27.09.2019, which in turn arises from the order passed by the A.O under Sec. 143(3) r.w.s 147 of the Income Tax Act, 1961 (for short 'Act'), dated 20.12.2017.

2. Briefly stated, the assessee had filed his return of income for A.Y 2011-12 on 24.06.2011, declaring a total income of Rs.7,18,390/-. The return of income filed by the assessee was processed as such u/s 143(1) of the Act. Subsequently, the case of the assessee was reopened u/s 147 of the Act.

3. Controversy involved in the present appeal hinges around the declining by the A.O of the assessee's claim for exemption of Long Term Capital Gain (LTCG) of Rs. 13,10,647/- arising from the sale

of shares of M/s Splash Media Ltd. u/s 10(38) of the Act. Shorn of unnecessary details, the assessee had on 15.09.2009 purchased 650 shares of M/s Splash Media Ltd. @ Rs. 253.65 for a consideration of Rs. 1,65,553/-. On 30.04.2010 the assessee received 2600 bonus shares against the existing 650 shares. On 02.08.2010 the bonus shares (Face value : Rs. 10/-) were split into 1:10 making it 26000 shares (Face value : Rs. 1). Out of the 26,000 shares 16,000 shares were sold by the assessee to various entities in the month of September, 2009 to March, 2010 on the BSE floor at an average rate of Rs. 82/- (approx) for a total sale consideration of Rs. 13,10,647/-, resulting to a LTCG of Rs. 13,10,647/-. The details of sale of 16,000 shares by the assessee are culled out as under :

Date	Trade Value	Scrip	PAN	Name of the buyer
27.09.2010	Rs. 5,41,283/-	Splash Media	AADCR7368C	Ranisat Dealers Pvt. Ltd.
07.02.2011	Rs. 2,55,838/-	Splash Media	AADPS8372G	Suresh Poojara
11.02.2011	Rs. 5,08,750/-	Splash Media	AAACV9962H	Vikraamshilla Credir & Finvest Pvt. Ltd.
11.02.2011	Rs. 4,775/-	Splash Media	AANPN3354K	Premnath
Total	Rs.13,10,647/-			

Long Term Capital Gain (LTCG) of Rs. 13,10,647/- on the aforesaid sale transactions was claimed by the assessee as exempt u/s 10(38) of the Act. After deliberating at length on the facts of the case the A.O dubbed the LTCG arising on the sale of the aforesaid shares as an accommodation entry and added the entire sale consideration of Rs. 13,10,647/- as an unexplained credit u/s 68 of the Act. Also, the A.O made a further addition u/s 69C of Rs. 39,319/- i.e @ 3% of the amount of LTCG towards unaccounted commission which as per him would have been paid by the assessee for obtaining the aforesaid accommodation entry. Accordingly, the A.O vide his order u/s 143(3) r.w.s 147, dated 20.12.2017 assessed the income at Rs. 20,68,360/-.

4. Aggrieved, the assessee carried the matter before the CIT(A) who concurred with the view taken by the A.O and dismissed the appeal.

5. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. We have heard the Id. Authorised Representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them.

6. As is discernible from the assessment order, the A.O had after considering the facts of the case; investigations made by the Investigation wing of the department at Kolkata regarding 84 penny stocks (the assessee being one of them) a/w investigations conducted by the Directorate of Investigation at Mumbai and Ahmedabad w.r.t routing of unaccounted money of LTCG beneficiaries into their accounts/books in the garb of LTCG; consulting the financials of M/s Splash Media Ltd over the years and referring to the sky rocketing gains arising from sale of shares over a short span; and drawing support from the statements (extracts) of various persons connected with M/s Splash Media Ltd that were recorded by the DGIT(Inv.), Kolkata during the course of their investigations, concluded, that the assessee had booked LTCG in his books of accounts on the basis of a pre-arranged method to evade taxes and launder his ill-gotten money. The observations of the A.O as summarised by him in the assessment order are culled out as under :

- “(a). **Mode of acquisition of the shares** : The assessee has purchased 650 shares of M/s Splash Media Ltd. for Rs. 1,65,000/- later on after issuing bonus shares in the ratio of 1:3 and holding became 2600 further the face value became Re. 1 from Rs. 10 and splitted into 26000 shares.
- (b.) **Sale of shares and unusual rise in the price**: Further the assessee has sold the 16000 shares at the price of RS. 13,10,647/-, thus resulting the long term capital gain which is 08 times the increase of the cost price, and as discussed the rise in share prices is not due to any commercial principles and market factors.
- (c). **Findings of Investigation wing**: The findings of the Directorate of Investigation of Mumbai and Kolkata as discussed above have proved that thassociated brokers, entry operators and the assessee had worked out an arrangement in which the shares were acquired by the asessee, the share prices were rigged and then with the help of entry operators by routing the cash, shares were sold at high price to arrive at tax free capital gains.
- (d). **Analysis of transactions** : Facts revealed that such trading transactions of purchase and sale of shares are not been effected, for commercial purposes but to create artificial gains, with a view to evade taxes –
- i. Transactions of shares were not governed by market factors prevalent at relevant time in such trade, but same were product of design and mutual connivance on part of assessee and the operators.
 - ii. The assessee resorted to a preconceived scheme to procure long term capital gains by way of price difference in share transactions not supported by market factors.
 - iii. Cumulative events in such transactions of shares revealed that same were devoid of any commercial nature and fell in the realm of not being bonafide and, hence, impugned long term capital gain is not allowable.
 - iv. Failure of assessee to discharge his onus : The assessee has not been able to prove the unusual rise and fall of share price to be natural and based on the market forces. It is evident that such share transactions were closed circuit transactions and clearly structured one.

- v. Financial analysis of the penny stock companies : The networth of the penny stock company is negligible. Even though the networth of the company and the business activity of the company is negligible the share prices have been artificially rigged to unusual high.
- vi. Arranged transactions: The transactions entered by the assessee involve the series of preconceived steps, the performance of each of which is depending on the others being carried out. The true nature of such share transactions lacked commercial contents, being artificially structured transactions, entered into with the sole intent, to evade taxes.”

It is in the backdrop of the aforesaid observations of the A.O that we shall hereinafter deal with the contentions advanced by the Id. A.R wherein he had refuted the aforesaid adverse inferences that were drawn as regards the genuineness of the transactions of purchase/sale of shares under consideration. As observed by us hereinabove, the assessee had on 15.09.2009 purchased 650 shares of M/s Splash Media Ltd. @ Rs. 253.65 for a consideration of Rs. 1,65,553/-. On 30.04.2010 the assessee had received 2600 bonus shares against the existing 650 shares. On 02.08.2010 the 2600 shares (Face value: Rs. 10/-) were split into 1:10 making it 26000 shares (Face value: Rs. 1). Out of these 26,000 shares 16,000 shares were sold by the assessee on the floor of BSE to various entities in the month of September, 2009 to March, 2010 through her regular broker, viz. M/s Emkay Global Financial Services Ltd. for a total sale consideration of Rs. 13,10,647/-. LTCG of Rs. 13,10,647/- had arisen to the assessee from its aforesaid transaction of sale of shares. On a perusal of the records, we find that the assessee in order to substantiate the authenticity of the aforesaid transaction of purchase/sale of shares of M/s Splash Media Ltd. had in the course of the assessment proceedings placed on record supporting documentary evidences, viz. (i). broker note evidencing the purchase of shares of M/s Splash Media Ltd. a/w the fact that payment of the purchase consideration was made through her bank account directly to the broker, viz. Emkay Global Financial Services Ltd; (ii). demat account of the assessee reflecting the purchase and sale of shares of M/s Splash Media; (iii). demat account of M/s Emkay Global Financial Services, broker of the assessee reflecting the entries of purchase and sale of the shares of M/s Splash Media Ltd.; (iv). broker note evidencing the sale of shares and its receipts from the broker, viz. Emkay Global Financial Services Ltd.; (v) the transaction statement of Emkay Global Financial Services Ltd showing the daily movement of various stocks held by the assessee a/w the shares of M/s Splash Media Ltd.; and (vi). the balance sheet, profit & loss a/c, statement of various ledger accounts, holding statement of shares for the year ended 31st March, 2011 and the preceding year 31st March, 2010 evidencing that the assessee was regularly investing in shares. On a perusal of the orders of the lower authorities, we find that genuineness of the aforesaid documentary evidence had not been dislodged by the lower authorities on the basis of any irrefutable material. As stated by the Id. A.R, and rightly so, the adverse inferences drawn by the A.O as regards the transactions of

purchase/sale of shares of M/s Splash Media Ltd. by the assessee are backed by the information received by him from the Investigation wing and the unsubstantiated statements of third parties who are not connected with the assessee. Also, the A.O instead of disproving the contents of the aforesaid documentary evidence that was filed by the assessee in support of her claim of having made genuine purchase/sale of shares in question, had rather in disregard of the same chosen to remain guided by assumptions, presumptions, surmises and the principle of preponderance of human probabilities. As is discernible from the assessment order, one of the major aspect that had weighed in the mind of the A.O for stamping the transactions of purchase/sale of shares of M/s Splash Media Ltd. by the assessee as a structured transaction with a purpose of facilitating tax evasion in the garb of a bogus claim of tax exempt capital gain u/s 10(38) of the Act and laundering of her ill-gotten money; was the fact that within a short span there was a steep rise in the price of shares of the said company i.e by 695%, which trade pattern of the aforesaid company as per the A.O did not move along and gel with the sensex wherein the normal returns were 7.80% for F.Y 2012-13 and 18.70% for F.Y 2013-14 for BSE/Sensex; and the financials of the company also did not show any reason for the extraordinary performance of its stock. It was observed by the A.O that the price of the shares of M/s Splash Media Ltd. had sky rocketed without their being any awesome profit, EBIDTA margin, EPS, bonus, dividend etc. In the backdrop of his aforesaid observations, the A.O was of the view that though all the parameters which are essential for increase of price of shares were either not present or were found to be unfavourable, however, despite that there was a multi fold increase in the price of the shares of M/s Splash Media Ltd., which revealed beyond doubt that the same was an artificial increase caused by rigging of the shares by a cartel of accommodation entry providers. In our considered view, though the aforesaid data gathered by the A.O being based on the facts and figures cannot be faulted on our part, however, we are unable to persuade ourselves to concur with him that for the said reason the assessee is to be held to have evaded taxes and laundered his unaccounted money by booking a bogus claim of exempt LTCG u/s 10(38) of the Act. Although, the A.O had at length discussed in his order the information that was shared with him by the Investigation wings of Kolkata, Mumbai and Kolkata i.e the modus operandi adopted by beneficiaries with the help of entry operators to obtain tax free capital gains, however, we are afraid that nothing concrete has been brought on record which would prove to the hilt the falsity of the assessee's claim of having carried out genuine transactions of purchase/sale of the shares under consideration, and therein prove that the assessee had only procured an accommodation entry of capital gain. On the contrary, we find that the assessee had duly substantiated the purchase of shares under consideration on the basis of supporting documentary evidence. Admittedly, the assessee

who is a regular investor for the last 20 years and had during the relevant period invested in 15 scrips, had purchased the shares of M/s Splash Media Ltd. in a dematerialized form through her regular broker, viz. Emkay Global Financial Services Limited. Also, as can be gathered from the broker note, the assessee had paid the purchase consideration of the aforesaid shares through her bank account directly to her broker, viz. Emkay Global Financial Services Limited. Also, as observed by us hereinabove, the assessee had out of her aforesaid holding of 26000 shares (supra) sold 16,000 shares over the period i.e September, 2010 to February, 2011 on the floor of BSE through her regular broker, viz. Emkay Global Financial Services Limited and had received the sale proceeds from the said broker through banking channel. Copy of the demat account of the broker reflecting the receipt of shares from the assessee had also been filed by the assessee to support the authenticity of her aforesaid transaction of sale of shares. Backed by the aforesaid substantial documentary evidence filed by the assessee which beyond doubt substantiates the genuineness of the transaction of purchase and sale of shares of M/s Splash Media Ltd. by her, we are afraid that the unsubstantiated claim of the A.O that the assessee had converted her unaccounted money by taking fictitious LTCG in a pre-planned manner does not merit acceptance. Our aforesaid view that in the absence of any evidence, whatsoever, to allege that money had changed hands between the assessee and the broker or any other person, or that some person provided the entry to convert unaccounted money for getting benefit of LTCG, the uncorroborated claim of the department that the assessee had taken recourse to a structured transaction for evading taxes and laundering her unaccounted money in the garb of exempt LTCG u/s 10(38) of the Act cannot be accepted is supported by the judgment of the Hon'ble High Court of Delhi in the case of Pr. CIT & Ors. Vs. Krishna Devi & Ors. (2021) 110 CCH 9 (Del), wherein it was held as under :

11. On a perusal of the record, it is easily discernible that in the instant case, the AO had proceeded predominantly on the basis of the analysis of the financials of M/s Gold Line International Finvest Limited. His conclusion and findings against the Respondent are chiefly on the strength of the astounding 4849.2% jump in share prices of the aforesaid company within a span of two years, which is not supported by the financials. On an analysis of the data obtained from the websites, the AO observes that the quantum leap in the share price is not justified; the trade pattern of the aforesaid company did not move along with the sensex; and the financials of the company did not show any reason for the extraordinary performance of its stock. We have nothing adverse to comment on the above analysis, but are concerned with the axiomatic conclusion drawn by the AO that the Respondent had entered into an agreement to convert unaccounted money by claiming fictitious LTCG, which is exempt under Section 10(38), in a pre-planned manner to evade taxes. The AO extensively relied upon the search and survey operations conducted by the Investigation Wing of the Income Tax Department in Kolkata, Delhi, Mumbai and Ahmedabad on penny stocks, which sets out the modus operandi adopted in the business of providing entries of bogus LTCG. However, the reliance placed on the report, without further corroboration on the basis of cogent material, does not justify his conclusion that the transaction is bogus, sham and nothing other than a racket of

accommodation entries. We do notice that the AO made an attempt to delve into the question of infusion of Respondent's unaccounted money, but he did not dig deeper. Notices issued under Sections 133(6)/131 of the Act were issued to M/s Gold Line International Finvest Limited, but nothing emerged from this effort. The payment for the shares in question was made by Sh. Salasar Trading Company. Notice was issued to this entity as well, but when the notices were returned unserved, the AO did not take the matter any further. He thereafter simply proceeded on the basis of the financials of the company to come to the conclusion that the transactions were accommodation entries, and thus, fictitious. The conclusion drawn by the AO, that there was an agreement to convert unaccounted money by taking fictitious LTCG in a pre-planned manner, is therefore entirely unsupported by any material on record. This finding is thus purely an assumption based on conjecture made by the AO. This flawed approach forms the reason for the learned ITAT to interfere with the findings of the lower tax authorities. The learned ITAT after considering the entire conspectus of case and the evidence brought on record, held that the Respondent had successfully discharged the initial onus cast upon it under the provisions of Section 68 of the Act. It is recorded that "There is no dispute that the shares of the two companies were purchased online, the payments have been made through banking channel, and the shares were dematerialized and the sales have been routed from de-mat account and the consideration has been received through banking channels." The above noted factors, including the deficient enquiry conducted by the AO and the lack of any independent source or evidence to show that there was an agreement between the Respondent and any other party, prevailed upon the ITAT to take a different view. Before us, Mr. Hossain has not been able to point out any evidence whatsoever to allege that money changed hands between the Respondent and the broker or any other person, or further that some person provided the entry to convert unaccounted money for getting benefit of LTCG, as alleged. In the absence of any such material that could support the case put forth by the Appellant, the additions cannot be sustained.

12. Mr. Hossain's submissions relating to the startling spike in the share price and other factors may be enough to show circumstances that might create suspicion; however the Court has to decide an issue on the basis of evidence and proof, and not on suspicion alone. The theory of human behavior and preponderance of probabilities cannot be cited as a basis to turn a blind eye to the evidence produced by the Respondent. With regard to the claim that observations made by the CIT(A) were in conflict with the Impugned Order, we may only note that the said observations are general in nature and later in the order, the CIT(A) itself notes that the broker did not respond to the notices. Be that as it may, the CIT(A) has only approved the order of the AO, following the same reasoning, and relying upon the report of the Investigation Wing. Lastly, reliance placed by the Revenue on *Suman Poddar v. ITO (supra)* and *Sumati Dayal v. CIT (supra)* is of no assistance. Upon examining the judgment of *Suman Poddar (supra)* at length, we find that the decision therein was arrived at in light of the peculiar facts and circumstances demonstrated before the ITAT and the Court, such as, inter alia, lack of evidence produced by the Assessee therein to show actual sale of shares in that case. On such basis, the ITAT had returned the finding of fact against the Assessee, holding that the genuineness of share transaction was not established by him. However, this is quite different from the factual matrix at hand. Similarly, the case of *Sumati Dayal v. CIT (supra)* too turns on its own specific facts. The above-stated cases, thus, are of no assistance to the case sought to be canvassed by the Revenue."

On the basis of our aforesaid deliberations, in the backdrop of the fact that there is no material with the department which would falsify the assessee's claim of having carried out genuine purchase/sale of shares of M/s Splash Media Ltd., we are unable to persuade ourselves to concur with the disallowance of the assessee's claim for exemption of LTCG of Rs. 13,10,647/- u/s 10(38) of the Act. As we have held that the assessee had carried out genuine transaction of purchase/sale of shares, therefore, as a consequence

thereto the addition u/s 69C of commission expenditure of Rs.39,319/- would also meet the same fate and is accordingly vacated.

7. Resultantly, the appeal of the assessee is allowed in terms of our aforesaid observations.

Order pronounced in the open court on 29.10.2021.

Sd/-
S. Rifaur Rahman
(ACCOUNTANT MEMBER)

Sd/-
Ravish Sood
(JUDICIAL MEMBER)

Mumbai, Date: 29.10.2021

Copy of the Order forwarded to :

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "SMC" Bench, ITAT, Mumbai
6. Guard File

BY ORDER,

Dy./Asst. Registrar
ITAT, Mumbai.