

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "D", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

**ITA No.7190/M/2019
Assessment Year: 2014-15**

Shri Rajesh Ratilal Vanigota, 100, Shreeji Bhawan, Old Hanuman Lane, Near Adarsh Hotel, Kalbadevi, Mumbai – 400 002 PAN: AACPV4721B	Vs.	ACIT 18(2), 3 rd Floor, Earnest House, Nariman Point, Mumbai - 400021
(Appellant)		(Respondent)

Present for:

Assessee by : Shri B.N. Rao, A.R.
Revenue by : Ms. Neha Thakur, D.R.

Date of Hearing : 09.11.2021
Date of Pronouncement : 22.11.2021

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the assessee against the order dated 25.07.2019 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2014-15.

2. The grounds raised by the assessee are as under:

"1. The Ld. Commissioner of Income tax (Appeals) erred in upholding the addition of Rs.94,08,983/- made by the Ld. AO treating the Long Term Capital Gains, a make believe transaction treating the same as unexplained investment. He ought to have granted exemption under section 10(38) of the Act. He has also upheld the assumed payment of brokerage of Rs.47,044/-.

2. The Ld. Commissioner of Income tax (Appeals) erred in enhancing the income by Rs.5,00,000/-"

3. The issue raised in 1st ground of appeal is against the order of Ld. CIT(A) upholding the addition of Rs.94,08,983/- as made by the AO by treating the long term capital gain on sale of shares as unexplained investment and thus rejecting the claim of the assessee under section 10(38) of the Act. Similarly, the assessee has also challenged the confirmation of disallowance of brokerage of Rs.47,044/- @0.5%.

4. The facts in brief are that the assessee filed the return of income on 23.03.2015 declaring total income of Rs.58,26,260/-. The case of the assessee was selected under CASS for examining suspicious transactions of long term capital gain arising from sale of shares. During the assessment proceedings, the AO noticed that assessee has declared long term capital gain on sale of shares of Rs.94,08,983/- on sale of shares of M/s. Sunrise Asian Ltd and claimed the same as exempt under section 10(38) of the Act. Accordingly, the AO called upon the assessee to furnish the details of these transactions and also recorded a statement of the assessee under section 131 of the Act on 30.11.2016. The AO noted that assessee has purchased 20,000 shares of M/s. Santoshima Trade Links Ltd. in physical form on 17.11.2011 which was later on amalgamated with M/s. Sunrise Asian Ltd. in the scheme of amalgamation on 26.06.2013 and the assessee got 20,000 shares of M/s. Sunrise Asian Ltd in lieu of shares in M/s. Santoshima Trade Links Ltd. The assessee bought 20,000 equity shares of M/s. Santoshima Trade Links Ltd. at Rs.25 per share from M/s. P. Saji Textile Ltd. for a consideration of Rs.5,00,000/-. The payment whereof was made through account payee cheque. According to the AO the scrip of M/s. Sunrise Asian Ltd. was a penny stock as per the report of

investigation wing of Kolkata. Thereafter, the assessee sold these shares for a consideration of Rs.99,08,983/-.The AO was not satisfied with the genuineness of the transactions despite the assessee furnishing all the evidences like date of purchase, entry in the D-mat account, copies of contract notes etc. and sale on stock exchange through registered broker and finally added Rs. 94,08,983/- as unexplained investment to the income of the assessee. Besides, the AO also added Rs.47,044/- being commission @ 0.5% of Rs.94,08,983/- in the order framed under section 143(3) of the Act dated 23.12.2016.

5. In the appellate proceedings also the Ld. CIT(A) affirmed the order of AO by holding that the gain of Rs.94,08,983/- was nothing but an accommodation arranged through manipulation on the stock exchange and thus dismissed the appeal of the assessee.

6. After hearing both the parties and perusing the material on record, we find that the assessee sold 20,000 shares of M/s. Sunrise Asian Ltd. which were purchased for Rs.5,00,000/- on 17.11.2011 at Rs.25 per share in M/s. Santoshima Trade Links Ltd. which got merged with M/s. Sunrise Asian Ltd. under the scheme of amalgamation. Thereafter, in lieu of shares of M/s. Santoshima Trade Links Ltd. the assessee was allotted 20,000 shares and the same were duly dematerialized. These shares were sold during the year through registered stock broker on the stock exchange on different dates and the consideration for sale of shares were received through banking channel. We note that the assessee has also made payments for purchase of shares through banking channel though initially the shares were

purchased in physical form and after amalgamation these shares were dematerialized. The AO by referring to the modus operandi of penny stock came to the conclusion that these penny stock companies are conduit for arranging accommodation of long term capital gain and loans through a racket and thus the transaction of sale and purchase of shares were not genuine. We note that the assessee has furnished all the evidences to prove the transactions of sale and purchase of shares and the AO has only relied upon the report of the Investigation Wing. We further note that the co-ordinate Bench of the Tribunal in the case of Anraj Heeralal Shah HUF vs. ITO in ITA No.4514/M/2018 dated 16.07.2019 wherein it has been held that the consideration resulting from sale of shares of M/s. Sunrise Asian Ltd. can not be termed as bogus. The case of the assessee is also supported by the case of Meenu Goel vs. ITO in ITA No.6235/Del/2007 wherein it has been held that where the assessee has produced all the relevant records and evidences such as purchase bills, copy of share transfer form, bank statements, copies of cover notes, payment of STT on sale of shares etc., however, the AO rejected all the evidences and relied on the report of the investigation report, in that circumstances, the co-ordinate Bench of the Tribunal has held that addition is not sustainable. Similarly, in the case of Mukta Gupta and anr. vs. ITO in ITA Nos.2766 & 2767/Del/2018 the co-ordinate Bench of the Tribunal has held that the long term capital gain resulting from sale of shares would not be treated as bogus on the ground that price of shares have risen manifold and the reasons for rise were not related to any fundamentals of the stock. Since the facts of the case before us are materially same

and in one of the decisions the same script of M/S Sunrise Asian Ltd is held to be not a penny stock. In view these fact and circumstances and decisions as discussed above, we are not in agreement with the conclusion of the Ld. CIT(A) on this issue. Accordingly, we set aside the order of Ld. CIT(A) and direct the AO to delete the additional of Rs. 94,08,983/-. Similarly, the issue of confirmation of addition of Rs.47,044/- being 0.5% of total long term capital gain which was added by the AO towards commissions is consequential to the above and is accordingly deleted. Consequently ground no. 1 is allowed.

7. The issue raised in ground No.2 is against the enhancement of addition by Ld. CIT(A) of Rs.5,00,000/- on account of purchase of these shares.

8. Since we have treated the sale of shares as genuine therefore the issue of purchase of shares at Rs.5,00,000/- is consequential one and is accordingly ordered to be deleted.

9. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 22.11.2021.

Sd/-
(Amarjit Singh)
JUDICIAL MEMBER

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Mumbai, Dated: 22.11.2021.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.