

आयकर अपीलीय अधिकरण
मुंबई पीठ "एस एम सी", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
आअसं. 7433/मुं/2019 (नि.व 2008-09)
ITA NO.7433/MUM/2019(A.Y 2008-09)

Income Tax Officer -20(3)(5),
Room No.205, 2nd Floor, Piramal Chambers,
Lalbaug, Parel,
Mumbai 400 012

..... अपीलार्थी /Appellant

बनाम Vs.

Vijay Popatlal Savla,
Shop No.18, Hindmata Cloth Market,
Dr.Ambedkar Road, Hindmata,
Dadar (E), Mumbai 400 014.

PAN: AAPPS-1288-K

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Ms. Smita Verma

प्रतिवादी द्वारा/Respondent by : Shri Jitendra Singh

सुनवाई की तिथि/ Date of hearing : 07/09/2021

घोषणा की तिथि/ Date of pronouncement : 03/12/2021

आदेश/ ORDER

This appeal by the Revenue is directed against the order of Commissioner of Income Tax(Appeals)-32, Mumbai [in short ' the CIT(A)'] dated 27/09/2019 for the Assessment Year 2008-09.

2. Ms. Smita Verma representing the Department submitted that the Revenue is in appeal against the order of CIT(A) deleting the addition of Rs.3,24,200/- in respect of accommodation entries in the nature of Long Term Capital Gains obtained from Mukesh Choksi. The Id.Departmental Representative submitted that search action u/s. 132 of the Income Tax Act, 1961 (in short 'the Act) was carried out on

25/11/2009 on Mahasagar Securities Pvt. Ltd. and Mukesh Choksi Group. Mukesh Choksi in his statement recorded during the course of search admitted that he has been providing accommodation entries through his group companies. The list of beneficiaries was also found during the course of search. As per the said list the assessee had taken accommodation entry of Rs.3,24,200/- from M/s. Compuwiz Securities Pvt. Ltd., one of the companies operated by Mukesh Choksi Group. The assessee had allegedly purchased 1000 shares of Quest Finance Ltd. in Financial Year 2007-08, through M/s. Compuwiz Securities Pvt. Ltd. The Assessing Officer made addition of Rs.3,24,200/- on account of accommodation entry as income from undisclosed sources. The CIT(A) has erred in deleting the aforesaid addition solely on the ground that no such transaction during the relevant period was carried out by the assessee. The CIT(A) has failed to consider that Mukesh Choksi in his statement has admitted the fact that through his Group companies he is engaged in providing accommodation entries. The name of the assessee figures in the list of beneficiaries of accommodation entries. The Id.Departmental Representative prayed for reversing the findings of CIT(A) and restoring addition of Rs.3,24,200/- in the hands of assessee.

3. Per contra, Shri Jitendra Singh appearing on behalf of the assessee vehemently supported the impugned order. The Id.Counsel for the assessee submitted that except for the statement of Mukesh Choksi no other cogent evidence is available on record to suggest that the assessee is one of the beneficiaries of alleged accommodation entry. The Id.Counsel for the assessee submitted that assessee was holding 5000 equity shares of Quest Finance Ltd. in his Demat account as on 31/03/2008. No shares of the aforesaid company were either sold or purchased during the period relevant to the assessment year 2008-09. This fact is evident from the bank account statement of Canara Bank and Demat account of the assessee. As per the contentions of the Assessing Officer the assessee has received

the amount on sale of shares in the account maintained with Standard Chartered Bank, whereas the assessee is not having either saving or current bank account with Standard Chartered Bank. The assessee is having Demat account with HDFC Bank and bank account with Canara Bank. The Id.Counsel for the assessee submitted that the Assessing Officer has made addition on wrong appreciation of facts, surmises and conjectures.

4. Both sides heard, orders of authorities below examined. The solitary issue in the present appeal by the Revenue is with respect to deleting of addition made in respect of alleged accommodation entry of Long Term Capital Gains. A perusal of the impugned order shows that the CIT(A) has deleted the addition after appreciating the evidences furnished by the assessee. The CIT(A) has given a categorical finding that assessee is holding 5000 shares of Quest Finance Ltd. in his Demat account with HDFC Bank. During the period relevant to the assessment year 2008-09 and thereafter, there has been no transaction in the Demat account of the assessee qua the shares of Quest Finance Ltd. The said shares were purchased by the assessee on 08/12/2004 for Rs.10,600/- from Ahilya Commercial Pvt. Ltd. and since then the said shares are reflected as investment in the books of assessee. The payment for purchase of shares in December, 2004 was through cheque and the said transaction is reflected in the bank statement. The First Appellate Authority further observed that there is no transaction of payment or receipt of Rs.3,24,200/- in the bank account of assessee as has been alleged by the Assessing Officer. There is no material on record to indicate that the assessee had any transaction with Mukesh Choksi or Compuwiz Securities Pvt. Ltd. or the assessee has sold shares of Quest Finance Ltd. during the period relevant to the assessment year 2008-09. Except for the statement of Mukesh Choksi there is no other supporting evidence. The Revenue has not been able to controvert the findings of CIT(A). In the absence of any contrary material I find no reason to interfere with the order of CIT(A), hence,

the same is upheld and the appeal of Revenue is dismissed being devoid of any merit.

5. In the result, appeal by the Revenue is dismissed.

Order pronounced in the open Court on Friday the 3rd day of December, 2021

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 03 /12/2021

Vm, Sr. PS (O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai