

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

**BEFORE SHRI PRAMOD KUMAR (VICE PRESIDENT) AND  
MS. SUCHITRA KAMBLE (JUDICIAL MEMBER)**

**ITA No.722/MUM/2020  
(Assessment Year: 2011-12)**

D.C. Securities Pvt. Ltd.  
B-704, Kalp Nagri,  
Balrajeshwar Road, Vaishali  
Nagar, Mulund (West),  
Mumbai – 400 080

Vs. Income Tax Officer 15(1)(4)  
Aayakar Bhavan, Maharishi  
Karve Road,  
Mumbai – 400 020

**PAN No. AACCD5336R**

**(Assessee)**

**(Revenue)**

Assessee by : Shri Badresh Doshi, A.R  
Revenue by : Shri Neha Thakur, Sr. D.R

Date of Hearing : 11/01/2022  
Date of pronouncement : 20/01/2022

**ORDER**

**PER SUCHITRA KAMBLE, J.M:**

This appeal is filed by the assessee against the order dated 02.12.2019 passed by the CIT(A)-24, Mumbai, for assessment year 2011-12. The assessee has raised the following grounds before us:

- "1. On the facts and circumstances of the case and in law the Ld. CIT(A) erred in confirming the additions of Rs.30,49,330 on account of alleged undervaluation of closing stock with respect to 25,000 shares of Bedmutha Industries Ltd.*
- 2. On the facts and circumstances of the case and in law, the Ld. CIT(A) ought to have appreciated that the omission of a particular item from the closing stock would have impact on the taxable income only if the same item has been included in the purchases and not otherwise.*
- 3. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the additions amounting to Rs.44,68,435 in respect of purchase of Rs.1,85,875 shares of Sal Manufacturing Ltd on account of the so-called discrepancy and by alleging that the appellant has not been able to reconcile it / explain the source of the said purchase.*
- 4. The Appellant craves leave to add, alter, amend, vary and / or withdraw any or all the above grounds of appeal."*

3. The assessee company is engaged in the business of trading in shares and securities. The assessee has not filed its return of income u/s 139 of the Income Tax Act, 1961. The case of the assessee was reopened u/s 147 of the Act by issuing notice u/s 148 of the Act dated 27.03.2018. The reasons for reopening the case of the assessee was reproduced in the assessment order as under:

*“In this case the assessee is non-filer of return of income. As per the data available in 26AS/AIR/CIB information it is seen that the assessee has made share transaction of Rs. 20000/- or more and contract of Rs. 10,00,000/- or more into commodity exchange. Despite entering into transaction, assessee has not offered any taxable income nor filed his return of income as per the provisions of the Income Tax Act.*

*As there is failure on the part of the assessee to file the required return of Income as per the provisions of Section 139 of the IT Act, 1961, it can be concluded that income exceeding Rs. 1,00,000/- has escaped tax for A.Y. 2011-12 within the meaning of section 147 of the I.T. Act, 1961.”*

In response to notice u/s 148 of the Act, the assessee e-filed the return income declaring total income at Rs. 74,690/-. The Assessing Officer observed that during the year under consideration the assessee had credited sale of shares of Rs. 52,90,323/- and debited purchases at Rs. 57,31,016/-. Further, the assessee has shown closing stock of shares at Rs. 6,03,270/- after debiting various expenses the assessee had offered a profit of Rs. 74,685. The assessee during the course of the assessment proceedings furnished copy of the broker's note and demat statement of the assessee for the period 01.04.2010 to 31.03.2011. On perusal of the demat statement of the assessee, the Assessing Officer observed that the assessee during the year under consideration had traded in two scripts on

delivery basis i.e. 15000 shares of Beckons Industries Ltd. formerly known as AGK Computer Secure Prints Ltd. were brought and sold on 08.12.2010, further the assessee had bought 10000 shares of Bedmutha Industries Ltd. on 02.12.2010 and were held by the assessee as its closing stock of shares for the Y.E. 31.03.2011 and the same were reflecting in the balance sheet of the assessee for Rs. 6,03,270/-. Notice u/s 133(6) of the I. T. Act was issued to the broker of the assessee, M/s SPS Share Brokers Pvt. Ltd. and the demat statement of the assessee and segment wise transaction statement of the assessee were called. In response to the same, the broker of the assessee vide reply dated 15.12.2018 to notice u/s 133(6) of the I. T. Act furnished the details called. The Assessing Officer observed that from the perusal of the submissions of the broker, it was seen from the MTM Summary – delivery and trading activity on the capital market segment, that the assessee during the year under consideration had purchased 35000 shares of Bedmutha Industries Ltd. whose value was ascertained at Rs. 104.36 on delivery basis and were shown as the closing stock of the assessee by the broker. Further, the assessee had also brought 23613 shares of Bedmutha for the rate of Rs. 239.72 and sold it for the same date for Rs. 256.34 and had incurred a profit of Rs. 3,92,399.73. The assessee also filed submission dated 20.12.2018. The Assessing Officer observed that the assessee failed to reconcile the discrepancy appearing in its balance sheet regarding the value and the quantity of the closing stock and the difference in respect of its trading in the shares of Bedmutha Industries Ltd. The Assessing Officer observed that as per the information regarding the script of Bedmutha Industries Ltd. was generated from the site of Security & Exchange Board of India wherein it was found that the SEBI had passed interim order in the case of Bedmutha Industries Ltd. on 19.12.2017 wherein it was observed by SEBI that the volume of the script was

increased by Bedmutha Industries Ltd. with the help of certain brokers who had indulged into self trade creating a artificial hike in the price of the shares. It was further observed that the rise in the price of the shares did not support the financials of the Bedmutha Industries Ltd. The Assessing Officer observed that the assessee in his submission has stated that the 10000 shares of Bedmutha Industries Limited are shown as a closing stock and the same are valued at Rs. 6,03,270/-. However, as per the information received from the broker it is seen that the assessee had 35000 shares of Bedmutha Industries Limited whose value was at Rs. 104.36 which sums up to Rs. 36,52,600/-. In view of the same, the closing stock of the assessee pertaining to the shares of Bedmutha Industries Limited is valued at Rs. 36,52,600/-. Since the assessee has already offered a sum of Rs. 6,03,270/- the same was reduced from the closing stock determined at Rs. 36,52,600/- and the balance of Rs. 30,49,330/- was added to the total income of the assessee by the Assessing Officer.

4. The Assessing Officer further observed that from the brokers note of the assessee that the assessee had done day trade in the script of SEL MANU Co. Ltd. wherein the assessee on 02.12.2010 had bought 14125 quantity of shares @ Rs. 24.90 vide Order Number 2010120269482310, Trade No 68550036 at 15.29.42 Hours and had sold 2,00,000 shares of SEL MANU CO LTD on the same day @ 24.10 vide Order Number 2010120267970581, Trade No 65725531 @ 11.40.24 Hours. From the same it was observed by the Assessing Officer that the assessee had purchased 14125 quantity of shares and had sold 2,00,000 shares on the same day, interestingly, 2,00,000 shares were sold at Rs. 11.40.24 Hours as per the brokers note and 14125 shares were purchased at 15.29.42 Hours. In this regards, the assessee furnished a separate brokers note for the purchases of 185875 quantity of shares of SEL MANU CO LTD but the same

were without order No. Trade No. and trade time. From the perusal of the reply received from the broker of the assessee it could be seen that the assessee had purchased 1,85,875 shares of SEL MANU CO LTD @ Rs. 23.48 and same was sold for Rs. 24.04 and the said trade was stated as delivery trade by the broker, further the broker of the assessee had also stated that the assessee had traded in "DAY TRADE" in the script of SEL MANU CO LTD wherein the assessee had bought 68133 shares @ Rs. 24.58 and had sold the same @ Rs. 26.31 on the same day. The assessee submitted in reply that SEL MANU Co. Script to qty of 185875 was not shown in purchase and submitted the bills which shows that the assessee purchased 185875 & 14125 shares separately and sold them on intra day basis i.e. 20000 Qty bills. The assessee further submitted that there are no shares lying in the pool account of the broker. The Assessing Officer observed that the onus was also on the assessee to share and discuss the discrepancies with his broker and furnish reconciliation from the broker regarding the trading in the 185875 shares of SEL MANU CO Ltd. Further the onus was also on the assessee to explain the source through which the assessee had traded in delivery based 185875 quantity of shares of SEL MANU CO Ltd. @ Rs. 24.04. 'Thus, the Assessing Officer made addition of Rs. 44,68,435/- (185875 X Rs. 24.04) to the total income of the assessee.

5. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

6. The Ld. AR submitted that at the time of assessment proceedings, the assessee submitted copy of DEMAT Account, holding statement for the year, statement of global report, copy of ledger account as well as submitted that there is no client code modification done by the assessee and the assessee was not aware of any order passed by the SEBI regarding

the broker. The Ld. AR submitted that the purchase of Bedmutha shares were not at all black listed by the SEBI at any point of time. Besides this the Broker was also not declared being into malpractice of the dealings in shares by the SEBI. The Ld. AR submitted that shares of Bedmutha in quantity of 10000 shares was reflected in Demat statement. In respect of 12,809 quantity shares of Bedmutha, the assessee purchased the script for which the bill was generated by the broker on 01.04.2011 and same was booked in A.Y. 2011-12. Regarding the script SEL MANU Co. that of 185,875 quantity shares were purchased and the bills of both the scripts that of 18,85,875 and 14,125 shares separately were submitted before the Assessing Officer and the same were sold on intra day basis i.e. 2,00,000 quantity bills which were also submitted before the Assessing Officer.

7. The Ld. DR submitted that 10000 shares of Bedmutha Industries Limited are shown as a closing stock and the same are valued at Rs. 6,03,270/-. But the information received from the broker shows that the assessee had 35000 shares of Bedmutha Industries Limited whose value was at Rs. 104.36 which totalled to Rs. 36,52,600/-. Therefore, the closing stock of the assessee pertaining to the shares of Bedmutha Industries Limited is valued at Rs. 36,52,600/-. As the assessee offered a sum of Rs. 6,03,270/- the same was reduced from the closing stock determined at Rs. 36,52,600/- and the balance of Rs. 30,49,330/- was rightly added to the total income of the assessee by the Assessing Officer. As regards to the trading in the 185875 shares of SEL MANU CO Ltd., the Ld. DR relied upon the Assessment Order and the order of the CIT(A).

8. We have heard both the parties and perused the relevant material available on record. From the perusal of the records it can be seen that shares of Bedmutha in quantity of 10000 shares was reflected in Demat

statement of the assessee and as regards to 12,809 quantity shares of Bedmutha, the assessee purchased the script for which the bill was generated by the broker on 01.04.2011. The same was booked in A.Y. 2011-12 as per the records, these facts are not taken into account by the Assessing Officer as well as by the CIT(A). As the purchase in consonance with the sale of the shares that of Bedmutha was never doubted, the records cannot be fortified by the Assessing Officer. The broker's note was not brought on record and the same were never confronted to the Assessee at the time of the Assessment proceedings as well as at the time of appellate proceedings before the CIT(A). Merely on the suspicion the Assessing Officer cannot ignore the actual fact that the 12,809 quantity of shares were purchased after 31.03.2011 and the same was taken into account by the broker in A.Y. 2011-12. Thus, the CIT(A) was not right in confirming the addition. Ground No. 1 and 2 of the assessee's appeal are allowed.

9. As regards to trading in the 185875 shares of SEL MANU CO Ltd., from the perusal of the records, it shows that 185875 quantity shares were purchased and the bills of both the scripts that of 18,85,875 and 14,125 shares separately were submitted before the Assessing Officer and the same were sold on intra day basis i.e. 2,00,000 quantity bills which were also submitted before the Assessing Officer. In fact the contract note for trade dated 02.12.2010 for purchase of 1,85,875 shares were also submitted before the Assessing Officer on which security transaction tax (STT) of Rs. 5,395 and misc. Charges of Rs. 47,605.67 were also paid by the assessee through the broker. Regarding purchase of 14,125 shares, the relevant documentary evidence such as contract note for trade dated 02.12.2010 was also produced by the assessee, at the time of assessment proceedings. All these evidences were totally ignored by the Assessing

Officer as well as by the CIT(A). Therefore, the CIT(A) was not right in confirming the additions thereby overlooking the evidences produced by the assessee during the assessment proceedings. Thus, Ground No. 3 is allowed.

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

Order pronounced in the open court on 20.01.2022

Sd/-  
(Pramod Kumar)  
Vice President

Sd/-  
(Suchitra Kamble)  
Judicial Member

Place: Mumbai

Date 20.01.2022

Rohit, Sr. PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण/ ITAT, Bench, Mumbai.