

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. 7067/मुं/2019 (नि.व 2007-08)
ITA NO.7067/MUM/2019(A.Y 2007-08)
आअसं. 7068/मुं/2019 (नि.व 2008-09)
ITA NO.7068/MUM/2019(A.Y 2008-09)
आअसं. 7069/मुं/2019 (नि.व 2009-10)
ITA NO.7069/MUM/2019(A.Y 2009-10)

Smt. Santosh Anil Parmar,
501, Prabhat Co-op Hs Society Ltd.
Plot No.;415A, D.K.Sandhu Marg ,
Chembur, Mumbai 400 071
PAN:AGKPP-5786-E

..... अपीलार्थी /Appellant

बनाम Vs.

Income Tax Officer-22(2)(2),
4th Floor, Tower No.6,
Vashi Rly Station,
Navi Mumbai 400 703

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Devendra Kothari

प्रतिवादी द्वारा/Respondent by : Shri R.A. Dhyani

सुनवाई की तिथि/ Date of hearing : 26/11/2021

घोषणा की तिथि/ Date of pronouncement : 21/02/2022

आदेश/ ORDER

These three appeals by the assessee are directed against the order of Commissioner of Income Tax(Appeals) -26, Mumbai [in short 'the CIT(A)'] Mumbai, dated 23/09/2019, common for the impugned Assessment Years, 2007-08, 2008-09 and 2009-10.

Since, identical issues are raised in all these three appeals, these appeals are taken up together for adjudication and are decided by this common order.

2. For the sake of convenience these appeals are decided in seriatim of Assessment Years. The facts are narrated from the appeal in ITA No. 7067/Mum/2019 for Assessment Year 2007-08.

ITA No.7067/Mum/2019 A.Y. - 2007-08:

3. The brief facts of the case as emanating from records are: The assessee had filed her return of income for the impugned assessment year on 24/10/2007 declaring total income of Rs.1,57,730/-. During the period relevant to the assessment year under appeal the assessee had sold shares of M/s. Buniyad Chemicals Ltd.. The gain on sale said shares were declared as long term capital gain in the return of income. The original return of the assessee was processed u/s. 143(1) of the Income Tax Act, 1961 (in short ' the Act').

Thereafter, the assessment in the case of assessee for the impugned assessment year was reopened on the basis of intimation received from the Director of Income Tax (I& CI), Mumbai. Notice u/s. 148 of the Act was issued to the assessee on 28/03/2013. The reasons for reopening state that the assessee has taken accommodation entry from M/s. Alliance Intermediaries and Network Pvt. Ltd., one of the company floated by Mukesh Choksi for allegedly providing accommodation entry, for bogus share transaction. On the basis of aforesaid information the Assessing Officer held that, the assessee had sold shares of Buniyad Chemical Ltd. through M/s. Alliance Intermediaries and Network Pvt. Ltd., the registration of said sub-broker has since been cancelled by National Stock Exchange of India (NSE) on 19/02/2004, the transaction of sale of shares is merely an accommodation entry. The Assessing Officer treated the long term

capital gain of Rs.5,03,622/- declared by the assessee, as income from unexplained sources and made addition of the aforesaid amount under the head 'Income from other Sources'. Aggrieved by the assessment order dated 23/01/2014 passed u/s. 143(3) r.w.s. 147 of the Act, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of assessee and confirmed the addition. Hence, the present appeal.

3. Shri Devendra Kothari appearing on behalf of the assessee submitted that a search and seizure action u/s. 132 of the Act was undertaken in the case of M/s. Mahasagar Securities Pvt. Ltd. by Investigation Wing on 25/11/2009. During the course of search, statement of Mukesh Choksi was purportedly recorded. On the basis of the said statement, the assessment for impugned Assessment Year in the case of assessee was reopened. During re-assessment proceedings it was alleged that since the assessee has failed to furnish proof of purchase of share of Buniyad Chemicals and that the said shares were sold through broker M/s. Alliance Intermediaries and Network Pvt. Ltd. whose registration was cancelled on 19/02/2004 the transaction of sale of said shares is not genuine. The Id. Authorized Representative for the assessee pointed that the assessee had purchased shares of Buniyad Chemicals. during the Financial Year 2000-2001. Admittedly, the assessee could not furnish any documentary evidence of purchase of share during the Financial Year 2000-01 as it was an old record. However the assessee in order to substantiate that the shares were in fact held by the assessee, the assessee furnished copies of the Balance Sheet as on 31/03/2002 to Balance Sheet as on 31/03/2005. The said Balance Sheets duly reflect investment in the shares of Buniyad Chemicals Ltd. The Id. Authorized Representative for the assessee pointed that out of total shares 33,500 of Buniyad Chemicals the assessee had sold 1500 shares during the financial year 2002-03. The capital gain from the sale of said shares was duly reflected in the

return of income for the Assessment Year 2003-04. The said transaction of the sale of shares was accepted by the Revenue as capital gain. The Id. Authorized Representative for the assessee referred to the statement of affairs relevant to the Assessment Year 2002-03, 2003-04, 2004-05 and 2005-06 along with the acknowledgment of return of income for Assessment Year 2004-05 and 2005-06 at pages 2 to 7 of the Paper Book. The Id. Authorized Representative for the assessee further pointed that the shares of Buniyad Chemicals were held by the assessee in her Demat account. The Id. Authorized Representative referred to the Demat account statement for the period 01/09/2004 to 30/09/2004 at page-9 of the Paper Book. As per the said statement the assessee was holding 32000 equity shares of Buniyad Chemicals. The Id. Authorized Representative for the assessee further referred to the Demat account statement for the period 01/06/2005 to 30/06/2005 at page 10 of the Paper Book wherein again as per the statement, the assessee was holding 32000 equity shares of Buniyad Chemicals. The Id. Authorized Representative for the assessee pointed that during the period relevant to the assessment year under appeal, the assessee had sold 8500 shares of Buniyad Chemicals. The said transaction of sale of shares is reflected in D-mat account statement for the period 01/08/2006 to 31/08/2006. The said shares were sold by the assessee through M/s. Alliance Intermediaries and Network Pvt. Ltd.. A copy of the contract note indicating transaction of sale shares is at page 19 to 21 of the Paper Book. The Id. Authorized Representative for the assessee pointed that the sale consideration was received by the assessee in the bank account. The Id. Authorized Representative for the assessee referred to IDBI Bank statement at page 22 of the Paper Book. Thus, the Demat account statement for the financial year 2004-05 clearly establish that the assessee was having shares of Buniyad Chemicals prior to that period.

The Assessing Officer and the CIT(A) has failed to take note of the shares of Buniyad Chemicals held by the assessee in Demat form. Merely, for the reason that registration of M/s. Alliance Intermediaries and Network Pvt. Ltd. as sub-broker was cancelled it would not make the transaction of sale of shares bogus. The Assessing Officer and the CIT(A) have confirmed the addition merely on assumption that since the registration of M/s. Alliance Intermediaries and Network Pvt. Ltd. was cancelled the transaction of sale of shares by the assessee through the aforesaid broker is bogus. The authorities below have failed to consider the fact that the shares were held by the assessee in her Demat account since long and the consideration for sales of shares was received by the assessee through banking channel. Thus, in the facts of the case it is evident that the money received against transfer of shares only be treated as capital gain, as disclosed in income tax return.

The Id. Authorized Representative for the assessee further pointed that in the period relevant to Assessment Year 2006-07, the assessee had sold shares of Buniyad Chemicals through M/s. Mahasagar Securities Pvt. Ltd. The assessee disclosed the income as long term capital gain, exempt from tax. The Assessing Officer disallowed assessee's claim. In first appellate proceedings the relief was granted by the CIT(A) accepting assessee's contention and deleted the addition. The Id. Authorized Representative for the assessee furnished copy of order of the CIT(A) -26, Mumbai dated 23/09/2019 for the Assessment Year 2006-07.

4. Per contra, Shri R.A. Dhyani representing the Department vehemently defended the impugned order. The Id. Departmental Representative submitted that the assessee failed to furnish any documentary evidence to show purchase of shares of Buniyad Chemicals. As per assessee's own admission the assessee has no documentary evidence to show purchase of shares. The Id. Departmental

Representative further contended that the shares were sold by the assessee through M/s. Alliance Intermediaries and Network Pvt. Ltd. a sub-broking company. During assessment proceedings the Assessing Officer made investigation from National Stock Exchange of India (NSE). In response to the notice u/s 133(6) of the Act, NSE vide letter dated 21/12/2012 informed that the registration of M/s. Alliance Intermediaries and Network Pvt. Ltd. as sub-broker was cancelled on 19/02/2004. Once the registration of a broker/ sub-broker is cancelled, it is not possible to make any transaction of sale and purchase of shares through the said sub-broker/ broker at NSE. Therefore, the alleged sale of shares of Buniyad Chemicals by the assessee through M/s. Alliance Intermediaries and Network Pvt. Ltd. is a sham transaction. The transaction is an accommodation entry. The Id. Departmental Representative vehemently defended the impugned order and prayed for dismissing appeal of the assessee.

5. Submissions made by rival sides heard, orders of authorities below and the documents furnished by assessee in the form of Paper Book examined. During the period relevant to assessment year under appeal, the assessee had sold 8500 shares of Buniyad Chemicals through M/s. Alliance Intermediaries and Network Pvt. Ltd., one of associate companies of Mukesh Choksi group. The assessee had purportedly purchased shares of Buniyad Chemicals in 2001. However, no documentary evidence was furnished by the assesseea to substantiate that the shares were purchased in the year 2001. It is relevant to mention here that the shares of Buniyad Chemicals were held by the assessee in Demat form and they were duly reflected in D-mat account statement of the assessee for the period 01/09/2004 to 30/09/2004 (at page 9 of the Paper Book). An examination of Demat account statement of assessee clearly indicate that the assessee was having 32000 shares of Buniyad Chemicals as on 01/09/2004. Thus, it can be safely concluded that the assessee had acquired shares of Buniyad Chemicals

prior to 01/09/2004. The assessee has also placed on record Demat account statement for the period 01/08/2006 to 31/08/2006. The opening balance of Buniyad Chemicals shares in the Demat account of the assessee is 23600 . The assessee sold 8500 shares of Buniyad Chemicals during Financial Year 2006-07, which were debited in the Demat account on 07/08/2006. The closing balance as per Demat account statement as on 31/08/2006 was 15100 shares. The transaction of 8500 shares during the financial year 2006-07 is further substantiated by contract note at page 19 to 21 of the Paper Book. The assessee has also placed on record a copy of her bank statement with IDBI Bank to show that the assessee has received a sum of Rs.5,03,621.91 towards sale consideration of shares by clearing on 15/07/2006. This date is same as the date of sale of shares mentioned in the contract note and proximate to the date of debit of shares in the Demat account of the assessee. The examination of documents on record clearly indicate that the assessee was holding shares of Buniyad Chemicals at least from the Financial Year 2004-05 and that the assessee had sold 8500 shares of Buniyad Chemicals during Financial Year 2006-07.

6. In so far as cancellation of registration of M/s. Alliance Intermediaries and Network Pvt. Ltd. as sub-broker by the NSE through whom the assessee had sold shares of Buniyad Chemicals, in my considered view would not make the transaction of sale of shares bogus. By furnishing cogent evidence, assessee has discharged her onus in proving that she was holding the shares since 2004 and had sold the shares during the relevant period. The Revenue has neither controverted nor rejected the Demat account statement of the assessee.

7. After examining the documents on record, I find merit in the appeal of assessee. The addition of Rs. 5,03,622/- made by the Assessing Officer by

treating capital gain on sale of shares as income from other sources is directed to be deleted.

8. In the result, findings of the CIT(A) on this issue are set aside and appeal of the assessee is allowed.

ITA NO.7068/MUM/2019(A.Y 2008-09)&
ITA NO.7069/MUM/2019(A.Y 2009-10)

9. The Id. Authorized Representative for the assessee submitted that the facts germane to these two appeals are identical to the facts in Assessment Year 2007-08, except that in Assessment Year 2008-09 the assessee had sold 6600 shares of Buniyad Chemicals. In Assessment Year 2009-10 the assessee had sold 8500 shares of Buniyad Chemicals. The Id. Authorized Representative for the assessee pointed that the assessee has furnished copies of the D-mat account statement and bank statement for the respective Assessment Years to substantiate that the assessee had indeed sold shares of Buniyad Chemicals and received the consideration in her bank account directly.

10. The Id. Departmental Representative fairly admitted that the facts in Assessment Year 2008-09 and 2009-10 are identical to the facts in assessment year 2007-08.

11. After hearing both the sides, and examining the orders of the authorities below and the documents submitted by the assessee in paper book, it is evident that the transaction of sale of shares and the reasons for rejecting the capital gain on sale of shares is identical in all the three Assessment Years, i.e. Assessment Year 2007-08 to 2009-10. Hence, the detailed findings given while adjudicating the appeal of assessee for Assessment Year 2007-08 would mutatis mutandis apply to the appeal for Assessment Year 2008-09 and 2009-10.

Consequently, the appeal of the assessee for both these Assessment Years are allowed, for parity of reasons.

12. In the result, the appeal of the assessee for Assessment Year 2008-09 and 2009-10 are allowed.

13. **To sum up, the appeals of the assessee in ITA No.7067/Mum/2019 for Assessment Year 2007-08, ITA No.7068/Mum/2019 for Assessment Year 2008-09 and ITA No.7069/Mum/2019 for Assessment Year 2009-10 are allowed.**

Order pronounced in the open Court on Monday the 21st day of February, 2022.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 21/02/2022

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