

THE INCOME TAX APPELLATE TRIBUNAL
“SMC” Bench, Mumbai
Shri Shamim Yahya (AM)

I.T.A. No. 1671/Mum/2021 (A.Y. 2014-15)

Hiralaxmi Ishwarlal Mehta Flat No. 26(702), C Wing 7 th Floor, Saibaba Enclave Tower Building 3, off S.V. Road, Near Citi Centre C.D. Baug Lane, Goregaon West, Mumbai-400 062. PAN : AAAPM8459P (Appellant)	Vs.	ITO-31(1)(5) Kautilya Bhavan 6 th Floor Bandra Kurla Complex Bandra East Mumbai-400 051. (Respondent)
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Assessee by	Shri Hitesh Shah
Department by	Shri Pravin Salunkhe
Date of Hearing	30.03.2022
Date of Pronouncement	02.05.2022

ORDER

This appeal by the assessee is directed against the order of learned CIT(A) dated 2.8.2021 pertains to A.Y. 2014-15.

2. The grounds of appeal read as under :

“On the facts and in the circumstances of the case, the Learned Commissioner of Income Tax (Appeals) National Faceless Appeal Centre (hereinafter referred to as 'the CIT(A)¹) has erred in law as well as on the facts of the case in dismissing the appeal and confirming the disallowance of Cost of Purchase of Rs.30675.00 from Long Term Capital Gain as declared in Income Disclosure Scheme 2016 [IDS, 2016] without adjudicating the case based the merits, documents filed , purchases were made by account payee cheques in earlier year and judicial pronouncement of Mumbai ITAT which is submitted in submission having the same facts of case of the assessee .

The appellant therefore being aggrieved by the order passed by the CIT(A) in utter disregards of the documentary evidences filed and on the facts and circumstances of the case prays to adjudicate the case on merit basis.”

3. Brief facts are that the assessee disclosed Rs. 16,20,156/- long term capital gain on penny stock transaction under Income Declaration Scheme,

2016 in A.Y. 2013-14. The Assessing Officer added the cost of the shares Rs. 30,673/- under section 68 as under :-

3. The assessee has shown income by way of Income from house properly. Loss on commodity under the head business/profession, capital gain and interest income. The assessee has also shown LTCG of Rs. 16,20,156/- which is claimed as exempt u/s 10(38).

4. On perusal of computation of income, it is noticed that the assessee has shown Long Term Capital Gain of Rs. 16,20,156/- on sale of shares and claimed the same as exempt u/s. 10(38). During the year, the assessee has received sale consideration of Rs. 16,50,829/- from sale of 57500 and 1600 shares of Esaar India Ltd and Sunrise Asian Ltd. respectively, are the penny stock companies. The assessee has disclosed amount of Rs. 16,20,356,- in A. Y. 2013-14 in Income Declaration Scheme, 2016 on account of cash income from the said transaction in penny stock. The assessee filed letter dated 19.12.2016 regarding considering the long term capital gain as disclosed in TDS 2016 instead of sale value while completing the assessment. The relevant extract is reproduced as under :

"Also please note that in the capital account amount capitalized is capital gain only and not the sale price hence the declaration in TDS is made of capital gain only.

Also the amount of purchases of shares made in earlier year by cheque is a margin money and the same has been adjusted against the sales proceeds, hence undisclosed income, in Long term capital gain and the sales proceeds as the cheque amount is out of disclosed income. At the time of sales of shares, amount of benefit which assessee achieve is a long term capital gain as the amount parted is amount of long term capital gain as this (i.e. undisclosed income) being the net of amount already paid by cheque and accordingly long term capital gain is disclosed in TDS, 2016. If the sales proceeds are made taxable then it amount to taxing the purchases made out disclosed sources. Hence purchase amount paid by cheque in earlier year out of disclosed. Hence, purchase amount paid by cheque in earlier year out of disclosed source cannot be charge to tax as cash credit under section 68."

5. The contention of the assessee has been considered but not found acceptable. The Directorate of Investigation, Kolkata carried out a country wide investigation to unearth the organized racket of generating bogus entries of Long Term Capital gains (LTCG) which is exempt from tax. The price of the shares of the penny stock companies are rigged and are raised through circular trading. The Directorate of Investigation, Kolkata investigated transactions in 84 such penny stock shares quoted on BSE.

5.1. During the year, the assessee has sold 57500 and 1600 shares of Esaar India Ltd and Sunrise Asian Ltd, respectively which are the penny stock companies and the sale proceeds of Rs. 16,50,829/- was received by the assessee. Further, the assessee has disclosed amount of Rs.16,20,156/- in

A. V. 2013-14 in Income Declaration Scheme. 2016 on account of cash income from the said penny stock transaction, the cost of Rs.30,673/- paid for purchase of shares could not be deducted while computing undisclosed cash income from transaction in penny stock, as the cost for purchase of said shares has been incurred in the year in which the said penny stock shares have been purchased, however, the accommodation entry of entire sale consideration of Rs. 16,50,829/- has been taken by the assessee during the year out of his income from undisclosed sources. Accordingly, the difference amount of sale consideration and Long Term Capital Gain, being of Rs. 30,673/- (16,50,829 – 16,20,156) is hereby treated as undisclosed income and added to the total income of the assessee as cash credit u/s. 68 of I.T.Act.

4. Upon assessee's appeal learned CIT(A) confirmed the same by a cryptic order as under :-

The background facts given above are duly considered. On perusal of computation of income it is noticed that the assessee has shown Long Term Capital Gain of Rs. 16,20,156/- on sale of shares and claimed the same as exempt U/S. 10(38). During the year, the assessee has received sale consideration of Rs.16,50,829/- from sale of 57500 and 1600 shares of Esaar India Ltd and Sunrise Asian Ltd. respectively which are the penny stock companies. The assessee has disclosed amount of Rs. 16,20,156/- in A. Y. 2013- 14 in Income Declaration Scheme, 2016 on account of cash income from the said transaction in penny stock. The assessee filed letter dated 19.12.2016 regarding considering the long term capital gain as disclosed in IDS 2016 instead of sale value while completing the assessment, The relevant extract is reproduced as under;-

After going through the observation made in the AO's order it is noted that the Directorate of Investigation, Kolkata carried out a country wide investigation to unearth the organized racket of generating bogus entries of Long Term Capital Gains (LTCG) which is exempt from tax. The price of the shares of the penny stock companies were rigged and are raised through circular trading. The Directorate of Investigation, Kolkata investigated transactions in 84 such penny stock shares quoted on BSE During the year. The assessee had sold 57500 and 1600 shares of Esaar India Ltd and Asian Ltd. respectively which are the penny stock companies and the sale proceeds of Rs. 16,50,829/- was received by the assessee. Further, the assessee has disclosed amount of Rs, 16,20,156/- in A. Y. 2013-14 in Income Declaration Scheme 2016 on account of cash income from the said penny stock transaction. The AO further of The cost of Rs. 30,673/- paid for purchase of shares could not be deducted while computing undisclosed cash income from transaction in penny stock as the cost for purchase of said shares had been incurred in the year in which the said penny stock shares has been purchased. However the accommodation entry of entire sale consideration of Rs. 16,50,829/- has been taken by the assessee during the year out of his income from undisclosed sources. Accordingly, the difference amount of sale consideration and Long Term Capital Gain being of Rs. 30,673/-

(16,50,329 - 16,20,156) was hereby treated as undisclosed income and added to the total income of the assessee as cash credit u/s. 68 of I.T. Act. 1961".

6. Considering the above mentioned facts. The appellant's case is liable to be dismissed.
5. Against the above order assessee is in appeal before ITAT.
6. I have heard both the parties and perused the records. I note that the assessee already disclosed the bogus long term capital gain claim on sale of penny stock shares under income disclosure scheme. The sum so disclosed was Rs. 16,20,156/-. The cost of these shares was Rs. 30,673/- which was a component of the total sale proceeds of Rs. 16,50,829/-. In this regard in this year the Assessing Officer proposed to add the cost of the shares Rs. 30,673/- as undisclosed income under section 68 of the I.T. Act. Section 68 provides for addition of credits, the source of which is not disclosed. It is beyond comprehension as to how the sum of Rs.30,673/- being the cost of purchase of the shares can be unexplained credit. No case has been made out that the Assessing Officer wanted any explanation for the source of purchase. Without any finding in this regard, the addition under section 68 of the Act of the cost of share is not legally tenable. Hence, I set aside the order of revenue authorities and decide the issue in favour of the assessee.
8. In the result, assessee's appeal is allowed.

Order pronounced in the open court on 02.05.2022.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 2/05/2022

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT

5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

PS

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai