

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
**IN THE INCOME TAX APPELLATE TRIBUNAL,
"SMC" BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
SHRI SIDDHARATHA NAUTIYAL, JUDICIAL MEMBER**

आयकर अपील सं./ITA No. 1254/AHD/2019

निर्धारण वर्ष/Asstt. Year: 2011-2012

Sanjay Champaklal Mehta (HUF), 12, Ganesh Appartment, Nehru Nagar Circle, Ambawadi, Ahmedabad. PAN: AAUHS9039K	Vs.	Income Tax Officer, Ward-5(2)(3), Ahmedabad.
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(Applicant)		(Respondent)
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Assessee by :	Shri Shamik H. Chokshi, A.R
Revenue by :	Shri V.K. Singh, Sr.D.R

सुनवाई की तारीख/**Date of Hearing** : **18/05/2022**
घोषणा की तारीख /**Date of Pronouncement**: **20/07/2022**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals)-5, Ahmedabad, arising in the matter of assessment order passed under s. 144 r.w.s. 147 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2011-12.

2. The assessee has raised following grounds of appeal:

1. *The Hon'ble CIT(A) erred in law and on facts in considering the total income after appeal effect Rs.5,42,794/- as against returned income of Rs.2,16,397/-. Thus he sustained the part addition.*

2. *The Hon'ble CIT(A) has erred in points of law and on facts in confirming addition of Rs.3,26,400/- without appreciating the fact that the same is already been shown in the income tax return.*

3. *The respondent craves liberty to add, amend, alter, edit, delete, modify or change all or any of the ground of the cross objection at the time of before the hearing of the appeal.*

3. The only issue raised by the assessee is that the learned CIT(A) erred in confirming the addition of Rs.3,26,400/- without appreciating the fact that the same is already been shown in the income tax return.

4. The assessee in the present case is a HUF. The AO received an information that there was survey action under section 133A of the Act carried out at Shri Shirish Chandrakant Shah, a Mumbai based entry provider. As a result of survey an excel sheet marked as "n navkar bips 30.10.12" was found and impounded. From the said excel sheet, it was noticed that Shri Shirish Chandrakant Shah was managing the Scrip of M/s Chandni Textile Engineering Industries Ltd for providing accommodation entry. As per the impugned excel sheet Shri Shirish Chandrakant Shah received an amount aggregating to Rs. 3.5 crore in cash as on 10-03-2011 against which provided accommodation entry by providing 500000 scrip of M/s Chandni Textile Engineering Industries Ltd as on 11-03-2011 at price of Rs. 69 to 69.8 per share. The entry recorded in excel sheet for sale and purchase of scrip of M/s Chandni Textile Engineering Industries Ltd on different dates were exactly matching with BSE data. During the survey operation, the key employee of the Shri Shirish Chandrakant shah in the statement categorically admitted that price of scrip of M/s Chandni Textile Engineering Industries Ltd was manipulated through synchronized trading and accommodation entry in form of long term and short capital gain or loss provided to beneficiaries. The HUF assessee on hand was one of the beneficiaries who transferred 60000 shares of M/s Chandni Textile Engineering Industries Ltd as

on 11-03-2011 at price of Rs. 69.77 per share and received a payout of Rs. 41,88,000/- which was not disclosed in the return of income. Accordingly, a notice under section 148 of the Act was issued thereafter several notices under section 142(1) were issued but the assessee failed to comply with the notices and make submissions. Thus, the AO based on the information available on record treated the entire sale proceeds received by the assessee on sale of share of M/s Chandni Textile Engineering Industries Ltd as bogus and added the same to the total income of the assessee.

5. Aggrieved assessee preferred an appeal before the learned CIT (A).

6. The assessee before the learned CIT (A) submitted that it has purchased 60000 share of M/s Chandni Textile Engineering Industries Ltd as on 11-03-2011 and the same were sold the same day i.e. squared of the transaction in same trading session. In the transaction, the assessee received net payout of Rs. 3,24,552/- and not the payout of Rs. 41,80,000/- as alleged by the AO. The assessee in support submitted copy of contract note, ledger from broker and bank statement. The assessee further submitted that the transaction was intra-day, therefore, the same was treated as speculative business and payout was included in profit and loss which was duly offered to tax.

7. The learned CIT (A) after considering the facts in totality restricted the addition to the extent of net payout of Rs. 3,24,552/- by observing as under:

5.3. I have carefully considered the assessment order, facts of the case and submission made by the appellant. The AO in the assessment order noted that the assessee has entered into a transaction for sale of share of Chandni Textile Engineering Ind. Ltd. of Rs.41,88,000/- but the same was not disclosed in return of income therefore, the same was treated as undisclosed income.

5.4. The appellant submitted that he has entered into intraday transaction of shares and on the same day there was a corresponding purchase of the share which AO has not considered and instead of profit, the entire sale price was added and filed supporting document. The AO was requested to attend the proceeding and submit comments over the contention of the appellant. Accordingly the AO attended the appellate proceedings and issue was discussed as per the order sheet entry on 15.05.2019 as under-

15.05.2019

On verification of the details submitted by AR of the assessee during appeal proceedings on 10.05.2019, it is noticed that, assessee was trade intraday trading in the script of M/s.Chandni Textile Engineering Industries Ltd. as per details below.

Date	Sales Quantity	Sales Value	Purchase Quantity	Purchase Value
11.05.2011	60000	43,85,000	60000	32,26,000
11.05.2011	60000	43,85,000	60000	32,26,000
11.05.2011	60000	43,85,000	60000	32,26,000
Total	60000	43,85,000	60000	32,26,000

From above data, it is clear that, assessee earned profit of only Rs.3,26,400/- from intraday trading in the script of M/s.Chandni Textile Engineering Industries Ltd.

Concerned AO called for discussion on the details submitted by AR during appeal proceedings regarding addition of Rs.4,28,000/- on A/C of sales of 60000 shares of "M/s Chandni Textile Engineering Industries Ltd." on 11.05.2011. AO goes through the details of assessee submitted through appeal proceedings and stated that as during the assessment proceedings assessee had not established any details AO has only data related to sale of 60000 shares of "M/s Chandni Textile Engineering Industries Ltd." on 11.05.2011 valued at Rs.43,85,000/- and not having data related to purchase of the said script, addition of total sale value of Rs.43,85,000/- has been made, while passing order u/s 26A of the Act.

However, AO agreed with the contention of assessee that he earned Rs.3,26,400/- from intraday trading of 60000 shares of M/s.Chandni Textile Engineering Industries Ltd. and total payout received by assessee of Rs.43,85,000/- is factually incorrect.

[Handwritten signatures and dates: 15/5/19]

5.5 In view of the above facts, the AO accepted the contention of the appellant that only profit out of the intraday transaction should be added. Accordingly, the addition made by the AO is restricted to Rs.3,26,400/- and balance is deleted.

Thus the ground of appeal is partly allowed.

8. Being aggrieved by the order of the learned CIT(A) the assessee is in appeal before us.

9. The learned AR before us filed a paper book running from pages 1 to 25 and inter alia submitted that the receipt from intra-day transaction on exchange in share of M/s Chandni Textile Engineering Industries Ltd has been included in profit loss account and income as per profit loss account has already been offered to tax. Thus addition confirmed by the learned CIT (A) to the extent of net payout is unjust and lead to double taxation. The learned AR drew our attention to computation of income and profit and loss account of the assessee which are placed on pages 15 and 17 of paper book.

10. On the other hand, the learned DR vehemently supported the order of the authorities below.

11. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that the

controversy is limited to the extent whether the assessee has disclosed the income from the intra-day transactions. For this purpose, we have referred the page number 17 of the paper book where the profit and loss account of the assessee was placed and we find that the assessee has shown the profit of ₹ 3,26,400/- including the profit arising to him from the impugned transaction. Thus, the finding of the learned CIT-A is based on wrong assumption of facts. At the time of hearing, the learned the DR has also not brought anything on record suggesting that the assessee has not disclosed impugned income in the income tax return. Thus, we hold that the assessee disclosed the income from the intra-day transaction and therefore no separate addition is warranted.

11.1 Before parting, it is also equally important to note that in intraday trading settlement transaction is done without actual delivery of securities therefore the income from the intraday activities can only be in the form of speculative in nature as defined under the provision of section 43(5) of the Act which reads as under:

*43. In sections 28 to 41 and in this section, unless the context otherwise requires—
(5) "speculative transaction" means a transaction in which a contract for the purchase or sale of any commodity, including stocks and shares, is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scrips:*

11.2 Therefore the income arises on intraday trading of scrip of M/s Chandni Textile Engineering Industries Ltd is taxable as income under the head business as speculative income. To our understanding, there is no possibility of calculating the income from intraday transactions under the head capital gain. In view of the above discussion we hold that the assessee has already offered the income from the sale of shares of M/s Chandni Textile Engineering Industries Ltd in profit & loss account. Thus, any further addition of the same again will lead to double taxation which was not warranted under the provision of the Act. Hence, we hereby set aside the order of the learned CIT(A) and direct the AO to delete the addition made by him. Thus the ground of appeal of the assessee is hereby allowed.

12. In the result appeal of the assessee is hereby allowed

Order pronounced in the Court on 20/07/2022 at Ahmedabad.

**Sd/-
(SIDDHARATHA NAUTIYAL)
JUDICIAL MEMBER**

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated **(True Copy)**
20/07/2022
Manish