

THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Shri B.R. Baskaran (AM)

I.T.A. No. 101/Mum/2021 (A.Y.2004-05)

ITO, Ward 32(1)(1) Room No. 703 Kautilya Bhavan Bandra Kurla Complex Bandra East Mumbai-400 051.	Vs.	Sandeep D. Shah 6B/602, Dwarka CHS Ltd., Daulat Nagar, Borivali-East Maharashtra-400066. PAN : AGVPS5933R
(Appellant)		(Respondent)

Assessee by	Shri Subramanian
Department by	Ms. Naina Krishnakumar
Date of Hearing	21.07.2022
Date of Pronouncement	26.07.2022

ORDER

The Revenue has filed this appeal challenging the order dated 31.8.2020 passed by learned CIT(A)-44, Mumbai and it relates to A.Y. 2004-05. The Revenue is aggrieved by the decision of learned CIT(A) in deleting the addition of Rs. 4,38,961/- relating to bogus long term capital gain and also addition of Rs. 21,948/- being expenses incurred in availing bogus long term capital gain.

2. I have heard the parties and perused the record. The assessee has filed his return of income for the year under consideration declaring total income of Rs. 1,43,299/-. The Assessing Officer received information that the assessee is one of the beneficiaries of M/s. Mahasagar Securities Pvt. Ltd. which was indulging in the activity of issuing accommodation bills for generating bogus capital gain. As per the information the assessee has obtained bogus bills for sale of shares of CMC Ltd. for Rs. 1,81,705/-, both aggregating to Rs. 4,38,961/-. Accordingly, the AO re-opened the assessment by issuing notice u/s 148 of the Act. The Assessing Officer treated the shares of M/s CMC Ltd. and M/s Divis's Lab as penny stocks. Accordingly he assessed the sale value of

Rs. 4,68,971/- as unexplained cash credit of Rs. 68 of the Act. The Assessing Officer also took the view that the assessee would have spent 5% of the sale value for getting accommodation bills. Accordingly he added Rs. 21,948/- as unexplained expenditure under section 69C of the Act. It is pertinent to note that the Assessing Officer had to complete the assessment to the best of his judgement under section 144 read with section 147 of the Act, since the assessee did not appear before him.

3. Before learned CIT(A) assessee submitted that he has not received any cheque/benefit from M/s. Mahasagar Securities Pvt. Ltd. and his name has been wrongly implicated. Hence, learned CIT(A) called for a remand report from the Assessing Officer. It appears that the assessee did not appear before the Assessing Officer and hence Assessing Officer requested learned CIT(A) to decide the issue on merits. The Learned CIT(A) deleted both the additions and hence the Revenue has filed this appeal before the Tribunal.

4. I noticed that learned CIT(A) has deleted the addition with the following observations :

“I have carefully gone through the assessment order, the written submission along with the relevant documents filed and the remand report of the AO. The AO made addition by treating the sale bill of share of CMC Ltd for a sale consideration of Rs.2,57,256 and Divi's Lab for a sale consideration of Rs 1,81,705 u/s section 68 of the Act and Rs.21,948 as commission on the accommodation entries. The appellant has in his submission categorically mentioned there he has not made any such transaction of purchase and sale of the shares of CMC and Divi labs Ltd. **In support of his argument he filed copis of bank statement to how that no such amounts mentioned by the AO are received. No cheque was received in his bank and he has never received any bill from M/s Mahasagar Securities Pvt. Ltd.** The appellant has also given an affidavit wherein he has categorically stated the following:

I am holding only 2 bank accounts in Bank of Baroda that is 1 current account and 1 saving account. With regard to information received from investigations wing for that I state that I have not received any amount from M/s. Mahasagar Securities Pvt. Ltd.

The Directors of the company fraudly or by mistaken reveals the indulgence of me in the issuance of bogus bills etc. The intimation received from the said co. is totally unbased & wrong. I do not even

know that how this is happened. It may be possible that personnel information of me fraudly used by the said co. But it is surprising for me that how & why the said co. has used the information to transfer the profit of the co to myself fraudly & tactfully.....

4.7 Further, the appellant has also submitted copies of his savings account and the current account in Bank of Baroda for the relevant year to prove his claim. **On verification of the bank accounts it is seen that there is no entry of any receipt from M/s. Mahasagar Securities Pvt Ltd or the amount mentioned by the AO in his order.** It means that AO has not made any effort to check whether the assessee has actually received any amount from the said M/s. Mahasagar Securities Pvt Ltd and whether the information received from the Investigation Wing is verifiable from the bank account of the party (the appellant). If the information says that the appellant received particular amount from particular party, it incumbent on the AO to check whether the amount was appearing in the bank account or the books of the said recipient. The information receive can be a starting point for investigation. However if the enquiry reveals that the there is no such receipt in the bank account of the alleged recipient, then said information has to wrong. If the facts arising out e bank account are against the allegation, the addition cannot be made. Therefore, the addition of Rs.4,38,961 on account of income from undisclosed sources and Rs.21,948 on account of commission made AO is held not to be justified and the same are deleted. Accordingly grounds 3, 4 and 5 raised in the appeal are allowed and appellant gets relief.”

5. I noticed that learned CIT(A) has examined the bank accounts of the assessee and has given a finding that the assessee has not received cheques for the alleged sale of shares from M/s. Mahasagar Securities Pvt. Ltd. The Learned CIT(A) also noticed that the Assessing Officer did not make any inquiry on the information received from the Investigation Wing. I noticed earlier that the AO has considered shares of M/s CMC Ltd and M/s Divis Labs Ltd as penny stocks. The Ld A.R submitted that both the companies belong to reputed groups and they cannot be considered as penny stocks. Thus, I notice that the Ld CIT(A) was convinced that the assessee was not a beneficiary of the alleged the accommodation bills provided by the M/s. Mahasagar Securities Pvt. Ltd. Before me, the revenue could not furnish any material to controvert the findings given by Ld CIT(A). Under these set of facts, I am of the view that learned CIT(A) has taken a conscious view of the matter and his order does not call for any interference. Accordingly I confirm the order passed by learned CIT(A).

6. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 26.07.2022.

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 26/07/2022

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//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS