

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में।
IN THE INCOME TAX APPELLATE TRIBUNAL "B"
BENCH, PUNE

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपीलसं. / ITA No.2881/PUN/2017

निर्धारणवर्ष / Assessment Year : 2014-15

Shri Ravindra Dada Patil, Flat No.607/608, Signature Apartment, Serene Meadow, Anandwali, Nashik. PAN: ADDPP 4442 K	Vs .	The ACIT, Circle-2, Kolhapur.
Appellant/ Assessee		Respondent /Revenue

Assessee by	Shri Pramod Shingte – AR
Revenue by	Shri M.G.Jasnani – DR
Date of hearing	11/07/2022
Date of pronouncement	29/08/2022

आदेश/ ORDER

Per S.S.Godara, JM:

This assessee's appeal for Assessment Year 2014-15 is directed against the Commissioner of Income Tax(Appeals)-2, Kolhapur's order dated 14.11.2017 passed in case no.Kop/267/2016-17, in proceedings u/s.143(3) of the Income Tax Act, 1961 [in short "the Act"].

Heard both the parties. Case file perused.

2. The assessee pleads the following substantive grounds in the instant appeal:

"1) *On the facts and circumstances of the case and in law the CIT(A) erred in confirming the addition of Rs.71,91,758/- u/s.68, being the proceeds from sale of shares by the appellant treating the transaction of sale of shares as a sham*

transaction without there being any valid reason. The same be deleted.

- 2) *On the facts and circumstances of the case and in law the appellant having received the sum of Rs.70,99,758/- from sale of shares of stock exchange on which STT has been paid, the proceeds being long term capital gains on sale of shares, are exempt U/s.10(38) and hence are not liable to tax. The exemption u/s.10(38) has no relevant with the manner of purchases. The addition on this account therefore needs to be deleted.*
- 3) *On the facts and circumstances of the case and in law the addition confirmed by the CIT(A) having been made only on surmises and conjunctures and without appreciating the facts correctly, particularly with respect to the past experience of the appellant in share market, the addition is invalid and hence needs to be deleted.”*

3. Learned Counsel next took us to the CIT(A)'s detailed discussion affirming the Assessing Officer's action making the impugned section 68 unexplained cash credits addition as under:

“5. DECISION: I have carefully considered the matter. The appellant has only one grievance against the action of the AO in holding that the LTCG claimed by him is bogus and consequently making the addition u/s 68. The facts have already been narrated by me. The appellant purchased 9200 shares of a company Transcend Commerce Ltd on 17/09/2012, the details of which are as under. Transcend was a public unlisted company at that point of time.

DATE OF PURCHASE OF SHARES	DATE OF PAYMENT	DATE OF CREDIT INDEMAT ACCOUNT
17.09.2012	20.10.2012	06.11.2012

This company was merged with SRK Industries Ltd consequent to which the appellant was allotted 20424 shares of Rs 10 each face value which were later split into face value of Rs 5 per share resulting in a holding of 40848 shares of SRK. These shares were then partly sold on the stock market resulting in LTCG which was claimed exempt. I specifically called for the purchase details of shares of Transcend. The appellant has produced a simple bill issued by Subhmangal Sales Pvt Ltd dated 17/09/2012 for Rs 92,000 for 9200 shares. The shares of Transcend were therefore

bought at par by the appellant. The payment for the same was made on 20/10/2012 (one month later) and the shares were credited into his demat account 15 days later, i.e 45 days after purchase of shares. Subhmangal Sales Pvt Ltd is not a registered broker neither is the purchase made through the trading portal of the stock exchanges. It is pertinent to note that the purchase consideration was paid after a month and the shares were credited into his demat account after 45 days. This is against the norms specified by SEBI. In fact, in cases of off market transactions, the SEBI vide Circular no SMDRP/Policy/CIT-21/99 dated 14th Sept 1999 has banned all negotiated deals including cross deals and all such deals are required to be executed only on the trading screens of the stock markets in the price and order matching mechanism of the exchange as in case of any ordinary deals. The purchase of shares itself is not in conformity with the regulatory guidelines specified by SEBI. The assessee is also not an investor in shares as is evident from his statement recorded by the AO. In fact in that statement, the appellant has admitted that he has no idea about the stock markets. It is therefore very surprising to note that in spite of having no knowledge of the share market, in spite of having violated the SEBI regulations for purchase of shares, the appellant would have me believe his humongous gains to be genuine. The past records of the appellant also do not reveal any share transactions. On the other hand, the details of sale of shares of SRK are as under:-

DATE OF SALE OF SHARES		DATE OF RECEIPT OF CONSIDERATION		DATE OF DEBIT INDEMAT ACCOUNT	
<i>DATE</i>	<i>NO OF SHARES</i>	<i>DATE</i>	<i>AMOUNT</i>	<i>DATE</i>	<i>NO OF SHARES</i>
26.11.2013	20,502	29.11.2013	44,21,613.21	26.11.2013	20,502
27.11.2013	5,000	05.12.2013	2,00,000.00	27.11.2013	5,000
09.01.2014	11,500	13.01.2014	19,60,000.00	09.01.2014	11,500
15.01.2014	3,846	21.01.2014	6,00,000.00	15.01.2014	3,846
	40,848		71,81,613.21		40,848

The difference between the modus of purchase and sale of shares is stark. At the time of sale, the demat account is debited on the same day and the appellant has received the sale consideration in the T+2 mode which is the normal trading mechanism followed by the stock exchange. No such prudence is observed at the time of purchase of shares. It also transpires that the appellant has sold the shares of SRK right at the peak of its share price after which the price has fallen back to its normal levels. I am therefore of the considered opinion that the purchase of shares of Transcend itself is a bogus transaction as the same is not in conformity with the regulatory guidelines of SEBI. It has been held by the Honble ITAT Mumbai Bench in the case of Ratnakar M Pujari ITA No 995/Mum/2012 that where the purchase itself is in doubt, the whole of the capital gains is to be held as bogus and therefore assessed as income. The only difference between the present case

and that case is that here the purchase is made through cheque while in the case of Pujari, the purchase consideration was in cash. I also find another decision of the Hon'ble ITAT Mumbai in the case of Shamim M Bharwani (2016) 69 taxmann.com 65 wherein it has been held that the transactions carried on outside the stock exchange would render the whole transaction in serious doubt.

5.1 The appellant has cited three cases before me, one of the Hon'ble Bombay High Court and one each of the Honhble ITAT Mumbai and Pune. I have perused those decisions. Therein the purchase of shares was made through the stock exchange with a proper contract note etc. The facts in the instant case are different and therefore the cases relied upon by the appellant are of no use to him. As discussed above, the purchase of shares made by the appellant are not only against the specific SEBI guideline of 1999, but the modus of payment, credit of shares to demat account are also against the SEBI guideline of T+2 settlement. I am therefore inclined to agree with the AO that the appellant has entered into a sham transaction as the purchase of shares itself is against regulations of SEBI. Accordingly the transactions made by the appellant resulting in humongous gains are also a sham transaction and the AO has rightly held them to be so. I therefore uphold the action of the AO in assessing Rs 71,91,758 as unexplained cash credits u /-s 68 in the hands of the appellant.

6. In the result, the appeal is dismissed."

4. Mr.Shringte vehemently contended that the assessee has filed all the relevant evidence discharging his onus of proving genuineness and creditworthiness of the impugned unexplained cash credits before both the lower authorities and therefore, the impugned addition made after rejecting his explanation that the same had been derived from sale of shares eligible for exemption under section 10(38) of the Act, ought to be deleted.

5. The Revenue has placed strong reliance both the learned lower authorities action making the impugned addition.

6. We have given our thoughtful consideration to the foregoing rival stands and find no merit in the assessee's arguments. The Assessing Officer's assessment order dated 30.12.2016 suggests that he had received department's investigation wing's report that various entry operators promoters and investors had been indulging the rigging of scrip prices in stock market thereby deriving bogus long term capital gains. He appears to have considered modus-operandi employed in such dubious sale purchase transactions in shares to conclude that the assessee's impugned claim under section 10(38) of the Act lacked genuineness. We note in this factual backdrop that this tribunal's recent co-ordinate bench's order in ITA No.1849/PUN/2018 Smt.Beena Shammi Chaudhary vs. ITO dated 17.02.2022 has accepted the Revenue identical arguments as under:

"9. Now I turn to contention of the ld. AR on section 47 of the Registration Act. This section with the heading 'Time from which registered document operates' provides that : 'A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration'. A document is first executed and then submitted for registration, if required. Normally, it takes some time between executing a document and its registration because the same has to be submitted for registration; checked by the competent authorities; and then actually registered. Unless a document is revoked before its actual registration, the parties submit themselves to the contents of the document by signing it, which coincides with its execution itself. Unless contrary is agreed between the parties in the document, it is from its execution that the parties intend to act upon it and make it operational. Section 47 of the Registration Act states that a registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made (that is, on its execution). It means that the time lag between the execution of a document and its registration is ignored insofar as its operation is concerned. Thus, all the

documents, whether or not requiring registration, operate from the date of their execution and the date of registration, where registration is mandatory, is irrelevant insofar as their operation is concerned. Whereas, section 17 of the Registration Act lists the documents whose registration is compulsory and section 49 of the Registration Act deals with the effects of non-registration of documents required to be registered u/s 17 of that Act, section 47 of the Registration Act deals with an altogether different aspect of time from which a registered document operates. It is only after a document required to be registered is actually registered as per section 17 of the Registration Act that the controversy of timing of operation of registration comes in to play, which is exclusively covered by section 47 of the Registration Act.

10. Coming to section 45 of the Act, which is a charging section for capital gains, provides that any profits or gains arising from the transfer of a capital asset effected in the previous year shall, save as otherwise provided in sections 54 etc., be chargeable to incometax under the head "Capital gains", and shall be deemed to be the income of the previous year in which the transfer took place. Manifestly, income under this head becomes chargeable to tax in the year in which the transfer takes place. "Transfer" takes place only when it becomes operational, that is, on executing the sale deed - neither before it, that is, when the parties are in the process of negotiations, nor after it, that is, when the registration of the deed actually takes place."

6. We adopt the foregoing above extracted detailed discussion mutatis-mutandis to affirm the impugned addition. Ordered accordingly.

7. This assessee's appeal is dismissed.

Order pronounced in the open Court on 29th August, 2022.

Sd/-
(DR. DIPAK P. RIPOTE
ACCOUNTANT MEMBER

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 29th Aug, 2022/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.