

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'SMC' BENCH
MUMBAI**

BEFORE: SHRI ABY T VARKEY, JUDICIAL MEMBER

&

SHRI M.BALAGANESH, ACCOUNTANT MEMBER

**ITA No.6983 & 6984/Mum/2019
(Assessment Year :2005-06 & 2006-07)**

Rupesh Bahilal Sharma 303, Veena Apartment 3 rd Floor, Mahatma Gandhi Phule Road, Mulund (E), Mumbai-400 081	Vs.	Income tax Officer-23(3)(3) C-10, 4 th Floor, Pratyakshakar Bhavan Bandra Kurla Complex Bandra (E), Mumbai-400 051
PAN/GIR No.ANEPS1034R		
(Appellant)	..	(Respondent)

Assessee by	Shri Bhadresh Doshi
Revenue by	Shri. Shambhu Yadav
Date of Hearing	05/12/2022
Date of Pronouncement	07/12/2022

अदेश / O R D E R

PER M. BALAGANESH (A.M.):

These appeals in ITA No.6983 & 6984/Mum/2019 for A.Ys.2005-06 and 2006-07 are preferred by the assessee against the independent orders of the Commissioner of Income Tax-40 (Ld.CIT in short), Mumbai, both dated 20/08/2019.

2. Identical issues are involved in both these appeals and hence they are taken up together and disposed of by this common order.

3. The first identical issue involved in these appeals is as to whether the Ld.CIT(A) was justified in confirming the action of the Ld.Assessing Officer (Ld.AO) in making an addition under section 69 of the Act in respect of purchase price of the shares of Sacheta Metals Ltd, in the facts and circumstances of the instant case.

4. We have heard the rival submissions and perused the materials available on record. The assessee is an individual and has filed his return of income for the assessment year 2005-06 on 11/08/2005 which was duly processed under section 143(1) of the Act. Later, his assessment was sought to be reopened by issuance of notice under section 148 of the Act based on some information received from DDIT(Inv.), Mumbai on the basis of search and seizure action in the case of Mahanagar Securities Pvt Ltd. The validity of assumption of jurisdiction under section 147 of the Act by the Ld.AO is not in challenge before us.

5. The Ld.AO observed that assessee had made purchase of shares of Sacheta Metals Ltd. The assessee was directed to furnish the details of purchase of shares during the course of re-assessment proceedings. The assessee vide letter dated 15/09/2011 submitted that during A.Y. 2005-06, he did not deal with any share transactions of Sacheta Metals Ltd; that the transaction of purchase of shares was done only through the broker, Alliance Intermediaries and Network Pvt Ltd in A.Y. 2006-07 and not in A.Y. 2005-06. It was also specifically brought to the attention of the Ld.AO that though as per the contract note issued by Alliance Intermediaries and Network Pvt Ltd, transaction of purchase of shares of Sacheta Metals Ltd was reflected as 30/03/2005; as per rules of Bombay Stock Exchange, the payment had to be made for the said purchase only after 2 days from the date of settlement and accordingly the assessee had made payment for purchase of shares only in April, 2005, which falls in A.Y. 2006-07. It was also pointed out that the

payment made for purchase of shares for A.Y. 2006-07 had been duly made out of accounted sources of the assessee in A.Y. 2006-07. It was also submitted that the payments made to the registered broker by account payee cheque only. In fact, during the course of re-assessment proceedings, a statement was recorded by the Assessing Officer under section 131 of the Act. In response to the question No.4 thereon, the assessee had categorically stated that payment for purchase of shares was made by him through account payee cheque in A.Y. 2006-07. The relevant operative portion of the questions raised by the Ld.AO, while recording statement under section 131 of the Act and replies given thereon by the assessee are reproduced hereunder for the sake of convenience:-

“Q4. We have got information that during the course of search & se u/s 132 of the IT Act in the case of Mahasagar Securities Pvt. Lt on 25-11-2009 by DDIT(Invg)Unit-l(IV) . It was revealed that Mahasagar securities P Ltd and its related 34 group of odd companiesf the Prominent ones being M/s alliance Intermediateries & Network P Ltd, M/s Mihir Agencies P Ltd Etc- all run by Mr. Mukesh Chokshi) were engaged in fraudulent billing activities and in the business of providing bogus speculation loss, short term/long term capital gain/ loss, share application money, commodities profit/loss on commodity trading through MCX and had been continuing this business for many years. You are one of the beneficiaries out of the list of client who have taken entries from these companies as extracted from the computer data seized from Shri Mukesh chokshi 's office premises. The name of the security is Sacheta Metals and transaction period is from 1- ' 04-2004 to 31-03-2005 and the amount involved is Rs. 465692.13/- on 30-03-2005. Please explain the transaction with documentary evidences.

A-4 No, I purchased the shares through cheques and the said transaction pertains to the FY 2005-06.

O-5. What is the method of accounting followed by you for your share trading business?

A-5 I am following Mercantile method of accounting for my business transaction.

Q-6. In merchantile method of accounting for AY 2005-06 you have to consider all the transaction between 1-04-2004 to 31-03-2005. Please explain why the transaction entered on 30-03-2005 should not be considered as pertaining to FY 2004-05 and AY 2005-06.

A-6 According to BSE rules, Transaction done for the settlement No-1 & 2 will fall under the next FY Therefore transaction dt 30-03-2005 will be taken for FY 2005-06 pertaining to AY 2006-07. We are hereby submitting copy of BSE settlement for last 6 Years, transaction done on last 2 days of March considered to the next FY.

Q-7 As per mercantile method of accounting followed by you the transaction for FY 2004-05 covers the period 1-04-2004 to 31-03-2005 as per IT Act. Please explain why the BSE rules should be followed by this Dept for the transaction covered in FY 2005-06?

Please explain.

A-7 It is easy for us to maintain and tally accounts that why BSE rules are followed.

Q-8 The said transaction is not reflected in FY 2004-05 and AY 2005-06 Also explain whether the payment was made by cash or cheques. Produce proof of the same with documentary evidence.

A-8 The said transaction is not reflected in FY 2004-05 and AY 2005-06 but it is reflected in next FY as per BSE rules. All the payments have been done by payee's a/c cheques. The said documents will be submitted on 23-11-2011.

Q-9 Can you remember the date of sale of shares of Sacheta Metals and amount involved?

A-9 These shares are sold in calendar year 2005-06. I don't remember the amount exactly. I will produce the broker's bill on 23-11-2011.

Q-10 From whom you purchased the said shares?

A-10 I purchased the shares from Mukesh Chokshi, Broker. I know him for the last 7 years. I met him in the stock market.

Q-11 How you sold the said shares?

A-11 I have sold the shares through Bonanza Portfolio Ltd, the authorized broker.

Q-12 Are you doing all the transaction with Bonanza Portfolio Ltd ?

A-12 Yes, other brokers are also there like Jawai Securities, Latin Manharlal securities ltd, Techno shares and stocks Ltd. Through whom I am doing share transaction.

Q-13 Please explain whether the sale proceed of these shares were received in cash or cheques.

A-13 All the payments were received in cheques. I will produce the documentary evidence on 23-11-2011.

Q-14 As per information received this is the bogus transaction. Can you give any explanation for the same.

A-14 I have made all the payment through cheques and the stock is reflected through DEMAT Account I content that the transaction is genuine.”

6. The Ld.AO observed that since assessee had purchased the shares from a broker entity belonging to Shri Mukesh Choksi group, the transactions of purchase of shares was concluded to be bogus. He also observed that assessee had indeed made purchase of shares of Sacheta

Metals Ltd in A.Y. 2005-06 itself, completely ignoring the contentions of the assessee regarding the settlement rules of Bombay Stock Exchange. Accordingly, he added the value of purchase of shares as unexplained investment under section 69 of the Act for the assessment year 2005-06. This action of the Ld.AO was upheld by the Ld.CIT(A).

7. At the outset, we find that assessee had made the purchase of share of Sacheta Metals Ltd only in A.Y. 2006-07 in accordance with settlement rules of Bombay Stock Exchange. Though the contract note was issued by the broker for purchase of shares on 30/03/2005, the assessee had time to make the payment within 2 days from the date of transaction. Accordingly, the assessee had made the payment by account payee cheque on 01/04/2005 and accounted for the said purchase of shares in his books in A.Y. 2006-07. Hence, it could be safely concluded that there was absolutely no purchase of shares that had happened in respect of Sacheta Metals Ltd in A.Y. 2005-06. The assessee had also furnished the following documents before the lower authorities:-

- (a) Contract Note for purchase of shares of Sacheta Metals Ltd dated 30/03/2005;
- (b) DEMAT account of the assessee reflecting the shares available in dematerialized form which also falls in A.Y. 2006-07;
- (c) Copy of letter from bank confirming the details of payment made to Alliance Intermediaries and Network Pvt Ltd (broker);
- (d) Copy of ledger of Alliance Intermediaries and Network Pvt Ltd reflecting purchase of shares on 01/04/2005 duly confirmed by it;
- (e) Copy of bank statement explaining the source for making payment for purchase of shares;
- (f) Copy of loan confirmation from M/s Tarlaben Dedhia for source for the immediate source of credit; and

- (g) Copy of assessee's ledger in the books of Bonanza Stock Broker Pvt Ltd (broker) through whom shares were bought and sold in A.Y. 2006-07.

8. The assessee also made some additional purchase of shares of Sacheta Metals Ltd during A.Y. 2006-07 and had sold the entire shareholding through Bonanza Stock Broker Pvt Ltd. The sale proceeds received on sale of shares were duly offered by the assessee as business income as he is engaged in the business of share trading. It is not the case of the Revenue that the sale proceeds received by the assessee on sale of shares is bogus wherein the nature and source of receipts is not established. Absolutely no discrepancy was pointed out by the Revenue in both the years as far as the scrip, i.e. Sacheta Metals Ltd is concerned. The only grievance of the Revenue is that assessee had made purchase of shares of Sacheta Metals Ltd through a broker, Alliance Intermediaries and Network Pvt Ltd, which happens to be a group entity of Shri Mukesh Chokshi. Since Shri Mukesh Chokshi was found to be involved in tainted transactions, the transaction of assessee was also sought to be considered so. There is absolutely no basis for levelling this allegation against the assessee by the Revenue. On the contrary, the assessee had furnished all the documentary evidences to prove the genuineness of the transactions of purchase and sale of shares carried out by him.

9. Hence, there is absolutely no case made out by the Revenue to make an addition under section 69 of the Act in respect of purchase of shares for A.Ys 2005-06 & 2006-07 as the entire transactions of purchase of shares of Sacheta Metals Ltd have been duly reflected in the accounts of share trading business of the assessee and explained by proper sources. The payments have been made by the assessee by account payee cheques from the sources drawn from the bank statements. The immediate source of credit was also explained by the assessee by way of

confirmation from third party. These facts are not disputed by the Revenue before us and the same are staring on us. Hence, we have no hesitation in directing the Ld.AO to delete the addition made under section 69 of the Act in respect of purchase of shares in respect of Sacheta Metals Ltd.

10. During the A.Y. 2006-07, the assessee had also made purchase of shares of Sundaram Finance Ltd. Since the said purchase of 10,000 shares of Sundaram Finance Ltd was made by the assessee from a broker entity belonging to Shri Mukesh Chokshi group, the Ld.AO concluded that the said transaction of purchase is bogus and accordingly made addition under section 69 of the Act in A.Y. 2006-07. Here also, the assessee had made purchase by making payment by account payee cheques out of sources drawn from his bank statement. The shares have been duly dematerialised as is evident from the DEMAT statement. These shares were subsequently sold in 2 tranches by the assessee through the registered stock broker, Bonanza Stock Brokers Ltd and gains arising thereon were offered to tax by the assessee as business income. In our considered opinion, both the purchase and sale of shares stood properly explained in the instant case and our observations made in respect of Sacheta Metals Ltd for A.Y. 2006-07 would hold good for this scrip also.

11. In view of the aforesaid observations, we have no hesitation in directing the Assessing Officer to delete the addition made on account of purchase of shares for both the assessment years under consideration. Accordingly, the ground 1 raised by the assessee for both the years are allowed.

12. The ground 2 raised by the assessee for A.Y. 2005-06 is allowed, in view of the decision rendered for Ground No.1 hereinabove.

13. The ground No.2 raised by the assessee for A.Y. 2006-07 would become infructuous in view of our decision for ground No.1 for A.Y. 2006-07.
14. In the result, both the appeals filed by the assessee are allowed.

Order pronounced on 07/12 /2022 in the open court.

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 07/12/2022
Pavanan, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary / Asstt. Registrar)
ITAT, Mumbai