

THE INCOME TAX APPELLATE TRIBUNAL  
“G” Bench, Mumbai  
Shri B.R. Baskaran (AM) & Shri Rahul Chaudhary (JM)

I.T.A. No. 1806/Mum/2022 (A.Y. 2014-15)

Sangeeta Nawal Agarwal 1601, Kanchanganga J.P. Road, Manish Nagar Andheri West Mumbai-400 053.  PAN : AEQPA 2693M (Appellant)	Vs.	ITO-25(1)(1) Mumbai./ National Faceless Appeal Centre Delhi  (Respondent)
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Assessee by	Shri Vimal Punmiya
Department by	Shri A.K. Das
Date of Hearing	17.11.2022
Date of Pronouncement	28.11.2022

O R D E R

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 26.04.2022 passed by Ld CIT(A), National Faceless Appeal Centre, Delhi and it relates to the assessment year 2014-15. The assessee is aggrieved by the decision of Ld CIT(A) in confirming the assessment of long term capital gains as income of the assessee treating it as bogus in nature and also in confirming addition made towards expenses in procuring bogus capital gains.

2. The assessee is an individual and she declared long term capital gains of Rs.48,71,510/- during the year under consideration on sale of shares and claimed the same as exempt. The assessee had earned long term capital gains on sale of M/s Global Infratech & Finance Ltd, which was identified as one of the penny stocks by the investigation wing of the department. This company was earlier known as M/s. Asianlak Capital & Finance Ltd. Hence the AO took the view that the assessee has availed accommodation entries for generating bogus capital gains. Accordingly, he treated the capital gains as

bogus in nature and assessed the same as income of the assessee. The AO also took the view that the assessee would have incurred expenses in procuring the long term capital gains and he estimated the same at 2.50% of sale value of shares and accordingly assessed a sum of Rs.1,24,183/- towards expenses. The Ld CIT(A) confirmed both the additions and hence the assessee has filed this appeal before the Tribunal.

3. The Learned AR submitted that the assessee had purchased shares in physical format through banking channel in the year 2011 when the name of the company was M/s. Asianlak Capital & Finance Ltd. The name of the company was changed into M/s. Global Infratech & Finance Limited. Subsequently, physical shares were converted into the dematerialised format and were kept in Demat account of the assessee. The assessee had held the shares for two years and during the year under consideration, she has sold a portion of the shares through a reputed broker named M/s JM Financial Services Ltd in stock exchange. The sale proceeds have also been received through banking channel. He submitted that the assessee had also paid Security transaction tax while effecting sale of shares. The Learned AR submitted that the assessee has purchased and sold the shares as an ordinary investor. He submitted that the assessee has furnished all the documents in support of purchase and sale of shares. He submitted that the AO has not found fault with any of the evidences nor did he bring any material on record to disprove those evidences. The entry and exit of shares in the Demat account of the assessee and further the payments made/received through banking channels would prove that the assessee had actually purchased and sold the shares. Hence there is no reason to doubt genuineness of the transactions of purchase and sale of shares. He submitted that the AO has simply placed his reliance on the report given by the investigation wing of the department. The AO has also not shown that the assessee was part of the ring which alleged to have rigged the prices of penny stocks of did he bring any material to show that there was flow of

equivalent amount of cash from the assessee. Accordingly, the Ld A.R submitted that the AO was not justified in disbelieving the genuineness of transactions and the Ld CIT(A) was not justified in confirming the order of AO.

4. The Learned AR submitted that the long term capital gains were exempted under the Income tax Act after introduction of Securities Transaction tax. In this regard learned AR referred to the speech given the Minister of Finance in the Parliament on 8<sup>th</sup> July 2008 at the time of introduction of Securities transaction tax (STT), wherein the Hon'ble Finance Minister has mentioned that the STT was introduced as an alternative to capital gains tax. He submitted that the assessee has paid STT on sale of shares, which was in lieu of tax on capital gains. Accordingly, he submitted that there is no reason to deny exemption of long term capital gain claimed by the assessee on sale of shares. He further submitted that Hon'ble Bombay High Court has also held that the capital gains cannot be assessed under section 68 of the I.T. Act when the transactions are genuine. In this regard he placed his reliance on the decision rendered by Hon'ble Bombay High Court in the case of CIT Vs. Shyam R. Pawar (2015) 54 Taxmann.com 108 and also decision rendered in the case of CIT Vs. Mukesh Ratilal Marolia (ITA No. 456/2007). He also submitted that the shares of this company are held by the financial institution and also by the Central Government, which fact also disproves the view of the investigation wing that it is a penny stock. Since the transactions are genuine, the AO was not justified in estimating expenses also. Accordingly he submitted that the tax authorities are not justified in assessing the long term capital gains as income of the assessee and also in estimating expenses towards procurement of long term capital gains.

5. The Learned DR, on the contrary, submitted that the Investigation Wing has carried out extensive investigation in respect of modus operandi followed in respect of penny stocks. He submitted that the shares of M/s.

Global Infratech & Finance Limited have been identified as one of the penny stocks. He further submitted that the assessee does not have any knowledge in the share market operations and she has admitted that she purchased these share as per suggestion given by her brother in law Mr. Rajesh Agarwal. Further, she was not able to show any knowledge about this company, its activities or its financial position. He further submitted that the financial position of the company does not justify huge increase in the price of shares. Further, the investigation wing has noticed that the price of these shares has been rigged so that the purchaser of the shares should convert their unaccounted income into the regular income. Accordingly, the learned DR submitted that these facts would show that the assessee herein has also availed bogus long term capital gains. Accordingly, he submitted that no interference is called for in the order passed by the learned CIT(A).

6. We heard rival contentions and perused the record. There is no dispute with regard to the fact that the assessee had purchased the shares of M/s Global Infratech and Finance Ltd (formerly known as M/s Asianlak Capital & finance Ltd) in the year 2011 in physical format by paying money through banking channels. Subsequently, he has dematerialised the shares and it has entered the demat account of the assessee. Subsequently, the assessee has sold the shares during the year under consideration after holding it for two years. They were sold through stock exchange using the services of a reputed broker named J M Financial Services Ltd. The Sale proceeds have also been received through banking channels. There is no dispute that the assessee has explained the transactions of purchase and sale of shares through proper evidences. The transactions carried out in demat account and bank account of the assessee would prove that the assessee has actually purchased and sold the shares.

7. We notice that the AO has disbelieved the transactions of purchase and sale of shares only for the reason that the shares of M/s Global Infratech

and Finance Ltd is identified as one of the penny stocks by the investigation wing of Income tax department. Accordingly, the AO has taken the view that the assessee herein has availed accommodation entry for generating bogus long term capital gains. We notice that the AO has not found fault with any of the evidences furnished by the assessee. The AO has also not bring any material on record to disprove those evidences. The AO has also not shown that the assessee was part of the ring which alleged to have rigged the prices of penny stocks. Thus, we notice that the AO has simply placed his reliance on the report given by the investigation wing of the department in order to disbelieve the claim of long term capital gain earned by the assessee. Hence, there is merit in the submission of Ld A.R that the assessee has invested in the shares of M/s Global infratech and Finance Ltd as an ordinary investor on the basis of some market information.

8. We notice that an identical case of allegation that the assessee has availed accommodation entries by way of capital gains in order to convert unaccounted money into accounted one, was examined by the Hon'ble jurisdictional Bombay High Court in the case of Shyam Power (2015)(54 taxmann.com 108)(Bom). The decision rendered by Hon'ble Bombay High Court in the above said case is extracted below:-

**“3.** Mr.Sureshkumar seriously complained that such finding rendered concurrently should not have been interfered with by the Tribunal. In further Appeal, the Tribunal proceeded not by analyzing this material and concluding that findings of fact concurrently rendered by the Assessing Officer and the Commissioner are perverse. The Tribunal proceeded on the footing that onus was on the Department to nail the Assessee through a proper evidence and that there was some cash transaction through these suspected brokers, on whom there was an investigation conducted by the Department. Once the onus on the Department was discharged, according to Mr.Sureshkumr, by the Revenue-Department, then, such a finding by the Tribunal raises a substantial question of law. The Appeal, therefore, be admitted.

**4.** Mr.Gopal, learned Counsel appearing on behalf of the Assessee in each of these Appeals, invites our attention to the finding of the Tribunal. He submits that if this was nothing but an accommodation of cash or

conversion of unaccounted money into accounted one, then, the evidence should have been complete. Change of circumstances ought to have, after the result of the investigation, connected the Assessee in some way or either with these brokers and the persons floating the two companies. It is only, after the Assessee who is supposed to dealing in shares and producing all the details including the DMAT account, the Exchange at Calcutta confirming the transaction, that the Appeal of the Assessee has been rightly allowed. The Tribunal has not merely interfered with the concurrent orders because another view was possible. It interfered because it was required to interfere with them as the Commissioner and the Assessing Officer failed to note some relevant and germane material. In these circumstances, he submits that the Appeals do not raise any substantial question of law and deserve to be dismissed.

5. We have perused the concurrent findings and on which heavy reliance is placed by Mr.Sureshkumar. While it is true that the Commissioner extensively referred to the correspondence and the contents of the report of the Investigation carried out in paras 20, 20.1, 20.2 and 21 of his order, **what was important and vital for the purpose of the present case was whether the transactions in shares were genuine or sham and bogus. If the purchase and sale of shares are reflected in the Assessee's DMAT account, yet they are termed as arranged transactions and projected to be real, then, such conclusion which has been reached by the Commissioner and the Assessing Officer required a deeper scrutiny.** It was also revealed during the course of inquiry by the Assessing Officer that the Calcutta Stock Exchange records showed that the shares were purchased for code numbers S003 and R121 of Sagar Trade Pvt Ltd. and Rockey Marketing Pvt. Ltd. respectively. Out of these two, only Rockey Marketing Pvt.Ltd. is listed in the appraisal report and it is stated to be involved in the modus-operandi. It is on this material that he holds that the transactions in sale and purchase of shares are doubtful and not genuine. In relation to Assessee's role in all this, all that the Commissioner observed is that the Assessee transacted through brokers at Calcutta, which itself raises doubt about the genuineness of the transactions and the financial result and performance of the Company was not such as would justify the increase in the share prices. Therefore, he reached the conclusion that certain operators and brokers devised the scheme to convert the unaccounted money of the Assessee to the accounted income and the present Assessee utilized the scheme.

6. It is in that regard that we find that Mr.Gopal's contentions are well founded. **The Tribunal concluded that there was something more which was required, which would connect the present Assessee to the transactions and which are attributed to the Promoters/Directors of the two companies.** The Tribunal referred to the entire material and found that the investigation stopped at a particular point and was not carried forward by the Revenue. There are 1,30,000 shares of Bolton Properties Ltd. purchased by the Assessee during the month of January 2003 and he continued to hold them till 31 March 2003. The present case related to 20,000 shares of Mantra Online Ltd for the total consideration of

Rs.25,93,150/-. These shares were sold and how they were sold, on what dates and for what consideration and the sums received by cheques have been referred extensively by the Tribunal in para 10. A copy of the DMAT account, placed at pages 36 & 37 of the Appeal Paper Book before the Tribunal showed the credit of share transaction. The contract notes in Form-A with two brokers were available and which gave details of the transactions. The contract note is a system generated and prescribed by the Stock Exchange. From this material, in para 11 the Tribunal concluded that this was not mere accommodation of cash and enabling it to be converted into accounted or regular payment. The discrepancy pointed out by the Calcutta Stock Exchange regarding client Code has been referred to. But the Tribunal concluded that itself, is not enough to prove that the transactions in the impugned shares were bogus/sham. The details received from Stock Exchange have been relied upon and for the purposes of faulting the Revenue in failing to discharge the basic onus. If the Tribunal proceeds on this line and concluded that inquiry was not carried forward and with a view to discharge the initial or basic onus, then such conclusion of the Tribunal cannot be termed as perverse. The conclusions as recorded in para 12 of the Tribunal's order are not vitiated by any error of law apparent on the face of the record either.

**7.** As a result of the above discussion, we do not find any substance in the contention of Mr. Sureshkumar that the Tribunal misdirected itself and in law. We hold that the Appeals do not raise any substantial question of law. They are accordingly dismissed. There would no order as to costs.

**8.** Even the additional question cannot be said to be substantial question of law, because it arises in the context of same transactions, dealings, same investigation and same charge or allegation of accommodation of unaccounted money being converted into accounted or regular as such. The relevant details pertaining to the shares were already on record. This question is also a fall out of the issue or question dealt with by the Tribunal and pertaining to the addition of Rs.25,93,150/-. Barring the figure of loss that is stated to have been taken, no distinguishable feature can be or could be placed on record. For the same reasons, even this additional question cannot be termed as substantial question of law.”

In the instant case also, we noticed that the AO has simply relied upon the report of the investigation department and held that the long term capital gains declared by the assessee are not genuine. We noticed that the shares were purchased on 13.09.2011 through stock-trade KKJ Stocks & Company having office in Chennai. The name of this broker does not find mention in paragraph 9.11 of the assessment order wherein in the name of stock brokers, who have admitted to providing accommodation entry of bogus long term capital gains have been mentioned. It is also not the case of the

Revenue that the Appellant was a part of syndicate of people that acted as accommodation entry providers. On perusal of the extract of the statement of the Appellant recorded during the assessment proceedings (as reproduced in paragraph 13 of the assessment order) shows that the Appellant had stated that her brother-in-law was taking care upon trading/investment in shares and that her brother-in-law was in turn, advice for investment consultant. It is pertinent to note that the Assessing Officer has not shown that brother-in-law or investment consultant were part of syndicate. On perusal of paragraph 19.9 of the assessment order, it can be seen that the Assessing Officer relied upon the price fluctuations between 18.11.2011 to 08.03.2013 to conclude that there was ragging of prices during the aforesaid period, whereas in the present case, the sales was made during 24.02.2014 to 28.02.2014 when the closing price had fallen to around Rs. 55.4 Per share from the highest trading closing price of Rs. 91.95 per shares. The shares were sold through D-mat account maintained with JM Financial Services Ltd. The Appellant continue to hold 12,837 shares as per statement dated 02.07.2018 placed at page 25 of the paper-book. No other material was brought on record by the AO to prove that the assessee has indeed availed only accommodation entries. We noticed that the assessee has furnished all documents relating to purchase and sale of securities. The shares have entered and exited his demat account. The purchase and sale transactions have been routed through the bank accounts of the assessee. All these documentary evidences produced by the assessee have not been disproved. Accordingly, we are of the view that the decision rendered by the jurisdictional Hon'ble Bombay High Court in the above said case of Shyam R Pawar (supra) is squarely applicable to the facts of the present case.

9. Accordingly, we are of the view that there is no reason to suspect the genuineness of long term capital gains declared by the assessee. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to delete the addition made by him.

10. Since we have held that the long term capital gains declared by the assessee has to be accepted, the addition relating to expenses is also liable to be deleted. We order accordingly.

11. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 28.11.2022.

Sd/-  
(RAHUL CHAUDHARY)  
JUDICIAL MEMBER

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

Mumbai; Dated : 28/11/2022

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