

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

**SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 407/MUM/2023
(Assessment Year: 2018-19)**

Shri Amit Rajnikant Shah,

Flat No. 3, 1st Floor, Navjivan Society,
Building No. 8/A, Lamington Road,
Mumbai - 4000
[PAN: AAEPS8074J]

..... **Appellant**

**Commissioner of Income Tax
(Appeals),**

Income Tax Department, NFAC,
Delhi

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Amit Shah
For the Respondent/Department : Ms. Naina K. Kumar

Date : 19.04.2023
Conclusion of hearing : 25.04.2023
Pronouncement of order

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant has challenged the order, dated 13/12/2022, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2012-13, whereby the CIT(A) had dismissed the appeal filed by the Appellant against the Assessment Order, dated 12/12/2017, passed under Section 143(3) read with Section 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').
2. The Appellant has raised following grounds of appeal:

- “1 The learned *Commissioner of Income Tax (Appeals), Income Tax Department, NFAC, Delhi, [CIT(A)]* has violated the principles of natural justice while passing the order u/s 250 of the Income Tax Act inter alia
- i. *Not giving a reasonable and sufficient opportunity of being heard.*
 - ii. *Passing order on 13-12-2022 when the case was adjourned to 23-12-2022 in response to appellant's request dtd. 08-12-2022.*
 - iii. *On holding that no response is filed when the case was already adjourned and the paper book (Pgs. 1 to 82) was filed online under e-proceedings in response to Notice u/s 250 bearing DIN: ITBA/NFAC/F/APL 1/2021-22/1036744988(1) dtd. 05-11- 2021 on 06-12-2021.*

Therefore, the order should be set aside.

2. *On the facts and circumstances of the case and in law, the learned CIT(A) erred in confirming the addition of Rs. 3,07,495/- u/s 68 of the Income Tax Act and the said addition should be deleted.*
3. *On the facts and circumstances of the case and in law, the learned CIT(A) erred in confirming the addition of Rs. 6,150/- u/s 69C of the Income Tax Act and the said addition should be deleted.”*

3. The relevant facts in brief are that for the Assessment Year 2012-13, the Assessee, an individual, did not file its return of income. On the basis of information received from Investigation Wing, Thane forwarded by DIT (Investigation), Pune, the Assessing Officer came to know that the Assessee had sold shares of M/s Aricent Infra Limited (formerly known as TCL Technologies Ltd.), a script alleged to be a penny-stock in which synchronized purchase and sale of shares had taken place. On examination of the trade data of M/s Aricent Infra Limited, the Assessing Officer found that the Assessee had undertaken trade in tune of INR 3,07,495/- in the aforesaid script and therefore, the reassessment proceedings were initiated against the Assessee by issuance of notice under Section 148 of the

Act, dated 25/03/2019. In response to the aforesaid notice, the Assessee filed return of income on 27/04/2019, declaring income of INR 70/- after claiming exemption under Section 10(38) of the Act in respect of sale of 3600 shares of M/s Aricent Infra Ltd. for a sum of INR 3,07,495/- during the previous year relevant to the Assessment Year 2011-12.

4. Relying upon the report of Kolkata Investigation Directorate pertaining to the penny-stock and the findings given therein related to bogus long/short term capital gains, the Assessing Officer concluded that the purchase of shares of M/s Aricent Infra Limited was doubtful and not in conformity with market trends. The Assessing Officer concluded that transactions of purchase and sales of shares of M/s Aricent Infra Ltd. undertaken by the Assessee were not genuine and therefore, the sale consideration of INR 3,07,495/- was treated by the Assessing Officer as unexplained cash credit under Section 68 of the Act. Further, the Assessing Officer made an addition of INR 6,150/-, being 2% of the aforesaid sale consideration of INR 3,07,495/-, under Section 69C of the Act holding the same to be accommodation charges paid by the Assessee to the broker for providing bogus accommodation entries. Thus, the Assessing Officer assessed the total income of the Assessee at INR 3,13,715/- as against returned income of INR 70/- after making addition of INR 3,07,495/- under Section 68 of the Act and INR 6,150- under Section 69C of the Act.
5. Being aggrieved, the Assessee preferred an appeal before CIT(A) and placed following facts before the CIT(A), which have reproduced in paragraph 4 of the order passed by the CIT(A), the relevant extract of the which read as under:

"4. Appellant's submission: During these appeal proceedings

1. xx xx

2. *The case was reopendShare application for Equity shares each of Rs 10/- of Toshika Chemicals Ltd now known as Aricent Infra Ltd, was made by the appellants parents around June, 1995 3600 shares were allotted on 19-07-1995 to Mrs. Virmatiben Rajnikant Shah Jt Rajnikant Somchand Shah Cost of the shares Rs.36,000/- was paid by cheque out of her own funds by Mrs. Virmatiben Rajnikant Shah Photocopies of Share Certificates were filed on record. The above Shares were gifted to the appellant by his mother. 1800 Shares were gifted on 30-01-2012 and 1800 Shares were gifted on 21-12-2012 by way of transfer into the appellants Demat Account No 1202300000788377 held with Union Bank of India, 66/80 M.S. Marg, Mumbai 400023 from Demat Account No. 1302590001157862 of Rajnikant Somchand Shah JL. Virmatiben Rajnikant Shah held with Union Bank of India, 66/80 M.S. Marg, Mumbai 400023 Demat Instruction Slip for gifts/transfer of above Shares executed by the parents were also filed on record. Transaction statement for the period 01-04-2011 to 31-03-2012 of Rajnikant Somchand Shah Jt. Virmatiben Rajnikant Shah showing the gift/transfer of above Shares into the appellants DP Account was also filed on record. 9. The shares of M/s Aricentinfra Ltd. were identified as Bogus entity by the Investigation wing of the Income Tax Department and therefore the transactions are not treated as genuine and not resulting in a genuine capital gains/loss. Hence the sale consideration of Rs 3,07,495 was treated cash credit u/s 68 by the learned A.O and added to the income of the appellant Further accommodation charges of Rs 6,150/- (2 percent of 3,07,495/-) were added u/s. 69C. 10. Being aggrieved by the said order, the appellant is in appeal before your Honour."*

6. The CIT(A), not being convinced, dismissed the appeal preferred by the Assessee vide order dated 13/12/2022.
7. Being aggrieved, the Assessee has preferred the present appeal before the Tribunal against the above order passed by the CIT(A).
8. We have heard the Ld. Departmental Representative and the Assessee who appeared in person and placed on record written submissions and paper book. We have also perused the material on record and the judicial precedents relied upon by the CIT(A). We find

that the Assessing Officer had proceeded on incorrect premises that the shares of M/s Aricent Infra Limited were purchased by the Assessee during the relevant previous year. Perusal of record shows that 3600 shares of Toshika Chemical Ltd were allotted to the parents of the Assessee (Ms. Virmatiben Rajnikant Shah/Rajnikant Somchand Shah) on 19/07/1995. The shares were allotted at the face value of INR 10 each and the purchase price of INR 3600/- was paid by cheque by the mother of the Assessee. The name of the Toshika Chemicals Ltd. was changed to TCL Technologies and thereafter, to Aricent Infra Ltd. Out of the aforesaid shares, 1800 shares were gifted by the mother of the Assessee on 30/01/2012 and the balance 1800 shares were gifted on 21/03/2012 by way of transfer to the DMat account of the Assessee. The 3600 shares thus acquired by the Assessee were sold by the Assessee through broker M/s Emkay Global Financial Services Limited on 17/01/2012 (100 shares), 18/01/2012 (1700 shares), 22/03/2012 (900 shares), and 26/02/2012 (900) shares for aggregating consideration of INR 3,07,495/- on which STT & Other charges aggregating to INR 505.48 were paid by the Assessee. In support of the aforesaid, the Assessee placed following documents on record:

- Photocopy of Letter, dated 16/12/2011, of Union Bank of India-Confirmation of Request for Dematerialization from Rajnikant Somchand Shah (Father of the Assessee)
- Photocopy of Dematerialization Request Form for Dematerialization of 3600 shares of Toshika Chemicals Ltd. (Aricent Infra Ltd.) DP ID 13025900
- Photocopy of Application Form for Transposition (TRPF), dated 15/12/2011, for replacement of name of Rajnikant Somchand Shah as the first holder along with photocopies of Shares Certificates of Toshika Chemicals Ltd. held in the names of Mrs. Virmatiben Rajnikant Shah and Rajnikant Somchand Shah

- Photocopy of Demat Transaction Statement of Rajnikant Somchand Shah for the period 01/10/2011 to 31/12/2012 dated 04/01/2012 showing transactions of TCL Technologies along with Demat Charges bill dated 03/01/2012 for the period 01/12/2011 to 31/12/2011.
- Photocopy of Demat Transaction Statement of Rajnikant Somchand Shah for the period 01/01/2012 to 31/01/2012 dated 02/02/2012 showing transactions of TCL Technologies along with Demat Charges Bill dated 02-02-2012 for the period 01-01-2012 to 31-01-2012
- Photocopy of Demat Transaction Statement dated 09/09/2019 of Rajnikant Somchand Shah for the period 01/04/2011 to 31/12/2012 showing transactions of Aricent Infra Ltd.
- Photocopies of Instruction Slip dated 13/01/2012 and 21/03/2012 given by Mr. Rajnikant Somchand Shah to Union Bank of India for transfer of 3600 (1800 + 1800) shares of TCL Technologies in Demat A/c No. 1202300000788377 favor of Amitkumar Rajnikant Shah (Assessee)

9. We find that during the assessment proceedings, the Assessee had also appeared before the Assessing Officer on 03/12/2019 and recorded his statement in response to the summons issued under Section 131 of the Act and had placed on record the above facts, which were, thereafter, supported by way of letter dated 05/12/2019 filed during the course of assessment proceedings. However, the Assessing Officer completely disregarding the aforesaid, and without conducting any independent enquiry to bring on record any material to controvert the facts placed by the Assessee before the Assessing Officer, treated the transaction of sale of shares of M/s Aricent Infra Ltd. as a bogus transaction and made addition of INR 3,07,495/- under Section 68 of the Act and INR 6,150/- under Section 69C of the Act. In appeal preferred by the Assessee, the CIT(A) also confirmed the aforesaid additions and dismissed the appeal of the Assessee. We find that the order passed by the Assessing Officer as

well as CIT(A) are based upon incorrect premises that the shares were purchased by the Assessee during the Financial Year 2011-12. In paragraph 11.1 of the Assessment Order, the Assessing Officer has recorded as under:

" 11.1. Assessee has purchased shares of above company during FY 2011-12 when company does not having any substantial profit. When financial results of M/s Aricent Infra Ltd. are not splendid and no chance of lucrative gains at the stage of purchase of its shares is a predetermined action on his part leading to subsequent path to acquire STCG by way of dubious methods. This predetermined action with specific intention is one of the circumstantial evidence leading to the conclusion that STCG." (Emphasis Supplied)

10. The above findings of the Assessing Officer are contrary to the material on record. The basis of the conclusions drawn by the Assessing Officer, as stated in paragraph 11.2 of the Assessment Order (reproduced herein below) is the increase in price of shares of Aricent Infra Limited during January, 2011 and January, 2015.

"11.2 Increase of share price of M/s Aricent Infra Ltd. non commensuration with financial results. The above graph shows sudden increase of share of M/s Aricent Infra Ltd., which is one key feature of a rigged stock."

11. We note that Assessing Officer has failed to appreciate that the shares were originally acquired in the year 1995 which fall outside the period commencing from January 2011 and ending on January 2015 examine/analysed by the Investigation Wing and/or the Assessing Officer. The shares under consideration were not purchased by the Assessee and were acquired by way of gift during the relevant previous year. Further, a perusal of chart reproduced in Assessment Order and referred to paragraph 11.2 of the Assessment Order shows that the chart pertains to script 'Kyra Lands' and not Aricent Infra Ltd. In view of the aforesaid, we hold that the

assessment has been framed on the Assessee without carrying out any independent enquiry or investigation by the Assessing Officer by merely relying upon the report of the investigation, and on the basis of incorrect understanding of the relevant facts. Accordingly, we overturn the findings returned by the Assessing Officer and CIT(A) that the transactions entered into by the Assessee resulting in Long Term Capital Gains in the hands of the Assessee in respect of shares of M/s Aricent Infra Limited was not genuine transaction and delete addition of INR 3,07,495/- under Section 68 of the Act and INR 6,150/- under Section 69C of the Act. Accordingly, Ground No. 2 and 3 raised by the Assessee are allowed while Ground No. 1 is disposed off as being infructuous.

In result, the present appeal preferred by the Assessee is allowed.

Order pronounced on 25.04.2023.

Sd/-
(B.R. Baskaran)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 25.04.2023
Alindra, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai