

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES, "SMC" JAIPUR

श्रीसंदीपगोसाई, न्यायिकसदस्य एवंश्रीराठोडकमलेशजयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA No. 39/JP/2023
निर्धारणवर्ष / Assessment Year : 2011-12

Smt. Archana Jain B-210, Vaishali Marg, Vaishali Nagar Jaipur	बनाम Vs.	The ITO Ward – 3(5) Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: ABPPJ 0401 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby : Shri Arpit Vijay, CA
राजस्व की ओरसे / Revenue by: Mrs. MonishaChoudhary, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 06/06/2023
उदघोषणा की तारीख / Date of Pronouncement: 26 /06/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 25-11-2022, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2011-12 wherein the assessee has raised the following grounds of appeal.

"1. Under the facts and circumstances of the case, the proceedings initiated u/s 148 of the I.T. Act, 1961 is void ab-initio deserves to be quashed because the action has been taken on the basis of reasons recorded u/s 148 of the I.T. Act, 1961 which are not related to the assessee.

2. The Ld. CIT(A) has grossly erred in confirming the action and finding of the Ld. AO regarding making addition of Rs. 6,78,673/- for arranging bogus Capital Loss which was not related to the assessee, treating the same as undisclosed income u/s 68 of the I.T. Act 1961.

3. The Ld. CIT(A) has grossly erred in confirming the action and finding of the Ld. AO regarding making addition of Rs. 4,05,389/- on presumption basis treating the same as unexplained cash credit u/s 68 of the I.T. Act 1961.

4. The Ld. CIT (A) has grossly erred in confirming the action and finding of Ld. AO regarding making addition of Rs. 10,84,062/- as undisclosed income u/s 68 of the I.T. Act 1961, as the provisions of Section 68 of the I.T. Act 1961 are applicable only when the assessee is maintaining books of accounts and in the present case assessee is a salaried individual not requiring to maintain the books of accounts.

5. The Ld. CIT(A) has grossly erred in confirming the action and findings of the Ld. AO regarding making addition of Rs. 20,630/- u/s 69C of the I.T. Act 1961 on presumptions and assumptions that commission @ 3 percent was paid for arranging Capital Loss, without any basis and without establishing that as to how the amount has been paid to the broker.

2.1 During the course of hearing, the ld. AR of the assessee has not pressed the Ground No.1. Therefore, the same is dismissed being not pressed.

3.1 During the course of hearing, the ld. AR of the assessee has taken up ground No. 2 & 3 for arguments before the Bench praying therein the ld. CIT(A) has erred in confirming the addition u/s 68 of the Act amounting to Rs.6,78,673/- for arranging bogus capital loss which was not related to the assessee and treating it as undisclosed income and further erred in confirming the addition u/s 68 of the Act amounting to Rs.4,05,389/- on presumption basis and treating it as unexplained cash credit.

3.2 Apropos Ground No. 2 & 3 of the assessee, the facts as emerges from the order of the ld. CIT(A) are as under:-

“8.4 The appellant has taken a bogus accommodation entry from the broker and has infused her unaccounted money amounting to Rs. 6,78,673/- into it. The appellant channelized the bogus entry through her bank account to give this entry the colour of legitimate income from penny stock trading. The broker has also admitted that the broker also used to issue the contract notes after modifying the client details. The modus operandi adopted by the broker and the details of the transactions arranged by the broker for these parties included the appellant also.

8.5 I have carefully examined the issue. During the appeal under consideration, no further documentary evidence, whatsoever, has been produced to prove the genuineness of the transaction. Apart from written submission, the appellant has produced copies of documents in appellant's submission. I have examined these documents. Instead of supporting the case of appellant, these documents only reinforces the findings of the AO which are based on his detailed analysis of the facts and circumstances of the case.

8.6 In view of the facts and circumstances borne out of the assessment order as discussed above, I am of the view that documents submitted as evidences to prove the genuineness of transaction are themselves found to serve as smoke screen to cover up the true nature of the transactions. It is revealed that the amounts received by the appellant are the result of arranged transactions to introduce its own unaccounted income through entry providers with the sole motive to account for the undisclosed income. The AO's action in quantifying and adding such unexplained money towards procurement of such accommodation entries at Rs 10,84,062/-

8.7 In view of the above discussion and the judicial precedents, it is held that the AO was justified in making addition of Rs.10,84,062/- of the I.T. Act. Accordingly, addition made by the AO is confirmed and the grounds of appeal are dismissed.”

3.3 During the course of hearing, the ld. AR of the assessee prayed that the additions so sustained by the ld. CIT(A) amounting to Rs.10,84,062/- (i.e. Rs.6,78,673/- & Rs.4,05,389/- should be deleted for which the ld. AR of the assessee has filed the detailed written submission as under:-

“1. The brief facts of the case are that the appellant derived her income from Salary and Other Sources and filed her return declaring loss of Rs. 78,284/- on 22.03.2012. **(PB No. 1)**

2. The appellant had received Salary of Rs. 1,95,000/- from M/s. Maxwell India during the year under consideration. The assessee had also received Interest from SB A/c Rs. 2,427/- and interest from M/s Maxwell India Rs. 36,000/- on Unsecured loan being total income from Other Sources was Rs. 38,427/-. But due to lack of knowledge in the original ITR the assessee had claimed negative income from Other Sources wrongly by deducting interest paid Rs. 3,11,711/- on unsecured loan, accordingly income from Other Sources was shown Rs. (-) 2,73,284/-. **(PB No. 2)**

3. In the return filled u/s 148 the above mistake was rectified and above Income from Other Sources of Rs. 38,427/- was shown correctly. **(PB No. 6)**

4. It is important to mention here that the appellant raised objection for initiating proceedings u/s 148 on the basis of reasons recoded by the Ld. AO **(PB No. 8)**, whereby the appellant submitted that the reasons mentioned by the Ld. AO does not belongs to the appellant. **(PB No. 40)**

5. During the year under consideration the appellant had not traded in penny stock company M/s. Swarnsarita Gems Ltd. (formerly known as Shyam Star Gems Limited) mentioned in the reasons recorded for reopening of assessment.

6. The copy of Bank Statement of HDFC Bank A/c 00541000008989 from 01/04/2010 to 31/03/2011 **(PB No. 42-43)** was provided to both the Ld. AO & Ld. CIT(A), which neither shows any receipt nor shows any payment to any Broker who could have assisted the appellant to trade in Penny Stock of M/s. Swarnsarita Gems Ltd. (formerly known as Shyam Star Gems Limited).

7. The complete details of all the entries in Bank Statement alongwith narrations are as under:

Date	Particulars	Withdrawal	Deposit
24.04.10	Unsecured Loan given to Maxwell India	3,00,000.00	
26.04.10	Dividend received from Canara Robocco MF		445.21
29.06.10	Dividend received from IDFC Ltd		396.00
30.09.10	Saving Bank Interest		1,218.46
11.10.10	Dividend received from Jindal Saw Ltd		3,125.00
14.10.10	Unsecured Loan taken from S.S. Maheshwari & Sons		1,40,000.00
16.10.10	Unsecured Loan repaid to Prem Lata Maheswari	1,25,000.00	
23.10.10	Dividend received from Alok Industries Ltd		50.00
27.10.10	Investment made in HDFC Top 200 MF	1,000.00	
29.10.10	Dividend received from Shri Adhikari Brothers Ltd		120.00
03.11.10	Dividend received from Cyber Tech Systems Ltd		225.00

10.12.10	Investment made in HDFC Top 200 MF	1,000.00	
28.12.10	Investment made in Tata AIG ULIP	12,500.00	
28.12.10	Investment made in Tata AIG ULIP	12,500.00	
29.12.10	Dividend received from Fidelity Ltd		8,327.78
10.01.11	Investment made in HDFC Top 200 MF	1,000.00	
10.02.11	Investment made in HDFC Top 200 MF	1,000.00	
10.03.11	Investment made in HDFC Top 200 MF	1,000.00	
11.03.11	Dividend received from DSP Black Rock MF		4,293.68
17.03.11	Receipt of Unsecured Loan from Maxwell India		3,00,000.00
23.03.11	Interest on Unsecured Loan paid to Prem Lata Maheshwari	4,130.00	
23.03.11	Interest on Unsecured Loan paid to S.S. Maheshwari & Co.	18,000.00	
23.03.11	Interest on Unsecured Loan paid to Sundeep Maheshwari	37,800.00	
23.03.11	Interest on Unsecured Loan paid to Sundeep Maheshwari HUF	83,700.00	
23.03.11	Receipt from Manoj Jain HUF		8,00,000.00
23.03.11	Repayment of Unsecured Loan alongwith Interest to Manoj Jain	6,06,803.00	
24.03.11	Interest on Unsecured Loan paid to S.S. Maheshwari & Sons	66,266.00	
26.03.11	Receipt of Unsecured Loan from Sundeep Maheshwari HUF		1,60,000.00
26.03.11	Receipt of Unsecured Loan from Sundeep Maheshwari		20,000.00
29.03.11	Salary received		32,400.00
31.03.11	Saving Bank Interest		1,209.05

8. It is clear from the Bank Statement of HDFC Bank A/c 00541000008989 for the period from 01.04.2010 to 31.03.2011 and details of all entries in HDFC Bank along with narrations that the appellant has not made any payment nor received any amount from any broker for taking Loss of Rs. 6,78,673/- during the year under consideration. The detail of all entries in HDFC Bank was provided to the Ld. AO vide letter dated 16/11/2018. **(PB No. 49)**

9. It is also clear from the Account Statement of Anand Rathi Share and Stock Brokers Limited-NSE-BSE-F&O for the period from 01.04.2010 to 31.03.2022 that no transaction was carried out by the appellant for purchase or sales of securities during the year under consideration. The Broker "Anand Rathi" has only charged DP Charges and Late payment charges during the year under consideration. **(PB No. 44)**

10. It is further clear from the Securities Transaction Tax (STT) Certificate issued by Broker-Anand Rathi that No transactions/records found for the period from 01.04.2010 to 31.03.2011. This further proves that the appellant has not taken any bogus loss of Rs.

6,78,673/- from trading in penny stock company M/s. Swarnsarita Gems Ltd during the year under consideration. **(PB No. 45)**

11. It is also amply clear from the Transaction/Bill Report of Broker-Anand Rathi that No transactions/records found for the period from 01.04.2010 to 31.03.2011. This further more proves that the appellant has not taken any bogus loss of Rs. 6,78,673/- from trading in penny stock company M/s. Swarnsarita Gems Ltd during the year under consideration. **(PB No. 46)**

12. It is further more clear from the Sauda Summary Report of Broker-Anand Rathi that No transactions/records found for the period from 01.04.2010 to 31.03.2011. This further more proves that the appellant has not taken any bogus loss of Rs. 6,78,673/- from trading in penny stock company M/s. Swarnsarita Gems Ltd during the year under consideration. **(PB No. 47)**

13. It is also important to mention that the Ld. AO has not given any proof that the said transaction belongs to the appellant. The Ld. AO has only reiterated that:

“As per information available with this office as received from investigation wing after collecting from BSE, you have booked loss of Rs. 6,78,673/- during the year under consideration in respect of M/s. Swarnsarita Gems Ltd, but you have shown loss of Rs. 2,73,284/- in original ITR filed in Sahar TR-1 on 22.03.2012. Therefore, it can be inferred that you had income of Rs. 4,05,389/- from other sources and after adjusting bogus transaction by taking accommodation entry which was set off from income under the head income from other sources and loss was declared by you in original return. Therefore, the sum of Rs. 4,05,389/- being unexplained cash credit is added u/s 68 to the total income.”

14. The Ld. AO has passed assessment order without giving any heeds to all the above Bank Statement of HDFC Bank, Account Statement of Anand Rathi, STT Certificate, Transaction/Holding Statement and Sauda Summary Report of Anand Rathi, on assumptions/presumptions basis.

15. The appellant has correctly explained the Ld. AO vide letter dated 16.11.2018, that the appellant had received Interest from SB A/c Rs. 2427/- and interest from M/s Maxwell India Rs. 36000/- on Unsecured loan being total income from Other Sources was Rs. 38427/-, but due to lack of knowledge in the original ITR the appellant had claimed negative income from Other Sources wrongly by deducting interest paid Rs. 3,11,711/- on unsecured loan, accordingly income from Other Sources was shown Rs. (-) 2,73,284/- and In the return filled u/s 148 the mistake was rectified and above income of Rs. 38,427/- was shown correctly. **(PB No. 48)**

16. It is amply clear from the above Bank Statement of HDFC Bank, Account Statement of Anand Rathi, STT Certificate, Transaction/Holding Statement and Sauda Summary Report of Anand Rathi that the appellant has not taken any bogus

loss of Rs. 6,78,673/- from trading in penny stock company M/s. Swarnsarita Gems Ltd during the year under consideration.

17. Therefore, your Honour is requested that the addition of Rs. 6,78,673/- & Rs. 4,05,389/- made on presumptions and assumptions may kindly be deleted.”

3.4 On the other hand, the ld. DR supported the order of the ld. CIT(A) and submitted that the ld. CIT(A) has rightly confirmed the action of the AO.

3.5 We have heard both the parties and perused the materials available on record. Brief facts of the case are that the assessee is an individual who derived her income from Salary, and other sources. The assessee filed her return of income for the A.Y. 2011-12 on 22.03.2012 declaring total loss of Rs. 78,284/-.(**PB No. 1-3**)Thereafter, the relevant assessment proceedings were initiated vide notice dated 29.03.2018 issued u/s 148 of the I.T. Act, 1961 (**PB No. 4**) and the assessee in response thereto again filed her return of income u/s 148 of the Act on 24.05.2018 declaring total income of Rs. 1,33,430/-. (**PB No. 5-7**). The re-assessment was completed u/s 147/143(3) of the I.T. Act, 1961 by ITO-Ward-3(5), Jaipur vide assessment order dated 27.11.2018 at an assessed income of Rs. 11,99,690/-. (**PB No. 9-11**)The AO has made addition of Rs. 6,78,673/- for arranging bogus Capital Loss treating the same as undisclosed income u/s 68 of the I.T. Act 1961. The AO also made addition of Rs. 4,05,389/- on presumption basis treating the same as unexplained cash credit u/s 68 of the I.T. Act 1961. It indicates that the AO made the addition u/s 68 of the Act amounting to amounting to Rs.10,84,062/- (i.e.

Rs.6,78,673/- & Rs.4,05,389/-). The relevant observation at para 4 of AO's order concerning the addition of Rs. 10,84,062 is as under:-

“ 4.....As per information available with this office as received from investigation wing after collecting from BSE, you have booked loss of Rs. 6,78,673/- during the year under consideration in respect of M/s. Swarnsarita Gems Ltd, but you have shown loss of Rs. 2,73,284/- in original ITR filed in Sahar TR-1 on 22.03.2012. **Therefore, it can be inferred that you had income of Rs. 4,05,389/- from other sources and after adjusting bogus transaction by taking accommodation entry which was set off from income under the head income from other sources and loss was declared by you in original return. Therefore, the sum of Rs. 4,05,389/- being unexplained cash credit is added u/s 68 to the total income.**”

However, the Id. CIT(A) has confirmed the action of the AO as to the additions made by the AO u/s 68 of the Act. From the records available before us, it is noted that the AO has nowhere in the assessment order had given proof that the said transactions belong to the assessee. It is also noted from the written submissions of the assessee whereby the assessee has furnished complete details of all the entries in the bank statement (supra). It is also noted from the available records that the assessee had not traded in penny stock company M/s. Swarnsarita Gems Ltd. (formerly known as Shyam Star Gems Ltd.) which is also mentioned in the reasons recorded for reopening of assessment. It is also noted from the Bank Statement of HFDC Bank Statement (supra) that there is no mention/ indication or involvement of the assessee in dealing in penny stock of M/s. Swarnsarita Gems Ltd. (formerly known as Shyam Star Gems Ltd.). We have also meticulously gone through the HDFC Bank Statement of the assessee where there is no glimpse of the assessee in the trading of penny stock with M/s. Swarnsarita Gems Ltd. (formerly known as

Shyam Star Gems Ltd.). It is also noteworthy to mention that the assessee has not taken any bogus loss of Rs.6,78,673/- from trading of penny stock company M/s. Swarnsarita Gems Ltd during the year under consideration. It is also noted that the AO had made further addition of Rs.4,05,389/- for which the Id.AR of the assessee vide letter dated 16-11-2018 submitted that *the assessee had claimed negative income from other sources Rs.(-) 2,73,284/- wrongly by deducting interest paid Rs.3,11,711/- on unsecured loan. No other transaction was made in BSE or with M/s. Swarnsarita Gems Ltd during the year under consideration by the assessee. Hence, it is not justified to add Rs.4,05,389/- (Rs.6,78,673 minus Rs.2,73,284/- i.e. Rs.4,05,389/-) u/s 68 to the total income of the assessee as the assessee had neither booked any loss nor made any transaction as mentioned in your notice.* It is noted from the available records that the AO did not provide any proof as to the additions of Rs.10,84,062/- (i.e. Rs.6,78,673/- & Rs.4,05,389/-) and it does not show any dealing in the penny stock M/s. Swarnsarita Gems Ltd. The addition sustained by the Id. CIT(A) on both the amounts does find merit to concur with his order passed herein above. Hence, in view of the above deliberations, the Ground Nos. 2 and 3 of the assessee are allowed.

4.1 As regards the ground No. 4 of the assessee is concerned for making addition of Rs.10,84,062/- by the AO as undisclosed income u/s 68 of the Act, the Bench noted that when it has not been established by the AO that the assessee in

real terms beneficiary of the transaction that has been alleged from M/s. Swarnsarita Gems Ltd. then this legal ground of the assessee has no relevance which is infructuous. Hence, the Ground No. 4 of the assessee is treated as infructuous.

5.1 As regards the Ground No. 5 of the assessee is concerned for making addition of Rs.20,630/- by the AO u/s 69C of the Act, the Bench noted that when it has not been established by the AO as to dealing the impugned shares by the assessee in penny stock with M/s. Swarnsarita Gems Ltd then the payment of commission @ 3% to the brokers amounting to Rs.20,630/- u/s 69C of the Act does not arise. Hence, this ground No. 5 of the assessee is allowed.

3.0 In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 26-06-2023

Sd/-

Sd/-

(संदीप गोसाईं)
(Sandeep Gosain)

(राठोडकमलेशजयन्तभाई)
(Rathod Kamlesh Jayantbhai)

न्यायिकसदस्य / Judicial Member

लेखासदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:-

26/06/2023

*Mishra

आदेश की प्रतिलिपिअग्रेहित / Copy of the order forwarded to:

1. The Appellant- Smt. Archana Jain, Jaipur
2. प्रत्यर्थी / The Respondent-The ITO, Ward 3(5), Jaipur
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File (ITA No.39/JP/2023)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar