

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "SMC" Bench, Mumbai.

Before Shri B.R. Baskaran (AM) & Shri Narender Kumar Choudhry (JM)

I.T.A. No. 1498/Mum/2023 (A.Y. 2011-12)

I.T.A. No. 1499/Mum/2023 (A.Y. 2014-15)

Vimal Kishor Shah Office Floor, Smruddhi House, 18 th Road, Plot No. 157, Chembur East Mumbai-400 071. PAN : AACPS8710K (Appellant)	Vs.	ITO, Ward-27(3)(5) Now ITO-27(3)(1) Income Tax office Vashi Railway Station Building, Navi Mumbai-400 703. (Respondent)
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Assessee by	Shri Paresh Shaparia
Department by	Shri Naganath B. Pasale
Date of Hearing	17.07.2023
Date of Pronouncement	19.07.2023

ORDER

Per B.R.Baskaran (AM) :-

Both the appeals filed by the assessee are directed against the orders passed by the learned CIT(A), National Faceless Appeal Centre, Delhi and they relate to A.Y. 2011-12 & 2014-15.

2. We shall first take up the appeal filed for A.Y. 2011-12, wherein the assessee is contesting the addition made under section 69 of the Act towards unexplained investment in jewellery.

3. We have heard the parties on this issue and perused the record. The assessee is an individual and deriving income by way of salary, capital gains and income from other sources. The Investigation Wing of the Income Tax Department found out that certain concerns floated by Rajendra Jain Group are providing accommodation entries in the form of purchase of diamond and

jewellery. It was noticed that the assessee has purchased jewellery for a sum of Rs. 2,27,250/- from M/s. Kriya Impex Pvt. Ltd. and for Rs. 3,00,240/- from M/s. Arihant Exports, both aggregating to Rs. 5,27,490/-. Both the above said concerns belonged to Rajendra Jain Group. Hence, the Assessing Officer reopened the assessment by issuing notice under section 147 of the Act. The Assessing Officer treated the above said purchases as unexplained investment and assessed the same under section 69 of the Act. The learned CIT(A) also confirmed the same.

4. The Learned AR submitted that the assessee has purchased jewellery from the above said two concerns by making payments through banking channel. In this regard, the learned AR invited our attention to the copy of the bank statement placed at page No. 34 & 35 of the paper book, wherein it is seen that the assessee has made payment of Rs. 2,27,250/- to M/s. Kriya Impex Pvt. Ltd. and Rs. 3,00,240/- to M/s. Arihant Exports. The Learned AR submitted that these investments have been duly reflected in the balance sheet under the head "Jewellery", which included the above said investment. The Learned AR, accordingly, submitted that the AO was not justified in treating the above said purchases as unexplained investment. Accordingly he prayed for deletion of the same.

5. The Learned DR, on the contrary, supported the order passed by the learned CIT(A).

6. Having heard the rival contentions, we are of the view that there is merit in the submission made by the assessee. First for all the assessee has purchased the above said jewellery for her own purpose and payments have been made through banking channel. The above said purchases have been duly reflected in the books of account as part of investment. Hence, we are of the view that there is no scope for treating the above said purchases as unexplained investment warranting addition of under section 69 of the Act.

Accordingly, we set aside the order passed by the learned CIT(A) and direct the Assessing Officer to delete the disallowance under section 69 of the Act.

7. We shall now take up the appeal filed for A.Y. 2014-15, wherein the assessee is contesting the assessment of sale value of the shares of Rs. 15,69,750/- as unexplained cash credit under section 68 of the Act.

8. The facts of the issue are that the assessee has sold 32500 shares of M/s. Blazon Marbles Ltd. and earned long term capital gains of Rs. 10,85,076/-, which was claimed by the assessee as exempt under section 10(38) of the Act. The Assessing Officer treated the same as bogus in nature on the basis of investigation report given by Kolkata Investigation Directorate with regard to 84 penny stocks, which included M/s. Blazon Marbles Limited. Accordingly, the Assessing Officer took the view that the capital gains declared by the assessee is bogus in nature and the exemption claimed under section 10(38) of the Act cannot be allowed. He also took the view that the entire sale consideration of Rs. 15,69,750/- is required to be assessed as taxable income under section 68 of the Act. Accordingly, the Assessing Officer assessed the above said sale consideration in the hands of the assessee which was also confirmed by the learned CIT(A).

9. We noticed that the assessee has purchased shares of M/s. Blazon Marbles Ltd. (earlier known as M/s. Shubham Granites Limited) through a stock broker named M/s. Alwin Securities by paying cheque on 21.2.2012. The shares have entered the demat account of the assessee and it was held for a period of two years. The assessee has sold them after a period of two years through same broker on 10.3.2014 for a sum of Rs. 15,69,750/-. The assessee earned long term capital gains of Rs. 10,85,076/- from such sale. The fact that the assessee has held the shares for a period of more than two years, in our view, would go in favour of the assessee.

10. We also noticed that the assessee is a regular investor in shares and it is not stray incidence of purchase and sale of shares. We notice that the aggregate value of investments held by the assessee as on 31.3.2014 was Rs. 3.78 crores, which consisted of investments made in 73 companies. We further notice that the purchase of shares has been accepted by the revenue in the earlier year and hence it may not be correct to treat the sale consideration as bogus in nature. We also notice that it is not the case of the Assessing Officer that either the assessee or the stock broker has been subjected to investigation by the SEBI. We also noticed that the Assessing Officer has entirely relied upon the report given by the investigation wing without making further investigation in order to find out whether the assessee was part of the group which indulged in rigging the price of the shares. The Learned AR also submitted that the share price has increased three times during the period of two years which is normal phenomenon found in the share market.

11. In view of the foregoing discussions, we are of the view that the tax authorities are not justified in assessing sale consideration of shares as unexplained cash credit u/s 68 of the Act. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to delete the addition.

12. The AO has added 1% of the sale consideration of shares as expenditure incurred by the assessee. The said addition has also been confirmed by Ld CIT(A). Since we have deleted the assessment of sale consideration, this addition, being consequential in nature, is liable to be deleted. We order accordingly.

13. In the result, both the appeals of the assessee are allowed.

Pronounced in the open court on 19.7.2023.

Sd/-
(Narendra Kumar Choudhary)
Judicial Member

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

Mumbai.; Dated : 19/07/2023

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//

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai