

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

Before Shri B.R. Baskaran (AM) & Shri Sandeep Singh Karhail (JM)

I.T.A. No. 1606/Mum/2022 (A.Y. 2014-15)

Rehana Anwar Shaikh Room No. 1601-02 Cosmic Heights, Sector IV, Bhakti Park, Wadala East, Mumbai-400 031. PAN : AYVPS2837C (Appellant)	Vs.	Assessing Authority Delhi National Faceless Appeal Centre Delhi (Respondent)
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Assessee by	Shri Prakash Jhunjhunwala
Department by	Smt. Mahita Nair
Date of Hearing	07.08.2023
Date of Pronouncement	31.08.2023

O R D E R

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 18.5.2022 passed by the learned CIT(A), National Faceless Appeal Centre, Delhi and it relates to A.Y. 2014-15. The assessee is aggrieved by the decision of the learned CIT(A) in confirming the addition of Rs. 1.05 crores being sale consideration received on sale of shares of listed sales of M/s. Radford Global Limited under section 68 of the Act.

2. The facts relating to the issue are stated in brief. During the course of scrutiny proceedings, the Assessing Officer noticed that the assessee has declared long term capital gains of Rs. 1.02 crores on sale of shares of M/s. Radford Global Limited and claimed the same as exempt under section 10(38) of the Act. It was noticed that the assessee has purchased 25,000 shares of M/s. Rosette Resorts Limited in November, 2011 at a price of Rs. 10/- per share. Subsequently the name of the above said company was

changed into M/s. Radford Global Limited. In January, 2013 the face value of the shares of Rs.10/- per share was split into shares of Rs. 2/- per share. Accordingly, the assessee received 1,25,000 shares of Rs. 2/- each against 25000 shares purchased by it. The assessee sold the entire 1,25,000 shares between 13.5.2013 to 17.5.2013 for an aggregate consideration of Rs.1,04,94,756/-. Since the shares were held for more than one year, the assessee computed long term capital gains of Rs. 1,02,44,756/- on sale of shares and claimed the same as exempt under section 10(38) of the Act.

3. The Assessing Officer noticed that the price of the shares of the above said company has started falling from August, 2013 onwards and it was trading around Rs. 4.75 per share in March 2014. He also noticed that the financials of the above said company did not justify the average selling rate of Rs.83/- per share realized by the assessee. The Assessing Officer also referred to the findings of the Kolkata Investigation Directorate, wherein the investigation wing had identified 84 stocks as penny stocks, whose prices were manipulated to earn bogus capital gains/capital loss and he noticed that the shares of M/s. Radford Global Limited was identified as one of the penny stocks. The Assessing Officer also noticed that certain share brokers were subjected to search under section 132 of the Act and they have admitted the fact of giving bogus long term gains entries to various beneficiaries. The Assessing Officer also identified the purchasers, who have purchased the shares sold by the assessee. He issued notice under section 133(6) of the Act to two of said purchases, but did not receive any reply from them. The Assessing Officer also referred to the report issued by SEBI and noticed that M/s. Radford Global Limited and its promoters have been found to be involved fraudulent market price by rigging share prices.

4. The Assessing Officer noticed that the assessee has purchased shares from M/s. Atherton Glass Works Limited. Hence the Assessing Officer issued

noticed to the above said party, but the said notice was returned back unserved. Hence, the Assessing Officer asked the assessee to prove the genuineness of the purchases. In response thereto the assessee submitted that it has purchased shares through M/s. Atherton Glass Works Limited by paying cheque. It was further submitted that, after dematerializing the shares, they were sold through SEBI registered broker in the Stock exchange platform and the sale consideration was received through banking channel. It was submitted that the shares were held for more than twelve months and hence the long term capital gain was claimed as exempt u/s 10(38) of the Act. The assessee placed reliance on the decision rendered by Hon'ble Bombay High Court in the cases of CIT Vs. Mukesh Ratilal Marolia (ITA No. 456 of 2007 dated 7.7.2011) and CIT Vs. Shyam R. Pawar (2015) 54 taxman.com 108. Accordingly, the assessee contended that the genuineness of purchase and sale transactions cannot be doubted with.

5. The Assessing Officer, however, did not accept the explanations given by the assessee. By placing reliance on the investigation report, SEBI report, the Assessing Officer took the view that the exemption of long term capital gains claimed under section 10(38) cannot be allowed. However, the Assessing Officer took the view that the sale consideration of Rs. 1.05 crores received by the assessee on sale of shares is required to be assessed as taxable income of the assessee under section 68 of the Act. Accordingly, the Assessing Officer assessed the sale consideration as unexplained cash credit under section 68 of the Act. The learned CIT(A) confirmed the same. He also held that the profit earned by the assessee from sale of shares is beyond human probabilities and in this regard, he took support of the decisions rendered by Hon'ble Supreme Court in the cases of CIT vs. Durga Prasad More (1971)(82 ITR 540) and Sumati Dayal vs. CIT (214 ITR 801).

6. Aggrieved by the orders passed by tax authorities, the assessee has filed this appeal before us.

7. The Ld A.R submitted that the assessee has furnished all evidences to the tax authorities to prove genuineness of purchases and sales of shares. He submitted that the AO has primarily relied upon the SEBI's interim report to come to the conclusion that the prices of shares of Radford global Ltd have been manipulated. However, the name of the assessee does not find place in the said SEBI report. In any case, the SEBI, vide its investigation report dated 20th September, 2017 has categorically held that it did not find any adverse evidence/adverse findings in respect of violation of provisions of SEBI Regulations. Accordingly, he submitted that there is no reason to suspect the share transactions carried on by the assessee. He also relied upon host of case laws, wherein the Tribunal has held that the purchase and sale of shares of Radford Global Ltd are genuine.

8. The Ld D.R, on the contrary, relied upon the order passed by the tax authorities. He submitted that the assessee has purchased shares offline and it was a stray transaction. It is discernible as to whether the assessee has understood share transactions. He submitted that the AO has taken support of SEBI report, report of Investigation wing with regard to penny stocks and exit providers to establish that the share transactions carried on by the assessee are not genuine. He submitted that the AO has also issued notices u/s 133(6) of the Act to two of the exit providers and also the person from whom the assessee has claimed to have purchased the shares. However, none of the parties has responded to the said notices. The Ld A.R placed reliance on the decision rendered by Hon'ble Calcutta High Court in the case of PCIT vs. Swati Bajaj (2022)(139 taxmann.com 352)(Cal) and certain other decisions.

9. In the rejoinder, the Ld A.R submitted that the AO has made reference to the report of investigation wing, SEBI report and also issued notices u/s 133(6) of the Act to the exit providers/supplier of shares. However, the AO

has not established that the assessee was part of the group which was manipulating the prices of shares. He submitted that the Hon'ble jurisdictional Bombay High Court has held in the case of Shyam Pawar (supra) that it is necessary to prove involvement of assessee in the manipulation before rejecting the share transactions of the assessee. He submitted that the decision rendered by the jurisdictional High Court is binding upon the AO and hence the decision rendered by the Hon'ble Calcutta High Court cannot be taken support of. He submitted other decisions relied upon by the Ld D.R are not either related to purchase and sale of shares or rendered on the facts prevailing in those cases.

10. We heard the parties and perused the record. We notice that the assessing officer has placed reliance on the report given by the Investigation wing of the Income tax department, Kolkatta and SEBI's interim report for arriving at the conclusion that the long term capital gains reported by the assessee is bogus in nature. With regard to the SEBI report, the Ld A.R brought to our notice the final report of SEBI, wherein it has been held that it did not find any adverse evidence/adverse findings in respect of violation of provisions of SEBI Regulations. With regard to the investigation report of Investigation wing, we notice that the AO has relied upon the said generalized report with regard to the modus operandi adopted in manipulation of prices and generation of bogus capital gains. It is not the case of the AO that the transactions entered by the assessee were found to be a part of manipulated transactions.

11. With regard to purchase of shares from a concern named M/s Atherton Glass Works Ltd, it is the case of the AO that the said concern did not respond to the notice issued by him u/s 133(6) of the Act. In this regard, a specific query was put to the counsel as to how the assessee purchased shares of M/s Radford Global Ltd from the above said concern. The Ld A.R submitted that M/s Atherton Glass works Ltd has given advertisement in the

news paper stating that it is dealing in physical odd lot shares of all companies. He submitted that the assessee has approached the above said company for purchasing shares of M/s Radford Global Ltd and categorically submitted that the assessee is not related to the above said concern. There is no dispute that the assessee has paid the purchase consideration by way of cheque issued in November, 2011. Copies of physical share certificates duly transferred in the name of the assessee in November, 2011 are placed in the paper book. The entire shares were dematerialized in April 2012 and they were sold in May, 2013. Hence we are of the view that there is no scope for suspecting the purchase of shares.

12. The AO has identified the purchasers of shares, which have been sold by the assessee and he issued notices under section 133(6) of the Act to two persons. Since the said notices were returned back/not responded, the AO has doubted the sale transactions of shares. However, it is pertinent to note that the assessee has sold the shares on the recognised stock exchange. It is not shown by the AO that the assessee was aware of the exit providers or part of the group involved in rigging the prices. Hence, mere fact of return of notices issued to two of the exit providers cannot be a ground to suspect the genuineness of sales, without bringing any other substantial evidence on record.

13. We notice that the assessing officer has not found fault with any of the documentary evidences furnished by the assessee to prove the purchases and sale of shares. As noticed earlier, the AO has not brought on record any material to show that the assessee was part of the group which involved in the manipulation of prices of shares. Hence, there is no reason to suspect the purchase and sale of shares undertaken by the assessee. In this regard, we take support of the decision rendered by Hon'ble Bombay High Court in the case of Shyam Pawar (supra), wherein it was held as under:-

“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.Sureshkumar, 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.”

14. The Hon’ble Jurisdictional High Court has considered an identical issue in yet another case of PCIT vs. Ziauddin A Siddique (Income tax Appeal No. 2012 of 2017 dated 4th March, 2022) and relevant discussions made by Hon’ble Bombay High Court are extracted below:-

“2. We have considered the impugned order with the assistance of learned counsels and we have no reason to interfere. There is a finding of fact by the Tribunal that the transaction of purchase and sale of shares of the alleged penny stock of shares of Ramkrishna Fincap Ltd (“RFL”) is done through stock exchange and through the registered Stock Brokers. The payments have been made through banking channels and even Security Transaction Tax (“STT”) has also been paid. The Assessing Officer also has not criticized the documentation involving the sale and purchase of shares. The Tribunal has also come to a finding that there is no allegation against the assessee that it has participated in any price rigging in the market on the shares of RFL.

3. Therefore we find nothing perverse in the order of the Tribunal.

4. Mr. Walve placed reliance on a judgement of the Apex Court in Principal Commissioner of Income tax (Central)-1 vs. NRA Iron & Steel (P) Ltd (2019)(103 taxmann.com 48)(SC) but that does not help the revenue in as much as the facts in that case were entirely different.

5. In our view, the Tribunal has not committed any perversity or applied incorrect principles to the given facts and when the facts and circumstances are properly analysed and correct test is applied to decide the issue at hand, then, we do not think that question as pressed raises any substantial question of law.

15. Accordingly, in the facts and circumstances of the case, 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) and Ziauddin A Siddique (supra) shall apply in the present case, since the AO has not established that the assessee was involved in price rigging and further the AO did not find fault with any of the documents furnished by the assessee.

16. We noticed earlier that the AO has assessed the Sale consideration of shares as unexplained cash credit u/s 68 of the Act. It is pertinent to note

that the purchase of shares made in an earlier year has been accepted by the revenue. The sale of shares has taken place in the online platform of the Stock exchange and the sale consideration has been received through the stock broker in banking channels. Hence, in the facts of the case, the sale consideration cannot be considered to be unexplained cash credit in terms of sec. 68 of the Act.

17. In view of the foregoing discussions, we hold that the sale consideration received on sale of shares cannot be assessed as unexplained cash credit u/s 68 of the Act and the long term capital gains declared by the assessee cannot be doubted with. Accordingly, we set aside the order passed by Ld CIT(A) and direct the AO to delete the impugned addition made by him.

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

Order pronounced on 31.8.2023.

Sd/-
(Sandeep Singh Karhail)
Judicial Member

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

Mumbai.; Dated : 31/08/2023

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//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS