

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "B", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER  
AND  
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.775/PUN/2023  
निर्धारण वर्ष / Assessment Year: 2013-14

ITO, Ward-1, Kolhapur.	Vs.	Splice Biotech Pvt. Ltd., 212, Azad Roads, Jaysingpur, Tal: Shirol, Dist. Kolhapur- 416115. PAN : AAHCS4671F
Appellant		Respondent

Revenue by : Shri M. G. Jasnani  
Assessee by : Shri Hari Krishan  
Date of hearing : 13.09.2023  
Date of pronouncement : 27.09.2023

**आदेश / ORDER**

**PER INTURI RAMA RAO, AM:**

This is an appeal filed by the Revenue directed against the order of the National Faceless Appeal Centre, Delhi ['NFAC'] dated 12.05.2023 for the assessment year 2013-14.

2. Briefly, the facts of the case are that the assessee is a company incorporated under the provisions of the Companies Act, 1956. It is engaged in the business of dealing, developing of properties and manufacturing-cum-trading of recycled betelnut. The Return of Income for the assessment year 2013-14 was filed on 19.09.2013 disclosing total income of Rs.97,64,890/-. Against the said return of

income, the assessment was completed by the Income Tax Officer, Ward-2, Ichalkaranji ('the Assessing Officer') vide order dated 29.03.2016 passed u/s 143(3) of the Income Tax Act, 1961 ('the Act') at total income of Rs.6,23,59,430/-. While doing so, the Assessing Officer denied the claim for exemption of capital gains u/s 10(38) of the Act amounting to Rs.1,16,28,954/- by holding that the transactions of purchase of shares of the scrip S. K. Stock Dealers Pvt. Ltd. and subsequent sale is nothing, but a bogus transaction by relying upon the investigation report by the Investigation Wing of the Department and the Securities & Exchange Board of India (SEBI). The Assessing Officer also made addition on account of unsecured loans received from following parties :-

Sr. No.	Name of the Party	Particulars of transaction	Amount of unsecured loan	Total
1.	MSV Fiscal Services Pvt. Ltd., Kolkata	On 06.07.2012 through Bank	Rs.30,00,000/-	Rs.75,00,000/-
		On 07.07.2012 through Bank	Rs.25,00,000/-	
2.	Welon advisory Services Pvt. Ltd., Kolkata	On 12.04.2012 through IDBI Bank	Rs.50,00,000/-	Rs.93,00,000/-
		On 28.06.2012 through IDBI Bank	Rs.30,00,000/-	
		On 11.07.2012 through DC Bank	Rs.13,00,000/-	
3.	Slow & Sound Electronics Pvt. Ltd., Kolkata	On 29.06.2012 through IDBI Bank	Rs.50,00,000/-	Rs.1,00,00,000/-
		On 06.07.2012 through DC Bank	Rs.30,00,000/-	
		On 11.07.2012 through DC Bank	Rs.20,00,000/-	

4.	Tristar Agencies Pvt. Ltd., Kolkata	On 11.04.2012 through IDBI Bank	Rs.30,00,000/-	Rs.1,00,00,000/-
		On 20.04.2012 through DC Bank	Rs.30,00,000/-	
		On 10.07.2012 through DC Bank	Rs.40,00,000/-	
5.	S.K. Stock Dealers Pvt. Ltd., Kolkata	On 11.04.2012 through IDBI Bank	Rs.20,00,000/-	Rs.1,00,00,000/-
		On 20.04.2012 through UCO Bank	Rs.20,00,000/-	
		On 24.04.2012 through UCO Bank	Rs.50,00,000/-	
		On 10.07.2012 through UCO Bank	Rs.10,00,000/-	
6.	Subhrekha Vyapaar Pvt. Ltd., Kolkata	On 28.06.2012 through IDBI Bank	Rs.20,00,000/-	Rs.52,00,000/-
		On 06.07.2012 through IDBI Bank	Rs.20,00,000/-	
		On 11.07.2012 through IDBI Bank	Rs.12,00,000/-	
Total				Rs.5,20,00,000/-

3. The Assessing Officer had also analyzed the modus operandi adopted by the appellant. For the sake of brevity, the modus operandi is not discussed herein.

The appellant was also provided the copy of statements recorded by the Investigation Wing of the Department, Calcutta from Shri Navneet Kumar Singhania and Shri Beni Prasad Lahoti, who are alleged to be involved in providing accommodation entries as bogus long term capital gains by adopting modus operandi as set out by the Assessing Officer in the assessment order. During the course of assessment proceedings, the appellant had failed to substantiate that the transactions of purchase and sales of

shares/unsecured loans are genuine one. In the circumstances, the Assessing Officer brought to tax the sale proceeds of the shares as unexplained cash credit and completed the assessment.

4. Being aggrieved by the order of assessment, an appeal was filed before the NFAC who vide impugned order deleted the addition by holding that the assessee had proved the genuineness of the transactions of purchase and sales of shares/unsecured loans. The NFAC had accepted the explanation of the assessee directed the Assessing Officer to delete the addition made u/s 68 of the Act.

5. Being aggrieved by the decision of the NFAC, the Revenue is in appeal before us in the present appeal.

6. The ld. Sr. DR submits that the NFAC ought not to have given direction to the Assessing Officer to delete the addition of Rs.5,20,00,000/- without appreciating the fact that the assessee failed to prove the identity and creditworthiness of the parties and genuineness of transactions.

7. The ld. AR placing reliance on the order of the NFAC submits that in view of the reasoned order passed by the NFAC, no interest is required.

8. We heard the rival submissions and perused the material on record. The issue in the present appeal relates to whether or not the

claim for exemption of capital gains u/s 10(38) of the Act is genuine. The material facts to be noted herein are as under :

During the course of assessment proceedings, the Assessing Officer noticed that the appellant had indulged in “suspicious transaction relating to long term capital gains on sale of shares” and relating to claim of appellant for exemption of Rs.1,16,28,954/- u/s 10(38) of the Act as sale of shares of S. K. Stock Dealers Pvt. Ltd.. The case of the Assessing Officer is that the appellant is a beneficiary of accommodation entries or long term capital gains from Calcutta Entry Provider, namely, Shri Navneet Kumar Singhania and Shri Beni Prasad Lahoti. The Investigation Wing of the Income Tax Department, Calcutta had conducted search and seizure operations on the said entry provider and recorded the statement, wherein, it is stated that he had admitted to have provided the accommodation entries in respect of scrips as per list which includes the company S. K. Stock Dealers Pvt. Ltd.. He further stated to have been admitted that the companies controlled by him are paper companies which were used for giving accommodation entries and list of the companies was also provided and the said companies were managed/operated by Shri Navneet Kumar Singhania and Shri Beni Prasad Lahoti. The investigation

report of the Income Tax Department was available in the public domain and also narrated the modus operandi adopted for the purpose of claiming the bogus long term capital gains/providing accommodation entries in the form of unsecured loans. During the course of assessment proceedings, the Assessing Officer had called upon to substantiate the genuineness of the transactions of purchase and sale of shares in the light of his findings. The Assessing Officer also furnished the copies of the statement recorded from entry providers. It is born on record that despite the adequate opportunity afforded to the appellant, the appellant had failed to rebut the findings of the Assessing Officer. In the circumstances, the Assessing Officer made addition of sale proceeds of the shares/unsecured loans invoking the provisions of section 68 of the Act.

On appeal before the NFAC, the NFAC accepted the explanation of the assessee directed the Assessing Officer to delete the addition made u/s 68 of the Act. This finding of the NFAC deleting the addition made by the Assessing Officer u/s 68 of the Act is under challenge before us contenting that the appellant had not discharged the onus of proving the genuineness of transactions of capital gains in respect of exemption u/s 10(38)/unsecured loans.

In a case involving identical facts of the case, the Hon'ble Calcutta High Court in the case of PCIT vs. Swati Bajaj, 446 ITR 56 (Calcutta) after making reference to the decisions of Hon'ble Madras High Court in the case of CIT vs. Manish D. Jain, 120 taxmann.com 180 (Mad.) and PCIT vs. Prabha Jain, 439 ITR 304 (Mad.) had confirmed the action of the Assessing Officer by holding that the Assessing Officer had cogently brought out the factual scenario to establish machinations of fraudulent, manipulative and deceptive dealings and how the stock exchanges system was misused to generate bogus LTCG.

9. There is yet one more reason as to why we are inclined to confirm the addition made by Assessing Officer, in view of the well settled principle of law that fraud vitiate everything and even principle of natural justice have no application and such transaction is *void ab initio*. The Hon'ble Supreme Court in the case of Friends Trading Co. vs. Union of India in Civil Appeal No.5608 of 2011 vide order dated 23.09.2022 held in the context of availment of alleged forged DEPB under the Customs Act, wherein, it was found DEPB licenses were forged and it was held that the exemption benefit availed on such forged DEPB are *void ab initio* on the principle that fraud vitiate everything and the period of limitation

was held to have no application and the Department was held to be justified in invoking the extended period of limitation and the fact that whether the beneficiary had no knowledge of about the fraud/forged and fake DEPB licenses have no bearing the imposition of custom duty. The ratio of judgement is squarely applicable to the transaction under consideration before us. Further, the application of principle of the fraud under judicial Acts was considered by the Hon'ble Supreme Court in the case of Smt. Badami (Deceased) By her L.R. vs. Bhali in Civil Appeal No.1723 of 2008 dated 22.05.2012, wherein, the Hon'ble Apex Court held as follows :-

*“20. In S. P. Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. and others [AIR 1994 SC 853] this court commenced the verdict with the following words:-*

*““Fraud-avoids all judicial acts, ecclesiastical or temporal” observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decree*

*- by the first court or by the highest court - has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.”*

*21. In the said case it was clearly stated that the courts of law are meant for imparting justice between the parties and one who comes to the court, must come with clean hands. A person whose case is based on falsehood has no right to approach the Court. A litigant who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If a vital document is withheld in order to gain advantage on the other side he would be guilty of playing fraud on court as well as on the opposite party.*

22. *In Smt. Shrist Dhawan v. M/s. Shaw Brothers [AIR 1992 SC 1555]* it has been opined that fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It has been defined as an act of trickery or deceit. The aforesaid principle has been reiterated in *Roshan Deen v. Preeti Lal [AIR 2002 SC 33]*, *Ram Preeti Yadav v. U. P. Board of High School and Intermediate Education and other [(2003) 8 SC 311]* and *Ram Chandra Singh v. Savitri Devi and others [(2003) 8 SCC 319]*.

23. *In State of Andhra Pradesh and another v. T. Suryachandra Rao [AIR 2005 SC 3110]* after referring to the earlier decision this court observed as follows:-

*“In Lazaurs Estate Ltd. v. Beasley [(1956) 1 QB 702]* Lord Denning observed at pages 712 & 713, “No judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud. Fraud unravels everything.” In the same judgment Lord Parker LJ observed that fraud vitiates all transactions known to the law of however high a degree of solemnity. ”

24. Yet in another decision *Hamza Haji v. State of Kerala & Anr. [AIR 2006 SC 3028]* it has been held that no court will allow itself to be used as an instrument of fraud and no court, by way of rule of evidence and procedure, can allow its eyes to be closed to the fact it is being used as an instrument of fraud. The basic principle is that a party who secures the judgment by taking recourse to fraud should not be enabled to enjoy the fruits thereof.”

10. In the present case also, the appellant deliberately withheld the information from the Assessing Officer as well as the NFAC which is within exclusive knowledge of appellant to establish the genuineness of transactions of purchase of shares of that company/unsecured loans. It is nothing but a fraud played by the appellant against the Assessing Officer as well as the NFAC who are quasi judicial authorities employed for execution of the provisions of the Income Tax Act. Therefore, the principle of fraud

can be squarely applied to the facts of the present case and principles of natural justice have no application. Applying the said doctrine, we have no hesitation to hold that the transaction of purchase and sale of shares of S. K. Stock Dealers Pvt. Ltd. under consideration before us is *void ab-initio*, this is nothing but sham, make believe and colourful device adopted with excellent paper work with intention bringing the undisclosed income into books of account. The decision of the Hon'ble Bombay High Court in the case of PCIT vs. Indravadan Jain, HUF in Income Tax Appeal No.454 of 2018 dated 12.07.2023 has no application to the facts of the present case, inasmuch as, the decision was premised on the fact that the shares were bought on the floor of listed exchange, whereas, in the present case, the shares were bought through private preferential allotment. The Hon'ble High Court simply dismissed the appeal preferred by the Revenue without framing any question of law which, in our considered opinion, does not constitute any precedential value. Moreover, the Hon'ble High Court had not invoked the theory of 'doctrine of fraud'. Therefore, the decision of the Hon'ble High cannot be termed as binding precedent. Equally, other decisions relied upon by the Id. Counsel have no application, inasmuch as, the 'doctrine of fraud' was not invoked by the

respective High Courts or the Tribunals. The NFAC had failed to examine the nature of transaction, the NFAC had passed order in perfunctory manner. Therefore, we reverse the order passed by the NFAC and restore the assessment order.

11. In the result, the appeal filed by the Revenue stands allowed.

Order pronounced on this 27<sup>th</sup> day of September, 2023.

**Sd/-**  
**(PARTHA SARATHI CHAUDHURY)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(INTURI RAMA RAO)**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 27<sup>th</sup> September, 2023.

*Sujeet*

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

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Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.