

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “B”, MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.1620/M/2023
Assessment Year: 2011-12**

M/s. Nipra Trading Private Limited, 501, Corporate Arena, D.P. Piramal Road, Bangur Nagar S.O., Goregaon, Mumbai – 400 104 PAN: AABCN1311K	Vs.	National Faceless Appeal Centre (NFAC), Delhi
(Appellant)		(Respondent)

Present for:

Assessee by : Mr. Gautam R. Mota, C.A.
Revenue by : Mr. Ashok Kumar Ambastha, D.R.

Date of Hearing : 26 . 07 . 2023
Date of Pronouncement : 08 . 09 . 2023

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, M/s. Nipra Trading Private Limited (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 26.07.2021 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)] qua the assessment year 2011-12 on the grounds inter-alia that :-

“The Appellant submits the following ground, which is without prejudice:

1. The order passed by the learned National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred to as 'the learned CIT(A)'] is bad in law and on facts.

2. Re: Order passed by CIT(A) is bad in law:

2.1 The learned CIT(A) grossly erred in stating that the order cannot be recalled as per the provision of Income Tax Act inspite of specific provision in section 154 of the Income Tax Act.

3. Re: Capital gain on account of sale of listed equity shares treated as Short Term Capital Gains instead of Long Term Capital Gains.

3.1 The learned CIT(A) grossly erred in holding that Equity Shares of Visagar Polytex Limited are not listed on recognized stock exchange, thereby denying benefit of 1" proviso to Sec. 2(42A) for the purpose of computing the period of holding and consequently treating the gain as short term capital gains.

3.2 The learned CIT(A) failed to appreciate the submissions made by the Appellant that the share of Visagar Polytex Limited are listed on recognized stock exchange and disregarded the same with a reason that he doesn't have power to recall his own order."

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : the assessee company is into the business of broking and dealing in shares and other securities. assessee's return of income for the year under consideration declaring total income of Rs.60,00,039/- showing the book loss of Rs.73,17,886/- under section 115JB of the Income Tax Act, 1961 (for short 'the Act') was processed and the assessment was framed under section 143(3) of the Act determining the total income at Rs.60,00,040/-. However, subsequently assessment was reopened by initiating the proceedings under section 147/148 of the Act and in response to the notice issued the assessee claimed the original return filed as reply to the same and the reasons recorded were supplied. During the reopening proceedings it was noticed that the assessee has reported long term capital gain (LTCG) taxable under section 112 (non STT) to the tune of Rs.55,00,000 on sale of shares of M/s. Visagar Polytex Ltd. on 05.02.2010 and shares were

allotted to the assessee company on 11.02.2010. The warrants issued in favour of the assessee were converted into equity shares on 19.04.2010 which were subsequently sold on 14.03.2011 and thereby computed the LTCG after claiming indexed cost of acquisition on the ground that the shares were held by it for more than 12 months. Declining the contentions raised by the assessee the Assessing Officer (AO) proceeded to hold that the gain arising on the sale of the shares in question is taxable under STCG and not under LTCG declared by the assessee and thereby assessee earned LTCG of Rs.70,00,000/- on the shares of M/s. Visagar Polytex Ltd. The AO thereby made an addition of Rs.70,00,000/- to the total income of the assessee.

3. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has partly allowed the same. Subsequently Ld. CIT(A) on the application moved by the assessee seeking rectification on the ground that Ld. CIT(A) has made an error in holding that the shares of M/s. Visagar Polytex Ltd. are not listed on any stock exchange the same would not be covered by the 1st proviso to section 2(42A) of the Act and thus any period of holding less than 36 months would result in the assets being treated as STCG. Declining the contentions raised by the assessee that shares of the M/s. Visagar Polytex Ltd. brought in question are listed on the stock exchange and as such this is an error apparent on record the Ld. CIT(A) dismissed the application moved by the assessee under section 154 of the Act. Feeling aggrieved with the impugned order passed by Ld. CIT(A) under section 154 read with section 250 of the Act assessee has come up before the Tribunal by way of filing present appeal.

4. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

5. Undisputedly the assessee has purchased the share warrants of M/s. Visagar Polytex Ltd. on 05.02.2010. It is also not in dispute that allotment of share warrants of M/s. Visagar Polytex Ltd. was made on 11.02.2010 for an amount of Rs.1,20,00,000/-. It is also not in dispute that the conversion of the share warrants into equity shares was made on 19.04.2010. It is also not in dispute that the assessee has sold the equity shares in question on 14.03.2011 for an amount of Rs.1,90,00,000/-.

6. In the backdrop of the aforesaid facts and circumstances of the case the short question arises for determination in this case is:

"As to whether the Ld. CIT(A) has erred in holding that equity shares of M/s. Visagar Polytex Ltd. in question are hit by 1st proviso to section 2(42)(A) for the purpose of computing the period of holding and consequently treating the gain as STCG?"

7. The Ld. CIT(A) has rejected the claim of the assessee company for treating the gain as LTCG on the shares of M/s. Visagar Polytex Ltd. in question on the ground that the shares in question being not listed on any stock exchange thus denied the benefit of 1st proviso to section 2(42A) of the Act by returning following findings:

"5.2.2 In present case, the warrants were purchased on 05.02.2010 which were allotted on 11.02.2010, converted into equity shares on 19.04.2010, and subsequently such shares were sold on 14.03.2011. In such case, the holding period of shares would be considered between 05.02.2010 to 14.03.2011, which is little above 13 months. The

appellant has claimed the gain on such sale of shares as Long Term Capital Gain. However, since the said shares of M/s Visagar Polytex Ltd. are not listed on any stock exchange, the same would not be covered by the exclusion in first proviso to section 2(42A), which reads as under:

“Provided that in the case of a security (other than a unit) listed in a recognized stock exchange in India or a unit of the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963) or a unit of an equity oriented fund or a zero coupon bond, the provisions of this clause shall have effect as if for the words "thirty six months", the words "twelve months" had been substituted.”

Since the appellant's shares sold were not listed on any stock exchange, the period of holding up to 36 months would be considered to classify it as short term capital asset.

5.3 In view of above, no interference is required in the assessment as short term capital gain of Rs.70,00,000/- on sale of said shares. Therefore, the ground of appeal is dismissed.

(Ground: Dismissed)”

8. To challenge the aforesaid findings returned by the Ld. CIT(A) the Ld. A.R. for the assessee drew our attention towards annual report for the financial year 2010-11 of M/s. Visagar Polytex Ltd. which shows that its shares were listed at the stock exchange, Mumbai. For facility of reference operative part of the annual report available at page 8 which is extracted as under:

VISAGAR POLYTEX LIMITED								Annual Report 2010-2011	
J. GENERAL SHAREHOLDERS INFORMATION:									
Annual General Meeting		14th DECEMBER, 2011							
Date		9:30 A.M.							
Time		1008/1009, Gold Crest Centre, I.T Road,							
Venue		Borivli - West, Mumbai - 400 092							
Financial Calendar		July 2011 to June 2012							
Financial reporting for the quarter ending September, 2011		OCTOBER END 2011							
Financial reporting for the quarter ending December, 2011		JANUARY END 2012							
Financial reporting for the quarter ending March, 2012		APRIL END 2012							
Financial reporting for the quarter ending June, 2012		JULY END 2012							
Date of Book Closure		10th December, 2011 to 14th December, 2011 (BOTH DAYS INCLUSIVE)							
Registered office		907/908, Day Plaza, S.V Road, Andheri - West, Mumbai - 400 058							
Dividend Payment Date		Before 13th January, 2012							
Listing on Stock Exchange		THE STOCK EXCHANGE, MUMBAI							
Stock Code (The Stock Exchange, Mumbai)		506146							
ISIN No.		INE370E01029							
Market Price Data: High/Low during each month in last financial year									
Date	Open (Rs.)	High (Rs.)	Low (Rs.)	Close (Rs.)	No. of Shares	No. of Trades	Net TAD (Rs.)		
July 2010	141.45	164.00	131.80	142.85	4,48,553	8,933	6,90,20,557		
August 2010	143.00	157.50	96.55	96.55	2,99,236	4,996	4,20,76,330		
September 2010	91.75	91.75	33.30	33.38	42,567	1,399	26,95,153		
October 2010	31.65	68.40	27.20	61.90	4,14,807	396	1,35,94,701		
November 2010	58.85	75.90	50.55	75.90	5,57,838	1,167	3,73,24,677		
December 2010	78.90	131.90	77.00	125.00	4,59,456	896	4,08,28,100		
January 2011	125.00	138.00	112.00	122.90	3,34,115	875	4,02,91,744		
February 2011	120.00	147.25	105.00	147.20	63,667	503	77,80,025		
March 2011	147.00	212.30	143.00	187.35	3,33,124	2,337	6,30,43,555		
April 2011	186.00	212.00	169.15	199.70	77,686	735	1,47,17,757		
May 2011	192.00	319.80	141.55	141.55	2,23,322	2,105	3,87,01,562		
June 2011	134.50	143.65	119.70	135.25	1,82,938	1,642	2,48,01,562		
Ex-Bonus									
18									
CERTIFIED TRUE COPY									

9. Ld. A.R. for the assessee also drew our attention towards the market value of the shares of M/s. Visagar Polytex Ltd. available at page 11 of the paper book which is extracted for perusal as under:

Nipra Trading Private Limited
A.Y. 2011-12
ITAT Appeal

Market Value of Visagar Polytex

Company : **VISAGAR POLYTEX LTD. 506146**
Period: Year 1993 to Year 2018

All Prices in ₹

Year	Open	High	Low	Close	No. of Shares	No. of Trades	Total Turnover	Deliverable Quantity	% Del. Qty to Traded Qty	Spread		%
										H-L	C-O	
1994	10.00	15.00	10.00	13.00			0			5.00	5.00	0
1995	37.00	145.00	15.00	78.00	4,700	33	5,62,000			133.00	41.00	0
1996	70.00	70.50	5.70	5.70	99,300	590	30,21,477			72.80	68.30	0
1997	4.75	88.50	4.80	89.50	29,400	117	5,92,750			85.80	84.75	0
1998	88.00	129.70	85.50	129.10	98,300	95	1,06,90,500			44.20	43.80	0
2000	128.00	130.00	39.00	39.00	3,956	25	2,95,275			82.90	82.00	0
2004	38.00	38.00	38.05	38.05	200	2	7,495			1.95	-1.95	0
2007	128.70	148.90	128.70	148.90	250	4	34,162	250	100.00	20.20	20.20	
2008	141.50	312.15	49.10	312.15	76,511	349	69,32,892	75,753	99.01	283.05	170.65	
2009	320.00	1,440.00	308.00	1,432.50	3,02,223	8,877	29,81,80,569	2,47,595	81.82	1,134.00	1,112.50	
2010	1,440.00	1,525.00	27.20	125.00	35,07,769	32,584	44,24,48,553	27,84,593	79.38	1,497.80	1,315.00	
2011	125.00	319.80	105.00	154.80	37,89,878	26,477	59,86,99,502	23,31,040	61.51	214.80	29.00	
2012	155.00	254.00	151.60	212.95	59,03,572	84,000	1,04,87,82,155	34,52,807	68.61	102.50	57.95	
2013	212.20	232.00	40.00	79.25	29,19,843	50,989	42,02,75,828	17,86,153	61.18	102.80	-132.95	
2014	79.50	884.95	65.80	802.00	20,88,117	40,747	95,82,81,935	12,00,722	61.81	798.35	722.50	
2015	802.20	1,499.00	41.55	75.15	1,16,47,704	91,028	1,77,32,82,355	83,72,803	54.71	1,456.45	-727.05	
2016	75.00	97.00	1.70	1.83	14,77,47,998	1,15,542	1,10,14,87,483	6,88,51,001	47.14	95.30	-73.87	
2017	1.95	2.82	0.70	1.55	18,94,81,045	44,695	31,23,85,868	11,28,34,094	56.44	2.05	-0.40	
2018	1.80	1.80	0.80	0.97	5,05,91,181	13,559	6,48,04,382	3,56,49,000	66.91	1.80	-0.83	

10. Bare perusal of the annual report of the M/s. Visagar Polytex Ltd. for A.Y. 2010-11 goes to prove that shares in question held by the assessee company were listed on the Mumbai stock exchange having code No.506146 and ISIN No.INE370E01029. It is also proved from market value of the shares of the M/s. Visagar Polytex Ltd. extracted above that the same are traded in the ordinary course. When it is proved that the shares of M/s. Visagar Polytex Ltd. held by the assessee were listed with the stock exchange,

Mumbai the assessee has rightly claimed the gain on the shares by treating the same as LTCG. When the period of holding warrants is to be included for calculating the holding period of the shares allotted on conversion of the warrants the assessee has rightly claimed the LTCG by selling the shares after a period of one year.

11. In view of what has been discussed above the Ld. CIT(A) has erred in confirming the addition made by the AO by treating the gain earned by the assessee on sale of the shares in question as STCG. So the AO is directed to delete the addition subject to verification of annual report of M/s. Visagar Polytex Ltd. referred to in the preceding para number 8.

12. Resultantly, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 08.09.2023.

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER
Mumbai, Dated: 08.09.2023.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.