

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI**

BEFORE SHRI.NARENDER KUMAR CHOUDHRY (JUDICIAL MEMBER)
AND
SHRI S RIFAUR RAHMAN (ACCOUNTANT MEMBER)

I.T.A. No.2427/Mum/2023
(Assessment year : 2012-13)

Uttam M Jain, HUF
52, 52, Govt Industrial Estate,
Charkop, Kandivali (W)
Mumbai- 400 067

PAN : AAAHU2571A

APPELLANT

vs Addl./Joint/Deputy/ACIT/ITO/
National E-Assessment Centre
Ward-42(1)(4), Kautilya Bhavan
Bandra Kurla Complex,
Mumbai

RESPONDENT

Present for the Assessee Shri Ritu Kamal Kishore, CA
Present for the Department Shri Ujjawal Kumar Chavhan SR AR

Date of hearing 19/10/2023
Date of pronouncement 23/11/2023

ORDER

Per N.K. Choudhry (JM):

This appeal has been preferred by the Assessee against the order dated 10/05/2023 impugned herein passed by the National Faceless Appeal Centre (NFAC) Delhi / Ld. Commissioner of Income-tax (in short, Ld. Commissioner) under section 250 of the Income-tax Act, 1961 (in short, the Act) for the A.Y.2012-13.

2. In the instant case, the Assessee had declared its income to the tune of Rs.15,53,430/- by filing its return of income on 14/09/2012, which was processed under section 143(1) of the Act. Subsequently, the AO on receiving the information from the DDIT(Inv) Unit-VIII(3), Mumbai vide letter dated 20/02/2019 to the effects *“that which an investigation was carried out in the scrip, namely M/s Nivya Infrastructure & Telecom Services Ltd and analyzed the data collected from Bombay Stock Exchange to identify the beneficiaries, who had traded in the above scrip. On analysis of such data, it was found that the Assessee is also one of the beneficiaries, who had traded in the scrip, M/s Nivya Infrastructure & Telecom Services Ltd during the A.Y. 2012-13 to the tune of Rs.33,68,750/-. It was further revealed that trading in the above mentioned alleged pennystock was a manipulated affair to generate entries of bogus long term capital gain / short term capital gain / business loss facilitating tax evasion. During the course of search, sworn statements of key persons were recorded, modus operandi was revealed wherein it was admitted that they were in the business of providing accommodation entries only.”* formed the reason to believe that income to the extent of Rs.33,68,750/- chargeable to tax has escaped assessment within the meaning of section 147 of the Act and consequently issued the notice u/s 148 of the Act.

Thereafter, statutory notices were also issued and certain queries were raised and the Assessee was given an opportunity to submit the details, in response to which the Assessee by filing its reply dated 27/12/2021 made the submissions and filed the relevant documents which were considered by the Assessing Officer; however, not found acceptable and the Assessing Officer ultimately, *“while relying upon the findings of the Investigation Wing (referred to above) and by making analysis of transactions and the order of the SEBI qua taking action against the scrip M/s Nivya Infrastructure & Telecom Services Ltd and by holding that cash has been routed from various accounts to provide accommodation entries to the Assessee and transaction entered into by*

the Assessee involved the series of pre-conceived steps, the performance of each of which is depending on others being carried out. The true nature of such share transaction like commercial contents being artificially structured, transactions entered into with the sole intent to avoid tax and by holding that the Assessee has not been able to prove the unusual rates and fall in share prices to be natural and based on the market affairs, it is evident that such share transactions were closed circuit transactions and clearly a structured one. The net worth of the pennystock is negligible and the LTCG claimed by the Assessee is a rigged one.” treated the amount of Rs.33,68,750/- as deemed income of the Assessee under section 68 of the Act.

The Assessing Officer also made the addition of Rs.1,68,437/- being 5% of Rs.33,68,750/- as commission allegedly paid to the pennystock holder / provider as long term capital gain under section 69C of the Act.

3. The Ld. Commissioner, more or less on the same footing as observed by the Assessing Officer, affirmed the additions. The Assessee being aggrieved is in appeal before us.

4. Heard the parties and perused the material available on record. It is not in controversy that the Assessee had acquired 25,000 shares of M/s Nivya Infrastructure & Telecom Services Ltd (also known as SV Electricals Ltd) on 18/02/2010 for an aggregate consideration of Rs.8,88,750/- from the Stock Exchange and through stock broker, Monarch Research & Brokerage Pvt Ltd. The payment for acquisition was made through account payee cheque and the consideration amount was debited from the Assessee's bank account on 20/02/2010. The shares were dematerialized and subsequently sold after a year on 25/05/2011 for a total consideration of Rs.33,68,750/- on the platform of stock exchange and through SEBI

registered stock broker, Sparkle Securities Solutions Pvt Ltd and the amount of sale proceeds has been received by the Assessee from his broker, in bank account. Even the capital gain of Rs.24,69,537/- has also been disclosed in the return of income. It is also a fact that the Assessee before the AO produced following documents:-

- i. Details of long term capital gain showing name of company, date of acquisition, cost of acquisition, number of shares, date of sale, amount of sale consideration and long term capital gain.
- ii. Contract notes for purchase of shares
- iii. Bank account statements substantiating the payment made towards purchase of shares
- iv. Demat account statement of appellant showing credit of 25,000 shares of NITSL.
- v. Contract notes for sale of share of NITSL
- vi. Ledger account of appellant in the books of share broker, Sparkle Securities Solution Pvt. Ltd.
- vii. Ledger account of M/s Sparkle Securities Solution Pvt. Ltd. in the books of appellant
- viii. Bank account statement showing receipt of payment of sale proceeds from broker on settlement.
- ix. Demat account statement of appellant showing sale of 25,000 shares of NITSL.

And by producing aforesaid documents, discharged its initial onus as cast upon him as per section 68 of the Act, to prove the transactions and to substantiate its claim. The Hon'ble jurisdictional High Court in the case of [Pr. CIT vs. Indravadan Jain HUF \(ITA No.454 of 2018 dated 12th July, 2023\)](#)

has also dealt with the identical addition as involved in this case and clearly laid down certain principles and /or considered the certain facts and circumstances, and therefore for the sake of completeness, guidance and brevity, conclusion drawn by Hon'ble high Court is reproduced herein below:-

"4. The A.O. did not accept respondent's claim of long term capital gain and added the same in respondent's income under Section 68 of the Act. While allowing the appeal filed by respondent, the CIT[A] deleted the addition made under Section 68 of the Act. The CIT[A] has observed that the A.O. himself has stated that SEBI had conducted independent enquiry in the case of the said broker and in the scrip of RFL through whom respondent had made the said transaction and it was conclusively proved that it was the said broker who had inflated the price of the said scrip in RFL. The CIT[A] also did not find anything wrong in respondent doing only one transaction with the said broker in the scrip of RFL. The CIT[A] came to the conclusion that respondent brought 3000 shares of RFL, on the floor of Kolkata Stock Exchange through registered share broker. In pursuance of purchase of shares the said broker had raised invoice and purchase price was paid by cheque and respondent's bank account has been debited. The shares were also transferred into respondent's Demat account where it remained for more than one year. After a period of one year the shares were sold by the said broker on various dates in the Kolkata Stock Exchange. Pursuant to sale of shares the said broker had also issued contract notes cum bill for sale and these contract notes and bills were made available during the course of appellate proceedings. On the sale of shares respondent effected delivery of shares by way of Demat instructions slip and also received payment from Kolkata Stock Exchange. The cheque received was deposited in respondent's bank account. In view thereof, the CIT[A] found there was no reason to add the capital gains as unexplained cash credit under Section 68 of the Act. The tribunal while dismissing the appeals filed by the Revenue also observed on facts that these shares were purchased by respondent on the floor of Stock Exchange and not from the said broker, deliveries were taken, contract notes were issued and shares were also sold on the floor of Stock Exchange. The ITAT therefore, in our view, rightly concluded that there was no merit in the appeal."

5. Coming to the instant case, admittedly in this case, the Assessee is a regular investor in shares and transacted the transactions of sale and purchase through stock exchange and share were dematerialized and subsequently sold after a year on 25/05/2011 and it is also not a case of the Assessing Officer or the Revenue Department that the Assessee or the brokers from whom the Assessee had purchased and sold the shares, were involved in the rigging / price shooting, therefore respectfully following the judgment of Hon'ble High Court in the case referred to above, we are inclined to delete the addition, hence the same is deleted.

6. In the result, appeal filed by the Assessee stands allowed.

Order pronounced in the open court on 23/11/2023.

Sd/-

**(S RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

Pavanan

sd/-

**(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

Asstt. Registrar/
Senior Private Secretary
ITAT, Mumbai