

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
MS. PADMAVATHY S, ACCOUNTANT MEMBER

ITA No. 2576/Mum/2023
(A.Y: 2012-13)

PravinkumarPratapchand Shah,3 rd Floor, 13/15, Anantwadi, Atmaram Merchant Road, Chira Bazar, Mumbai-400002.	Vs	ITO, Ward 34(2)(7), 746, Kautilya Bhavan, C-41, To C-43, G-Block BKC, Bandra (E) Mumbai-400051.
PAN/GIR No. : AAPPS9017G		
Appellant	..	Respondent

Assessee by :	Shri Lawanya Rajpurohit.AR
Revenue by :	Shri Joginder Singh,. Sr.DR

Date of Hearing	15.11.2023
Date of Pronouncement	20.11.2023

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The appeal is filed by the assessee against the order of the National Faceless Appeal Centre (NFAC) Delhi / CIT(A) passed u/sec 143(3) r.w.s 147 and U/sec 250 of the Ac. The assessee has raised the following grounds of appeal:

- 1) On the facts and in circumstances of the case and in law, the Ld CIT(A)- NFAC has erred in sustaining the addition made by the AO, without appreciating that the ld. AO has erred in invoking provisions of Sec 147.*

2) On the facts and in circumstances of the case and in law, the CIT(A) has erred in confirming the act of the AO passing the impugned assessment order without proper verification of facts and application of mind. The impugned assessment order cannot be sustained. Kindly quash it.

3) On the facts and in circumstances of the case and in law, the CIT(A) has erred in confirming the addition of Rs. 661975 as unexplained cash credit under s. 68 of the Act ignoring the submissions made and evidences adduced by the appellant

4) On the facts and in the circumstances of the case and in law, the CIT(A) has erred in confirming the order passed by the AO, using materials collected behind the back of the appellant against the appellant, without first giving its copies to the appellant and affording him opportunity of rebutting the same. The impugned assessment order is therefore in violation of principle s of natural justice hence void.

5) Your appellant craves leave to add to, amend, alter, modify and/or delete any of the above grounds or to add any new grounds thereto.

2. The brief facts of the case that, the assessee is an individual and derives income from salary and income from other sources. The assessee has filed the return of income for the A.Y 2012-13 on 11.10.2012 disclosing a total income of Rs.1,79,950/- and the return of income was processed u/sec 143(1) of the Act. The Assessing Officer (AO) has received the information from DGIT (Inv) Kolkata in respect of purchase and sale of shares of M/s. Diamant Infrastructure Ltd and the assessee is a beneficiary and the

AO has recorded the reasons for reopening of assessment. The AO found that, the assessee has sold the shares in the F.Y 2011-12 and the aggregate value is Rs. 6,61,875/-. The AO has reason to believe that the income has escaped assessment and issued notice u/sec 148 of the Act. In compliance to notice, the assessee has filed the return of income on 01.04.2019 disclosing the income of Rs. 1,79,947/- and the notice u/sec 143(2) and u/sec 142(1) of the Act are issued. The assessee was also provided reasons for reopening of assessment and the assessee has filed the objections. Whereas the AO has dealt on the objections and are disposed off. The AO found that the assessee has purchased 12500 shares of M/s Diamant Infrastructure Ltd on 27.07.2011 on the stock exchange for a consideration of Rs.6,99,476/- and subsequently the assessee has sold the entire shares on 29.07.2011 for Rs.6,61,875/- and suffered Short term capital loss of Rs. 40,075/- and was not claimed in the return of income filed. The AO considered the facts, submissions in respect of the shares in the assessment proceedings and income details declared by the assessee. Further the AO observed that the assessee has obtained bogus short term capital loss on the share transactions. The AO dealt on the various facts of

transactions and the price trend on stock exchange, the report of the Kolkata investigation wing and has doubted the earning of Short Term Capital loss and observed that there is no correlation of rise and fall of the share price. Whereas the A,O was not satisfied with the explanations and material information and came to a conclusion that transactions are not genuine and made an addition of sale value of shares as unexplained cash credit u/sec 68 of the Act of Rs.6,61,875/- similarly the AO has estimated the commission expenditure @ 3% on the sale value which was worked out to Rs.19,856/- u/sec69C of the Act and finally assessed the total income of Rs. 8,61,680/- and passed the order u/sec 143(3) r.w.s 147 of the Act dated 18.12.2019.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has considered the grounds of appeal, submissions of the assessee, statement of facts and findings of the AO, whereas the CIT(A) has confirmed the addition of sale value of the shares and granted relief in other grounds of appeal and partly allowed the appeal. Aggrieved by the CIT(A)order, the assessee has filed an appeal before the Hon'ble Tribunal.

4. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in sustaining the addition of sale value of shares overlooking the facts and information submitted in respect of the transactions and the assessee is regular investor and has incurred loss in this scrip. Further there is no scope for the AO to make the additions based on the surmises and conjectures as the assessee has filed the documentary evidence in support of the claim. Whereas the AO has only relied on the investigation report and no independent enquiry was conducted. The Ld.AR substantiated the submissions with the details and prayed for allowing the appeal. Contra, the Ld.DR relied on the order of the CIT(A).

5. We heard the rival submissions and perused the material on record. The Ld.AR submitted that the CIT(A) has erred in dismissing the grounds of appeal pertaining to validity of reassessment and addition u/sec68 of the Act. The Ld.AR emphasized that the assessee has furnished the financial statements, summary of purchase and sale of shares in F.Y 2011-12, ledger account and the copies of bank statements, The Ld AR highlighted that the assessee has purchased the 12,500 shares of M/s Diamant Infrastructure Ltd on 27.07.2011 and due to fall in the

share prices, the assessee has sold the above shares on 29-07-2011 and has incurred short term loss of Rs.40,075/- and was not claimed setoff in the return of income filed. The Ld.AR mentioned that the AO has not considered the facts that the assessee is a investor and the transactions are supported with the material evidences. The AO has doubted the purchase and sale of shares and observed that the price rigging is not commensurate with the financials of the company. The assessee has substantiated with all details in support of sale and purchase of shares. Whereas the AO has relied on the investigation report and treated the sale of shares as not genuine. Further the A.O. has not made any enquiry or independent investigation and relied on the statement of the parties in the investigation report. The fact remains that the assessee has submitted the requisite details in respect of purchase and sale of shares through stock exchange subject to STT and were not disproved. The transaction of purchase and sale of shares is through banking channel. The assessee has purchased the shares in the open market supported with the contract notes and details and the payment is made through banking channel. The assessee has purchased and sold the shares in the

stock exchange through authorized broker and was subject to the payment of STT and because of fall in share price value due to market- conditions, the assessee has sold the shares through authorized broker of the stock Exchange subject to STT and incurred loss. Further the assessee has not claimed any set off of short term capital loss. Hence Considering the facts, circumstances, we set aside the order of the CIT(A) on this disputed issue and direct the assesseeing officer to delete the addition. Accordingly, we allow these grounds of appeal in favour of the assessee.

6. Since, the grounds of appeal on merits are decided in favour of the assessee, hence the grounds of appeal with respect to validity of reassessment proceedings raised by the assessee becomes academic and are left open.

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

Order pronounced in the open court on 20.11.2023.

Sd/-
(PADMAVATHY S)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 20.11.2023

KRK, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT (Judicial)
4. The PCIT
5. DR, ITAT, Mumbai
6. Guard File

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)
ITAT, Mumbai