

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH,
MUMBAI

BEFORE SHRI ABY T. VARKEY, JM AND SHRI S RIFAUR RAHMAN, AM

आयकर अपील सं/ I.T.A. No.2440/Mum/2023

(निर्धारण वर्ष / Assessment Year: 2011-12)

Kishansing Pahadsingh Parmar (HUF) Flat No.801, Shreenath Apartment A-Wing, J.P. Cross Lane, Himanshurai Road, Malad (West), Mumbai-400064.	बनाम/ Vs.	ITO-30(2)(1) C-13 Pratyakshakar Bhavan, Bandra Kurla Complex, Bandra East, Mumbai-400051.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AADHK9023N		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Rajendra Kumar Jain/Shri Kunal Lunawat	
Revenue by:	Shri S. N. Kabra (Sr. AR)	

सुनवाई की तारीख / Date of Hearing: 30/11/2023

घोषणा की तारीख /Date of Pronouncement: 12/12/2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee trust against the order of the Ld. Commissioner of Income Tax (Appeals)/(NFAC), Delhi dated 28.04.2023 for the assessment year 2011-12.

2. The main grievance of the assessee is against the action of the Ld. CIT(A) confirming the action of the AO making an addition of Rs.29,77,009/- and Rs.89,310/- u/s 69C of the Income Tax Act, 1961 (hereinafter "the Act").

3. Brief facts are that the assessee had claimed Long Term Capital Gain (LTCG) on sale of shares of M/s. Comfort Intech Ltd. (hereinafter "M/s. Comfort Intech"). The details of purchase of shares



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of M/s. Comfort Intech made in April, 2008 i.e. in AY. 2009-10 are as under: -

Date	Qty	Rate	Amount Rs.	Taxes	Grand total
07.04.2008	11790	13.49	1,59,047	1,545	195140
10.04.2008	14210	13.60	1,93,256	1,884	160592
Total	26,000				3,55,732

4. From the aforesaid transactions, it is noted that the assessee had purchased 26000 shares of M/s. Comfort Intech on 07.04.2008 and 10.04.2008 from the Bombay Stock Exchange (BSE) @ Rs.13.49/13.60 per share respectively, for a total consideration of Rs.3,55,732/-. Later on, 14.10.2009 the shares were split into 1:10 ratio and received 2,06,000 shares. Thereafter, the assessee sold in the relevant year under consideration, 1,36,000 shares through BSE @ of Rs.29.54/Rs.29.60/Rs.29.65/Rs.14.40 on 07/04/2010, 08/04/2010, 09/04/2010 and 16/06/2010 for a total consideration of Rs.29,60,435/- which fact is discernable from the copy of the sale contract placed at page no. 14 to 20 of PB. The purchase consideration as well as sales consideration from the transaction of the shares M/s. Comfort Intech was made through the banking channel which fact is discernable from the perusal of the page no. 21 to 23 of PB. According to the AO/Ld. CIT(A), the aforesaid transaction was suspicious and bogus which fact according to him, was revealed from the report of Investigation Wing of Directorate of Investigation Kolkata, which held that shares of M/s. Comfort Intech was a penny-stock. The AO in the assessment order has discussed the general modus operandi resorted by the players involved in providing bogus LTCG for beneficiaries like assessee in detail and acknowledged that assessee filed documents to support the



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purchase/sale of share of M/s. Comfort Intech through the BSE, share purchase invoice, sale invoice, copy of Demat account proving the holding of shares, copy of source of funds and movement of funds for the purchase of share and copy of bank statement showing receipt of sales etc. Though the AO did not find any infirmity in the aforesaid documents but he relied upon the Investigation Wing Report to draw adverse inference against the transaction made by assessee in respect of scrip of M/s. Comfort Intech Ltd which was also branded as a penny-stock. The AO also referred to the statement of Shri Anil Agarwal and Shri Raj Kumar Kedia who according to AO had made statement during the survey that they were entry providers; and that Shri Anil Agarwal managed and controlled M/s. Comfort Intech Ltd has admitted to have manipulated the scrip for beneficiaries. However, the assessee denied the allegation made by AO on the strength of statements and the assessee asserted before AO that he had not met these two person and therefore had no connection with them, so their statements should be discarded. And also pointed out that from a perusal of the statements given by these two persons would reveal that there was nothing incriminating against assessee to be a beneficiary of any wrongdoing. According to the assessee, he has purchased the share of M/s. Comfort Intech through BSE and sold the same through BSE. And held the shares in Demat accounts and remitted STT and since he fulfilled the conditions for claiming LTCG on sale of shares has claimed exemption u/s 10(38) of the Act in accordance to law. However, the AO rejected the contention of the assessee and was of



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the opinion that the assessee had traded in bogus scrip M/s. Comfort Intech Ltd. Therefore, he added an amount of Rs.29,77,009/- as well as added commission amount of Rs.89,310/- @ 3% which according to AO can be presumed to have been given as commission to the agent who provided/arranged bogus capital gains. Thus, made addition of Rs.29,77,009/- as well as Rs.89,310/- u/s 69C of the Act. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to confirm the same. Aggrieved, the assessee is before us.

5. We have heard both the parties and perused the records. We find that the assessee has purchased and sold the share of M/s. Comfort Intech Ltd through Bombay Stock Exchange which fact is proved from perusal of the purchase/sale contracts marked as Annexure-A and Annexure-B placed at page no. 14 to 20 of PB. We note that the assessee had purchased 26,000 shares of M/s. Comfort Intech Ltd for a rate of Rs.13.49/Rs.13.60 per share for a total consideration of Rs.3,55,732/- through the BSE on 07/10th April, 2008. And from the date of purchase, the shares were lying in the Demat account of the assessee. Thereafter, the shares had been split into 1:10 ratio on 14.10.2009, by virtue of it assessee had 2,60,000 shares of M/s. Comfort Intech. And the assessee had sold 136000 shares during the relevant assessment year as shown in chart below: -

Date	Qty	Rate	Amount Rs.
07.04.2010	15,000	29.54	4,43,103
08.04.2010	30,000	29.60	8,87,882
09.04.2010	16,000	29.65	4,74,450
16.06.2010	75,000	15.40	11,55,000
Total	1,36,000		29,60,435



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Thus, it is noticed that assessee sold 1,36,000 shares of M/s. Comfort for total consideration of Rs.29,60,435/-. And the assessee has paid STT on it. The entire purchase consideration as well as sale consideration has passed through, the banking channel which fact is discernable from perusal of bank statement seen placed at page no. 21 to 23 of PB. We note that even though the assessee had filed the aforesaid primary documents before the AO/Ld. CIT(A), he did not find any infirmity in the same and erred in not giving any credence to it; and merely based on the Investigation Wing report has branded the scrip of M/s. Comfort Intech as penny-stock and erred in drawing adverse inference against the assessee which action cannot be countenanced. We note that similar addition made in respect of LTCG claim in respect of capital gain on sale of scrip of M/s. Comfort Intech Ltd came up for consideration before this Tribunal in the case of Amit H. Patel (HUF) v DCIT-CC-3(4) (ITA. Nos. 5761, 5762, 5764 & 5765/Mum/2019 vide order dated 15.07.2021), and the Tribunal had discussed about the scrip of M/s. Comfort Intech Ltd from page no. 11 to 15 and allowed the claim of the assessee. Since the AO/Ld. CIT(A) could not find any infirmity in the primary documents shown by assessee in respect of purchase and sale of the scrip of M/s. Comfort Intech Ltd through stock exchange on which STT has been paid and consideration has passed through the banking channel and the shares were lying in Demat account from purchases till it was sold, the action of the lower authorities cannot be countenanced. And therefore, we allow the appeal of the assessee and direct the AO to allow the claim



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of LTCG to the tune of Rs.29,77,009/- and consequently the addition of purported commission also need to be deleted i.e. of Rs.89,310/- made u/s 69C of the Act, we order accordingly.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on this 12/12/2023.

Sd/-
(S RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 12/12/2023.
Vijay Pal Singh, (Sr. PS)

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai