

IN THE INCOME TAX APPELLATE TRIBUNAL  
Mumbai "SMC" Bench, Mumbai.

Before (Retd.) Justice C.V. Bhadang (President) & Shri B.R. Baskaran (AM)

I.T.A. No. 922/Mum/2023 (A.Y. 2011-12)

Mr. Prakashmal M. Adani Room No. 14, 1 <sup>st</sup> Floor Gurukrupa Building 6, Dr. Deshmukh Lane Mumbai-400 004.  PAN : AJOPA6337K (Appellant)	Vs.	CIT(A)-50 Mumbai     (Respondent)
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----	-----------------------------------------------------

Assessee by	Shri Mukesh Choksi
Department by	Shri Sunny Kachhwaha
Date of Hearing	14.12.2023
Date of Pronouncement	14.12.2023

O R D E R

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 31.1.2023 passed by the learned CIT(A)-50, Mumbai and it relates to A.Y. 2011-12. The assessee is aggrieved by the decision of the learned CIT(A) in confirming the addition of Rs. 24,10,916/- made by the Assessing Officer (AO).

2. The Learned AR submitted that the assessee did not file any return of income u/s 139(1) of the Act for the year under consideration. It was noticed by the Assessing Officer that the assessee has carried out transactions in Bombay Stock Exchange. Hence, the AO reopened the assessment of the year under consideration by issuing notice under section 148 of the Act.

3. The Assessing Officer noticed that the assessee has purchased the shares at a cost of Rs.13,85,326/- and sold shares for Rs. 10,25,590/-. Since the assessee did not furnish any detail relating to purchases and sales of

shares, the Assessing Officer assessed both the value of purchase and sales aggregating to Rs. 24,10,916/- as unexplained income of the assessee under section 69 of the Act. The learned CIT(A) also confirmed the same and hence the assessee has filed this appeal.

4. The Learned AR submitted that the above said share transaction was carried out by the father of the assessee who has since expired. He submitted that the assessee does not have any records/details relating to purchase and sale of shares pointed out by the AO. He further submitted that the AO also did not share the relevant details with the assessee. He submitted that the details given by the assessing officer would show that the assessee has actually suffered loss of around Rs. 3.59 lakhs (Rs.13,85,326/- less Rs.10,25,590/-). Accordingly, he submitted that no addition is called for under section 69 of the Act.

4. On the contrary, learned DR submitted that the assessee has not explained the source of purchase of shares and hence the Assessing Officer has assessed the same as unexplained investment under section 69 of the Act. The AO has also assessed the sale value of shares, since the assessee did not file any details thereof.

5. At this stage, the Bench pointed out that the addition of sale value of shares cannot be made, when the entire value of purchases of shares is added. The learned DR submitted that the view expressed by the bench is acceptable in principle, but the AO was constrained to make the addition in the absence of any details.

6. We noticed that the details of purchase and sale of shares are not available either with the assessee or with the assessing officer. There should not be any dispute that, if an assessee is not able to furnish the details of sources for making investment, the same is assessable as income of the

assessee u/s 69 of the Act. Admittedly, in the instant case, the assessee could not explain the sources for making investments in shares to the tune of Rs.13,85,326/-. Accordingly, we are of the view that the AO was justified in making addition of purchase value of shares amounting to Rs. 13,85,326/-.

7. With regard to the sale of shares, in the absence of any other details, it may be presumed that the assessee has sold the shares out of the shares purchased by him earlier. In that case, the capital gain, if any, arising on sale of shares alone can be brought to tax and not entire sale value. However, in the instant case, it is not known as to whether the assessee has made profit or incurred loss. Considering the sale value of shares at Rs.10,25,590/-, it is the contention of the Ld A.R that the assessee has actually incurred loss. In any case, entire sale value of shares cannot be assessed to tax. Accordingly, we are of the view that the Assessing Officer was not justified in assessing sale value of shares. Accordingly, we set aside the order passed by the learned CIT(A) and restrict the addition under section 69 of the Act to Rs. 13,85,326/-.

8. The assessee has also raised a ground submitting that the F&O loss of Rs. 23,91,825/- should be allowed to be set off against the income assessed by the Assessing Officer. However, we noticed that the assessee has not furnished any details supporting to the loss so claimed by him. Accordingly, the above said ground is liable to be rejected.

9. In the result, the appeal filed by the assessee is partly allowed.  
Order pronounced on 14.12.2023.

Sd/-  
[Justice (Retd.) C.V. Bhadang]  
President

Sd/-  
(B.R. Baskaran)  
Accountant Member

Mumbai.; Dated : 14/12/2023

Copy of the Order forwarded to :

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

//True Copy//

*PS*

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai