

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “C” BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

**ITA No.735/Ahd/2018
Assessment Year: 2014-15**

Bharatkumar Gangaram Patel, 5 th Floor, Loha Bhawan, Navrangpura, Ahmedabad. [PAN – ACRPP8538 K]	Vs.	The Income Tax Officer, Ward – 5(2)(2), Ahmedabad.
(Appellant)		(Respondent)
Assessee by	Shri Keyur Bhavishi, AR	
Revenue by	None. Adjournment Application on behalf of DR rejected. DR submissions completed on 14.09.2023 by Ms. Saumya Pandey Jain, Sr. D.R.	
Date of Hearing	26.10.2023	
Date of Pronouncement	05.01.2024	

ORDER

This appeal is filed by the assessee against order dated 08.02.2018, passed by the CIT(A), Ahmedabad-5, for the Assessment Year 2014-15.

2. The assessee has raised the following grounds of appeal :-

- a) *That no opportunity to cross examination has been given by the AO*
- b) *Shares have been purchased, demated and sold for which necessary bills have been issued.*
- c) *Shares have been sold through demat account and against the sale payment has been received by account payee cheque etc.*
- d) *STT shares have been sold on recognized stock exchange on which STT have been paid.”*

3. The assessee filed return of income for Assessment Year 2014-15 on 31.12.2014 declaring total income at Rs.2,57,910/-. The return of income was processed under Section 143(1) of the Income Tax Act, 1961. Notice under Section 143(2) of the Act dated 28.09.2015 was issued and served to the

assessee. Notice under Section 142(1) read with Section 129 of the Act dated 05.09.2016 alongwith questionnaire was issued and served upon the assessee. In response to the above notices, the Ld. AR/CA of the assessee attended the assessment proceedings and filed written submissions as well as details. The Assessing Officer observed that in the present case reason for scrutiny selection is "Suspicious Long Term Capital Gains on shares" (inputs from Investigation Wing) and, therefore, submissions and evidences were called for from the assessee. The Assessing Officer issued show cause notice dated 16.12.2016 which includes entire report of the Directorate of Investigation, Kolkata. The main gist of the show cause notice was in respect of assessee's entry of bogus LTCG of Rs.51,34,778/- claimed under Section 10(38) of the Act. The Assessing Officer pointed out from the Investigation Wing report that shares of Surabhi Chemicals & Investment Limited is reflected in the list at Sl. No.16 and, therefore, the said share was utilised with the sole objective of entering unaccounted cash of beneficiaries into regular books of account. The Assessing Officer also pointed out the brokers who are earning commission and providing bogus LTCG to the beneficiaries namely SMC Global Securities Limited, Anand Rathi Share & Stock Broker Limited , Religare Securities Limited, Destiny Securities Limited, Madhya Pradesh Stock Exchange Limited, Nakamichi Securities Limited & Intellect Stock Broking Limited. The Assessing Officer further observed that the assessee purchased 2000 shares of Surbhi Chemical & Investment Limited which was purchased off market on 02.03.2012 from M/s Akriti Advisor Services Pvt. Ltd. for a cost of Rs.2,50,000/-. The assessee received bonus share of Rs.18,000/- which made it to Rs.20,000/- (fair value at Rs.10/-) shares which was further split into Rs.2,00,000/- shares each of Rs.1/-, out of which the assessee sold 1,00,000 shares between 24.09.2016 to 31.12.2013 and received Rs.52,59,778/- which resulted into LTCG of Rs.51,34,778/- and claimed as exemption under Section 10(38) of the Act. The assessee submitted contract note of Arihant Marketingb Limited money receipt of Akriti Advisor Services Pvt. Ltd., copy of bank statement for Oriental Bank of Commerce and Gujarat Ambuja Co. Op. Bank. The Assessing Officer further observed that the assessee failed to submit the following relevant evidences regarding purchase and sale of 2000 shares of Surbhi Chemicals & Investment Limited which was purchased off market from M/s Akriti Advisor Marketing Limited and thereafter received 18,000 bonus shares.

- “1. *The copy of original certificate of 2000 shares held by Akriti Advisor Pvt. Ltd. which was purchased off market.*
2. *The audit report showing the financial status of Surabhi Chemicals & Investment Pvt. Ltd. to issue 18000 bonus shares.*
3. *The application form for converting the said shares into Demat form.*
4. *The procedure followed to convert the share into penny stock.*
5. *The Suda Chitthi regarding purchase and sale of the said shares.”*

4. Thus, the Assessing Officer made addition of Rs.52,59,778/- being sale consideration shown as received from bogus sale of shares and treated the same as unexplained and unaccounted cash receipt which has been channelized through book entry and banking system.

5. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

6. As regards to the ground no.1, Ld. AR submitted that there is no allegation by the Investigation Wing or any other person named by the CIT(A). The assessee ever approached penny operators or any other person whatsoever for any such bogus LTCG claim. The Ld. AR further submitted that statements of acceptance of various brokers does not even justify that the additions made by the CIT(A) but there is no denying the fact that none of those persons specifically named the assessee to have been ever benefited by them in respect of LTCG claimed by the assessee. Thus, the Ld. AR submitted that the CIT(A) was not justified in drawing adverse inference against the assessee. The transaction of sale of shares were online trading system through his broker from whom he received the sale consideration. The broker also receives payments for all his transactions from Stock Exchange. The seller and the buyer cannot know the names of each other as well as their respective brokers who were involved in the trading transactions in the secondary platform. In such situation, it cannot be presumed that there could be any transfer of cash between the buyers and sellers to convert the unaccounted money of the beneficiaries as alleged by the CIT(A).

The Ld. AR relied upon the decision in the case of USP Organics Pvt. Ltd. vs. DCIT.

7. As regards to ground no.2, the Ld. AR submitted that it is inescapable to determine that there exists an involvement of the promoter and an entry operator in the transactions carried out by the assessee and the same are connected to the stockbroker of the assessee. The Ld. AR relied upon the decision of ACIT vs. Vineet Sureshchandra Agarwal (ITAT Ahmedabad)

8. As regards to ground no.3, the Ld. AR submitted that merely on general statement of SEBI, it cannot be stated that the assessee was involved in the bogus transactions. The Ld. AR submitted that the CIT(A) failed to observe that while taking statement, the assessee was asked only about the transaction on which the assessee has earned LTCG. Out of the total sales of shares, 1,00,000 shares were sold in LTCG earned by the assessee has been correctly disclosed in the income tax return and brought under the purview of tax. Keeping this in view, the assessee who is a honest taxpayer should not be penalised at the same pretext. The assessee was neither concerned with entry operators or price rigging nor in contact with brokers. The assessee purchased shares offline through cheque which is evident from the bank statement and the same was submitted to the CIT(A). The physical shares were converted to demat on 09.08.2012 which is near the date of purchase. The Ld. AR relied upon the decision of Hon'ble Kolkata High Court in case of CIT vs. Lakshamangarh Estate & Trading Company.

9. As regards to ground no.4, the Ld. AR submitted that the CIT(A) has not provided the document upon which the order is framed by the Assessing Officer. The CIT(A) should have called for information from the assessee or the broker/sub-broker by issuing notice under Section 133(6) of the Act to the broker. The documents and evidences furnished by the assessee were neither found to be false nor fabricated and genuineness of the transactions was never doubted. The CIT(A) disallowed the assessee's claim of LTCG on sale of shares of Surbhi Chemical and Investment Limited as suspicious and on presumption. The assessee provided the certificate of shares, application form for converting into demat, procedure of M/s Surabhi Chemicals and Investment Limited, saudachitthi

regarding purchase and sales of the said shares and therefore, the observations made by the Assessing Officer as well as CIT(A) was not justified. The Ld. AR relied upon the decision of Hon'ble Calcutta High Court in case of CIT vs. Rungta Properties Pvt. Ltd. (ITA No.105 of 2016).

10. The Ld. DR on earlier occasion submitted that the pattern of the scrip purchase was elaborately discussed by the Assessing Officer in the Assessment Order thereby stating that the assessee purchased the 2000 shares of Surbhi Chemicals & Investments Limited off market on 02.03.2012 from M/s. Akriti Advisor Services Pvt. Ltd., but the assessee received shares of 18000 which made it to Rs.20,000/- which is spare value at Rs.10/- and further split into Rs.2,00,000/- amounting to Rs.1/- per share. While splitting this 200000 shares, the assessee has not described the same or explained the same to the Assessing Officer and thus purchase and sale of 2000 shares of Surbhi Chemicals & Investments Limited and selling of the same audit report showing the financial status of Surbhi Chemicals & Investments Limited was not submitted before the Assessing Officer. The Assessing Officer has given the detailed finding in paragraph no.12.1. The Ld. DR also relied upon the SEBI order/proceedings in respect of Akriti Advisor Services Pvt. Ltd. now known as Akriti Infra Pvt. Ld. The Ld. DR also relied upon the SEBI show cause notice dated 04.12.2017 issued to Akriti Advisor Services Private Limited as well as notice dated 31.05.2020. Thus, the Ld. DR relied upon the Assessment Order and the order of the CIT(A).

11. We have heard both the parties and perused all the relevant material available on record. The assessee purchased off market shares of Surbhi Chemicals & Investments Limited from M/s. Akriti Advisor Services Limited but the assessee has shown the share application form for converting the said shares into demat account form. The audit report of the company showing the financial status of Surbhi Chemicals & Investments Limited. Copy of original share certificate of 2000 shares as well as procedure followed for converting the said shares into demat form and Sauda Chitthi regarding purchase and sales of the said shares. The assessee has submitted the purchase contract note of Akriti Advisor Services Limited which was purchased from off market on 02.03.2012 and the sales contract note issued by stock exchange broker in support of sales alongwith

broker ledger account. The assessee checked through the BSE Site and found that trading of shares of Surabhi Chemical and investment suspended only twice in 2015 and SEBI has not suspended any transaction of Surabhi Chemicals and Investments during the holding of shares by the assessee. As per the submissions of the Ld. AR, the Assessment Order though related upon the investigation report has not set out as to how assessee's involvement for alleged increase in share price or assessee's own fund was invested has been set out in the Assessment Order. The element of bogus sale of shares as unexplained and unaccounted cash receipt was not established by the Assessing Officer as the assessee has given all the details at the time of Assessment Order. The independent verification of the transactions was limited by the Assessing Officer to the extent of investigation report but the same has not doubted purchase of the shares off-market and, therefore, the same cannot be made bogus sale of shares at the available period when the assessee sold the shares was not involving the assessee to manipulate the price of the scrip then the entire case of the Revenue fails. Thus, the addition made by the Assessing Officer and confirmed by the CIT(A) does not remain. Besides this, the reference of Hon'ble Calcutta High Court in case of Swati Bajaj by the Ld. DR will be applicable in the present case if the assessee has not shown the details while purchasing as well as the details related to demat application of the said shares as well as the selling of the shares was doubted at any juncture by the Assessing Officer through assessee's own action. That element in the observation of the Assessing Officer is missing in the present case. Thus, appeal of the assessee is allowed.

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

Order pronounced in the open Court on this 5th January, 2024.

Sd/-
(WASEEM AHMED)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 5th January, 2024

PBN/*

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad