

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

BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER

**ITA No.334/Ahd/2022
Assessment Year: 2014-15**

Puneet Singh R. Bhadoria, G-202, Darshanam Avenue, Sayajiganj, Vadodara – 390 020. Gujarat. [PAN – ASFPB 0400 L] (Appellant)	Vs.	The Income Tax Officer, Ward – 4(1)(9), Vadodara. (Respondent)
Assessee by	Shri Parin Shah, AR	
Revenue by	Shri Yogesh Mishra, Sr. DR	
Date of Hearing	14.12.2023	
Date of Pronouncement	17.01.2024	

ORDER

This appeal is filed by the assessee against order dated 24.05.2022 passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the Assessment Year 2014-15.

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

- “1. *The order passed by NFAC is bad in law and required to be quashed.*
2. *The reopening of assessment under Section 148 is bad in law as same has been done for verification purpose only for making fishing and roving inquiries.*
3. *Ld. NFAC erred in law and on facts in confirming addition of Rs.38,29,680/- made by AO by invoking Section 69A of the Act ignoring documentary evidence.*
4. *Ld. NFAC erred in law and on facts in confirming addition ignoring fact that the material relied on by AO was not provided and thus violated the principle of natural justice.*

5. *Both lower authorities erred in law and on facts in passing orders without providing statement of the person relied on and consequent cross examination.*
6. *Charging of interest u/s.234A, 234B, 234C and 234D is not justified.*
7. *Initiation of penalty under Section 271(1)(c) is not justified.”*

3. The assessee filed return of income on 14.11.2014 declaring total income at Rs.1,49,070/-. Notice under Section 148 of the Income Tax Act, 1961 was issued on 26.03.2019. Notice under Section 142(1) alongwith Questionnaire was issued on 14.06.2019. In response to notice under Section 148 of the Act, the assessee filed his return of income on 25.11.2019 declaring total income at Rs.1,49,070/-. Notice under Section 143(2) was issued on 05.12.2019. In response to the notices, the assessee filed submissions before the Assessing Officer. The assessee reported income from salary and other sources. The Assessing Officer observed that on 26.04.2011 i.e. during the Financial Year 2011-12 the assessee purchased 9000 shares of Turbotech Engineering Limited at the price of Rs.5/- per share. The shares were allotted by the assessee on 04.07.2013 at the total sale value of Rs.37,84,680/-. Thus, making capital gain of Rs.37,39,680/- within a period of 26 months i.e. value of the shares increased 83 times in 26 months. The assessee claimed Long Term Capital Gain (LTCG) of Rs.37,24,760/- after a indexing the purchase cost as exempt in the return of income. The Assessing Officer observed that the shares of Turbotech Engineering Limited were purchased through Private placement (offline) through Vijay Bhagwandas & Co. The shares purchased were dematerialised on 29.05.2013 i.e. nearly after 25 months from the date of purchase. In the month of July 2013 the entire shares were sold for Rs.37,78,717/- at the price of Rs.420/- per share through broker M/s Anand Rathi Shares & Stock Brokers Limited through the platform of BSE and an amount of Rs.37,24,760/- was claimed exempt under Section 10(38) of the Act. The Assessing Officer observed that the BSC India has suspended the trading in shares of Turbotech Engineering Limited on 06.01.2015 when the price of share was Rs.1.85 per share. The Assessing Officer further observed that pricing and trading trend of share of Turbotech Engineering Limited extracted from the data of BSE for the period from 28.11.2011 to 06.01.2015 was abnormal rise and fall in the price and volumes.

After taking cognisance of the assessee's submissions, the Assessing Officer made addition of Rs.38,29,680/- as unexplained money under Section 69 of the Act and addition of Rs.2,60,733/- as commission paid under Section 69C of the Act.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. AR submitted that the CIT(A) was not justified in dismissing the assessee's plea regarding reopening of the assessment under Section 148 of the Act as the same is bad in law as the reopening is only for the sake of verification and making fishing and roving enquiries. The Ld. AR further submitted that reopening was not justifiable as the assessee has given all the details while filing the return of income under Section 139(1) of the Act. As regards the merit of the case, the Ld. AR submitted that the assessee has obtained shares through Private Channel and payment to purchase the same shares of Turbotech Engineering Limited was placed before the Assessing Officer as well as before the CIT(A). The contract note to that effect as well as the payment records reveals that the purchase was genuine. The Assessing Officer at no point of time doubted the purchase of shares. As regards suspension of said scrip from BSE, it was suspended in the year 2015 but the assessee has sold these shares on 04.07.2013 which is prior to the suspension of trading of the said shares. The Ld. AR relied upon the various decisions which are as follows :-

- 1 *Sandipkumar Parshottambhai Patel, 457 ITR 368*
- 2 *Genuine Finance Pvt. Ltd, 152 taxmann.com 330*
- 3 *Swati Luthra, 6480/Del/2017, Delhi*
4. *Simi Verma, 3387/Del/2018, Delhi*
5. *Hakimuddin Khambati, 288/Ind2019, Indore*
6. *Radheyshyam Khandelwal, 7/Ind/2019, Indore*
7. *Ridhi Bagaria, 76/CTK/2023, Cuttack*
8. *Priyanka Agrawal, 406/PAN/2018, Panaji*
9. *Parasben Kasturchand Kochar, 204 of 2020, Gujarat*
- 10 *Sunita Khemka, 389/Del/2018, Delhi*

- 11 *Gokuldharm Enterprise LLP, 675/Ahd/2018, Ahmedabad*
- 12 *Ambalal Chimanlal Patel, 2398/Ahd/2018, Ahmedabad*
13. *Bimala Devi Singhania, 212/CTK/2019, Cuttack*
14. *Rajnikant Prabhudas Mandavia, 401/Ahd/2019, Ahmedabad*
- 15 *Hiteshkumar Bindal, 351/Ind/2022, Indore*
16. *Nitish Rameshchandra Shah, 1116/Mum/2022, Mumbai*
17. *Avani Ajay Palan, 542/Ahd/2022, Ahmedabad*
18. *Shree Suprinit Tradinvest Pvt. Ltd., 550/Ahd/2023, Ahmedabad*
19. *Sejalben N. Vora, 329/Ahd/2018, Ahmedabad*

6. The Ld. DR submitted that the assessee has not genuinely obtained the scrip and the same was doubted by the Assessing Officer as just before selling of the said scrip the assessee converted them to dematerialise format for selling it on BSE plat form. In fact, the said company of Turbotech Engineering Limited was a loss making company and still the assessee sold the shares at such a higher rate was properly doubted and justified by the Assessing Officer in the Assessment Order. In respect of decision of Hon'ble Gujarat High Court in case of Sandipkumar Parshottambhai Patel (supra), the scrip bearing was not related to Turbotech Engineering Limited and, therefore, the same cannot be taken into account. The ratio in fact clearly set out that the cases where the sale and purchase was genuinely done, the same should be allowed but in the present case the assessee's conduct for purchase of shares itself was not scrutinised and selling of the share after converting the said shares into dematerialised form raise the suspicion and establish case of the Revenue.

7. Heard both the parties and perused all the relevant material available on record. There is a delay of 37 days in filing the appeal, for which, the reason given by the assessee appears to be genuine, hence delay is condoned. It is pertinent to note that in the present case the case, the assessee has purchased the shares offline at Rs.5/- per share (900 shares). Thus, in total the assessee purchased the shares for only Rs.45,000/-. The assessee purchased these shares through private placement with Vijay Bhagwandas & Co. Contract note

was not produced related to Vijay Bhagwandas & Co. but the evidences related to transfer of shares through Vijay Bhagwandas & Co. who was share trading stock broker registered under SEBI was given by the assessee before the Assessing Officer. The assessee paid the amount for purchase of these shares through cheque and the certificate of the said shares were also taken on record. But at the same time, while selling of the said shares in the month of July 2013 prior to month of the said selling the assessee has converted the shares/dematerialised the shares on 29.05.2013 which is after 25 months from the date of purchase. The Assessing Officer in the Assessment Order at page no.13 has given the finding in respect of the assessee's purchase and sale activities wherein it was stated that the sale consideration is in fact first paid by the assessee in cash who has trusted confidence in broker but the said fact appears to be not correct. The Assessing Officer has not stated out as to how the assessee is involved in price variation of the said scrip of Turbotech Engineering Limited during that period while selling the said shares/scrip. Besides this, the suspension of the said scrip came much after selling of the said scrip carried out by the assessee. Therefore, the assessee has rightly claimed exemption under Section 10(38) of the Act. The Assessing Officer as well as the CIT(A) has not established that the assessee was involved in the price manipulation of the sales scrip and, therefore, this cannot be treated as unexplained money under Section 69A of the Act. As regards the reopening of the assessee's case, the reopening was properly done with proper procedure followed by the Assessing Officer and, therefore, ground no.2 in that respect is dismissed but on merit i.e. ground no.2 (actually 3) is allowed.

8. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open Court on this 17th January, 2024.

SD/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 17th 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*