

IN THE INCOME TAX APPELLATE TRIBUNAL

"D" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.2306/Mum./2023

(Assessment Year : 2009-10)

Rekha Pinesh Shah
A/2601, Shreepati Jewels Ruby
Tatya Gharpure Marg
Pimpalwadi, Girgaon S.O.
Mumbai 400 004 PAN – AMXPS1580Q

..... Appellant

v/s

Income Tax Officer
Ward-19(3)(1), Mumbai

..... Respondent

Assessee by : Ms. Umang Dedhia

Revenue by : Smt. Mahita Nair

Date of Hearing – 29/01/2024

Date of Order – 31/01/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 01/05/2023, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], for the assessment year 2009-10.

2. In its appeal, the assessee has raised the following grounds:-

- "1. *On the facts and circumstances of the case and in law, the learned CIT (A) has erred in confirming the action of the AO in denying the claim of exemption u/s 10(38) in respect of Long Term Capital Gain (LTCG) on sale of shares on recognized stock exchange, and treating the sale*

consideration of Rs. 24,30,000/- as unexplained income u/s 68 (a) without bringing any adverse material on record against the Appellant, (b) without proving that ample documentary evidences filed by the Appellant in support of purchase and sale were false, fictitious or bogus and (c) on mere suspicion, speculation, generalized statements, theoretical assumptions, allegations and assertions, without there being any supporting evidence against the Appellant.

3. *On the facts and circumstances of the case and in law, the learned CIT (A) has erred in confirming impugned addition by failing to realize that (a) off market purchase transaction in shares is not illegal nor prohibited and (b) the spectacular LTCG of the Appellant cannot be branded/labeled as bogus unless the nexus of the Appellant with the alleged persons is established by the AO in price rigging etc.*
4. *On the facts and circumstances of the case and in law, the learned CIT (A) has erred in confirming impugned addition (a) by relying upon various decisions which are materially distinguishable on facts and (b) by conveniently overlooking the decisions relied upon by the Appellant.*
6. *On the facts and circumstances of the case and in law, the AO has erred in framing assessment u/s 147 in the case of the Appellant on the basis of the statement of person searched and without affording the Appellant opportunity of cross examining that person though specifically demanded by the Appellant.*
5. *The appellant craves leave to add, to amend, to substitute, to delete and/or rescind any of the grounds of appeal on or before the final hearing, if found necessary."*

3. The brief facts of the case are that the assessee is an individual and for the year under consideration filed her return of income on 30/03/2011 declaring a total income of Rs. 2,00,340. The return filed by the assessee was processed under section 143(1) of the Act. Subsequently, on the basis of the information received from DIT (Investigation), Kolkata that the assessee has traded in shares of some companies listed on the Calcutta Stock Exchange and has availed accommodation entries of bogus long-term capital gains, notice under section 148 of the Act was issued on 29/03/2016 and proceedings under section 147 of the Act were initiated. In response to the aforesaid notice, the assessee submitted that the original return of income may be treated as a return filed in response to notice issued under section

148 of the Act. As per the Assessing Officer ("AO"), during the year the assessee has sold 8000 shares of the scrip M/s Blue Print Securities Ltd at the sale consideration of Rs. 24,18,307 and has earned long-term capital gains of Rs. 23,23,376, which has been claimed as exempt under section 10(38) of the Act. Further, these 8000 shares were purchased by the assessee at the cost of Rs. 94,940. From the information received from Investigation Wing, it was noted that M/s Blue Print Securities Ltd is one of the penny stock companies, which have been used for generating bogus long-term capital gains and the assessee is a beneficiary of accommodation entry of long-term capital gains. During the assessment proceedings, the assessee was asked to show cause as to why the sale consideration received by the assessee from the sale of shares of M/s Blue Print Securities Ltd should not be treated as unexplained cash credit under section 68 of the Act and brought to taxation by treating the same as a sham transaction. Further, the assessee was asked to explain as to why in view of collusion with the broker/operator to arrange the said transaction, the accommodation charges @2% of the sale consideration of said shares be not added to the total income of the assessee under section 69C of the Act. In response thereto, the assessee submitted the details in respect of the purchase and sale of shares, DEMAT statements, etc. Further, the assessee submitted that the payment is received through the bank and STT has duly been paid, therefore the share transactions are genuine and no accommodation entries have been availed by the assessee.

4. The AO vide assessment order dated 29/12/2016 passed under section 143(3) read with section 147 of the Act did not agree with the submissions of

the assessee and held that the assessee is a beneficiary of accommodation entry obtained from the operators of penny stock company M/s Blue Print Securities Ltd. The AO further noted that the operators of the said company and broker involved in the scam have confirmed in the statements recorded on oath during the course of the investigation that they are engaged in fraudulent activities and providing accommodation entries for the purchase and sale of shares for commission through a no. of private limited shell companies and some penny stock companies including M/s Blue Print Securities Ltd. Accordingly, the AO came to the conclusion that the transaction made by the assessee of the sale of shares of M/s Blue Print Securities Ltd is not genuine and the assessee has taken accommodation entries by way of premeditated steps with a view to imparting a colour of genuineness to such share transaction. As a result, the AO disallowed the exemption claimed under section 10(38) of the Act and added the sum of Rs. 23,23,367 received by the assessee as long-term capital gains under section 68 of the Act.

5. In the appeal before the learned CIT(A), despite notices being issued, no reply/submission was filed on behalf of the assessee. Accordingly, vide impugned ex-parte order dated 01/05/2023, the learned CIT(A) dismissed the appeal filed by the assessee. Being aggrieved, the assessee is in appeal before us.

6. We have considered the submissions of both sides and perused the material available on record. It is evident that the learned CIT(A) has passed the order ex-parte due to the non-appearance of/on behalf of the assessee.

Now in appeal before us, the assessee is duly represented by the learned Authorised Representative and wishes to pursue the litigation against the addition made by the AO. In view of the above, we are of the considered opinion that in the interest of justice, the assessee be hereby granted one more opportunity to represent its case on merits before the learned CIT(A). Consequently, we deem it fit and proper to restore the matter to the file of the learned CIT(A) for *de novo* adjudication of the appeal on merits after consideration of all the details/submissions as may be filed by the assessee. Needless to mention no order shall be passed without affording reasonable opportunity of hearing to the parties. Further, the assessee is directed to appear before the learned CIT(A) on all the dates of hearing as may be fixed without any default. As the matter is being restored to the file of the learned CIT(A) for adjudication on merits, the other grievances raised by the assessee in the present appeal do not call for adjudication at this stage. Accordingly, grounds raised by the assessee are allowed for statistical purposes.

7. In the result, the appeal by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 31/01/2024

Sd/-
PRASHANT MAHARISHI
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 31/01/2024

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai