

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

BEFORE SHRI.NARENDER KUMAR CHOUDHRY (JUDICIAL MEMBER)
AND
MISS. PADMAVATHY S. (ACCOUNTANT MEMBER)

I.T.A. No.2921/Mum/2023
(Assessment year : 2005-06)

Meghna Bharadwaj Kazi
C/o CA Himanshu Gandhi
16th Floor, D Wing, Trade
World Tower, Kamala Mills
Compound, Lower Parel,
Mumbai-400 013

PAN : AJJPB3205C

APPELLANT

Vs Income Tax Officer
(International Taxation)-3(1)(1),
Mumbai (Current jurisdiction),
Air India Building, Nariman
Point, Mumbai-400 021

RESPONDENT

Present for the Assessee : Shri.Himanshu Gandhi
Present for the Department : Shri. Srinivas

Date of hearing : 11/01/2024
Date of pronouncement : 25/01/2024

ORDER

Per N.K. Choudhry (JM):

This appeal has been preferred by the Assessee, against the order dated 31/07/2023 impugned herein passed by the Commissioner of Income-tax (Appeals)-57, Mumbai (in short 'Ld. Commissioner') under section 250 of the Income-tax Act, 1961 (in short, 'the Act') for the A.Y.2005-06.

2. In the instant case, a search and seizure operation under section 132 of the Act was carried out in the case of Mahasagar Securities Pvt. Ltd (in short, "Mahasagar") by DDIT Unit, Mumbai on 25/11/2009 on the basis of information that this company and its related companies were engaged in providing bogus bills of transaction in shares and securities. Further, the directors of these companies engaged in fraudulent billing activities and in the business of providing bogus speculation profit / loss, short term / long term capital gain/loss for trading in shares and securities and in commodities for the last many years. During the course of search, a computer data was seized wherein a list of clients / beneficiaries, who has taken entries from the Assessee company were extracted and the transaction entered into with the beneficiary companies were reported as bogus and represented the undisclosed income of the beneficiaries in A.Y. 2005-06. The Assessee has also been reported to be one of the beneficiaries appearing in the list forwarded by the DDIT, Investigation Unit, and Mumbai. On the basis of the aforesaid information, the reasons were recorded for initiating the proceedings / reopening the proceedings under section 147 of the Act and consequently issuance of notice under section 148.

3. In response to the notice under section 148 of the Act, the Assessee, by filing a letter dated 08/11/2012 enclosed fax copy of the return of income for the A.Y. 2005-06. In the letter it has been stated that the Assessee is a non-resident and staying abroad and the notice under section 148 of the Act sent to the Assessee is invalid as PAN and address mentioned in the notice

does not belong to the Assessee, despite, the Assessee is co-operating in proceedings and trying to provide the details as much as possible. The Assessee further stated that the income of the Assessee was below taxable limit as prescribed under section 139(1) of the Act, therefore, she had shown income as 'Nil' and, therefore, a return of income attached with the letter may be considered as valid return in response to the notice under section 148 of the Act. The Assessee also claimed that as the Assessee had no taxable income and, therefore, she did not file the return of income for the A.Y. 2005-06. The Assessee also not earned any income from capital gains in the assessment year 2005-06 from 'Mahasagar' as she was not maintaining any account directly or indirectly with them and also had no transaction with them till today. In support of such contention, the Assessee also filed an affidavit on non judicial stamp paper of Rs.100 /- duly notarized. The Assessee at last repeatedly denied to have received income of Rs.23,10,928/- from any source of income as alleged qua long term capital gain as the Assessee is a non resident for the last 14 years right from the year 1998-99 and she got married to a non-resident Indian and staying abroad for the last so many years.

4. The Assessing Officer, though considered the claim of the Assessee, however, not being satisfied with the same and by considering the peculiar facts and circumstances of the case specific to the effect *“that search and seizure operation under section 132 of the Act was undertaken in the case of ‘Mahasagar’ and its related parties by Deputy Commissioner of Income-tax (Inv)-*

1(4) and during the course of search it was revealed that the said company and its related group of 34 odd companies were engaged in fraudulent billing activities and in the business of providing bogus speculation profit / loss, short term / long term capital gain / loss, share application money, commodities profit / loss on commodities trading (from MCX) and has been continuing this business for many years. The list of clients who have taken entries from these companies has been retrieved from the computer data seized from the office premises Where it was found that the Assessee had obtained accommodation entries of Rs.23,10,928/- from M/s Alliance Intermediaries & Networking Pvt. Ltd during the assessment year under consideration”, ultimately treated the commission / profit of Rs.23,10,929/- allegedly earned by the Assessee in the share transaction carried out through M/s Alliance Intermediaries & Networking Pvt. Ltd as unexplained investment under section 69 of the Act and added the same to the total income of the Assessee.

5. The Assessee being aggrieved, challenged the said addition as well as reopening of the assessment proceedings before the Ld. Commissioner, who not only dismissed the ground raised by the Assessee qua reopening of the assessment proceedings but also affirmed the addition on merit. The Assessee being aggrieved is in appeal before us.

6. We have given thoughtful consideration to the peculiar facts and circumstances of the case and observe that on the basis of data retrieved from the computer during the course of search and seizure action under section 132 of the Act carried out in the

case of 'Mahasagar' and its related parties, it was revealed that the said 'Mahasagar' and its related group of 34 companies were engaged in fraudulent billing activities and in the business of providing bogus profit / loss bogus speculation profit / loss, short term / long term capital gain / loss, share application money, commodities profit / loss on commodities trading (from MCX). From the list of clients, who have taken entries from these companies, has been extracted from the computer data seized from the office premises, wherein it was also found that the Assessee has also obtained accommodation entries of Rs.23,10,928/- from M/s Alliance Intermediaries & Networking Pvt. Ltd. during the year under consideration.

6.1 The Assessee before the authorities below specifically denied that she has not carried out any transaction as she is NRI and living in foreign country for the last around 14 years. In support of her claim, the Assessee not only submitted the copy of the passport but also filed duly sworn affidavit and claimed that the income of the Assessee for the assessment year under consideration was below the taxable limit as prescribed under section 139(1) of the Act.

6.2 Though the authorities below considered the said denial/claim of the Assessee, however, made and affirmed the addition by holding that the Assessee has not provided any evidences other than the copy of the bank passbook and self-declaration affidavit and, therefore, did not discharge the burden

of proof cast under section 69 of the Act. Mr. Mahesh Choksi during the search in the case of 'Mahasagar' admitted that he used to provide accommodation entries of share transaction to various entities. The data seized during the search also reflected share transactions carried out by the Assessee through various companies of Shri Mukesh Choksi. Therefore, mere denial by Assessee that she has not carried out any transaction through companies of Shri Mukesh Choksi cannot contradict the findings of the search.

6.3 We are unable to understand that how the addition can be made only on the basis of statement of third party, who has not mentioned the name of the Assessee specifically and the opportunity of cross examination of such party also admittedly denied. Further the statement even otherwise not directly related to the Assessee. And simply on the basis of list of clients, may be the identical name of the Assessee appears in the list, but how without corroborating the material and / or documents, the addition can be made. In our considered view, the addition as made by the Assessing Officer and affirmed by the Ld. Commissioner simply on the basis of general statement of third party and computer data wherein the identical / similar name of the Assessee appears, is not at all sustainable, specifically when there is complete denial by the Assessee and the addition is not substantiated by any corroborative/substantive material. Hence, we do not have any hesitation to delete the addition under consideration.

7. In the result, the appeal filed by the Assessee stands allowed.

Order pronounced in the open court on 25/01/2024.

Sd/-

sd/-

(MISS. PADMAVATHY S.)	(NARENDER KUMAR CHOUDHRY)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Pavanan

प्रतिलिपि अग्रेषित **Copy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

Asstt. Registrar, **ITAT, Mumbai**