

IN THE INCOME TAX APPELLATE TRIBUNAL

"D" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.2914/Mum./2023

(Assessment Year : 2011-12)

Shri Rohit Manohar Shetty
362, Zainab Villa, Senapati Bapat Marg
Matunga, Mumbai 400 016
PAN – AAKPS6518F

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Circle-35(2), Mumbai

..... Respondent

Assessee by : Shri Arvind Pinto
Revenue by : Smt. Mahita Nair

Date of Hearing – 30/01/2024

Date of Order – 01/02/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 30/06/2023, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, New Delhi, [*learned CIT(A)*], for the assessment year 2011-12.

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

"1. On the facts and in the circumstances of the case and in law, the faceless Ld CIT(A) has erred in confirming the addition made by the Ld Assessing Officer, of Rs..77,79,564 being Rs.73,86,255 plus 5% commission as income from other sources, instead of accepting the short-term capital gains of Rs.21,69,2115 as declared in the return of income.

2. On the facts and in the circumstances of the case and in law, the faceless Ld CIT(A) erred in uploading the order of equally the Ld A.O. in reopening the assessment under section 147 when there was no income that had escaped assessment.

3. On the facts and in the circumstances of the case and in law, the faceless Ld CIT(A) has not taken into account the entire submissions made nor the various case laws that were submitted on the issue.

4. On the facts and in the circumstances of the case, the faceless Ld CIT(A) has ignored that the rules of natural justice have been ignored, by not providing a cross examination of the party from which this information was received.

5. The faceless Ld CIT(A) while placing reliance on a third party Confessional statement has not provided the appellant the opportunity of rebutting the same.

6. On the facts and in the circumstances of the case, both the Ld A.O and also the face less LD CIT(A) has ignored the fact that this was a genuine transaction, which has resulted in a short term capital gain of Rs.23,31,334/- where tax of Rs.3,49,000/- was paid and not a case where a short term or long term capital loss was shown or adjusted.

7. On the facts and in the circumstances of the case and in law both the Ld. CIT(A) has ignored a determinant fact that the transaction was through the stock exchange and therefore not collusive transaction to evade income and consequently the tax.

8. On the facts and in the circumstances of the case the Ld. CIT(A) while making deduction on the Bank account and brokers notes, has not given the appellant an opportunity to explain the relevant transactions thereby breaching the rules of natural justice.

9. The appellant begs this Hon'ble Tribunal to stay pending demand until the final hearing of the appeal.

The appellant craved leave to add, alter, amend or withdraw all or any of the foregoing grounds of appeal herein and to submit such statements, documents or papers considered necessary either at or before hearing of the appeal."

3. The only grievance raised by the assessee, in the present appeal, is against the addition made under section 68 of the Act by treating the short-term capital gains earned by the assessee from sale of shares as bogus.

4. The brief facts of the case are that the assessee is an individual and for the year under consideration filed its return of income on 25/07/2012

declaring a total income of INR 26,71,714. During the year, the assessee earned income from salary, short-term capital gains, and income from other sources. The return filed by the assessee was processed under section 143(1) of the Act. Subsequently, on the basis of the information received from DDIT(Investigation), Unit-6(2), Mumbai that the assessee has made transactions in the scrip M/s VAS Infrastructure Ltd, which is a penny stock scrip, notice under section 148 of the Act was issued on 29/03/2018 and proceedings under section 147 of the Act were initiated. In response to the said notice, the assessee filed the return of income on 14/07/2018 declaring a total income of INR 26,71,714. As per the information, the share price in the scrip of M/s VAS Infrastructure Ltd displayed a sharp rise in price during the relevant financial year without any support from the financial fundamentals of the scrip. Further, the share prices of the scrip had suddenly jumped to a very high value and had fallen back without any financial market justification. As per the aforesaid information received from the Investigation Wing, the assessee has done a purchase/sale transaction in the above-mentioned shares wherein purchases have been made at INR 52,71,040 and sales have been made at INR 73,86,255, resulting in short-term capital gains of INR 21,69,215 from the transaction. During the reassessment proceedings, the Assessing Officer ("AO") noted that the share price of the aforesaid scrip moved from INR 6.50 on 06/04/2009 to a high of INR 173.40 on 10/11/2010 and then fell back to INR 37.70 on 28/03/2012 and further by the end of the financial year 2012-13 it had come down to INR 12.90. The AO also took into consideration the statements of certain exit providers recorded under section 131 and the statement of director of M/s VAS Infrastructure Ltd. recorded by

Mumbai Investigation Wing. The AO after considering the aforesaid statements came to the conclusion that the director of the company has no explanation about the trading of the company. Further, by analysing the financial statements of the company and comparison of the past earning growth, the AO treated the transaction by the assessee as bogus and the entire sale consideration of the above transaction and 5% commission thereon is added to the total income of the assessee under the head "*income from other sources*" as unexplained cash credit under section 68 of the Act.

5. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee and held that the contract notes and cheque payments do not necessarily prove that the transaction was genuine but instead only indicate that the paperwork or documentation is in order. The learned CIT(A) further by considering the bank statement of the assessee held that the payment made for the purchase of shares of aforesaid scrip is not reflected in the bank statement and similarly the receipt of sale consideration is also not reflected in the bank statement. 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 the plea of the assessee that during the year, it has done share transactions in the scrips of Delta Corp Ltd, Farmax, Kajaria Ceramics, VAS Infrastructure Ltd, and Vertex Securities. From the aforesaid transaction, the assessee earned short-term capital gains of INR 23,31,325, including short-term capital gains of INR 21,69,215 from the transaction in VAS Infrastructure Ltd. As per the assessee, the short-term capital gains earned by the assessee during the year have been offered for

taxation. During the hearing, the learned AR submitted that the assessee transacted in the scrip of VAS Infrastructure Ltd on the basis of information received from some magazine. It was further submitted that the aforesaid transaction was done through a sub-broker who had also made several trades for the assessee in the aforesaid scripts. During the hearing, the learned AR referred to the contract notes, copy of account to the broker, and statement of bank account pertaining to the impugned transaction.

7. At the outset, we find that in the present case return of income filed by the assessee was not selected for scrutiny. The AO based on the information received from the DDIT(Investigation), Unit-6(2), Mumbai initiated the reassessment proceedings. We are of the considered view that the said information constitutes new and tangible material for initiating the reassessment proceedings in the case of the assessee and on the basis of the aforesaid information, the AO initiated proceedings under section 147 of the Act and issued a notice under section 148 of the Act. In *ACIT v. Rajesh Jhaveri Stock Brokers (P.) Ltd*, [2007] 291 ITR 500 (SC), the Hon'ble Supreme Court held that if there is relevant material on the basis of which a reasonable person can form a requisite belief that income chargeable to tax has escaped assessment, then proceedings under section 147 of the Act can be validly initiated. In the present case, as noted above, on the basis of information received from the Investigation Wing, reassessment proceedings in the case of the assessee were initiated. Further, it is also well settled that the sufficiency or correctness of the material is not a thing to be considered at the stage of recording the reasons. As a result, we find no infirmity in the reassessment proceedings initiated by the AO under section 147 of the Act.

8. On merits, we find that during the reassessment proceedings, the assessee vide its submission dated 14/11/2018 filed before the AO on 16/11/2018, forming part of the paper book from pages 6-7 furnished the details pertaining to share transaction in VAS Infrastructure Ltd undertaken during the year and copy of DEMAT account. Further, the assessee also furnished a copy of his bank account held with the State Bank of India. In the aforesaid submission, it was submitted that from the share transaction in VAS Infrastructure Ltd, it has earned short-term capital gains, which were offered to tax along with the applicable interest under section 234 A/B/C of the Act. However, we find that the AO without considering the aforesaid submission or the details furnished by the assessee regarding its transaction in VAS Infrastructure Ltd made the impugned addition. We further find that the AO has referred to statements of certain exit providers recorded by the Investigation Wing. However, no information is brought on record by the Revenue whether these individuals are the exit providers for the assessee.

9. We find that the learned CIT(A) though referred to the aforesaid submissions on pages 5-6 of the impugned order, however, only commented on the volatility in the price of the scrip and did not analyse the details furnished by the assessee. We further find that the learned CIT(A) sustained the addition on an altogether new basis that the source of funds for making the investment in shares of VAS Infrastructure Ltd is not proved from the bank statement of the assessee.

10. Therefore, from the record, it is sufficiently evident that the lower authorities have not examined the details furnished by the assessee and have

not analysed the claim of the assessee in light of those details. Further, no material is available on record to show that the assessee was put to notice before disputing the source of the payment made for purchasing the shares of VAS Infrastructure Ltd. From the record it is also evident that an opportunity to cross-examine the broker on whose statement Revenue has placed reliance was also not provided to the assessee. Accordingly, we deem it appropriate to restore this issue to the file of the AO for *de novo* adjudication after considering the details filed by the assessee. Since the matter is restored to the file of the AO, the assessee shall be at liberty to furnish any other information in support of his claim. The assessee is also directed to furnish all the information as may be sought by the AO without any failure. The AO is directed to provide the opportunity to the assessee to cross-examine the person on whose statement any reliance may be placed by the Revenue. With the above directions, the impugned order is set aside and the grounds raised by the assessee on merits are allowed for statistical purposes.

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

Order pronounced in the open Court on 01/02/2024

Sd/-
PRASHANT MAHARISHI
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 01/02/2024

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