

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. KUL BHARAT, JUDICIAL MEMBER**

ITA No.24/Del/2021
Assessment Year: 2014-15

DCIT Central Circle -43(1) New Delhi	Vs.	Mohan Mittal 138, Deepali Enclave, Pitampura, New Delhi PAN No.APFPM0496Q
(APPELLANT)		(RESPONDENT)

Appellant by	Dr. Maninder Kaur Biswas, Sr. DR
Respondent by	Sh. Ruchesh Sinha, Advocate Sh. Arun Jain, CA

Date of hearing:	05/02/2024
Date of Pronouncement:	07/02/2024

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the revenue is preferred against the order of the CIT(A)-14, New Delhi dated 24.09.2020 pertaining to A.Y. 2014-15.

2. The grievance of the revenue read as under :-

a. Ld. CIT(A)-14, New Delhi erred in deleting the addition of Rs. 5,93,06,611/- on the ground that the provisions and penal actions of SEBI Rules and Regulation are much wider in and it cover much

wider. AO has used the report and Data of SEBI in order to substantiate his claim. AO has not applied the rules and penal provisions of SEBI

b. Ld. CIT (A)-14, New Delhi erred in deleting the addition of Rs. 5,93,06,611/- on the ground that Hon'ble ITAT Mumbai has deleted the addition on similar ground because there was no occasion on the part of Hon'ble ITAT Mumbai to decide on the scrip M/s Radford Therefore, the decision relied on by the Ld. CIT(A)-14, New Delhi is not applicable to the facts of the present case.

c. Ld. CIT (A)-14, New Delhi erred in deleting the addition of Rs. 5,93,06,611/- on the ground that the addition was made on mere suspicion. AO has not given the summons to Brokers as it was already done by Kolkata Investigation Unit. AO has given sufficient opportunities of natural justices to assessee. AO has made additions after in-depth research and analysis in 61 pages of assessment order.

d. Ld. CIT (A) has not appraised the fact that the share price rose to 7442% during that period. The return was 2309%.Ld. CIT(A)-14, New Delhi has not appraised the detailed financial analysis of the scrip done by AO. In light of the above facts it is clearly evident that the Ld CIT(A)-14, New Delhi has erred in deleting the addition of Rs. 5,93,06,611/-.

3. At the very outset the Counsel for the assessee stated that on identical set of facts in the case of the brother of the assessee Sh.

Mukesh Mittal this Tribunal in ITA No.761/Del/2020 has decided the issue in favour of the assessee and against the revenue.

4. The DR fairly conceded to this but placed strong reliance on the assessment order.

5. We have carefully perused the assessment order dated 27.12.2016. The quarrel revolves around the claim of exemption u/s. 10 (38) of the Act in respect of long term capital gains to the tune of Rs.57513700/-. The bone of contention is the sale of shares of Radford Global Ltd which resulted into long term capital gain of Rs. 5.75 crores.

6. Based upon the investigation report of Pr. DIT, Investigation Wing Kolkata unit the AO formed a belief that the said company is a penny stock company and heavily drawing support from the investigation report and placing strong reliance on the modus operandi of some brokers, the AO denied the benefit of long term capital gains and made addition of Rs.57513700/- and further Rs.1792911/- being alleged commission paid to the brokers for such accommodation entry.

7. We find that the very same AO has framed the assessment of the brother of the assessee Sh. Mukesh Mittal who claimed LTCG on sale of shares of the very same company Radford Global Limited.

8. In the case of the brother the quarrel travelled upto the Tribunal and this Tribunal in ITA No.761/Del/2020 order dated 26.03.2021 held as under :-

“5.0 We have heard the rival contentions and have also perused the relevant records available with us, especially the orders of the revenue authorities and the case laws referred hereinabove. The assessment order clearly shows that the AO has merely reproduced the modus operandi of the entry providers who booked bogus long term capital gains through penny stock companies. The show cause notice dated 2.12.2016 issued by the AO during the assessment proceedings and the findings of the AO are based upon interim order of SEBI dated 19.12.2014. Even the Ld. CIT (A) has relied upon another interim order dated 26.8.2016 confirming the earlier interim order dated 19.12.2014. However, it is now an admitted fact that interim orders of the SEBI have been later on revoked by the SEBI. The interim orders framed by SEBI dated 19.12.2014 and 26.8.2016 were revoked in respect of 82 entities including the assessee by final order dated 20.9.2017. It was held in Para 9 of the said order as under:

"9 Upon completion of investigation by SEBI, investigation did not find any adverse evidence/ adverse findings in respect of violation of provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities market) Regulations, 2003 (PFUTP Regulations) in respect of following 82 entities (against whom directions were issued vide the interim orders as confirmed vide the above said confirmatory orders) warranting continuation of action under section 11B r/w/ 11(4) of SEBI Act. However investigation

has found adverse findings against Radford which warrants Adjudication proceedings".

5.1 The name of the assessee appears at item 77 of the list. Further it was held in Para 10 as under:

"10 Considering the fact that there are no adverse findings against the aforementioned 82 entities with respect to their role in the manipulation of the script of Radford, I am of the considered view that the directions issued against them vide interim orders dated December 19, 2014 and November 9, 2015 which were confirmed vide orders dated October 12, 2015, March 18, 2016 and August 26, 2016 are liable to be revoked."

5.2 The decision of ITAT in the case of Shri Brij Bhushan Singhal vs. ACIT (supra), considered the scrip of M/s Radford Global Ltd. on identical facts and held as under:

"30. Further, the assessing officer has heavily relied upon the various orders passed by The Securities and Exchange Board of India in various companies in which the assessee has earned the long-term capital gain as well as in case of the assessee. First Such order relied upon is interim ex parte orders dated 19/12/2014 passed in case of M/s First financial services Ltd and M/s Redford global Ltd. The learned CIT-A was also heavily harping upon the orders of the SEBI for confirming the addition. In interim order in Redford global Ltd, dated 19/12/2014 assessee was restricted to access the securities market till further directions. Subsequently, on 20/09/2017, SEBI passed an order in that company holding that there are no adverse findings against the aforementioned 82 entities, which included the family of the assessee, and the

assessee himself with respect to their role in the manipulations in prices of the script of the company. Therefore, it revoked the original order passed on 19/12/2014.....

31. Almost similar orders were passed in all the companies wherever the income tax department asked the SEBI to enquire. The assessee has placed all these orders at page number 302-419 of the paper book. Furthermore, the para number 96 of the above order clearly shows that the intimation is also given to The Director General Of Income Tax Investigation, New Delhi and The Principal Director Of Income Tax Investigation Kolkata and Chandigarh for necessary action. From this, it is apparent that reliance on the interim order of securities exchange control Board of India by the revenue authorities is misplaced as in each of these companies in which the income tax department requested SEBI to investigate has given a clean chit to the assessee and his family. Therefore, reliance on SEBI interim order was misplaced and even otherwise now do not survive in view of subsequent final orders of SEBI."

5.3 Similar view has also been expressed by the ITAT in the case of Shri Riaz Munshi wherein it was held as under:

"6. We have considered the rival submissions and perused the material on record. The assessment order clearly show that the A.O. merely reproduced the modus operandi of the entry providers who booked bogus long term capital gains through penny stock companies in which either there is no business or they have accumulated losses or a Company is floated only for that purpose. Learned Counsel for the Assessee has filed financials of M/s EBFL from A.Ys. 2011-2012 to

2017- 2018 and for the assessment year under appeal the financials are reproduced above, which clearly show that this Company is dealing in actual business activities. Its financials are very heavy and as such the modus operandi of this type of penny stock companies would not be available in the case of M/s EBFL. The findings of the A.O. are entirely based upon interim order of SEBI. However, it is an admitted fact that interim order of the SEBI have been later on revoked by the SEBI on assessee as well as M/s EBFL have been cleared from all allegations and charges. In the case of Amar Nath Goenka vs. vs., ACIT reported in 54 CCH 344, the ITAT, Delhi Bench considered the scrips of M/s EBFL on identical facts and held as under:

"Assessee placed sufficient documentary evidences before A.O. to prove genuineness of the transaction. The assessee purchased shares through banking channel and actually got the shares transferred in his name. Purchase was made through cheque which is supported by bank statement. The transactions of sale have been made through Demat account. The contract note along with other details were produced to show that purchase and sale of the shares have been made through banking channel through recognized Stock Exchange through Demat account on which Security Transaction Tax have also been paid. The A.O. did not make any enquiry on the documentary evidences filed by the assessee. No material have been brought on record against the assessee to disprove the claim of assessee. It is not the case of the Revenue that amount received

on sale of shares is more than what is declared by the assessee. The assessee pleaded that the Interim Order of the SEBI have been diluted by passing final order in which no adverse view have been taken against the aforesaid company. Thus, the assessee's claim of purchase and sale of shares have been supported by documentary evidences. The statement of Shri Sanjay Vohra was recorded by the Investigation Wing, Kolkata, but, the same was not confronted to the assessee and his statement was also not subjected to crossexamination on behalf of the assessee. Therefore, his statement cannot be read in evidence against the assessee. The A.O. did not mention any fact as to how the claim of assessee was sham or bogus. The assessee satisfied the conditions of Section 10(38). The broker through whom transactions were carried-out have not denied the transaction conducted on behalf of the assessee. It, therefore, appears that the addition is merely made on presumption and assumptions of certain facts which are not part of the record. There is no other material available on record to rebut the claim of assessee of exemption claimed under section 10(38). Issue is decided in assessee 's favour."

6.1. In the present case, the assessee submitted sufficient documentary evidences before A.O. to prove genuineness of the transaction. The assessee purchased the shares through banking channel and actually got the shares transferred in his name. The purchases are supported by bank statements. The transaction of the sale have been made through Demat

Account which is corroborated by contract note and other details and transaction is carried out through banking channel through stock exchange through Demat Account on which Security Transaction Tax have also been paid. The A.O. merely relied upon interim order of the SEBI to make addition against the assessee, otherwise, there were no evidence or material on record to disprove the claim of assessee. Since the interim order of the SEBI have been revoked against the assessee and M/s EBFL, therefore, nothing survives in favour of the A.O. The A.O. did not make any further investigation or enquiry into the matter and merely relied upon the interim order of the SEBI and investigation carried out by the Kolkata Wing. Further, it is not clear from the assessment order whether Investigation Wing report have been confronted to the assessee or any right of cross-examination have been allowed to any statement recorded at the back of the assessee. The assessee asked for the cross-examination of any statement which is used against the assessee for making the addition. But, the assessment order is silent on this aspect. Therefore, the above facts clearly show that assessee entered into the genuine transaction and as such the profit on sale of scrip was exempt from tax. The Ld. D.R. relied upon decisions of the ITAT, Delhi Benches, Delhi in the cases of SumanPoddar vs., ITO (supra) and UditKalra vs., ITO (supra), in which the findings of the Tribunal had been that these are cases of penny stock companies which fact is not there in the present case. Therefore, these decisions would not support the case of the Revenue as

having distinguishable on facts. The authorities below have not rebutted the explanation of assessee that he has indulged in dealing in scrips in earlier year as well as in subsequent years. It would, therefore, show that assessee is regularly dealing in scrips. The A.O. has not brought any adverse material against the assessee so as to make the above additions. Considering the totality of the facts and circumstances of the case and financials of M/s EBFL as reproduced above and other years (PB-76), we set aside the Orders of the authorities below and delete both the additions.

7 In the result, appeal of the assessee allowed."

5.4 We also find that the AO has held that many share brokers as well as many employees of these share broking companies in Kolkata, in their statements recorded under section 131 of the Act, have admitted to the fact that they have artificially inflated the prices of the shares of their dummy companies to deliberately provide bogus accommodation entries of the long term capital gain/loss, short term capital gain/loss to the beneficiaries. However, no such statement has been confronted or supplied to the assessee during the course of assessment proceedings. In fact no specific statement has even been referred by the AO in the order of assessment or in the show cause notice extracted in the order of assessment. On the contrary, the fact is that the assessee is a habitual investor. The undisputed details of investment and disinvestment made by the assessee and accepted by the revenue in the earlier year, instant year and succeeding year is as under :

Sr. No.	Assessment Year	Particulars	Date of Sale	Sale Price	Date of Purchase	Purchase price	Capital Gain
i)	2012-13	Vikas Global Limited	--	--	--	--	13,183 (Claimed exempt u/s 10(38))
ii)	2014-15 (other than script under consideration)	SBI Magna Insta Cash	10.5.2013	45,06,452	2.5.2013	45,00,000	6,452 (Short term capital gain)
		SBI Premier Liquid Fund	4.7.2013	2,30,79,188	--	2,30,00,000	791,88 (Short term capital gain)
		V&K Software	21.2.2014	7,13,384	--	42,900	6,70,484 (Claimed exempt u/s 10(38))
iii)	2015-16	Dhruv Global Ltd.	16.3.2015	12,500	9.9.2002	50,000 (Indexed cost 1,14,541)	-1,02,041
		Cubical Services	11.6.2014	13,61,908	8.3.2013	4,34,982	9,26,926 (Claimed exempt u/s 10(38))
iv)	2017-18	PC Jewellers	20.2.2017	1,53,02,868	21.8.2013	33,56,119	1,19,46,749 (Claimed exempt u/s 10(38))
		PVR	20.2.2017	1,28,353	8.12.2007	22,725	105628 (Claimed exempt u/s 10(38))
v)	2018-19	MotilalOswal	11.5.2017	4,93,675	27.4.2017	5,00,000	-6325 (Short term capital gain)
vi)	2019-20	Oil & Natural Gas Corporation	21.2.2019	2,06,700	16.1.2019	1,93,011	13,689
		Polka Resorts (P) Ltd.	23.3.2019	1,08,00,000	23.1.2017	22,95,082	85,04,918
		MotilalOswal	7.9.2018	1,10,37,986	16.5.2017	98,00,000	12,37,986

5.5 It is also seen that the assessee has placed on record complete documents and evidences to support purchase and sale of shares of M/s. Radford Global Ltd. The sale was through screen based trading and STT and all charges were duly paid. The consideration was received through banking channels. In such circumstances, the AO ought to have conducted independent enquiries and verifications with due application of mind before drawing any adverse inference. Thus, the approach of the Assessing authority in making the addition is also contrary to section 142(1) of the Act which provides that for the purpose of obtaining full

information in respect of income or loss of any person, the AO may make such enquiry as he considers necessary.

5.6 Much has been argued before us as to the astronomical increase in price of shares of M/s Radford Global Ltd. However, isolated fact of increase in prices of a scrip, without evidence of any involvement of the assessee cannot be the basis to deny the claim made by the assessee, particular when SEBI has specifically exonerated the assessee. The addition has, thus, been made on surmises, conjectures a suspicion. The transactions of the assessee are prior to any enquiry or order made by SEBI. Thus, when a person who has been absolved by SEBI and, when the revenue has not placed any material in the shape of statement or otherwise to prove any involvement of the assessee in alleged wrong doing, then there remains no justification to hold that the amount credited represented unexplained credits u/s 68 of the Act. The decision of the ITAT in the case of Karuna Garg (supra) also supports the above wherein it was held as under:

"21. A perusal of the assessment order clearly shows that the Assessing Officer was carried away by the report of the Investigation Wing Kolkata. It can be seen that the entire assessment has been framed by the Assessing Officer without conducting any enquiry from the relevant parties or independent source or evidence but has merely relied upon the statements recorded by the Investigation Wing as well as information received from the Investigation Wing. It is apparent from the Assessment Order that the Assessing Officer has not conducted any independent and separate enquiry in the case of the assessee. Even, the statement recorded by the Investigation Wing has not been got confirmed

or corroborated by the person proceedings. during the assessment proceedings.

22. Section 142 of the Act contains the provisions relating to enquiry before assessment.

23. It is provided u/s. 142 (2) of the Act that for the purpose of obtaining full information in respect of income or loss of any person, the Assessing Officer may make such enquiry as he considers necessary. In our considered view the Assessing Officer ought to have conducted a separate and independent enquiry and any information received from the Investigation Wing is required to be corroborated and reaffirm during the assessment by the Assessing Officer by examining the concerned persons who can affirm the statements already recorded by any other authority of the department, Facts narrated above clearly show that the Assessing Officer has not made any enquiry and the entire assessment order and the order of the first Appellate Authority are devoid of any such enquiry.

24. The report from the Directorate Income Tax Investigation Wing, Kolkata is dated 27.04.2015 whereas the impugned sales transactions took place in the month of March, 2014. The exparte ad interim order of SEBI is dated 29.06.2015 wherein at page 34 under para 50 (a) M/s. Esteem Bio Organic Food Processing Ltd was restrained from accessing the securities market and buying selling and dealing in securities either directly or indirectly in any manner till further directions. A list of 239 persons is also mentioned in SEBI order which are at pages 34 to 42 of the order the names of

the appellants do not find place in the said list. At pages 58 and 59 the names of pre IPO transferee in the scrip of M/s. Esteem Bio Organic Food Processing Ltd is given and in the said list also the names of the appellants do not find any place. At page 63 of the SEBI order-trading by trading in M/s. Esteem Bio Organic Food Processing Ltd a further list of 25 persons is mentioned and once again the names of the appellants do not find place in this list also.

25. As mentioned elsewhere the brokers of the assessee namely ISG Securities Limited and SMC Global Securities Limited are stationed at New Delhi and their names also do not find place in the list mentioned here in above in the SEBI order. There is nothing on record to show that the brokers were suspended by the SEBI nor there anything on record to show that the two brokers of the appellants mentioned here in above were involved in the alleged scam. The Assessing Officer has not even considered examining the brokers of the appellants. It is a matter of fact that SEBI looks into irregular movements in share prices on range and warn investor against any such usual increase in shares prices. No such warnings were issued by the SEBI.”

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5.12 We are, thus of the considered view that the assessee has successfully discharged the onus cast upon him by the provisions of section 68 of the Act and such discharge is purely a question of fact. We, accordingly, direct the Assessing Officer to accept the long term capital gain of Rs.57513700/- declared as such and allow exemption u/s. 10 (38) of the Act. In the light of the above, we delete the impugned addition made of Rs. Rs.57513700/- on account of unexplained cash credits u/s. 68 of the Act. Since we

have deleted the addition on account of unexplained cash credits u/s. 68 of the Act, we do not find any merit in the consequential addition of Rs.1792911/- and the same is also directed to be deleted.”

9. Respectfully following the decision of the coordinate Bench (supra) we decline to interfere with the findings of the CIT(A). The appeal of the revenue is dismissed.

Order pronounced in the open court on 07.02.2024.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

NEHA

Date:- .02.2024

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI