

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A" MUMBAI**

BEFORE SHRI NARENDER KUMAR CHOUDHRY, HON'BLE JUDICIAL MEMBER

AND

SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER

**ITA NO.1653/MUM/2023
(ASSESSMENT YEAR: 2014-15)**

Anoopkumar Devidas Raimalani Manav Jewellers, Patwa Chawl Ground Floor, 80, Sheikh Memon Street, Zaveri Bazar Mumbai- 400002 PAN: AAAPR8626H	v.	Circle 23(1) Earnest House, Nariman Point Mumbai- 400021
(Appellant)		(Respondent)

Assessee Represented by	:	Shri K Gopal & Shri Om Kadalkar
Department Represented by	:	Shri Manoj Kumar Sinha
Date of conclusion of Hearing	:	31.01.2024
Date of Pronouncement	:	15.03.2024

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the assessee against order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter in short "Ld. CIT(A)"] dated 14.11.2022 for the A.Y.2014-15.

2. At the outset, we observe that present appeal is filed by the assessee with a delay of 119 days and assessee also filed an affidavit in this regard and prayed for condonation of delay. Assessee filed an affidavit dated 03.10.2023 and submitted as under: -

"1. The Applicant had filed his returns on 29.09.2014 declaring his total income at Rs.21,35,090/- for the year under consideration. The returns filed by the Applicant were selected for scrutiny assessment and subsequently, the Ld. A.O. passed the assessment order dated 28.12.2018 under section 143(3) of the Act wherein the Ld. A.O. had made certain additions/disallowances aggregating to Rs.1,44,36,593/- to the total income of the Applicant.

2. The Applicant had preferred an appeal before the National Faceless Appeal Centre, Delhi (hereinafter referred to as 'NFAC'). The NFAC passed an order dated 14.11.2022 confirming the additions/disallowance made by the Ld. AO.

3. The aforesaid order was merely uploaded on the e-filing portal of the Petitioner without giving any notification to the Applicant regarding the same. The Applicant has neither received any E-mail on its registered E- mail ID nor any Message providing an intimation regarding the said order. Thus, the Applicant was not aware of the said order. It is only when the Chartered Accountant checked the e-filing portal of the Petitioner on 09.05.2023 did he found that the NFAC passed impugned order dated 14.11.2022 passed under section 250 of the Act has been uploaded for the assessment year 2014-15.

4. Subsequently, the Applicant informed his Chartered Accountants regarding the said order and the said Chartered Accountants filed the present appeal on 12.05.2023 before the Hon'ble Income Tax Appellate Tribunal (hereinafter referred to as 'ITAT') challenging the order passed under section 250 of the Act upholding the disallowances/additions made by the Ld. A.O.

5. As per the provisions of section 253(2) of the Act, every appeal under shall be filed within sixty days of the date on which

the order sought to be appealed against is communicated to the assessee. Thus, the time limit for filing the present appeal against the impugned order dated 14.11.2022 was available till 13.01.2023 as per the provisions of section 253(2) of the Act. As the present appeal was filed on 12.05.2023, the same is time barred by 119 days.

6. The Applicant submits that the delay in filing the present appeal is not because of any malafide intention on the part of the Applicant or tax consultant, but due to the circumstances beyond the control of the Applicant. Hence, Your Honours may be pleased to condone the delay caused due to 'sufficient cause' in filing the present appeal.

7. The Applicant submits that it has co-operated with the Department in the completion of its tax related matters for all the earlier and subsequent assessment year. There is no malafide intention in not filing the present appeal on time. Hence, your honours may condone the delay of 119 days in filing the appeal. The Applicant relies on the decision of the Hon'ble ITAT Chandigarh Bench in the case of Emsons Organics Ltd. v. DCIT [ITA Nos. 1088 to 1092 (Chd.) of 2018] wherein it was held that where facts sufficiently demonstrated that delay of 615 days in filing appeal was non-deliberate and by filing of appeal late, assessee had not derived any undue advantage, Tribunal was justified in condoning delay. The Applicant relies on the decision of Hon'ble Supreme Court in the case of Improvement Trust vs. Ujagar Singh, Civil Appeal No. 2395 of 2008 dated 09.06.2010. In this case Hon'ble Supreme Court at page 6 in Paragraph 1, 2 & 3 has observed as under:

(i) While considering an application for condonation of delay no strait-jacket formula is prescribed to come to the conclusion if sufficient and good grounds have been made out or not. Each case has to be weighed from its facts and the circumstances in which the party acts and behaves. From the conduct, behavior and attitude of the appellant it cannot be said that it had been absolutely callous and negligent in prosecuting the matter,

(ii) Justice can be done only when the matter is fought on merits and in accordance with law rather than to dispose it of on such technicalities and that too at the threshold;

(iii) Unless malafides are writ large on the conduct of the party, generally as a normal rule, delay should be condoned. In the legal arena, an attempt should always be made to allow the matter to be contested on merits rather than to throw it on such technicalities. Apart from the above, the appellant would not have gained in any manner whatsoever, by not filing the appeal within the period of limitation.

8. *The Applicant relies on the observation of the Apex Court in the case 167 ITR 471 (SC) Collector, Land Acquisition Vs. Katiji.*

"When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in injustice being done because of a non-deliberate delay."

9. *The Appellant further seeks kind attention of the Hon'ble Bench to the observations of the Hon'ble Kerala High Court in the case of Vasu & Co. Vs. State of Kerala (2001) 124 STC 124 (Ker.).*

"We are of the view that it is not necessary in all cases to give evidence regarding the delay in filing appeals. The affidavits are documents of evidence. On the basis of the affidavits, if the Court is satisfied that sufficient explanation has been given for condoning delay, then the affidavit can be accepted as evidence. If proof of what is stated in the affidavit is insisted on, that will prolong the litigation. Here is a case where the Assessee is aggrieved by the orders of the assessing authorities. According to him, he has been directed to pay tax which he was not bound to pay and on the ground of delay the Tribunal has shut the doors against him. Of course, if the Petitioner had been negligent or irresponsible, the Court cannot come to his succor. Here, we find some truth in what the Petitioner had stated in so far as he has approached this Court by filing original Petition. It would have been better, if some evidence was given regarding his case that the particular advocate did not file

appeals. But the court can take judicial notice of the difficulty in getting such affidavits".

10. In view of the above , the Applicant prays that your honor may to be pleased to consider the facts of the case and condone the delay of 119 days and oblige.

3. On the other hand, Ld. DR objected for the condonation of delay and however, he has not filed any submissions against the affidavit as well as the facts described in the above affidavit.

4. Considered the submissions of both parties, on a perusal of the affidavit and the reasons explained therein for the delay in filing the appeal, we find the assessee is prevented with reasonable cause in filing the appeal in time. The assessee could properly explain the delay in filing the appeal, therefore following the ratio in the decision of the Hon'ble Supreme Court in the case of Collector, Land Acquisition *v.* MST. Katiju and others, [1987] 167 ITR 471, we condone the delay of 119 days and admit the appeal for disposing off the same on merits.

5. Assessee is in appeal before us and raised following grounds in its appeal: -

"1. Confirming the addition of Rs. 8,60,124/- on account of interest paid on Loans borrowed for purchase of Surat Property which was given on Rent. The appellant receive rent of same property.

2. *Confirming the addition of Rs. 8,53,181/- on account of interest paid u/s 24(b) on loans borrowed for purchases on surat property which was given on rent. The appellant receive rent of same property.*

3. *Confirming the addition of Rs. 6,69,052/- on account of interest charged by M/s Kush Commodities a partnership firm from which the appellant withdraw amount excess than his capital balance, hence firm charged interest on same and the appellant received share of profit and remuneration from firm.*

4. *Confirming the addition of Rs. 3,48,985/- on account of disallowing of interest paid on unsecured loan, while the borrowed fund has been advanced and interest was claimed against bank interest received of Rs. 1,32,530/-. The appellant has also received interest of Rs. 2,86,850/- on loans and advances which has been given to Vijay Group Construction.*

5. *Confirming the addition of Rs. 1,84,800/- on account of deemed Rent of Rs. 2,64,000/- of the flat at Borivali, while the staff of proprietary concern M/s Manav Jewellers were staying at the same premises.*

6. *Confirming addition of Rs. 1,71,301/- on account of Business Exp. Treated as personal exp.*

7. *Confirming the addition by applying sec. 68 to the LTCG claimed in reference to sale of shares of sunrise Asian Ltd. For the amount of Rs. 1,17,33,011/-*

8. *Confirming in making reliance upon various evidences which have been collected behind back of the assessee without confronting to the assessee and therefore, the addition made may please be deleted.*

9. *Confirming in making reliance upon the statement and evidences of various persons, without allowing cross examination and therefore, the addition made is in violation of rule of natural justice and therefore, the same may please be deleted.*

10. *Confirming addition of Rs. 4,69,320/- on account of so called commission payments for so called bogus LTCG entry of Rs. 1,17,33,011/- in absence of any evidences thereof and therefore, the addition made may plea se be deleted."*

6. We proceed to dispose off the appeal by adjudicating the issues ground wise.

7. Brief facts of the case are, assessee filed his return of income for A.Y. 2014-15 on 29.09.2014 declaring total income at ₹.21,35,090/- and the return was processed under section 143(1) of Income-tax Act, 1961 (in short "Act"). Subsequently, the case was selected for scrutiny under CASS and notices under section 143(2) and 142(1) of the Act along with questionnaire, were issued and served on the assessee. In response to the said notices, Authorised Representative of the assessee, attended from time to time and filed relevant information as called for. The assessee is an individual and proprietor of Manav Jewellers which is engaged in dealing of gold & silver, standard bars, ornaments & jewellery during the year under consideration. During the year under consideration the assessee has declared income from house property, income from business and interest income which is offered for tax in respective heads. The assessee has declared Long Term Capital Gain of ₹.1,11,33,011/- in the scrip of Sunrise Asian Ltd. and claimed the same as exempt under section 10(38) of the Act.

8. With regard to Ground No. 1 which is in respect of confirming the addition of ₹.8,60,124/- being standard deduction @30% on account of shop premises received of Surat Property, at the time of hearing, Ld.AR of the assessee submitted that this ground is not pressed. Accordingly, the same is dismissed as not pressed.

9. With regard to Ground No. 2 of grounds of appeal, brief facts are, during the course of assessment proceedings, Assessing Officer observed that assessee has debited ₹.9,87,154/- from house property income as interest paid'. The assessee was asked to furnish the details of interest paid along with interest paid certificate. In response, assessee claimed that the interest certificate is enclosed however no certificate was found enclosed with the submissions except bank loan interest of ₹.1,33,973/- for the loan taken from State Bank of Travancore. The AR was asked about the utilization of this loan for which he has stated that this loan is used for purchase of property at Aura Biplax in current year. As the loan is not used for the property for which it is claimed and the interest on loan relates to an under construction property the same is not allowable. Accordingly, the claim of ₹.1,33,973/- under section 24(b) is disallowed and added to the income from house property.

10. Further, Assessing Officer observed regarding the balance interest of ₹.8,53,181/- the AR has given list of various entries for the period 2006 to 2014 and claimed that the shop was purchased from the funds of Manav Jewellers and Kush Commodities which were repaid to them by taking loans from the persons to whom the interest is paid and therefore the interest paid to Meena Raimalani, Ashok Raimalani, Ashok Raimalani (HUF), Godavari D. Raimalani & Murlidhar M. Raimalani of ₹.3,36,791, ₹.2,59,393, ₹.55,833, ₹.91,064 and ₹.1,10,100 respectively can be truly deducted against income from rent received.

11. Assessee filed his submissions, Assessing Officer after considering the submissions of the assessee observed that same is not acceptable in view of the fact that, the repayment of funds claimed by him by taking loans from family members after 5-7 years that to in a current type transaction with his proprietary concern as well as partnership firm cannot prove the nexus that the outstanding loan in respect of property were repaid by him. The claim also could not be accepted as per the provisions of section 24(b) of the Income Tax Act 1961 which is reproduced below: -

"No deduction shall be made under the second proviso unless the assess furnished a certificate, from the person to whom any interest is payable on the capital borrowed, specifying the amount

of interest payable by the assessee for the purpose of such acquisition or construction of the property, or conversion of the whole or any part of the capital borrowed which remains to be repaid as a new loan."

12. Since the assessee could not submit the interest certificate asked for in support of his claim, hence the Assessing Officer presumed that assessee has nothing to submit in support of his claim. Hence, the interest claimed u/s 24(b) amounting to ₹.8,53,181/- is also disallowed and added to total income of the assessee under the head "Income from House Property".

13. Aggrieved, assessee preferred an appeal before Ld. CIT(A) and filed submissions. After considering the submissions of the assessee Ld.CIT(A) dismissed the ground raised by the assessee observing as under: -

"7. Ground No. 2 relates the addition of Rs. Rs 8,53,181/- in reference to the interest claimed u/s. 24(b).

7.1 In this ground the appellant has debited amount of Rs 9,87,154/- against house property income as interest paid for borrowing. The AO has asked for the certificate but he said that except the amount of Rs 1,33,973/-, no certificate has been found in reference to the balance amount of Rs 1,53,181/-.

.....

7.3 I have perused the matter. Since the appellant has failed to furnish the interest certificate required in order to claim the same u/s 24(b) for Rs 8,53,181/-, the AO's action in disallowing the same is upheld and the ground no. 2 is dismissed."

14. At the time of hearing, Ld.AR of the assessee submitted that the requirement of furnishing interest certificate is not applicable to the assessee as the proviso to section 24(b) of the Act is not applicable since the concerned property is not an SOP. He relied in assessee's own case for the A.Y.2013-14 in ITA No. 3167/MUM/2022 dated 01.09.2023.

15. On the other hand, Ld. DR relied on the orders of the lower authorities.

16. Considered the rival submissions and material placed on record, we observe from the record that identical issue has been considered by the Coordinate Bench in assessee's own case for the A.Y. 2013-14 in ITA.No.3167/MUM/2022 dated 01.09.2023 and held as under: - -

"6. I have heard both the parties and perused the record. The main plea of the assessee is that AO erred in disallowing the claim of deduction of interest for non-production of certificate as per 3rd proviso to section 24(b) of the Act. According to assessee, third proviso to section 24(b) of the Act is not applicable in the facts of the case because the third proviso is applicable for property referred to in subsection (2) of section 23 of the Act and not to property given on rent. According to the Ld. AR, as per section 24 of the Act, the income chargeable under the head "income from house property" shall be computed after giving the following deduction (i) a sum equal to 30% of the annual value of the property and (ii) where the property has been acquired, constructed, reconstructed with borrowed capital, the amount of any interest payable on such capital. According to assessee his claim falls under section 24(b) of the Act. Thus, the assessee has to only prove that the deduction claimed (interest payable) on such capital for construction/acquiring the property has been borrowed and that the

interest is payable on such capital borrowed. I find force in the submission of the assessee that he has made the claim of interest deduction of Rs.4,71,939/- u/s 24(b) of the Act and the AO erred in insisting on producing the certificate as stipulated in third proviso to section 24(b) of the Act. However, in the facts of the case, I am of the view that as per sub-clause (b) of section 24 of the Act, assessee in order to succeed on this issue has to prove by adducing evidence to show that the property in question (Surat) has been acquired with borrowed capital and the interest claimed by him was in respect of such borrowed capital. In this context, I note that the Ld. DR had drawn my attention to page no. 4 of the PB (Balance sheet) and submitted that assessee has borrowed un-secured loan from several persons and has incurred interest expenses, but failed to satisfy before AO that the interest claimed as deduction was for capital borrowed for acquiring/construction/re-construction of the shop at Surat. Be that as it may, it is admitted fact that the relevant documents were not filed before the AO/Ld. CIT(A) and for the first time some additional evidences has been filed. Therefore, this issue is restored back to the file of the AO for denovo adjudication to consider to whether, the deduction claimed u/s 24(b) of the Act is allowable or not. The AO to give proper opportunity to assessee to furnish relevant documents to substantiate that interest claimed by him is pertaining to the capital borrowed for construction/acquiring the property at Surat; and after considering the relevant evidences filed if any, and the submission of assessee, and the discussion (supra), the AO to decide the claim in accordance to law."

17. Since the issue is exactly similar and grounds as well as the facts are also identical, respectfully following the above decision in assessee's own case for the A.Y. 2013-14, we remit this issue back to the file of Assessing Officer for fresh adjudication as per law. Accordingly, Ground No. 2 raised by the assessee is allowed for statistical purpose.

18. With regard to Ground No. 3, which is in respect of disallowance of ₹.6,69,052/- being excess withdrawal from the capital balance with Kush

Commodities and claimed against share of profit and remuneration from the said firm under section 36(1)(iii) of the Act, at the time of hearing, Ld.AR of the assessee submitted that this ground is not pressed. Accordingly, ground raised by the assessee is dismissed as not pressed.

19. With regard to Ground No. 4 of grounds of appeal which is in respect of disallowance of ₹.3,48,985/- under section 57(iii) of the Act on account of interest paid on unsecured loans. Brief facts relating to the ground are, during the course of the assessment proceedings, Assessing Officer observed that assessee has claimed interest expenses ₹.3,48,985/- against the interest income of ₹.4,18,943/-. In connection with the above claim the assessee was asked the following details vide notice dated 20/12/2016:

"You have shown income from other sources comprising of interest from bank as well as loan given to Vijay Group Construction. You have claimed deduction u/s. 57 of Rs.3,48,985/- as interest paid. You are hereby asked to correlate borrowed funds with interest income chargeable u/s. 56. You are further asked to examine movement of funds and its application to prove the direct nexus of interest expenses and income received. Please provide proof in support of your claim."

20. In response to the same, assessee has submitted some entries in chart and claimed that the same relates to payment made to Vijay Group Construction and claimed that in view of the above the deduction

for interest paid to Anoop D. Raimalani HUF and Mahesh B. Rohira be allowed. After considering the submissions of the assessee, the Assessing Officer observed that the analysis of personal capital account shows that assessee has claimed interest expenses under section 57 as follows:-

<i>Name of Party</i>	<i>Interest Paid (Rs.)</i>
1. <i>Anoop Raimalani (HUF)</i>	<i>1,93,227/-</i>
2. <i>Mahesh B. Rohira</i>	<i>1,55,758/-</i>
	<i>3,48,985</i>

21. Further, Assessing Officer observed from the details filed by the assessee as well as the Axis Bank statement that the loan to Vijay Group Construction is given on 16/04/2013 out of the funds received from Kush Commodities in the bank account. The claim of the assessee for the interest paid to Anoop Raimalani HUF and Mahesh Rohira is not acceptable as there is no direct nexus between the funds received from them and the funds on which interest is received by the assessee. No nexus is proved by the assessee in respect of bank interest. As per the details given by the assessee the funds were received from Anoop Raimalani HUF in April 2011 and the funds from Mahesh Rohira were received in October 2013 and therefore the nexus is not proved.

22. Assessing Officer relying on the decisions of CIT *v.* Calcutta Agency Ltd. [19 ITR 191] and that in CIT *v.* Smt Indiramani Jatia [35 ITR 298], observed that burden of proof regarding the deduction or allowance is always on assessee. where an assessee seeks to deduct from his receipts/profits certain items of expenditure, the onus of proving that such deductions are permissible is on the assessee especially since the claims are based on facts which are exclusively within the knowledge of the assessee. He observed that the assessee could not established the fact that borrowed funds have been utilized for earning of interest by proving the direct nexus of loan taken and transfer out on lending, making the interest on loan taken as to meet expenditure wholly and exclusively for the purpose of earning the interest income. Therefore, the claim of deduction of interest on loan taken did not come under section 57 (iii) of the Act. The assessee failed to support its claim that the expenditure should be wholly and exclusively for the purpose of earning the interest income. Smt. Padmavati Jaikrishna *v.* Add.CIT [166 ITR 17(SC)] and CIT. *v.* Dr. V. P. Gopinathan. [248 ITR 449 (SC)]. The interest expenses is not directly relatable to interest received and the assessee cannot correlate the interest paid with borrowed funds used in income generating asset or with the income chargeable u/s 56 of the Act itself. The claim of

deduction of ₹.3,48,985/- from interest income received of ₹.4,18,943/- is disallowed and added back to income from other sources.

23. Aggrieved, assessee preferred an appeal before Ld. CIT(A). After considering the submissions of the assessee Ld. CIT(A) dismissed the ground raised by the assessee observing as under: -

"9. Ground No. 4 pertains to addition of interest payments of Rs.3,48,985/- u/s 57 (iii) of the IT Act, 1961.

9.1 In this ground the appellant has claimed interest expenses of Rs 3,48,985/- against the interest income of Rs 4,18,943/-. During the course of assessment proceedings, the AO in his assessment order has stated that –

.....

9. I have perused the matter. In view of the detailed discussion by the AO on the issue in paras 7.2 to 7.8 of the assessment order, I am inclined to agree with the AO that the interest expenses of Rs 3,48,985/- are not directly relatable to the interest received and the appellant has failed to correlate the interest paid with borrowed funds utilized for business purposes. Accordingly, the disallowance made by AO under section 57 of IT Act is upheld and this ground of appeal is dismissed."

24. Aggrieved, assessee is in appeal before us and at the time of hearing, Ld.AR of the assessee submitted that the identical issue is considered and decided by the Coordinate Bench in assessee's own case for the A.Y. 2012-13 and prayed that the similar direction may be followed. Copy of the order is placed on record.

25. On the other hand, Ld. DR relied on the orders of the lower authorities.

26. Considered the rival submissions and material placed on record, we observe from the record that identical issue has been considered by the coordinate bench in assessee's own case for the A.Y. 2012-13 and remitted the issue back to the file of Assessing Officer for fresh adjudication. The Coordinate Bench of the Tribunal in ITA.No.3166/MUM/2022 dated 28.04.2023, held as under: - -

5. Heard the rival submissions and perused the material on record. The sole crux of the disputed issue that the CIT(A) has erred in confirming the additions by the A.O. as the transactions are not supported with the documentary evidences. The Ld.AR emphasized that the assessee has submitted the details as called for by the authorities. The assessee is filling the application for admission of additional evidences under Rule 29 of ITAT rules with the Home loan account statements, bank account statement, Ledger Accounts, financial statements etc which were not available earlier and could not produce before the lower authorities. Further the evidences play a important role in decision making in the adjudicating proceedings. Therefore considering the facts, circumstances and additional evidences, the assessee should not suffer for non filing of material information, as the evidences played vital role in decision making and admit the additional evidence. Accordingly, to meet the ends of justice, set aside the order of the CIT(A) and restore the entire disputed issues along with the additional evidence to the file of the assessing officer to decide afresh on merits and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information. Accordingly, allow the grounds of appeal of the assessee for statistical purposes.

27. Since the issue is exactly similar and grounds as well as the facts are also identical, and assessee has filed the relevant evidences viz, confirmation of accounts, bank statements and certificates, before us which need to be verified by the Assessing Officer, respectfully following the above decision in assessee's own case for the A.Y. 2012-13, we remit this issue back to the file of Assessing Officer for fresh adjudication as per law. Accordingly, Ground No. 4 raised by the assessee is allowed for statistical purpose.

28. With regard to Ground No. 5 and 6, at the time of hearing, Ld.AR of the assessee submitted that Ground No. 5 and 6 are not pressed, accordingly, the same are dismissed as such.

29. With regard to Ground No. 7, 8, 9 and 10 which are inter-related in respect of addition by applying section 68 of the Act to the Long Term Capital Gain claimed in reference to sale of shares of Sunrise Asian Ltd., for an amount of ₹.1,17,33,011/-, brief facts relating to the above grounds are, during the course of the assessment proceedings, Assessing Officer on perusal of the records observed that, as per the computation of income and other details filed it is seen that the assessee has earned long term capital gain of ₹.1,11,33,011/- on sale of

24000 shares of Sunrise Asian Ltd which has been claimed exempt under section 10(38) of the Act. The assessee furnished the particulars of the income claimed as exempt u/s 10 (38) of the Act as following:

Scrip Name : SUNRISE ASIAN (Amalgamation of Santoshima Tradlinks Limited)							
Buy				Sell			
Date of purchase / sale	quantity	rate	amount	quantity	Rate	Amount	Gain
Purchase date not provided by the assessee	24000	25	600000				
December 2013 various dates 05/12/2013 to 16/12/2013				24000	491 to 492	1,17,33,011	1,11,33,011

30. The capital account was credited by ₹.1,11,33,011/- by profit on sale of shares. The part of the fund received on sale of shares has been given to Shri Murlidhar Railalani and part is utilized for investment in partnership firm M/s Kush Commodities in which the assessee is partner.

31. As regards the sale, as tabulated above the same were sold from 05.12.2013 to 16.12.2013 for consideration of ₹.1,17,33,011/- resulting in gain of ₹.1,11,33,011/-. In respect of sale of shares copy of contract notes of the broker M/s. Urja Investments Pvt. Ltd., copy of Bank statement highlighting the receipt of payment, Demat statement for few

months only were furnished. The assessee was specifically asked for to furnish the Demat statement for AY 2013-14 and 2014-15 but the assessee has failed to submit the same before Assessing Officer. The Assessing Officer observed that the purchase of shares is not through stock market as contract notes have not been filed by the assessee. Regarding proof of purchase of the share the assessee has furnished an undated letter on the letter head of M/s. Santoshima Tradelinks Ltd. mentioning the transfer of 24000 shares of Santoshima Tradelinks Limited in the name of the assessee. Though the AR has submitted that the 24000 shares of Santoshima Tradelinks Ltd. were purchased for ₹.6,00,000/- in off market transactions from P. Saji Textiles Pvt. Ltd., he has not filed any supporting documents for the same. The bank statement shows the payment made for acquiring the shares is also not furnished before Assessing Officer.

32. Assessing Officer observed that assessee has only traded in single scrip during the current financial year. No proof has been given by the assessee for the purchase of the scrip. The scrip was sold in the month of December 2013. The assessee has not filed the complete demat account and therefore it is not clear when the 24000 shares of Santoshima Tradelinks Ltd were received in his demat account. Similarly,

it is not clear from the demat statement when he has received the shares of Sunrise Asian Ltd. by scheme of amalgamation as claimed by the AR in his letter dated 29/12/2016 which was sent through e-mail on 30/12/2016.

33. Assessing Officer in his order from Page No. 9 to 53 has elaborately analysed various parameters with regard to claim of Bogus long term capital gain such as findings of the Investigation Wing, Investigations in the case of operators, Analysis of Scrip M/s. Sunrise Asian Limited, price rigging, examination of persons with which assessee traded (exit entry provider), SEBI Report with regard to accommodation entry providers (for the sake of brevity the same is not reproduced below). Subsequently, Assessing Officer issued notice under section 131(1) of the Act requiring assessee to explain with evidences why the Long Term Capital Gain should not be treated as non-genuine and sale consideration received on the penny stock should not be taxed as an unexplained cash credit under section 68 of the Act.

34. In response, Assessee did not attended for recording of his statement on oath. Assessing Officer observed that Authorised Representative has though claimed that the purchase of shares is made

from M/s. P. Saji Textiles Ltd. through banking channels. He has not filed any supporting documents. The Assessing Officer observed that the company from which the assessee has purchased the shares is controlled and operated by Shri Vipul Vidur Bhatt and Vipul Bhatt is a director in the company. The search action was undertaken on this company and Vipul Vidhur Bhatt. The detailed findings of which has already been given in the preceding paragraphs. Further he observed that all the above facts clearly prove that the assessee was acting in connivance with the operator of the scrip and the LTCG shown by him is a pre-arranged bogus entry.

35. Further, Assessing Officer observed that Authorised Representative has claimed that the assessee receives daily tips on his mobile phone but this appears to be baseless claim as the assessee has only dealt in the single scrip and the demat statement for the few months which are placed on record does not show any share transaction other than the scrip of Santoshima Tradelinks Limited / Sunrise Asian Ltd. The AR has not informed with cogent reasons as to how the assessee has received the tips on his mobile phone in respect of an unlisted and little known company. Authorised Representative has also failed to explain as to why there is no shares in the investment portfolio of the assessee when

he is daily receiving calls and tips for investment that offers good opportunity for handsome returns. The scrip of UNITECH Ltd. cited by the AR with great enthusiasm is also not in the investment list of the assessee. The Assessing Officer observed that it is very surprising that the person who is daily receiving various calls and tips for investment does not make any investment in the other companies / scrips and chooses a little known penny stock whose fundamentals are weak with no proven track records, for making huge investment of Rs.6,00,000/- at one go and purchases it through a dubious company in an off market transaction and does not file any supporting for the purchase transaction.

36. Further, Assessing Officer has granted the request to grant cross-examination was acceded to and the assessee was called to attend on 30/12/2016 so that his statement can be recorded and thereafter cross-examination can also be provided, however he has failed to attend and thus lost the opportunity of cross-examination.

37. After considering the submissions of the assessee, Assessing Officer observed that the transaction of LTCG is a manipulated transaction done by assessee in connivance with the operators to evade

taxes on his unaccounted income and relying on statement made by operators treated the LTCG as non-genuine, according to him LTCG declared by the assessee of ₹.1,17,33,011/- as unexplained income u/s.68 of the Act, he came to conclusion by observing as under: -

"27. FINDINGS AND CONCLUSION

27.1 The submissions made by the assessee and reply is considered. The facts of the case, investigations made by various directorates, and statement recorded during the assessment proceedings are considered. From the discussion in the preceding paras it is concluded that long term capital gains booked by assessee in his books were pre-arranged method to evade taxes and launder money. Following are the findings and the reasons which substantiates the findings.

a. Mode of acquisition of the shares: The assessee has purchased 24000 shares of Santhoshima Tradelinks Ltd. for Rs. 600000/- from M/s. P. Saji Textiles Ltd. which is a company controlled by Vipul Vidhur Bhatt the operator of the scrip Sunrise Asian Ltd.

b. Sale of shares and unusual rise in the price: Further the assessee has sold the 24000 shares at the price of Rs.1,11,33,011/-, thus resulting the long term capital gain of Rs.1,11,33,011/-, which is almost 19 times the increase of the cost price, and as discussed the rise in share prices is not holding to any commercial principles and market factors.

c. Findings of Investigation wing: The findings of the Directorate of Investigation of Mumbai and Kolkata as discussed above have proved that Shri Vipul Vidur Bhatt and associated brokers, entry operators and the assessee had worked out an arrangement in which the shares were acquired by the assessee, the share prices were rigged and then with the help of entry operators by routing the cash, shares were sold at high price to arrive at tax free capital gains.

d. Analysis of transactions: Facts revealed that such trading transactions of purchase and sale of shares are not been effected, for commercial purpose but to create artificial gains, with a view to evade taxes-

i. Transactions of shares were not governed by market factors prevalent at relevant time in such trade, but same were product of design and mutual connivance on part of assessee and the operators.

ii. The assessee resorted to a preconceived scheme to procure long-term capital gains by way of price difference in share transactions not supported by market factors.

iii. Cumulative events in such transactions of shares revealed that same were devoid of any commercial nature and fell in realm of not being bona fide and, hence, impugned long term capital gain is not allowable.

iv. The order of SEBI referred above has also given the similar finding that the prices of the shares were determined artificial by manipulations and cannot be a product of market factors and commercial principals.

e. Failure of Assessee to discharge his onus: The assessee has not been able to prove the unusual rise and fall of share prices to be natural and based on the market forces. It is evident that such share transactions were closed circuit transactions and clearly structured one.

f. Ignorance of the assessee about shares and penny stock companies: Assessee has though claimed he is receiving many tips and calls for investment the said claim does not reflect anywhere in his books or investment portfolio. This proves that he has little or no knowledge about the shares traded and having any knowledge about the fundamentals of the penny stock companies.

g. Financial analysis of the penny stock companies: The networth of the penny stock company is negligible. Even

though the networth of the company and the business activity of the company are negligible the share prices have been artificially rigged to unusual high.

h. Order of the SEBI: Sebi has passed an order where the one of the main operators Shri Anil Agarwal and M/s Comfort fincorp and many other broking and trading firms were said to be indulging in to share manipulations.

i. Arranged transactions: The transactions entered by the assessee involve the series of preconceived steps, the performance of each of which is depending on the others being carried out. The true nature of such share transactions lacked commercial contents, being artificially structured transactions, entered into with the sole intent, to evade taxes.

j. Acceptance of Shri Kalpesh Manhar Jani in his statement recorded U/s 131 on 04/02/2016 to 06/02/2016 that he is only a name shake Director of Sunrise Asian Ltd. And all the affairs of this company is being managed by Shri Vipul Bhatt who is his cousin brother.

k. Statement of Shri Raman Pagi, Dinesh Paggi, Employee of Shri Vipul Bhatt acted as the exit providers recorded on 04-02-2016 clearly proves that Shri Vipul Vidhur Bhatt has fraudulently used the documents of the person of small means who were known to him to obtain PAN, open Bank account, demat account etc for providing accommodation entry in the scrip of Sunrise Asian.

i. Shri Piyush Rasiklal Shah Chartered Accountant in his sworn statement recorded U/s 131 on 06/02/2016 has admitted that he has arranged Bogus Long Term Capital Gain entry in the scrip of Sunrise Asian for his clients through Shri Vipul Vidur Bhatt who was the operator of this scrip.

m. Shri Shailesh Patel in his sworn statement recorded U/s 131 of the I Tax Act on 04/02/2016 has admitted that he has provided PAN detail of various person to open the bank

account, demat account etc to Shri Pratik Bhatt for which he is getting 10,000/-rupees annually.

n. Recovery of PAN card of 311 persons from the premises of Shri Vipul Vidur Bhatt during search and seizure action mostly of the persons who have acted as Exit Provider without any financial capacity to do so.

.....

29. Thus considering the findings of the search/ survey, inquiries conducted in the case of assessee, brokers, operators and the entry providers and the nature of transaction entered into by the assessee the LTCG of Rs.1,11,33,011/- claimed exempt u/s 10(38) of the act by the assessee is disallowed and the amount of Rs.1,17,33,011/- received as sales proceeds on sale of shares in lieu of cash is added back as unexplained cash credit under section 68 of the Act and taxed U/s 115BBE of the Act

30. Accordingly, pure and simple conclusion is to be drawn that the assessee has made the payment of Rs.1,17,33,011/- out of his undisclosed sources for the entry of LTCG. From, the foregoing paras it was proved that the exempt LTCG were accommodation entries obtained against cash delivered. In this case, total of such credit is Rs.1,17,33,011/-. This shows that during the year, unaccounted cash to the tune of Rs.1,17,33,011/- was utilized to avail this credit in the bank. Proceedings u/s 274 for levy of penalty 271(1) (c) are initiated separately for furnishing inaccurate particulars of income resulting into concealing particulars of income

31. Rs.1,17,33,011/- was found credited in the bank account of assessee in cheque before 31.3.2014. In view of the finding recorded as result of search and seizure, it is proved that the same is received against payment of equivalent cash and margin before 31.03.2014. It is known practice that accommodation entries are obtained by giving a commission. In statement before tax authorities all have admitted that they charged a margin and it is a market practice to charge commission/margin in these transactions. Margin of 4% on LTCG entries was confirmed by Shri Vipul Vidur Bhatt for LTCG entries. In the aforesaid circumstances and to meet the cause of justice a reasonable percentage of the bogus credit is added to the income as commission. In this case, the percentage of

commission paid is taken at 4%. Thus, commission paid on the total bogus LTCG entry of Rs.1,17,33,011/- @4% i.e. Rs.4,69,320/- is added back u/s 69C as unexplained expenses as the books did not show entry of such commission payments. This cash/money paid and expenses are not recorded or are not sourced from any disclosed sources of assessee's income. The amount of Rs.4,69,320/- added U/s 69C is taxed at the maximum marginal rate as per provisions of Section 115BBE. Proceedings u/s 274 for levy of penalty 271(1) (c) are initiated separately for furnishing inaccurate particulars of income and concealing particulars of income on addition of the commission paid added as unexplained expenditure."

38. Aggrieved, assessee preferred an appeal before the Ld. CIT(A) and filed detailed submissions. After considering detailed submissions of the assessee and findings of the Assessing Officer, Ld. CIT(A) dismissed the ground raised by the assessee observing as under: -

12.5 I have perused the matter and the relevant factors to be considered in this case including the objective facts, evidences adduced and material available on record.

12.6 The investigation carried out by the DGIT(Inv.), in which found that various BSE listed penny stock for providing bogus LTCG/STCG in which the appellant, is one of such penny stock Directorate ne companies transactions some Tax (Investigation) conducted companies, investigation in the matter of tax evasion by some individual extensive by showing income from long term capital gains, which was bogus, perpetrated thought accommodation entry operators. Even the plain reading of the reports of investigation Wing reveals that how the transaction penny stock was being managed by syndicate of entry be operators, brokers and beneficiary and assessee Company was one of the beneficiaries of this scheme.

12.7 The case laws cited are distinguishable on facts of the case and thus of no help to the assessee as there is records to prove that the assessee colluded on the brokers, operators to make the non-genuine and sham transactions unaccounted money look real by s enough material available on s of routing giving it a color of LTCG.

12.8 In the present case, sufficient and reasonable time and various opportunities as demanded by the appellant has been given to attend for

examination on oath. The submission filed in reply to show-cause is carefully gone through and it is found that his claim is false, incorrect and untrue and untenable as none of his ground is substantiated. Despite poor fundamentals of companies why the assessee bought this penny stock has not been explained.

12.9 In view of the facts and circumstances borne out of the assessment order and legal precedents as discussed above, I am of the view that documents submitted as evidences to prove the genuineness of transaction are themselves found to serve as smokescreen to cover up the true nature of the transactions in the facts and circumstances of the case as it is revealed that amount received by the appellant company as undisclosed money are arranged transactions to introduce its unaccounted income through entry providers with the sole motive to account for the unexplained /undisclosed income. Accordingly, in view of the above discussion and judicial precedents, it is held that AO was justified in making addition of Rs 1,17,33,011/- as bogus LTCG entry of the appellant of the Act. Grounds No. 7 to 9 are accordingly dismissed.

12.10 Since arranging such unexplained cash credit necessarily entails payment of commission to entry providers, the AO's action in quantifying and adding such unexplained investment towards procurement of such entries amounting to Rs 1,17,33,011/- is also upheld as reasonable and justified in the facts of the case as investigation carried out in the case reveal that rate of commission paid is 4% of Rs 4,69,320/- u/s 69C as unexplained expenses. Accordingly, entire addition amounting to Rs 1,17,33,011/- is confirmed, the Ground No. 10 of the appeal is also dismissed.

39. Aggrieved, assessee is in appeal before us. At the time of hearing, Ld.AR of the assessee brought to our notice relevant facts relating to the ground and contended the action of the Assessing Officer in adding the Long Term Capital Gain. Further, he submitted the following documents:-

"1. Axis Bank Statement reflecting payment of Rs.6,00,000/- to P. Saji Textiles Ltd. for acquisition of 24,000 shares pertaining to m/s. Santoshima Tradelinks Ltd. at Page 172 of the paper book II

2. Statement of income and personal capital and Balance Sheet at Page 3 and 4 respectively of the paper book 1.

3. *Axis Bank ledger account reflecting sale proceeds at Pg. No. 45 of the Paper book I*
4. *Copy of the contract notes pertaining to Urja Investments P. Ltd. at Pages 108 - 114 of the Paper book I*
5. *Copy of the statement of accounts pertaining to Urja Investments P. Ltd. for the period 01.04.2013 to 31.03.2014 at Pages 115 - 116 of the paper book I*
6. *Copy of the ledger account of from Urja Investment P. Ltd. as on 31.03.2014 at Pages 117 - 118 of the Paper book I*
7. *Copy of the debit note dated 20.07.2011 from P. Saji Textiles Limited indicating acquisition of 24,000 shares pertaining to Santoshima Tradelinks Ltd. at Page 119 of the paper book I*
8. *Copy of the share certificate dated 19.08.2011 from Santoshima Tradelinks Ltd. at Page 287 of the paper book III*
9. *Appellant's personal Balance Sheet for the period 2012-13 and 2013-14 reflecting investment pertaining to Santoshima Tradelinks Ltd. at Pages 317 and 319 of the paper book III respectively*

40. Ld.AR of the assessee relied on the following case law: -

- i. Hon'ble Bombay High Court in PCIT v. Indravadan Jain HUF [ITXA//2018]*
- ii. Hon'ble ITAT, Ahmedabad Benh in ITO vM/s. Ice Worth Reality LLP [ITA Nos. 565 & 566/AHD/2020].*

41. On the other hand, Ld. DR objected to the submissions of the Ld.AR of the assessee and relied on the orders of the lower authorities by submitting that there are substance in the findings of the lower authorities. Further he submitted that the shares were purchased by the assessee off market and he brought to our notice page no 119 of paper

book to highlight the transaction. It was purchased from P. Saji Textiles Limited. He also submitted that the assessee has not attended any of the proceedings before Assessing Officer. Ld DR brought to our notice the SEBI report in which the scrip Sunrise Asian Ltd, the facilitator Mr. Vipul Vipur Bhatt and the party from whom the assessee has purchased the shares P Saji Textiles Ltd were investigated. The above parties were debarred from trading in the stock exchange, the scrip is band for a period of one year and others for a period of 6 months. He submitted that it clearly shows that the scrip, facilitator and entry operator are directly involved in the manipulation of prices etc., Ld. DR relied on the following case law : -

- i. Pr.CIT v. Swati Bajai [2022] 139 taxmann.com 352 (Calcutta)*
- ii. Smt Asha Rajendra Gupta v ACIT in ITA No. 7712/MUM/2019 dated 13.04.2023*

42. Considered the rival submissions and material placed on record, The Assessing Officer observed that assessee had made huge profit out of this investment because of this, it makes the script as suspicious and penny stock. Further, it is fact on record that the financials of the company are not commensurate with the purchase and sale price in the market. The assessee has purchased the shares off market from P Saji

Textiles Ltd, who are under suspension by the SEBI order dated 6.09.2021. Subsequently, D-mated the scrips and sold the same in the stock exchange. The revenue has established the link of Mr. Vipul Bhatt in this transaction, who also found in the SEBI report. It clearly raises several doubt on the purchase and sales transactions recorded in this case. However, there is no discrepancies in the documents filed by the assessee claiming the deductions u/s 10(38) of the Act. At the same time, all the characteristics of the penny stock exists in the present case and the Ld DR has brought to our notice that entry operator, the facilitator are under the scanner of the investigation wing and also the SEBI has suspended them from buying and selling of scrips in the stock exchange, the assessee has directly dealt with them and the revenue managed to establish the link with the persons who are habitually involved in this kind of transactions, the revenue has brought on record the relevant fact on record and also the assessee did not appear for any cross examination or for any proceedings before the revenue authorities. It clearly establishes that the transaction of earning huge capital gain is not genuine. The cases referred by the Ld AR are distinguishable to the facts on record.

43. We observe that the Hon'ble Bombay High Court in the case of Pr.CIT v. Ziauddin A Siddique in Income Tax Appeal No. 2012 of 2017 dated 04.03.2022 held as under: -

*2. We have considered the impugned order with the assistance of the learned Counsels and we have no reason to interfere. There is a finding of fact by the Tribunal that the transaction of purchase and sale of the shares of the alleged penny stock of shares of Ramkrishna Fincap Ltd. ("RFL") is done through stock exchange and through the registered Stock Brokers. The payments have been made through banking channels and even Security Transaction Tax ("STT") has also been paid. The Assessing Officer also has not criticized the documentation involving the sale and purchase of shares. **The Tribunal has also come to a finding that there is no allegation against assessee that it has participated in any price rigging in the market on the shares of RFL.***

3. Therefore we find nothing perverse in the order of the Tribunal.

44. From the above decision, it was observed that the tribunal has not found any allegation against the assessee that it has participated in any price rigging in the market on the shares, whereas in this fact brought on record shows that the assessee has directly having link with the persons who are involved in the tainted transactions and facilitated this kind of accommodation or transactions to unjust enrichment of the beneficiaries. When the direct link was established with these parties with the assessee, the transaction recorded and documents submitted are make to believe, hence the submissions of the assessee are rejected at this stage. Further we observe that in the similar scrip and similar transaction, the coordinate bench has decided the issue against the

assessee in the case of Meenu Ajay Pathak (ITA No 155/Mum/2023 dated 18.07.2023), the same is reproduced below:

"8. We find that in the present case, the AO also issued notices under section 133(6) of the Act to the exit providers/purchasers of shares from the assessee to ascertain their identity. However, either these notices were returned unserved or remained un-complied with. The AO, as noted on pages 30-35 of the assessment order, noted that these entities/persons are operated/utilised by Mr. Vipul Vidur Bhatt for circular trading. Further, though the shares of these penny stock companies were listed on the stock exchange, however, the same were closely held and controlled by Shri Vipul Vidur Bhatt. In this regard, the AO placed reliance upon the statement recorded under section 132(4) of Mr. Vipul Vidur Bhatt. In his statement, Mr. Vipul Vidur Bhatt admitted that all the entities were managed and controlled by him wholly, though on paper it was opened in the name of various persons. It was also claimed by Mr. Vipul Vidur Bhatt that he is an accommodation entry provider and has earned commission for doing the work of the entry provider. Further, as regards the request of the assessee to grant of the cross objection of Mr. Vipul Vidur Bhatt, the AO issued summons under section 131 of the Act to Mr. Vipul Vidur Bhatt on 12/12/2017, to attend the office on 15/12/2017, simultaneously a letter dated 13/12/2017, was also addressed to the assessee to be present for cross-examination. However, the assessee vide letter dated 14/12/2017, expressed her inability to attend the office at short notice.

9. Thus, from the above, it is discernible that in the present case, the AO conducted a thorough investigation of the share transaction undertaken by the assessee. As noted above, the AO not only examined the company whose shares were purchased by the assessee but also examined the identity of the purchaser/exit providers, who were also found to be closely related to Mr. Vipul Vidur Bhatt, who was the key person controlling and managing the affairs of M/s Sunrise Asian Ltd. Further, the AO has also examined the statements of assessee's father-in-law and other individuals on whose alleged advice shares in M/s Sunrise Asian Ltd. were purchased by the assessee.

10. During the hearing, the learned Authorised Representative ("learned AR") submitted that the learned CIT(A), NFAC passed the impugned order without providing an opportunity of being heard through physical/video conferencing to the assessee. From the perusal of the impugned order, we find that the learned CIT(A),

NFAC has taken due note of the detailed written submissions filed by the assessee on 23/11/2022, which have been reproduced in the impugned order from pages 3-10. During the hearing, the learned AR also placed on record another written submission dated 28/09/2022 filed by the assessee before the learned CIT(A), NFAC, wherein the assessee made detailed submissions against the additions made by the AO. We find from the submission dated 28/09/2022, that the assessee made a conditional request before the learned CIT(A), NFAC, to grant an opportunity of being heard, if in case, the learned CIT(A), NFAC, wants to take an adverse view. The learned AR also placed on record acknowledgement of filing of submissions and case laws pursuant to notices dated 01/11/2022 and 14/11/2022, issued by the learned CIT(A), NFAC. Thus, we are of the considered view that when the assessee had filed multiple written submissions pursuant to notices issued by the learned CIT(A), NFAC, in such circumstances, it cannot be held that no appropriate opportunity of being heard was granted to the assessee. As regards the request of being heard through physical/video conferencing, we find that such a request was not made in lieu of filing the written submissions or to explain the complex facts, however, the same was sought only in a case the learned CIT(A), NFAC, takes an adverse view. During the hearing before us also, the assessee made similar arguments as were made before the lower authorities and no new argument was made. Therefore, in the peculiar facts of the present case wherein the assessee made multiple detailed submissions pursuant to various notices issued by the learned CIT(A), NFAC, it cannot be held that an appropriate opportunity of being heard was not provided to the assessee and there is a violation of principles of natural justice. In view of the aforesaid findings, we also do not find any merit in the reliance placed by the learned AR on the decision of the SMC Bench of the Tribunal in assessee's own case for the preceding year, wherein the appeal was restored to the file of the learned CIT(A) for de novo adjudication, as in the present case adequate opportunity of being heard was duly provided to the assessee by the learned CIT(A), NFAC.

11. During the hearing, the learned AR also submitted that the assessee was not granted sufficient time to cross-examine Mr. Vipul Vidur Bhatt, on whose statement reliance has been placed by the AO. In this regard, by referring to the letter dated 14/12/2017, forming part of the paper book on pages 78-79, the learned AR submitted that the intimation dated 13/12/2017, regarding the cross-examination on 15/12/2017, was received by the assessee on 14/12/2017, and thus there was less than 24 hours for the assessee to cross-examine the witnesses. In this regard, the learned AR placed reliance upon the assessment order dated 30/12/2016, passed under section 143(3) of the Act for the assessment year

2014-15 in assessee's own case and submitted that in the preceding year, the assessee was granted sufficient time to cross-examine Mr. Vipul Vidur Bhatt. From the perusal of the aforesaid assessment order for the assessment year 2014-15, at the outset, we find that in the preceding year, the AO relied on a similar statement recorded of Mr. Vipul Vidur Bhatt on which reliance has been placed in the year under consideration. Therefore, when the same statement of Mr. Vipul Vidur Bhatt has been relied on in both the assessment years by the AO, we find no basis in the plea of the assessee that sufficient time was not granted for cross-examining Mr. Vipul Vidur Bhatt in the year under consideration. In any case, we find that in the preceding year, despite the grant of sufficient time to the assessee, Mr. Vipul Vidur Bhatt did not comply with the summons issued under section 131 of the Act.

12. During the hearing, the learned Departmental Representative placed reliance on the final order dated 06/09/2021, passed by the SEBI. From the perusal of the aforesaid order, we note that the SEBI had barred Sunrise Asian Ltd and other entities to whom the assessee had sold the shares from accessing the securities market or buying, selling or otherwise dealing in the securities market, either directly or indirectly or be associated with the securities market in any manner for a period of 6 months to one year. Further, we find that the SEBI found the manipulative trade executed by Sunrise Asian Ltd., as well as the entities to whom these shares were sold by the assessee. Though, the assessee was not part of the investigation conducted by SEBI, however, the same does not absolve her from proving the genuineness of the transaction in shares of Sunrise Asian Ltd. under section 68 of the Act.

13. It is also the plea of the assessee that the payment for the acquisition of shares was made from the bank account and the shares were dematerialised and credited to the Demat account maintained by the assessee. It was further the submission of the assessee that during the year, the assessee sold the shares through the broker on BSE. However, as noted above, not only Sunrise Asian Ltd but the exit providers were also found to be involved in manipulative trade practices by the SEBI. Further, Mr. Vipul Vidur Bhatt in his statement had admitted and confirmed that all the entities controlled and managed by him are mere bogus paper companies and he is involved in providing accommodation entry on a commission basis. Thus, not only Sunrise Asian Ltd but Conart Traders Ltd, whose shares were initially purchased by the assessee in physical form, were found to be belonging to Mr. Vipul Vidur Bhatt in the present case. Accordingly, we find no infirmity in the findings of the AO, which were confirmed by the learned CIT(A)

vide impugned order. Accordingly, in view of the aforesaid findings, grounds no. 2-4 raised in assessee's appeal are dismissed."

45. Therefore, we respectfully follow the ratio of the above decisions and factual matrix in this case, we are inclined to dismiss the grounds raised by the assessee. Accordingly the Ground Nos.7 to 10 raised by the assessee are dismissed.

46. In the result, appeal filed by the assessee is partly allowed as indicated above.

Order pronounced in the open court on 15th March, 2024.

Sd/-
(NARENDRA KUMAR CHOUDHRY)
JUDICIAL MEMBER

Mumbai / Dated 15.03.2024
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER
(Asstt. Registrar)
ITAT, Mum