

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "A" Bench, Mumbai.

Before Shri B.R. Baskaran (AM) & Shri Sandeep Singh Karhail (JM)

I.T.A. No. 1922/Mum/2023 (A.Y. 2014-15)

ITO-19(1)(1) Room No. 501 5 th Floor Piramal Chambers Lalbaug Mumbai-400 012. (Appellant)	Vs.	Alpa Rajendra Jain 2405, Panchratna M.P. Marg, Opera House, Mumbai-400004. PAN : ACP PJ9850N (Respondent)
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Assessee by	Shri Karan Jain
Department by	Shri Manoj Kumar Sinha
Date of Hearing	18.01.2024
Date of Pronouncement	21.03.2024

ORDER

Per B.R.Baskaran (AM) :-

The revenue has filed this appeal challenging the order dated 29-03-2023 passed by Ld CIT(A), National Faceless Appeal Centre, Delhi and it relates to the assessment year 2014-15. The revenue is aggrieved by the decision of Ld CIT(A) in deleting the addition of Rs.1,88,00,832/- relating to Sale proceeds of alleged penny stock made by the AO u/s 68 of the Act.

2. The facts relating to the issue are discussed in brief. The return of income filed by the assessee for AY 2014-15 was taken up for scrutiny by the AO. It was noticed that the assessee has sold 20,000 shares of M/s Pine Animation Ltd during the year under consideration and earned long term capital gain of Rs.1,87,01,659/-. The above said shares had been purchased for Rs.60,000/- and the sale value of shares was Rs.1,88,00,832/-. The AO noticed that the shares of M/s Pine Animation Ltd were identified as one of the penny stocks by the investigation wing of the department, in which the prices were found to have been manipulated in order to generate bogus

capital gains/loss. Hence the AO issued summons to the assessee and recorded a Statement from her. In the statement, the assessee submitted that she is a regular investor in Shares and she invested in the shares of M/s Pine Animation Ltd (Earlier known as Four K Animation Ltd) on the advice of her Brother in law. She admitted that she did not have information about the Company or its financials. The AO noticed that the assessee had purchased shares at Rs.3.00 per share and sold them around Rs.94/- per share. The AO took the view that there was abnormal increase in the prices of shares. Since the assessee had invested in the shares of above said company without analyzing its fundamentals, the AO took the view that the impugned investment transactions entered by the assessee is beyond human probabilities. Further, the AO also placed reliance on the report given by the investigation wing of Kolkatta, wherein it had been stated that the share prices of M/s Pine Animation Ltd has been manipulated. Further, he noticed that the fundamentals of the above said company do not justify the high share price. He also noticed that SEBI has passed an adverse order stating that the share prices of M/s Pine Animation Ltd have been rigged. In view of the above, the AO came to the conclusion that the long term capital gains generated by the assessee was not genuine. Accordingly, he took the view that the sale value of shares amounting to Rs.1,88,00,832/- should be treated as unexplained cash credit and accordingly assessed the same u/s 68 of the Act.

3. The Ld CIT(A) noticed that the assessee has furnished all evidences in support of purchase and sale of shares, viz., Copy of bill for purchase of shares, evidence for payment of purchase consideration, demat statements to show that the shares were credited in her demat account, copy of sale bill cum contract note issued by registered broker of the Stock exchange, copy of demat statement to show that the shares have exited from the demat account, copy of bank statements to prove the receipt of sale consideration. It was also contended before the Ld CIT(A) that the shares were purchased in

an earlier year and the AO has accepted the purchase transactions as genuine and hence the AO could not have doubted the genuineness of sales. Further, the assessee also placed her reliance on various case laws in support of her contentions, particularly, the decision rendered by the Mumbai bench of ITAT in assessee's own daughter's case and brother in law's case.

4. The Ld CIT(A) noticed that the identical additions made in the case of other assesseees named M/s Priyanka Ankit Miglani and Smt Archana Anuj Miglani has been deleted by the Tribunal in its order passed in ITA No.2530/2532/2532/2533/2528/2529 dated 21.03.2023). Following the said order, the Ld CIT(A) deleted the addition. The revenue is aggrieved.

5. The Ld D.R submitted that the assessee has purchased shares in the physical mode on the advice of her brother in law. However, from the Statement recorded from the assessee, it was noticed that she has made investment in the shares of M/s Pine Animation Ltd without knowing anything about the company. He further submitted that the Ld CIT(A) has granted relief by placing reliance on the order passed by the Tribunal. However, the mode of purchase of shares was different in those cases and hence the said order is distinguishable. He submitted that the addition relating to penny stock has been sustained in many other cases and in this regard, he placed his reliance on the following decisions:-

- (a) Sri Anirudh Venkata Ragi vs. ITO (ITA No.352/Hyd/2019 dated 21.11.2023)
- (b) PCIT vs. Swati Bajaj (2022)(139 taxmann.com 352)(Cal)
- (c) Suman Poddar vs. ITO (2019)(112 taxmann.com 330)(SC)
- (d) Sanjay Bimalchand Jain vs. PCIT (2018)(89 taxmann.com 196)(Bom)

6. The Ld A.R, on the contrary, submitted that the assessee has furnished all the details and evidences in support of purchase and sale of shares of M/s Pine Animation Ltd. He further submitted that the shares were purchased in

an earlier year and the said purchase has been accepted as genuine by the AO. Accordingly, he submitted that the AO could not have doubted sale of those shares. He further submitted that the Ld CIT(A) has granted relief by placing reliance on a decision rendered by the co-ordinate bench in identical set of facts. He further submitted that identical addition made in the hands of daughter of the assessee and HUF of her brother in law has been deleted by the co-ordinate bench in *Smt Kritika Rajendra Jain vs. ITO* (ITA No.7064/M/2019 and *M/s Shailesh Jain HUF* (ITA No.6068/M/2019 dated 16-02-2021). He further submitted that the AO has placed entire reliance on the report given by the investigation wing and he did not make any independent enquiry. Further, the AO did not find fault with any of the documents furnished by the assessee to prove the purchase and sale of shares. Even though the SEBI has conducted enquiry with regard to share dealings in the shares of *M/s Pine Animation Ltd*, it did not make any enquiry with the assessee. Accordingly, he submitted that the transactions entered by the assessee cannot be doubted with. Accordingly he submitted that the Ld CIT(A) was justified in deleting the addition.

7. We heard rival contentions and perused the record. We notice that the assessing officer has primarily placed reliance on the report given by the Investigation wing of the Income tax department, Kolkata in order to arrive at the conclusion that the long term capital gains reported by the assessee is bogus in nature. We notice that the investigation report prepared by Investigation wing, Kolkata is a generalized report with regard to the modus operandi adopted in manipulation of prices of certain shares and generation of bogus capital gains. We notice that the AO has placed reliance on the said report without bringing any material on record to show that the transactions entered by the assessee were found to be a part of manipulated transactions, i.e., it was not proved that the assessee has carried out the transactions of purchase and sale of shares in connivance with the people who were involved

in the alleged rigging of prices. The Ld A.R also submitted that the regulator of stock market SEBI has not conducted any enquiry against the assessee.

8. In the statement recorded from the assessee, she has stated that she was guided by her brother in law in making the investment. Further, she has also stated that she is a regular investor in shares. Hence it cannot be said that the assessee was completely unaware of share market transactions. Further, the AO could not disprove the share transactions through the statement recorded from the assessee u/s 131 of the Act. We also notice that the assessee has

- (a) purchased these shares by paying consideration through banking channels.
- (b) dematerialized the shares and kept the same in the Demat account.
- (c) sold the shares through stock exchange platform
- (d) received the sale consideration through banking channels.

Further, the shares have entered and exited the demat account of the assessee. We notice that the AO himself has not found any defect/deficiencies in the evidences furnished by the assessee with regard to purchase and sale of shares. Further, the AO has not brought on record any material to show that the assessee was part of the group which involved in the manipulation of prices of shares. We notice that the shares were purchase in an earlier year and the said purchase has not been suspected by the AO. Hence, there is no reason to suspect the purchase and sale of shares undertaken by the assessee.

9. The Ld D.R placed his reliance on host of case laws to contend that addition relating to penny stock transactions has been confirmed in those cases. There should not be any dispute that the purchase and sale of shares reported by the assessee is a factual matter and each of the case has to be examined on the basis of facts prevailing therein. Further, the assessee has submitted the copy of order passed by co-ordinate bench in the family member's cases of the assessee, viz., (M/s Shailesh Jain HUF & Smt Kritika

Rajendra Jain (supra), wherein identical additions have been deleted. In the above said cases, the co-ordinate bench noted that the said assesseees have furnished all evidences in support of purchase and sale of shares. It noticed that the AO did not establish any link between the assessee and the reports of investigation wing. The Tribunal took support of the decision rendered by Hon'ble Supreme Court in the case of Adamine Construction P Ltd (99 taxman 45), wherein, while dismissing the appeal of Revenue, has referred to the following observation of Hon'ble Delhi High Court:-

“What is evident is that the AO went by only the report received and did not make the necessary further enquiries – such as into the bank accounts or other particulars available with him but rather received the entire findings on the report, which cannot be considered as primary material. The assessee had discharged the onus initially cast upon it by providing the basic details which were not suitably enquired into by the AO.”

Further, the co-ordinate bench has placed reliance on the following case laws, wherein identical additions made by the AO were deleted:-

- (a) Kunal Dedhia vs. DCIT (ITA No.3893/M/2019 dated 31.7.2020)
- (b) Vijayrattan Balkrishan Mittal (ITA No.3429/M/2019 dated 01.10.2019)
- (c) Mukesh B Sharma vs. ITO (ITA No.6249/M/2018 dated 29.5.2019)

The facts prevailing in this case is identical with the facts that existed in the cases of family members of the assessee, viz., M/s Shailesh Jain HUF & Smt. Kritika Rajendra Jain (supra).

10. In our view, above said decision support the case of the assessee. We may also refer to the some of the decisions rendered by Hon'ble jurisdictional Bombay High Court. In the case of Shyam Pawar (54 taxmann.com 108)(Bom), the Hon'ble Bombay High Court has observed as under:-

“3. Mr.Sureshkumar seriously complained that such finding rendered concurrently should not have been interfered with by the Tribunal. In further Appeal, the Tribunal proceeded not by analyzing this material and concluding that findings of fact concurrently rendered by the Assessing Officer and the Commissioner are perverse. The Tribunal proceeded on the footing that onus was on the Department to nail the Assessee through a

proper evidence and that there was some cash transaction through these suspected brokers, on whom there was an investigation conducted by the Department. Once the onus on the Department was discharged, according to Mr.Sureshkumr, by the Revenue-Department, then, such a finding by the Tribunal raises a substantial question of law. The Appeal, therefore, be admitted.

4. Mr.Gopal, learned Counsel appearing on behalf of the Assessee in each of these Appeals, invites our attention to the finding of the Tribunal. He submits that if this was nothing but an accommodation of cash or conversion of unaccounted money into accounted one, then, the evidence should have been complete. Change of circumstances ought to have, after the result of the investigation, connected the Assessee in some way or either with these brokers and the persons floating the two companies. It is only, after the Assessee who is supposed to dealing in shares and producing all the details including the DMAT account, the Exchange at Calcutta confirming the transaction, that the Appeal of the Assessee has been rightly allowed. The Tribunal has not merely interfered with the concurrent orders because another view was possible. It interfered because it was required to interfere with them as the Commissioner and the Assessing Officer failed to note some relevant and germane material. In these circumstances, he submits that the Appeals do not raise any substantial question of law and deserve to be dismissed.

5. We have perused the concurrent findings and on which heavy reliance is placed by Mr.Sureshkumar. While it is true that the Commissioner extensively referred to the correspondence and the contents of the report of the Investigation carried out in paras 20, 20.1, 20.2 and 21 of his order, **what was important and vital for the purpose of the present case was whether the transactions in shares were genuine or sham and bogus. If the purchase and sale of shares are reflected in the Assessee's DMAT account, yet they are termed as arranged transactions and projected to be real, then, such conclusion which has been reached by the Commissioner and the Assessing Officer required a deeper scrutiny.** It was also revealed during the course of inquiry by the Assessing Officer that the Calcutta Stock Exchange records showed that the shares were purchased for code numbers S003 and R121 of Sagar Trade Pvt Ltd. and Rockey Marketing Pvt. Ltd. respectively. Out of these two, only Rockey Marketing Pvt.Ltd. is listed in the appraisal report and it is stated to be involved in the modus-operandi. It is on this material that he holds that the transactions in sale and purchase of shares are doubtful and not genuine. *In relation to Assessee's role in all this, all that the Commissioner observed is that the Assessee transacted through brokers at Calcutta, which itself raises doubt about the genuineness of the transactions and the financial result and performance of the Company was not such as would justify the increase in the share prices. Therefore, he reached the conclusion that certain operators and brokers devised the scheme to convert the unaccounted money of the Assessee to the accounted income and the present Assessee utilized the scheme.*

6. It is in that regard that we find that Mr.Gopal's contentions are well founded. **The Tribunal concluded that there was something more which was required, which would connect the present Assessee to the**

transactions and which are attributed to the Promoters/Directors of the two companies. The Tribunal referred to the entire material and found that the investigation stopped at a particular point and was not carried forward by the Revenue. There are 1,30,000 shares of Bolton Properties Ltd. purchased by the Assessee during the month of January 2003 and he continued to hold them till 31 March 2003. The present case related to 20,000 shares of Mantra Online Ltd for the total consideration of Rs.25,93,150/-. These shares were sold and how they were sold, on what dates and for what consideration and the sums received by cheques have been referred extensively by the Tribunal in para 10. A copy of the DMAT account, placed at pages 36 & 37 of the Appeal Paper Book before the Tribunal showed the credit of share transaction. The contract notes in Form-A with two brokers were available and which gave details of the transactions. The contract note is a system generated and prescribed by the Stock Exchange. From this material, in para 11 the Tribunal concluded that this was not mere accommodation of cash and enabling it to be converted into accounted or regular payment. The discrepancy pointed out by the Calcutta Stock Exchange regarding client Code has been referred to. But the Tribunal concluded that itself, is not enough to prove that the transactions in the impugned shares were bogus/sham. The details received from Stock Exchange have been relied upon and for the purposes of faulting the Revenue in failing to discharge the basic onus. If the Tribunal proceeds on this line and concluded that inquiry was not carried forward and with a view to discharge the initial or basic onus, then such conclusion of the Tribunal cannot be termed as perverse. The conclusions as recorded in para 12 of the Tribunal's order are not vitiated by any error of law apparent on the face of the record either.

7. As a result of the above discussion, we do not find any substance in the contention of Mr.Sureshkumar that the Tribunal misdirected itself and in law. We hold that the Appeals do not raise any substantial question of law. They are accordingly dismissed. There would no order as to costs.

8. Even the additional question cannot be said to be substantial question of law, because it arises in the context of same transactions, dealings, same investigation and same charge or allegation of accommodation of unaccounted money being converted into accounted or regular as such. The relevant details pertaining to the shares were already on record. This question is also a fall out of the issue or question dealt with by the Tribunal and pertaining to the addition of Rs.25,93,150/-. Barring the figure of loss that is stated to have been taken, no distinguishable feature can be or could be placed on record. For the same reasons, even this additional question cannot be termed as substantial question of law.”

11. In the case of PCIT vs. Ziauddin A Siddique (Income tax Appeal No. 2012 of 2017 dated 4th March, 2022), the Hon'ble Bombay High Court has observed as under:-

“2. We have considered the impugned order with the assistance of 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 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 the 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.

4. Mr. Walve placed reliance on a judgement of the Apex Court in Principal Commissioner of Income tax (Central)-1 vs. NRA Iron & Steel (P) Ltd (2019)(103 taxmann.com 48)(SC) but that does not help the revenue in as much as the facts in that case were entirely different.

5. In our view, the Tribunal has not committed any perversity or applied incorrect principles to the given facts and when the facts and circumstances are properly analysed and correct test is applied to decide the issue at hand, then, we do not think that question as pressed raises any substantial question of law.

12. Further, in the case of CIT vs. Jamnadevi Agarwal (20 taxmann.com 529 (Bom), the Hon’ble Bombay High Court has held that the transactions of purchase and sale of shares cannot be considered to be bogus, when the documentary evidences furnished by the assessee establish genuineness of the claim. In the case of PCIT vs. Indravadan Jain (HUF) (ITA No. 454 of 2018)(Bom), the broker through whom, the assessee had carried out the transactions have been alleged to have been indulged in price manipulations and the SEBI had also passed an order regarding irregularities and synchronized trades carried out in the shares by the said broker. However, the evidences furnished by the assessee with regard to purchase and sale of shares were not doubted. Under these set of facts, the Hon’ble Bombay High Court held as under:-

“...The CIT(A) came to the conclusion that respondent bought 3000 shares of RFL, on the floor of Kolkatta Stock Exchange through registered share broker. In pursuance of purchase of shares the said broker had raised invoice and purchase price was paid by cheque and respondent’s bank account has been debited. The shares were also transferred into respondent’s Demat account where it remained for more than one year. After a period of one year the shares were sold by the said broker on various dates in the Kolkatta Stock Exchange. Pursuant to sale of shares the said broker had also issued contract notes cum bill for sale and these contract notes and bills were made available during the course of appellate proceedings. On the sale of shares respondent effected delivery of shares

by way of Demat instruction slips and also received payment from Kolkatta Stock Exchange. The cheque received was deposited in respondent's bank account. In view thereof, the CIT(A) found there was no reason to add the capital gains as unexplained cash credit under section 68 of the Act. The Tribunal while dismissing the appeals filed by the Revenue also observed on facts that these shares were purchased by respondent on the floor of Stock Exchange and not from the said broker, deliveries were taken, contract notes were issued and shares were also sold on the floor of Stock Exchange. The ITAT therefore, in our view, rightly concluded that there was no merit in the appeal.”

13. We noticed earlier that the AO has assessed the Sale consideration of shares as unexplained cash credit u/s 68 of the Act. It is pertinent to note that the purchase of shares made in an earlier year has been accepted by the revenue. The sale of shares has taken place in the online platform of the Stock exchange and the sale consideration has been received through the stock broker in banking channels. Hence, in the facts of the case, the sale consideration cannot be considered to be unexplained cash credit in terms of sec. 68 of the Act.

14. We notice that, in the instant case, the AO has not established that the assessee was involved in price rigging and further the AO did not find fault with any of the documents furnished by the assessee. Hence the ratio laid down in the above said cases by the jurisdictional Hon'ble Bombay High Court shall apply to the facts of the present case. Accordingly, we hold that the addition made by the AO is not sustainable and the Ld CIT(A) has rightly deleted the addition. Accordingly, we uphold his order.

15. In the result, the appeal filed by the revenue is dismissed.

Order pronounced on 21.03.2024.

Sd/-
(Sandeep Singh Karhail)
Judicial Member

Sd/-
(B.R. Baskaran)
Accountant Member

Mumbai.; Dated : 21/03/2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

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PS

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai