

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

Before Justice (Retd.) C.V. Bhadang (President) & Shri B.R. Baskaran (AM)

I.T.A. No. 2008/Mum/2023 (A.Y. 2014-15)

Lalitaben Pravin Shah 25, Harhar Wala Building, S.V. P. Road Opp. Moti Talkies Mumbai-400 004. PAN : ABIPS1884R (Appellant)	Vs.	CIT(A) New Delhi. (Respondent)
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Assessee by	Shri K. Gopal & Ms. Neha Paranjpe
Department by	Shri Manoj Kumar Sinha
Date of Hearing	17.01.2024
Date of Pronouncement	05.04.2024

O R D E R

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 28.4.2023 passed by the learned CIT(A), National Faceless Appeal Centre, Delhi and it relates to A.Y. 2014-15. The assessee is aggrieved by the decision of the learned CIT(A) in confirming the addition of sale proceeds of shares of alleged penny stock as unexplained cash credit under section 68 of the Act.

2. The facts relating to the case are stated in brief. During the course of assessment proceedings, the Assessing Officer noticed that the assessee has declared long term capital gain of Rs. 84,89,785/- on sale of shares of M/s. Sunrise Asian Limited and claimed the same as exempt under section 10(38) of the Act. It was noticed that the assessee had purchased 18000 shares of M/s. Conart Traders Ltd. on 17.6.2011 at Rs. 20/- per share in physical mode and was later dematerialised and credited in the D-mat account of the

assessee. Subsequently the name of the above said company was changed into Sunrise Asian Ltd. The assessee sold all the shares during the period from August 2013 to March 2014 in various installments for an aggregate sale value of Rs. 88,49,785/-, which resulted in long term capital gain of Rs.84,89,785/-. The assessee claimed the same as exempt u/s 10(38) of the Act.

3. The Assessing Officer noticed that the investigation wing of Kolkata has reported that the bogus capital gains were generated by rigging the price of shares of certain companies, which were named as “penny stocks”. It was noticed that M/s. Sun Asian Ltd. was identified as one of the penny stocks. He examined the financial statements of Sun Asian Ltd. and took the view that the market value of shares was not commensurate with the actual fundamentals of that company. He also noticed from the report given by the investigation wing of Kolkata that the operators were rigging the prices of shares. The said report also included the statement taken from one of the operators named Shri Vipul Vidur Bhatt, wherein he had admitted that he has provided accommodation entries in the firm of bogus long term capital gains in the shares of Sun Asian Ltd. The AO also noticed that the shares sold by the assessee have been purchased by certain persons and the said persons have booked heavy losses in trading of shares. The Assessing Officer also issued notices under section 133(6) of the Act to the purchasers of shares, the Bombay Stock Exchange, the Share broker of the assessee and also to the principal officer of Sun Asian Ltd. But the Assessing Officer did not receive any reply from any of them. He also noticed that price of shares of M/s Sun Asian Ltd. has fallen drastically afterwards.

4. The assessing officer also referred to the report given by the investigation wing and also the statement given by a person named Shri Vipul Vidur Bhatt, wherein he had admitted that he has provided accommodation entries in the form of bogus long term capital gains in the scripts of M/s Sunrise

Asian Ltd. He also collected details of persons who had purchased shares that were sold by the assessee. Accordingly, the AO asked the assessee to prove the genuineness of long term capital gains declared by her. In reply, the assessee contended that the purchase and sale of sunrise asian Ltd were genuine transactions. The AO did not accept the same. Accordingly, he assessed the entire sale consideration of Rs.88,76,410/- as income of the assessee u/s 68 of the Act. The Ld CIT(A) also confirmed the same and hence the assessee has filed this appeal.

5. The ld A.R submitted that the assessee has furnished all the evidences to prove the purchase and sale of shares of M/s Sunrise Asian Ltd. Besides the above shares, the assessee has also invested in shares of M/s Looks Health Ltd. He submitted that the AO did not find fault with any of the evidences furnished by the assessee. On the contrary, the AO has placed his reliance entirely on the report given by the investigation wing. He submitted that the AO has not proved that the assessee was part of the group that was manipulating the prices of shares. Hence, the AO could not have disbelieved the documents furnished by the assessee and assessed the sale price of shares as unexplained cash credit. In support of his submissions, the Ld A.R relied upon following case laws:-

- (a) CIT vs. Shyam R Pawar (2015)(54 taxmann.com 108)(Bom)
- (b) PCIT vs. Indravadan Jain HUF (ITA no.454 of 2018)
- (c) The ITO vs. M/s Ice Worth Reality LLP (ITA Nos. 565 & 566/Ahd/2020 dated 13-03-2023)
- (d) Vipul M Shahj (HUF) vs. The ITO (ITA No.130/Mum/2023 dated 16.10.2023)

Referring to the case of M/s Ice worth Reality LLP, the Ld A.R submitted that the Tribunal has noted the fact that even Canara Bank has purchased the shares of this company. Accordingly, he submitted that the transactions of the assessee should not have been doubted merely on the basis of generalized report given by the investigation wing. He submitted that the AO

did not carry on any other investigation to show that the transactions carried on by the assessee were not genuine.

6. The Ld D.R submitted that the report of the investigation wing clearly shows that the prices of M/s Sunrise Asian Ltd were manipulated. Further, the trading in the above said shares was suspended earlier. The fundamentals of this company were very weak and hence a prudent investor could not have invested in such kinds of shares. Further, one of the operators Shri Vipul Vidhur Bhatt has confessed that he was providing accommodation entries in sale of shares of M/s Sunrise Asian Ltd. He further submitted that the notices issued u/s 131 of the Act were not responded by the broker, BSE and even M/s Sunrise Asian Ltd. He submitted M/s Canara Bank has purchased the shares subsequently in 2016 and not during the relevant year under consideration. Accordingly, he submitted that the surrounding circumstances would show that the transactions carried on by the assessee in this share were not genuine and accordingly contended that the order passed by Ld CIT(A) should be upheld. The Ld D.R placed his reliance on the following case law:-

- (a) PCIT vs. Swati Bajaj (2022)(139 taxmann.com 352)(Cal)
- (b) Sanjay Bimalchand Jain vs. PCIT (2018)(89 taxmann.com 196)(Bom)
- (c) Smt Asha Rajender Gupta vs. ACIT (ITA No.7712/Mum/2019 dated 13-04-2023)
- (d) Sangeetha Devi Jhunjhunwala vs. ITO (2023)(152 taxmann.com 348)(Delhi)
- (e) Shri Rajendra M Jain Vs. ITO (ITA No.775/Mum/2022 dated 31-01-2023)
- (f) Saroj Baid vs. ITO (2023)(155 taxmann.com 630)(K01 – Trib)

7. The Ld A.R, on the contrary, submitted that it is not correct to say that the fundamentals of the company were not good. Referring to the financial details extracted by the AO, the Ld A.R submitted that the turnover of the

company has increased substantially. He further submitted that the examination conducted by the AO did not bring out any fact adverse to the assessee. He further submitted that the assessee has sold the shares in the stock exchange platform and she could not have known as to who purchased the shares. Further, the non-response of the broker to the notice issued by the AO could not be a ground to disbelieve the transactions, when the assessee has furnished all evidences in support of purchase and sale of shares and further those evidences were not proved to be false. He further submitted that the shares were purchased in an earlier year and the said purchase has been accepted as genuine by the AO and hence, he should not have doubted sale of those shares. He submitted that even though the SEBI has conducted enquiry with regard to share dealings in the shares of M/s Sunrise Asian Ltd, the assessee has not been subjected to any enquiry. Accordingly, he submitted that the transactions entered by the assessee cannot be doubted with.

8. 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, Kolkatta 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.

9. We notice that the assessee has furnished reply to the notice issued by the AO and the AO could not find any adverse features from the said reply. Further, the AO also could not disprove the share transactions by bringing any material on record. 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.

10. 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. In respect of decisions rendered by co-ordinate Mumbai benches, we notice that they did not refer to the jurisdictional Bombay High Court decisions.

11. It is noticed that the AO did not establish any link between the assessee and the reports of investigation wing. At this stage, we may refer to 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, the Hon'ble Supreme Court has referred to the following observations made by 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.”

The Id A.R placed his reliance on the decision rendered by Hon'ble jurisdictional Bombay High Court in the case of Shyam Pawar (54 taxmann.com 108)(Bom), wherein 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.”

12. We may also refer to the decision rendered by Hon'ble Bombay High Court in the case of PCIT vs. Ziauddin A Siddique (Income tax Appeal No. 2012 of 2017 dated 4th March, 2022), wherein 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.

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 are of the view that the Ld CIT(A) was not justified in confirming the addition made by the AO. Accordingly, we set aside the order passed by Ld CIT(A) and direct the AO to delete the addition of sale proceeds of shares made u/s 68 of the Act.

15. In the result, the appeal of the assessee is allowed.

Order pronounced on 05.04.2024.

Sd/-
(Justice (Retd.) C.V. Bhadang)
President

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

Mumbai.; Dated : 05/04/2024

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.

//True Copy//

PS

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai