

IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI

**BEFORE MS. KAVITHA RAJAGOPAL, JM AND
SHRI OMKARESHWAR CHIDARA, AM**

ITA No. 4420/Mum/2023
(Assessment Year: 2014-15)

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| Smt. Heena Harakhchand Rambhia D-5, M. K. Bros Industrial Estate, Kurla Andheri Road, Jarimari, Kurla (W), Mumbai-400 077 | Vs. | CIT(A) ITO, Ward-42(2)(3), Kautilya Bhavan, BKC Bandra, Mumbai-400 050 |
| PAN/GIR No. AAAPR 6856 K | | |
| (Appellant) | : | (Respondent) |
| Assessee by | : | Shri Vaibhav Nagda |
| Revenue by | : | Shri P. D. Chougule |
| Date of Hearing | : | 30.04.2024 |
| Date of Pronouncement | : | 30.04.2024 |

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) (‘ld.CIT(A) for short), passed u/s.250 of the Income Tax Act, 1961 (‘the Act’), pertaining to the Assessment Year (‘A.Y.’ for short) 2014-15.

2. It is observed that the present appeal has been filed with a delay of 65 days, which the assessee prays to be condoned for the reason that there was “sufficient cause” for the said delay and the same has been supported by an Affidavit filed by the assessee. After hearing both the sides, we are of the view that the delay in filing this appeal is to be condoned as having “sufficient cause” established by the assessee. Delay condoned.

3. The assessee has challenged the disallowance of long term capital gain ('LTCG' for short) claimed u/s.10(38) of the Act amounting to Rs.74,41,757/- on sale of shares where the lower authorities have held the same as unexplained cash credit u/s. 68 of the Act and addition of Rs.3,72,087/- u/s. 69C of the Act towards commission paid for the transaction of shares for which LTCG was claimed. The assessee has also challenged the ground that the Id. AO has failed to furnish the statements/information received by the Investigation Wing along with the denial of opportunity of cross examination.

4. The brief facts are that the assessee is an individual and had filed her return of income dated 31.01.2015, declaring total income at Rs.4,78,310/- out of income from salary and income from other sources and the same was processed u/s. 143(1) of the Act. The assessee's case was selected for scrutiny and notice u/s. 143(2) and 142(1) of the Act were duly issued and served upon the assessee.

5. The learned Assessing Officer ('Id. A.O.' for short) during the assessment proceeding has sought for details pertaining to the LTCG of Rs.74,41,757/- claimed by the assessee on sale of shares of M/s. SRK Industries Ltd. to be exempt u/s. 10(38) of the Act. The assessee had furnished the same to the Id. A.O. and upon considering the same, the assessment order dated 28.12.2016 was passed by the Id. AO u/s. 143(3) of the Act, determining the total income at Rs.82,92,154/- after making an addition u/s.68 and 69C of the Act.

6. Aggrieved, the assessee was in appeal before the first appellate authority who vide order dated 03.08.2023 upheld the addition made by the Id. A.O. on the ground that the

assessee has failed to discharge the primary onus casted upon her to prove the genuineness of the said transaction.

7. Further aggrieved the assessee is in appeal before us.

8. The learned Authorised Representative (Id. AR for short) for the assessee contended that the assessee was not provided with the statement or the information from the Investigation Wing that was relied upon by the Id. AO during the assessment proceeding. The Id. AR further stated that the assessee was unable to appear before the Id. CIT(A) for furnishing the details to substantiate the claim of the assessee. The Id. AR also stated that the Id. CIT(A) has passed the order merely relying on the assessment order and without considering the written submission filed by the assessee. The Id. AR hence prayed that the assessee may be given one last opportunity to present her case before the first appellate authority for the reason that the assessee has a good case on the merits.

9. The learned Departmental Representative ('Id. DR' for short), on the other hand, controverted the said fact and stated that the assessee was provided with sufficient opportunity before the first appellate authority and that the assessee has failed to discharge the onus casted upon her. The Id. DR opposed for remanding the issue to the Id. CIT(A).

10. We have heard the rival contentions and perused the materials available on record. It is observed that the assessee has purchased 10,000 shares of M/s. Transcend Commerce Ltd. (now amalgamated with SRK Industries Ltd.) as per the scheme of merger which was approved by the Hon'ble High Court. The payment for the purchase of

shares was said to be made through account payee cheque and the shares were transferred into the demat account of the assessee which was substantiated by furnishing the following:

- *Copy of sales bill issued by the Island Entertainment Private Limited showing purchase of 10,000 shares of Transcend Commerce Limited (now amalgamated with SRK Industries Limited)*
- *Copy of Ledger in the name of the appellant issued by the Mangum Equity Booking Limited registered with NSDL.*
- *Copy of Transaction Statement from Axis Bank Limited.*
- *Copy of Contract Notes issued by Magnum Equity Booking Limited showing sale of 22,200 shares of SRK Industries Limited.*

11. The assessee is said to have sold the shares of M/s. SRK Industries Limited and has furnished the shares brokers contract notes issued by M/s. Magnum Equity Booking Limited to prove the sale transactions along with the copy of the demat account details. The assessee contended that neither the Id. A.O. nor the Id. CIT(A) has not disputed the veracity of the documentary evidence produced by the assessee. She has further stated that the Id. A.O. merely on the premise of the information that the said share is a penny stock as per the Investigation Wing of the department, disallowed the claim of the assessee. She has also stated that the Id. A.O. has failed to prove that the assessee was involved in the alleged rigging of the price of shares and relied on various decisions to substantiate her contention. The assessee is also aggrieved by the non furnishing of the statement of the operators involved in the penny stock and thereupon denial of the opportunity of the cross examination of those persons. It is also observed that the first appellate authority in the impugned order has also not gone into the merits of the case and has merely relied on the assessment order. It is also noticed that the Id. CIT(A) has recorded that the assessee has failed to prove her case inspite of several opportunities accorded to her. Beyond that, we do not find any discussion on the evidences produced

by the assessee before the lower authorities which had instead relied upon various decisions on penny stocks.

12. On the above, factual matrix, we are of the considered view that the Id. CIT(A) having co-terminus power as that of the Id. A.O. ought to have given a finding on the merits of the case duly appreciating the available evidences produced by the assessee, pertinent it is to mention that the assessee has also been non compliant before the first appellate authority. In this scenario, we deem it fit to remand this issue back to the file of the Id. CIT(A) for fresh adjudication after duly considering the submissions/contentions of the assessee and after examining *inter alia* whether the assessee has been a regular investor in shares, the holding period of the said shares, the financials of the company whose shares have been purchased by the assessee along with the nature of business carried out by the said company, the details of the Directors and the justification for the increase in the price of the shares, nevertheless the other related details with documentary evidences to substantiate the claim of the assessee. Having said that, the assessee is bound to discharge the primary onus casted upon her by furnishing the above mentioned details before the first appellate authority as a final opportunity without any undue delay on her end. We, therefore, are inclined to remand all these issues to the file of the Id. CIT(A) with the direction to decide the issue on the merits of the case after considering the aforementioned parameters.

13. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 30.04.2024.

Sd/-
(Omkareshwar Chidara)
Accountant Member

Sd/-
(Kavitha Rajagopal)
Judicial Member

Mumbai; Dated : 30.04.2024
Roshani, Sr. PS

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai