

as exempt. According to AO, the long term capital gain worked out to Rs.11,13,26,495/- and it arose on account of sale of a penny stock named M/s Greencrest. Based on the report given by the Investigation wing of department, the AO disallowed the claim of exemption holding that the long term capital gain declared by the assessee is not genuine and accordingly added Rs.11,13,26,495/- to the total income. The AO also took the view that the assessee would have incurred commission expense in procuring bogus long term capital gains. The AO estimated the same at 0.25% of Long term capital gains amount of Rs.11,13,26,495/-, which worked out to Rs.2,78,316/-. The AO added the above said amount also to the total income of the assessee u/s 69C of the Act.

3. The assessee filed appeal before Ld CIT(A) challenging the above said additions. When the above said appeal was pending, the Ld PCIT initiated revision proceedings u/s 263 of the Act on 02-03-2020. When both the proceedings were pending, the Government of India announced Vivad Se Vishwas Scheme giving an opportunity to the assesseees to settle the disputes arising in income tax proceedings. The assessee decided to settle the above said disputes arising in the original assessment proceedings under the above said scheme. Accordingly, it filed Form-I under the VSV Scheme on 31-01-2021 and subsequently settled the disputes relating to the additions made in the original assessment proceedings by paying due taxes. The application filed by the assessee was also accepted and the order for final settlement in Form-5 was also issued to the assessee on 14th Jan, 2022. Accordingly, the appeal filed by the assessee before Ld CIT(A) against the original assessment order came to an end.

4. In the mean time, the Ld PCIT passed the revision order u/s 263 of the Act on 09-03-2021 on the following issues:-

- (a) The AO should have made addition of entire sale consideration of Rs.11,56,74,955/- arising on sale of shares of penny stock instead of

only long term capital gain of Rs.11,13,26,495/-. This has resulted in short addition of Rs.43,48,500/-.

(b) The commission income should have been estimated @ 0.25% on the entire sale consideration of Rs.11,56,74,955/-, where as the AO has estimated the addition on the amount of Capital gains. This has resulted in short addition of Rs.11,051/-.

(c) Interest expenses of Rs.35,921/- claimed by the assessee is related to the purchase and sale of shares. Since the assessee is declaring capital gains, the above said interest expenses is not allowable as deduction.

(d) Similarly, the assessee has claimed expenses of Rs.19,490/- for demat charges, Rs.2,805/- general expenses, Rs.3,710/- as courier charges, Rs.3,420/- as telephone expenses aggregating to Rs.29,425/- . All these expenses cannot be considered as wholly and exclusively incurred for earning interest income. Hence they need to be disallowed.

The assessee did not challenge the revision order passed by Ld PCIT.

5. The AO accordingly passed the consequential order u/s 143(3) r.w.s 263 of the Act making all the above said additions. The AO also did not give credit of taxes paid under VSV scheme. The assessee challenged the order passed by the AO u/s 143(3) r.w.s 263 of the Act by filing appeal before Id CIT(A). The first appellate authority confirmed all the additions. However, he directed the AO to allow credit for taxes paid under VSV scheme. Still aggrieved, the assessee has filed this appeal. Hence, the assessee is in appeal before the Tribunal.

6. The first issue relates to the addition of Rs.43,48,500/-. This amount actually represents the purchase consideration claimed by the assessee as deduction against the sale value of shares while computing Long Term Capital Gains. There is inconsistency with regard to this purchase

consideration also. In the original assessment proceedings, the AO has taken the value of purchase consideration as Rs.43,48,500/-. However, the assessee claims that the actual purchase consideration was Rs.25,00,000/- only. There is no clarity on this matter.

7. Be that as it may, the assessee has purchased the shares of Marigold Glass Industries Ltd on 28.02.2012 by making payment of Rs.25.00 lakhs. The said payment is duly reflected in her bank account. The assessee got the share certificate on 9th Jan, 2013. Thus the purchase of shares has been made in the earlier year and the same has not been questioned by the AO. Accordingly, if at all the purchase and sale transactions is to be considered bogus, yet the additional amount brought into the books by the assessee is the amount of Long term capital gains only. This is so because the cost of purchase has already been accounted for in the books and the said cost is required to be deducted from the sale consideration in order to arrive at the additional income brought into the books. Hence, we are of the view that the entire sale consideration declared by the assessee cannot be considered as unexplained income of the assessee. The profit on sale of shares declared by the assessee alone can be considered as unexplained. Accordingly, we are of the view that the AO was not justified in making addition of purchase cost of Rs.43,48,500/- (which was considered as purchase consideration in the original assessment proceedings) during the instant year. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to delete this addition.

8. The next addition relates to enhancement of estimated commission expenses by Rs.11,051/-. We notice that this addition has been made by the AO on estimated basis. It was only a presumption entertained by the AO. There is no evidence to show that the assessee has actually paid any commission at all. Hence there is no basis to say that the assessee would have paid the commission expenditure on the amount of sale consideration. Accordingly, we are of the view that the addition enhanced by the AO pursuant to the directions given by PCIT is not justified. Accordingly, we

set aside the order passed by Ld CIT(A) on this issue and direct the AO to delete this addition.

9. The next addition relates to disallowance of interest expenditure of Rs.35,921/-. According to the tax authorities, the assessee has claimed this expenditure against the purchase and sale of shares. The fact remains that the assessee does not carry on business activities in purchase and sale of securities. She is only an investor. Hence the assessee could not have claimed this interest expenditure, if it is related to purchase of shares. Before us, the assessee did not furnish any details to demonstrate as to how this claim is allowable as deduction. Accordingly, we have no other option but to confirm the addition made by the AO.

10. The next issue relates to the disallowance of expenses of Rs.29,425/-. The reasoning given by us in the preceding paragraph would apply to this expenditure also. Accordingly, we confirm this addition made by the AO.

11. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 26th April, 2024.

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER
Mumbai, Date : 26th April , 2024

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

VM,Sr.PS(O/S)

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "A" Bench, Mumbai
- 5) Guard file

By Order
Dy./Asstt. Registrar
I.T.A.T, Mumbai