

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI**

**BEFORE JUSTICE (RETD.) C V BHADANG, HON'BLE PRESIDENT &
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

**ITA NO.3662/MUM/2023
Assessment Year 2014-15**

Sunita Motilal Sinha,
B 201, Twin Tower Apartment,
Lokhandwala Complex,
Andheri West, Mumbai – 400 053.
PAN:AFXPS-8836-A

- Appellant

Vs.

ITO 25(1)(3), Mumbai
Kautalya Bhavan,
Mumbai.

- Respondent

Appellant by : Shri Mani Jain
Respondent by : Shri Manoj Kumar Singh

Date of Hearing : 04/03/2024
Date of Pronouncement : 29/04/2024

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER :

The assessee has filed this appeal challenging the order dated 31-05-2023 passed by Ld CIT(A), NFAC, Delhi and it relates to the assessment year 2014-15. The assessee is aggrieved by the decision of Ld CIT(A) in confirming the addition of sale proceeds of shares as unexplained cash credit u/s 68 of the Act and also in confirming the addition made u/s 69C of the Act relating to estimated expenses.

2. The facts relating to the above said issue are discussed in brief. The assessee filed her original return of income declaring a total income of Rs.6,11,480/-. The assessee had claimed exemption of long term capital gains arising on sale of shares u/s 10(38) of the Act to the tune of Rs.8.08

crores. The assessee had earned long term capital gains on sale of shares of M/s Rutron International Ltd, which was identified as one of the penny stocks by the Investigation wing of Kolkata. As per the information received from the Investigation wing, certain brokers were involved in manipulating the prices of small companies (called "penny stock companies") in order to generate bogus capital gains/losses. It was noticed that the assessee had purchased 5,00,000 shares of Rs.10/- each of M/s Rutron International Ltd for a consideration of Rs.50.00 lakhs on 05.12.2012. The same was credited to the demat account of the assessee. The face value of shares was reduced to Re1.00 per share due to split on 26.11.2013 and hence the assessee got 50 lakh shares. The assessee sold all the shares in January, 2014 for an aggregate value of Rs.8.60 crores. Since the shares were held for more than one year, the assessee claimed the capital gain of Rs.8.08 crores as exempt u/s 10(38) of the Act. The assessing officer extensively relied upon the report given by the investigation wing in order to arrive at the conclusion that the long term capital gains declared by the assessee is not genuine. He observed that the financial results of the company do not justify steep rise in the prices shares of above said company. He also noticed that the above said company was declaring very low income. The AO issued summons u/s 131 of the Act to the assessee, but the assessee did not respond to it. Subsequently, the assessee filed a detailed reply to the AO, wherein she furnished the documents to establish the genuineness of purchase and sale of shares. The AO also issued notice u/s 133(6) of the Act to the Share broker of the assessee named M/s Arcadia Share & Stock brokers Ltd. However, the above said broker also did not respond to the notice issued by the AO. Subsequently, the AO found from the SEBI that the SEBI has taken action against the above said broker by way of levying fine and also suspending its operation for one week. Hence the AO came to the conclusion that the sale of shares of M/s Rutron International Ltd is a colourable device adopted by the assessee with a view to evade taxation. Accordingly, the AO assessed the sale consideration on sale of shares of M/s

Rutron International Ltd aggregating to Rs.8.60 crores as unexplained cash credit u/s 68 of the Act. The AO also presumed that the assessee would have incurred expenses in procuring the bogus long term capital gains. He estimated the same at Rs.8,59,690/- and assessed the same as unexplained expenditure u/s 69C of the Act. The Ld CIT(A) confirmed the additions made by the AO and hence the assessee has filed this appeal.

3. The Ld A.R submitted that the assessee is a regular investor in shares and hence it is not an isolated transaction of purchase and sale of shares. He submitted that the AO has fully relied upon the report given by the Investigation wing. However, the AO did not find fault with any of the documents furnished by the assessee in support of purchase and sale of shares. The AO has also not brought on record any material to show that there was flow of cash between the parties outside the books of accounts. He submitted that the Jaipur bench of Tribunal has considered an identical case of purchase and sale of shares of M/s Rutron International Ltd in the case of Shri Meghraj Singh Shekhawat (ITA No.443 & 444/JP/2017 dated 07-03-2018) and the Tribunal has deleted the addition made by the AO. He submitted that the Mumbai bench of Tribunal has also considered an identical issue of purchase and sale of shares of M/s Rutron International ltd in the case of Ramprasad Agarwal vs. ITO (ITA No.4843/M/2018 & 1228/M/2018 dated 30-11-2018) and deleted the addition, following the decision rendered by Jaipur bench of Tribunal. The Ld A.R submitted that the assessee has not been subjected to any enquiry by the SEBI. With regard to the fines imposed by SEBI on the broker M/s Arcadia Share & Stock brokers Ltd, the Ld A.R submitted that the same is with reference some other activities of the broker and not with regard to the transactions carried on with the assessee. The Ld A.R further submitted that the AO has not brought on record any material to show that the assessee was part of the group which was manipulating the prices of the shares. Accordingly, the Ld A.R submitted that the AO has disbelieved the transactions of purchase and sale of shares of M/s Rutron International Ltd on surmises

without conducting further enquiries and also merely relying upon generalized report given by the Investigation wing. He submitted that the Ld CIT(A) also did not find any fault with the documents furnished by the assessee. Accordingly, he prayed that the additions made by the AO may be deleted.

4. The Ld D.R, on the contrary, submitted that the assessee has applied for the shares through Preferential allotment. Generally shares are allotted on preferential basis only to few select known persons. Hence, the assessee should know the promoters of the company. He submitted that the assessee did not respond to the summons issued by the AO and the broker also did not respond to the notice issued u/s 133(6) of the Act. Further, the unusual rise in the prices of shares is not commensurate with the financials and fundamentals of the company. Accordingly, the Ld D.R submitted that surrounding circumstances would show that the assessee has availed only accommodation entry in the form of long term capital gains.

5. In the rejoinder, the Ld A.R submitted that the prices of shares are determined by the market forces on the basis of future prospects of the company. Referring to a news paper report item, which is placed at page 37 of the paper book, the Ld A.R submitted that the above said news states that the prices of a company named Bombay Burma Trading Corporation has jumped 430% in 3 years time period, even though it has incurred losses in the last three years. Despite the losses, it is stated in the news that the broking firm M/s Kotak Securities believed that it is a rich investment and prices will go up further. Hence the financials/fundamentals are only one of the factors in determining the prices by the market forces. The Ld A.R submitted that the assessee has sold all his shares for an average price of around Rs.17/- per share during January, 2014. Earlier to that period, i.e., from March 2013 to November 2013, the price of shares was trading in the range of Rs.25 to 26/- per share. He submitted that, had the assessee been connected to the promoters and part of the group rigging the prices, she

would have sold the shares during that period for peak price. Accordingly, he submitted that this very fact would prove that the assessee has dealt with the shares of the above said company as an ordinary investor only.

6. We have 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 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 by the brokers to manipulate the prices of certain shares to suit their requirement in generating bogus capital gains/capital losses. 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 submitted that the SEBI, who is regulator of stock market operations, has not conducted any enquiry with the assessee. We notice that the enquiry conducted with the broker through whom the transactions of purchase and sale were effected, was on different issues.

7. From the demat account copy furnished by the assessee, we notice that the assessee is a regular investor, i.e., she is holding shares of other companies also. Thus, the impugned transactions are not isolated transactions of purchase and sale. Hence the version of the assessee that she has purchased shares of M/s Rutron International Ltd in the regular course of making investments cannot be doubted with. There is no dispute that the assessee has

- (a) purchased these shares by paying consideration through banking channels and relevant documents for purchase have been furnished.
- (b) The shares were received and kept in the Demat account.
- (c) sold the shares through stock exchange platform
- (d) received the sale consideration through banking channels.

Thus, the shares have entered and exited the demat account of the assessee. Under these set of facts, we are of the view that the genuineness of the transactions of purchase and sale of shares can be doubted with only, if the AO could bring some other evidences to disprove the documents furnished by the assessee. We notice that the AO himself has not found any defect/deficiencies in the evidences furnished by the assessee. Further, the AO has not brought on record any material to show that the assessee was part of the group that was manipulating the prices of shares. Under these set of facts, we are of the view that there is no reason to suspect the purchase and sale of shares undertaken by the assessee.

8. In the case of Shri Meghraj Singh Shekawat (supra), we notice that the Jaipur bench of Tribunal has considered an identical issue relating to sale of shares of M/s Rutron International Ltd and deleted the addition by following the decision rendered by Hon'ble Rajasthan High Court in the case of CIT vs. Smt Pooja Agarwal (2018)(99 taxmann.com 451)(Raj). In the case of Smt Pooja Agarwal (supra), the Tribunal had deleted the additions, inter alia, observing as under:-

"...It was also submitted that there was no mention of Sh P K Agarwal in the order of Settlement Commission in the case of Sh. Sushil Kumar Purohit. Copy of the order of settlement commission was submitted. The AO has failed to counter the objections raised by the appellant during the assessment proceedings. Simply mentioning that these findings are in the appraisal report and appraisal report is made by the Investigation wing after considering all material facts available on record does not help much. The AO has failed to prove through any independent enquiry or relying on some material that the transactions made by the appellant through share broker P K Agarwal were non-genuine or there was any adverse mention about the transaction in

question in statement of Sh. Pawan Purohit. Simply because in the sham transactions bank a/c were opened with HDFC Bank and the appellant has also received short term capital gain in his account with HDFC Bank does not establish that the transaction made by the appellant were non-genuine. Considering all these facts the share transactions made through Shri P K Agarwal cannot be held as non-genuine. Consequently denying the claim of short term capital gain made by the appellant before the AO is not approved. The AO is, therefore, directed to accept claim of short term capital gain as shown by the appellant.”

The Jaipur bench has also followed the decision rendered by Special bench of ITAT, Mumbai in the case of GTC Industries vs. ACIT (1998)(65 ITD 380)(Mum), wherein it was observed as under:-

“...However this presumption or suspicion how strong it may appear to be true, but needs to be corroborated by some evidence to establish a link that GTC actually had some kind of a share in such secret money. It is quite a trite law that suspicion howsoever strong may be but cannot be the basis of addition except for some material evidence on record. The theory of ‘preponderance of probability’ is applied to weigh the evidences of either side and draw a conclusion in favour of a party which has more favourable factors in his side. The conclusions have to be drawn on the basis of certain admitted facts and materials and not on the basis of presumption of facts that might go against assessee. Once nothing has been proved against the assessee with aid of any direct material especially when various rounds of investigation have been carried out, then nothing can be implicated against the assessee.”

The revenue had challenged the decision rendered by the Tribunal before Hon’ble Rajasthan High Court, but the same was dismissed by the Hon’ble High Court. We noticed earlier that the above said decision was also followed by Mumbai bench of Tribunal in the case of Mr Ramprasad Agarwal (supra).

9. The Hon’ble jurisdictional Bombay High Court has also expressed identical view in the case of CIT vs. Shyam R Pawar (54 taxmann.com 108)(Mumbai). Following observations made by Hon’ble Bombay High Court are important:-

“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.Suresh kumar 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.”

10. Identical view has been expressed by Hon'ble Bombay High Court in yet another case in PCIT vs. Ziauddin A Siddique (I T Appeal No.2012 of 2017 dated 04-03-2022). In the case of CIT vs. Jamnadevi Agarwal (supra), the Hon'ble Bombay High Court 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) (supra), 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.”

In the instant case also, we noticed that the evidences furnished by the assessee to prove the purchase and sale of shares, payment made/received, entry/exit of shares in the demat account of the assessee etc., were not doubted with.

11. In the case of PCIT vs. Smt Krishna Devi (supra), the Hon'ble Delhi High Court has noticed that the reasoning given by the AO to disbelieve the capital gains declared by the assessee, viz., astronomical increase in the price of shares, weak fundamentals of the relevant companies are based on mere conjectures. Accordingly, the Hon'ble Delhi High Court affirmed the decision rendered by ITAT in deleting the addition of capital gains.

12. Accordingly, in the facts and circumstances of the case, we are of the view that the decisions rendered by the jurisdictional Hon'ble Bombay High Court in the cases cited above shall apply to the facts of the present case, since the AO has not established that the assessee was also involved in price rigging and further the AO did not find fault with any of the documents furnished by the assessee. The Ld CIT(A) has placed reliance on the decision rendered by Hon'ble Kolkata High Court in the case of Swati Bajaj (supra). However, we have followed the principles laid down by the jurisdictional Hon'ble Bombay High Court in deciding the issue. With regard to the decision rendered by the co-ordinate bench in the case of Shri Hitendra G Ghadia (supra), we may observe that the revenue did not show parity of facts and further, we notice that the co-ordinate bench did not refer to the binding decisions of Hon'ble Bombay High Court. Hence, we are of the view that the revenue could not place reliance on both the decisions referred above.

13. In view of the foregoing discussions, we hold that the transactions and purchase and sale of shares of M/s Rutron International Ltd cannot be doubted with and consequently, the sale proceeds cannot be assessed as unexplained cash credit u/s 68 of the Act. Accordingly, the addition relating to estimated expenses is also liable to deleted. Accordingly, we set aside the

order passed by Ld CIT(A) and direct the AO to delete the impugned additions made by him.

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

Order pronounced in the open court on 29 April, 2024.

Sd/-

[Justice (Retd) C V Bhadang]
President

Mumbai, Date : 29 April, 2024

VM.

Sd/-

(B.R. Baskaran)
Accountant Member

Copy to :

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

By Order

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