

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

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI VIKAS AWASTHY, JUDICIAL MEMBER**

ITA NO.3702/MUM/2023
ASSESSMENT YEAR :2012-13.

Income Tax Officer -42(3)(4),
Kautilya Bhavan, Room No.735,
7th Floor, Bandra Kurla Complex,
Bandra (E),Mumbai – 400 051

---- Appellant

Vs.

Suresh Chandra Kachhara,
B-601-602, Bhoomi Arcade,
Opp. Children's A Academy School,
Ashok Nagar, Kandivali,
Mumbai – 400 101
PAN: AAFPK-2420-D

--- Respondent

Appellant by : Shri G.L.Kachhara
Respondent by : Shri Suresh D. Gaikwad, Sr.AR
Date of Hearing : 13/05/2024
Date of Pronouncement : 13/05/2024

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER :

The revenue has filed this appeal challenging the order dated 16-08-2023 passed by Ld CIT(A), NFAC, New Delhi for assessment year 2012-13. The revenue is assailing the decision of Ld CIT(A) in granting relief of Rs.3,85,625/- assessed by the AO u/s 68 of the Act.

2. The facts relating to the issue cited above are stated in brief. The assessee herein is a salaried employee working in M/s BDH Industries Ltd. During the year under consideration, the assessee had sold shares of M/s Exelon Infrastructure Ltd for a

sum of Rs.3,85,625/-. The assessee had purchased the said shares for Rs.3,38,384/-. Since the said shares were held for less than 12 months, the assessee declared short term capital gain of Rs.47,241/- on sale of those shares.

3. The AO noticed that the shares of M/s Exelon Infrastructure Ltd was identified as one of the penny stocks by the investigation wing. Accordingly, the AO reopened the assessment u/s 147 of the Act and assessed the entire sale consideration of Rs.3,85,625/- as unexplained income of the assessee. The AO also added 2% of the sale consideration as estimated expenses.

4. In the appellate proceedings, the Ld CIT(A) noticed that the AO did not carry out any type of investigation with regard to the transactions carried on by the assessee, i.e., the AO had simply placed his reliance on the report given by the investigation wing. Accordingly, the Ld CIT(A) held that the AO did not apply his mind on the facts of the present case and accordingly, deleted the above said additions made by the AO. The revenue is aggrieved.

5. The Ld D.R supported the order passed by the AO.

6. On the contrary, the Ld A.R submitted that the assessee had purchased the shares on 25.4.2011 through a broker named M/s Nirmal Bang Securities P Ltd and sold the shares on 17th May, 2011 through the very same broker. He submitted that the shares were purchased and sold through stock exchange platform and also through banking channels. Accordingly, placing reliance on the decision rendered by Hon'ble Bombay

High Court in the case of PCIT vs. Indravadan Jain, HUF (Income tax Appeal No. 454 of 2018 dated 12th July, 2013), the Ld A.R contended that the order passed by Ld CIT(A) does not warrant interference. He also placed reliance on the decision rendered by the co-ordinate bench in the case of Dinesh Singh Chhajed (ITA No.189/Mum/2022 dated 31-01-2023), wherein also the short term capital gains declared by that assessee was directed to be accepted.

7. We heard the parties and perused the record. We notice that the AO has simply placed his reliance on the report given by the investigation wing and did not carry out any independent examination of the transactions of purchase and sale reported by the assessee. First of all, the assessee has held the shares for less than one month only, i.e., the shares were purchased on 25th April, 2011 and sold on 17th May, 2011. Secondly, it was submitted that the shares were purchased and sold through stock exchange platform. Thirdly the shares have entered and exited the demat account of the assessee. Fourthly, it was submitted that the money was given and received through banking channels. Further, we notice that the assessee has only declared short term capital gains on sale of the above said shares, i.e., the assessee has not claimed exemption of profits from sale of these shares. We also notice that it is not the case of the AO that the documents relating to purchase and sale of shares are not reliable. We noticed that the Ld CIT(A) has also given categorical finding that the AO did not carry on any type of

investigation with regard to the transactions carried on by the assessee.

8. Under these set of facts, we are of the view that both the decisions relied upon by the assessee would apply to the facts of the present case. Accordingly, we uphold the order passed by Ld CIT(A) on this issue.

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

Order pronounced in the open court on 13th May , 2024.

Sd/-

(VIKAS AWASTHY)
JUDICIAL MEMBER

Mumbai, Date : 13th May, 2024

Vm

Copy to :

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

Sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER

By Order

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