

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD

BEFORE MRS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

ITA No. 806/Ahd/2016

निर्धारणवर्ष/Assessment Year: 2008-09

The ACIT, Circle-5, Ahmedabad	Vs.	M/s. Jubilee Tradelink Pvt. Ltd., 9B, Bansidhar Apartments, Gyanganga Classes, Jawaharnagar, Vasna, Ahmedabad PAN : AABCJ 0614 P
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri S.N. Soparkar, Sr. Advocate & Shri Parin Shah, AR
Revenue by :		Shri Ravindra, Sr DR

सुनवाई की तारीख/Date of Hearing : 08.05.2024
घोषणा की तारीख /Date of Pronouncement: 29.05.2024

आदेश/ORDER

PER SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:

This appeal has been filed by the Department against the order of the learned Commissioner of Income-tax (Appeals)-9, Ahmedabad [hereinafter referred to as "CIT(A)" for short] dated 05.01.2016, passed under Section 250(6) of the Income Tax Act, 1961 [hereinafter referred to as "the Act" for short], for the Assessment Year (AY) 2008-09.

2. The Department has taken the following grounds of appeal:-

"1. The Ld. CIT(A) has erred in law and on facts in holding the reassessment proceedings as void.

2. The Ld. CIT(A) has erred in law and on facts by not appreciating that the assessment was reopened within four years from the relevant assessment year and the issue decided in reassessment proceedings was not dealt with during original assessment proceedings..

3. *The Ld. CIT(A) has erred in law and on facts in directing to allow the assessee short term capital loss of Rs.30,10,000/- instead of short term capital gain of Rs.44,98,600/- calculated by the AO.*

4. *The Ld. CIT(A) has erred in law and on facts by not appreciating that the assessee had failed to explain commercial expediency to sell the shares through off market transactions below the market price.*

5. *On the facts and circumstances of the case, the Ld. Commissioner of Income Tax(A) ought to have upheld the order of the Assessing Officer.*

6. *It is, therefore, prayed that the order of the Ld. Commissioner of Income Tax(A) may be set-aside and that of the Assessing Officer be restored."*

3. The brief facts of the case are that the appellant-assessee had purchased 8000 shares of Mundra Port and Special Economic Zone (MPSEZ) for Rs.40,18,877/- and sold 7000 shares for Rs.30,80,000/- and 800 shares for Rs.3,52,000/-. On the said transaction, the assessee has incurred a short term capital loss of Rs. 30,10,000/-. The sale transaction was off market transaction and not through any stock exchange. The assessee informed the A.O. during the re-assessment proceedings that all the necessary details were submitted during the original assessment proceedings and it is a matter of fact that the transaction of sale of shares has taken place between two independent parties, through banking channel as well as through demat account. All the details such as the bank account, the ledger account of MPSEZ in books of appellant, the names of the persons to whom shares were sold etc. were submitted at the time of original assessment proceedings. A detailed chart of computation of capital loss of Rs. 30.10 lacs was also submitted during the assessment proceedings. However, the A.O. during the reassessment proceedings relied on the fact that the assessee has failed to establish the genuineness of transaction by furnishing material evidences, the assessee failed to establish the rationale of transfer of shares through the demat account and the why the transactions were not carried out on a stock exchange and that too at lower

price than existing market price. Accordingly, the Assessing Officer disallowed the short-term capital loss of ₹30,10,000/- and confirmed addition of ₹44,98,600/- on account of short-term capital gains.

4. Before Ld. CIT(A), the assessee objected to initiation of reassessment proceedings on the assessee under Section 147 of the Act. The main ground of objection of the assessee with regards to proceedings under Section 147 of the Act were that proceedings were initiated by way of change of opinion, without bringing on any new facts on record, which were not existing at the time of original assessment. According to the assessee it had disclosed all the material facts during the original assessment proceedings and the A.O. during the reassessment proceedings has also not brought forward any evidences or documentary proof which would suggest receipt of unaccounted money by the assessee, because of which the reassessment proceeding has been initiated. However, the A.O. dismissed the objection of the assessee and proceeded with the reassessment proceedings. In light of the above facts, Ld. CIT(A) observed that it can be seen from the facts and circumstances placed on record that during the original assessment proceedings the assessee had, in fact, submitted the necessary details called for by the then A.O. The then A.O. was aware of the fact that there is a short term capital loss and was aware of the cost of purchases of shares as well as the sale price of these shares and the persons to whom the said shares have been sold. The then A.O. also had called for the bank statement of the assessee for the said period. Based on these documents the then A.O. has accepted the short term capital loss of Rs. 30,10,000/-. Accordingly, Ld. CIT(A) quashed the reopening of assessment, with the following observations:-

“5.7 I fully agree with the contention of the appellant and its reliance on the judgment of CIT vs Kelvinator of India Ltd 256 ITR 1 referred above. From the circumstances and facts mentioned above, it is apparent that all the facts were

before the then A.O during the original assessment proceedings. The appellant had submitted all the required details that were called for by the then A.O. The then A.O had further gone into the details of ledger account of MPSEZ in the books of appellant as well as the bank statements of the appellant. He also had names of shareholders buying these shares and the quantity as well. Therefore, I am of the considered view that the assessment proceedings have been reopened due to change of opinion. Therefore, the action of the A.O to reopen the assessment proceedings on the basis of change of opinion is not justified and is void in the eyes of law. Hence, the grounds of appeal no.1 & 2 are hereby allowed."

5. Further, even on merits, Ld. CIT(A) allowed the appeal of the assessee by observing that the assessee had transferred the shares through demat account, all transactions had taken place through banking channels, the assessee had submitted the names of all persons to whom the shares were sold along with their corresponding demat accounts, there is no illegality in undertaking off-the market transactions to effectuate sale of shares, the Assessing Officer has not put forth any documentary evidence to show that difference in the sale price and the market price was received by the assessee by any other means. The only reason why the additions were made by the Assessing Officer were for the reason that the shares have been sold at lower price than price prevailing on the stock exchange. The Ld. CIT(A) was of the view that, in light of the above facts, the short-term loss incurred by the assessee on sale of shares could not be disallowed in the hands of the assessee. Accordingly, Ld. CIT(A) allowed the appeal of the assessee with the following observations:-

"6.2 I have carefully considered the facts of the case and contentions of the appellant. Ground of Appeal 1 & 2 are already allowed, hence these grounds of appeal are consequential in nature. It can be seen that the appellant had undertaken the off market transaction for sale of shares. The market price on the date of sale was at higher than the sale price at which the appellant has sold these shares. The appellant has submitted during the reassessment proceedings that these shares have been transferred through demat account and all the transactions have taken place through bank account. The appellant also

submitted the names of all the persons to whom the shares were sold along with their corresponding demat account. The off market transaction are not illegal transactions. The A.O has not put forth any additional documentary evidence that the difference in the sale price and the market price was received by the appellant by any other means, only because the shares have been sold at the price lower than the market price and not on the stock exchange. The A.O has made an addition of Rs.44,98,600/- holding that the short term capital loss of Rs. 30. 10 lacs as non-genuine and made an addition on account of short term capital gain of Rs. 44,98,600/-. I do not agree with the disallowance of Short Term Capital Loss and addition on account of Short Term Capital Gain. The A.O. is directed to allow the Short Term Capital Loss as claimed by the appellant and delete the addition made on account of Short Term Capital Gain. Hence, the ground of appeal 3, 4 and 5 are hereby allowed."

6. The Department is in appeal before us against the order passed by Ld. CIT(A), deleting the additions made in the hands of the assessee. Before us, DR primarily reiterated the contents of the assessment order and submitted that there is no justifiable reason as to why the assessee had sold the shares at a loss, when clearly the assessee had the option of selling the shares at a profit on the stock exchange at the then prevailing market price. In response, the Counsel for the assessee reiterated the contents of the order of Ld. CIT(A) and submitted that Ld. CIT(A) has correctly observed that there is nothing on record to establish that the assessee had engaged in any illegality, all the details of the transaction were before the Assessing Officer both at the time of original proceedings, as well as in the reassessment proceedings, there is no allegation by the Department that the difference in the sale price and the market price was received by the assessee by any other means, all the transactions had taken place through banking channels, the names and details of all the parties to whom the sales were sold were informed to the Assessing Officer, and therefore, there is no infirmity in the order of Ld. CIT(A), so as to call for any interferes.

7. We have heard the rival contentions and perused the material on record. On going through the facts of the instant case, we are of the considered

view that looking into the instant facts, the Ld. CIT(A) has not erred in facts and law in holding that the reassessment proceedings are liable to be quashed since all the facts were before the Assessing Officer at the time of original assessment order and no new facts or circumstances had come to the knowledge of Assessing Officer so as to initiate reassessment proceedings, which were undertaken only with a view to reappraise the same set of facts. This, in our view, is a case of change of opinion, and the Ld. CIT(A) has, therefore, correctly held that the reassessment proceedings are liable to be set aside. Further, even on merits, we find no infirmity in the order of the Ld. CIT(A), so as to call for any interference.

8. In the result, the appeal of the Department is dismissed.

Order pronounced in the open Court on 29.05.2024 at Ahmedabad.

Sd/-

Sd/-

**(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

**(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER**

Ahmedabad; Dated 29/05/2024

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधिअधिकरण अपीलीय आयकर , /DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

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सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण
ITAT, Ahmedabad