

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

BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

ITA No. 1821/Ahd/2018
Assessment Year : 2011-12

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| Vijay Kantilal Vora 201, Shrushti Flats, Opp. GEB Sub Station, Gotri Road, Vadodara-390021 | Vs | The DCIT Circle-4(2)(1), Vadodara |
| PAN: AAKPV3542 J | | |

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| अपीलार्थी/ (Appellant) | | प्रत्यर्थी/ (Respondent) |
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| Assessee by : | Shri Sunil Talati, CA |
| Revenue by : | Shri Sudhakar Verma, Sr.DR |

सुनवाई की तारीख/Date of Hearing : 27/05/2024
घोषणा की तारीख /Date of Pronouncement: 30/05/2024

आदेश/O R D E R

PER MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

This appeal by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)- 4 Vadodara (hereinafter referred as "Ld. CIT(A)" dated 30.1.2018, relating to the assessment order passed by the Assessing Officer (hereinafter referred as "AO") under section 144 r.w.s. 147 of the Income Tax Act, 1961(hereinafter referred as "the Act" for the assessment year 2011-12.

2. Assessee has taken following grounds of appeal:

1. *The learned assessing officer erred in making addition of rs. 2,09,01,660/- considering the long-term capital gain as unexplained cash credit. The learned assessing officer and hon'ble CIT (A) failed to consider the long-term capital gain of Rs. 2,09,01,660/- as exempt s/s. 10(38) and the same was added as unexplained income u/s 68 of the IT Act, 1961.*
2. *The said addition was made after re-opening of the case, though the same was accepted during the original assessment order passed. The addition was made by rejecting off market transactions, though the records clearly shows that the transactions have taken place and all the documents as well as ROC records shows that the assessee is the owner of shares.*
3. *The appellant reserves the right to add, delete and/or modify all or any of the grounds of appeal.*

The brief facts of the case are as follows:

3. The assessee also filed following additional grounds of appeal before us:

"The Ld. AO has erred in law and on facts in reopening the case of appellant invoking the provisions Section 147 of the Act. It is submitted that there is no escapement of income on the part of appellant, as the complete details of LTCG gain earned on sale of shares of KGN Industries were filed and, verified as well as scrutinized during the course of original assessment proceeding u/s 143(3) of the Act. On the facts and circumstances of the case, the whole reopening of assessment u/s 147 of the Act is bad in law and void-ab-initio. Therefore, the order passed by the A.O. u/s 144 r.w.s 147 of the Act deserves to be quashed and set aside."

Facts of the case:

4. The assessee filed his return of income 30-7-2011 declaring the total income of Rs. 10,86,110/- mainly Salary being source of income. Subsequently notice was sent under section 148 of the Act and the assessment was completed u/s 144 r.w.s. 147 of the Act adding back the long-term capital gains of Rs. 2,09,01,660/- claimed as exempt u/s 10(38). The said addition was made u/s 68 of the Act.

5. During the course of assessment u/s 147 it was identified that the assessee had sold 85000 shares of KGN Industries Ltd. for the sum of Rs. 2,11,18,250/- These shares were purchased by the assessee on 8-8-1999 and the same were dematerialised on 15-4-2010 before sale in September 2010. The Assessing Officer (AO) noted that the purchase and sale is a fabricated transaction held as bogus. AO also recorded his observations as follows:

[i] The financials of the penny stock KGN Industries Limited and movement of the price is abrupt, unrealistic and not based upon any realistic parameters. The history of investment in shares made by the assessee also generally reveals that he has not been dealing in shares on a regular basis.

[ii] The purchase of these shares were claimed to be through off market deals and not through stock exchanges and the shares were entered in DEMAT account subsequent to the purchase of shares. In this case, it was held in earlier paras that the purchase of shares is bogus.

[iii] That even assuming the purchase as genuine [in this case it was held as bogus in earlier paras], the sales, given the high rates of such penny stock, with no real buyers, are bogus. The evidentiary value of payment of STT cannot make a non-genuine transaction, a genuine one.

[iv] The scrip is a penny stock, purchased at a low price, which is over a period of time ramped up by operators acting in benami names or name lenders. The purchases are off market purchases, and not reported on exchange.

[v] The purchases are in the physical form, and dematised only subsequently generally long after the purchase date, close to the date of sale.

[vi] Also the manners in which the shares under considerations have been acquired and sold are not in accordance with the normal market practice.

5.1. Consequently, the AO treated the capital gains as unexplained cash credits under Section 68 of the Income Tax Act, 1961, and added the amount to the assessee's income.

6. The assessee filed an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)], who upheld the addition made by the AO.

7 Aggrieved by the order of the CIT(A), the assessee has preferred this appeal before the Tribunal.

7.1. There was a delay of 102 days in filing an appeal before us. The assessee filed a condonation petition along with an affidavit stating that the assessee was under severe mental strain due to numerous litigations, ill-health of mother. The Supreme Court in the case of Collector, Land Acquisition v. Mst. Katiji 1987 taxmann.com 1072, analysed the provisions of law qua limitation Act and held that the expression 'sufficient cause' employed by the legislature in the Limitation Act is adequately elastic to enable the Courts to apply the law in a meaningful manner which sub-serves the ends of justice-that being the life purpose for the existence of the institution of Courts. Further refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and the cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties. In view of the judicial pronouncement and circumstances as highlighted above by the assessee and in the interest of justice, the delay in filing of the present appeal is hereby condoned.

8 During appellate proceedings before us, it was observed that the shares were originally purchased on 8.8.1999. Initial purchase related to 8500 shares of value of Rs. 10/- each of Royal Finance Ltd. (presently known as KGN Industries Ltd. These shares were purchased off-market in 1999. KGN

Industries Ltd. had subsequently passed a resolution to split the said shares of value of value of Rs. 10/- to Re. 1/- each; that the assessee had sent shares for dematerialisation on 26.3.2010 and shares were dematerialised on 15.4.2010, and thereafter sold the same on 13th and 14th September 2010; that accordingly 85,000 shares of Re. 1/- each were sold.

9. The documents filed before us reveal that as evidence of share purchase off-market in 1999 the assessee had filed share transfer form, evidencing purchase of shares of Royal Finance Ltd. from Standard Leasing & Finance Ltd. with stamp by the Registrar of Companies, Gujarat dated 5. 8.1999. Form No. 7C, in terms of section 108(1D) of the Companies Act, 1956, dated 26.3.2010 was also filed before us as evidence.

10. We have gone through the provisions of section 108(1D) of the Companies Act, 1956 and have noted that it provides for transfer of its shares to be registered only on the production of instrument of transfer and in sub-clause (A), (1) (B) and (1) (C), it provides time line for submitting transfer form to the company by the shareholder who acquired the shares on transfer. Section 108(1-D) deals with the situation where, to avoid hardship, the Government may, on an application made to it, extend the period mentioned in sub-clause (1) (A), (1) (B) and (1) (C) of the Companies Act, by such further time as it deems fit.

11. Therefore, what transpires is that Form No. 7C was filed by the assessee to register its name as shareholder on acquisition of shares in 1999, with KGN Ltd belatedly. The shares were acquired in 1999 and Form No. 7C has been filed in 2010 i.e. after ten years. We do not find any approval granted for this belated filing of the requisite transfer form. Also, we have noted that

immediately on filing of alleged form no.7C, the shares were DEMATED and then sold. Considering the above facts, the genuineness of the purchase of the shares in 1999 seems to be clouded in doubt.

12. To prove the genuineness of purchase, only documentary evidence is not sufficient. It has to be supported by the evidence of consideration paid for such purchase. The counsel for the assessee could not provide the details of consideration paid. The trail of purchase has to be established by substantive evidence of entry in bank statement or receipt if paid in cash.

13. Ld. DR relied on the order of the lower authorities and reiterated that the matter is related to penny stock. Further, Ld. DR submitted that the period of holding of shares is not over ten years as alleged, but the purchase and sale of shares was made within a short period of time.

14. We have heard the submissions of both the parties. The counsel for the assessee contended that the transactions were genuine and furnished documents in support of the purchase and sale of shares. However, it was noted that the AO had not thoroughly verified the evidence pertaining to the purchase of shares.

15. Upon careful consideration of the facts and circumstances of the case and the submissions made, we are of the view that the matter requires further examination especially relating to purchase of the shares and its period of holding.

16. Therefore, in the interest of justice, we deem it appropriate to set aside the order of the CIT(A) and restore the matter to the file of the AO with the following directions:

- a. The AO shall provide an opportunity to the assessee to furnish all relevant evidence and documents related to the purchase of shares of KGN Industries Ltd. including share transfer forms and form 7C.
- b. The AO shall carry out a thorough verification of the evidence provided by the assessee, including the bank statements, receipts for consideration paid, brokers' notes, contract notes, and other relevant documents.
- c. The AO shall also conduct necessary inquiries with the stock exchange or any other authorities to ascertain the genuineness of the transactions.
- d. After completing the verification, the AO shall re-adjudicate the issue of the capital gains on the sale of shares in accordance with the law and pass a speaking order.

17. The counsel for the assessee has not pressed for the additional grounds of appeal hence dismissed.

18. In view of the above, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the Open Court on 30 May, 2024 at Ahmedabad.

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER *True Copy*
Ahmedabad, Dated 30/05/2024

Sd/-
(MAKARAND V.MAHADEOKAR)
ACCOUNTANT MEMBER

Rajesh

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)- (NFAC), Delhi
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

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