

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No. 3904/M/2023
Assessment Year: 2014-15**

M/s. Suresh Maheshwari HUF 431, Akshay Girikunj, Bldg.- 3, Parliament Road, Andheri (West) – 400058. Andheri Railway Station S.O. PAN: AABHS3934A	Vs.	Dy. Commissioner of Income –Tax-25(1), Room No. 206, 2 nd Floor, Matru Mandir, Tardeo Road, Mumbai- 400007.
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Rajesh Shah, C.A.
Revenue by : Shri Prashant Mahajan, Sr. D.R.

Date of Hearing : 07 . 05 . 2024

Date of Pronouncement : 29 . 05 . 2024

O R D E R

Per : Ratnesh Nandan Sahay, Accountant Member:

1. These appeals have been filed by the appellant against the order of the Ld. CIT (Appeals) passed u/s. 250 of the Income Tax Act [the 'Act' in short] dated 21/09/2023 for the Assessment Year 2014-15.
2. The following grounds have been raised in ITA No. 3904/M/2023:-

“1. The Ld. CIT(A) has erred in confirming the addition of ₹ 73,94,850/- u/s 68 of the Act by treating long term capital gains as bogus.

2. The Ld. CIT(A) has erred in natural justice for confirming the addition as the Ld. AO has not provided any cogent materials or cross examination to the assessee.

3. The Ld. CIT(A) has erred in confirming the addition made by Ld. AO for 2,21,845/-on account estimation of commission being 3 percent of ₹ 73,94,850/- as unexplained expenditure.

4. The appellant reserves the right to add, alter, amend or withdraw any grounds of appeal.”

3. The facts of the case, in brief, are that the return of income for A.Y. 2014-15 was filed on 05/07/2014 declaring total income at Rs.27,24,880/-. The return was duly process u/s. 143(1) of the IT Act, 1961. Subsequently, information was received in the ITD system of the IT Department from investigation wing of the IT Department, Calcutta that accommodation entries were provided by the entry providers where unaccounted cash was introduced through a layer of transaction to show it as genuine. The details of the modus operandi have been given in the body of the assessment order as to how the entire process was manipulated in order to defraud the revenue.
4. The assessing officer noted that the assessee was also one of the beneficiaries of the entire manipulative transactions as per the details given as under.

Scrip Code	Scrip Name	Buy/Sell	Quantity	Trade Count	Trade Value
531228	RANDER CORP	SELL	15000	33	10,42,500
530561	RAD GLOBAL	SELL	75000	247	63,52,350
Total					73,94,850

5. Accordingly, notice u/s. 148 was issued to the assessee on 29/03/2017 after reopening of the assessment by recording reasons therein. The assessing officer, after making a detail discussion in the impugned assessment order, made the addition of Rs.73,94,850/- u/s. 68 of the Act on the ground that the claim of the assessee that it has earned Long Term Capital Gain (LTCG) on account of sale of shares of Rander Corporation and Radford Global and exempted u/s. 10(38) of the IT Act was found to be a bogus transaction. Further, a sum of Rs.2,21,845/- being 3% of the sale value of Rs.73,94,850/- was also added u/s. 69 C of the Income Tax Act as unexplained expenditure on account of commission paid for arranging the entire transactions of bogus LTCG.
6. The Ld. CIT Appeal upheld the order of the assessing officer on the ground that the case was squarely covered by the decision of Hon'ble Calcutta High Court dated 14/06/2022 in the case of PCIT- 5, Kolkata vs. Swati Bajaj [(IA No.

GA/2/2022) and 90 others] the details of which have been given in the impugned order of the Ld. CIT Appeal issued vide Appeal No. 3904 of 2023 for the assessment year 2014-15. Ld. CIT Appeal also confirmed the addition of Rs.2,21,845/- made u/s. 69 C of the Act on the ground that the assessee must have paid a commission of 3% of the total trade value of Rs.73,94,850/- for arranging and facilitating the entire transactions as genuine.

7. Aggrieved by the order of the Ld. CIT Appeal, the appellant has filed this appeal. During the course of hearing before us, the Ld. Counsel of the appellant submitted a Paper Book containing details of the decisions held by various Courts and Tribunals on this issue. He also referred to the decision of the Hon'ble ITAT Mumbai "C" Bench in ITA No. 3256/Mum/2022 for the assessment year 2014-15 in the case of Chirag Tej Prakash Dangi vs. ITO Ward 26(1)(5) Mumbai dated 20.02.2024 wherein the Hon'ble Tribunal has already held that the buy/sale of shares of Radford Global as genuine on the ground that the sale of shares has taken place through online platform of the stock exchange and the sales consideration has been received by the stock broker through banking channels.

8. Now coming to the buy/sale of shares of Rander Corporation, the appellant's counsel, in addition to the decisions of the various courts and Tribunals on this issue, specifically referred to the decision of the coordinate Bench of ITAT Mumbai in ITA. No. 2427/Mum/ 2023 dated 23.11.2023 in the case of Uttam M Jain, HUF vs. Addl./Joint/Deputy/ACIT/ITO in which one of the Members of this bench was part of that Bench, has also held following the decision of the jurisdictional High Court in the case of Pr.CIT vs. Indravadan Jain HUF (ITA No.454 of 2018 dated 12th July 2023) that the transaction in shares cannot be held to be bogus if the assessee is a regular investor in shares and transacted the transaction of sale and purchase through stock exchange and shares were dematerialized and subsequently sold after a year on 25/05/2011 and it is also not a case of the Assessing Officer or the Revenue Department that the assessee or the brokers from whom the assessee had purchased and sold the shares, were involved in rigging /price shooting.
9. The departmental Representative, on the other hand, has placed reliance on the order of the Ld. Assessing officer and the Ld. CIT Appeal.

10. We have considered the rival submissions and found that the coordinate benches of ITAT (Mumbai) have already held that unless there is specific evidence of rigging and manipulation in the transactions of shares the same cannot be treated as bogus simply on the basis of the investigation carried out by the investigation wing of the Income Tax Department. The SEBI has also not pointed out any specific instance of rigging in shares in the case of the appellant. Thus, respectfully following the decisions of the Coordinate Bench of ITAT, Mumbai (Supra), we also hold that in the absence of any cogent evidence of manipulation, the entire transactions in shares, which have taken place through stock exchange and banking channels, cannot be treated as bogus. Accordingly the addition made by the AO is deleted.

11. Similarly, since the share transactions were not treated as bogus, the estimated addition on account of commission paid for arranging and facilitating the entire transactions cannot be held to be justified..

12. In the result, the appeal is allowed.

Order pronounced in the open court on 29.05.2024.

Sd/-**(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER****Sd/-****(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER**

Mumbai, Dated: 29.05.2024.
Snehal C. Ayare, Stenographer

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.