

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SMT. RENU JAUHARI, ACCOUNTANT MEMBER**

**ITA No.3731/M/2023
Assessment Year: 2013-14**

Ms. Neha Bankim Joshi, Gala No.7, Ground Flr, Ratna Jyot, Industrial Estate, Irla, Gauthan Lane, Vile Parle West, Maharashtra-400 056 PAN: AADPJ9157A (Appellant)	Vs.	Income Tax Officer, Kautilya Bhavan, G Block BKC, Bandra Kurla Complex, Bandra East, Maharashtra – 400 051 (Respondent)
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Present for:

Assessee by : Mr. Uday Shah, A.R.

Revenue by : Shri Himanshu Kumar, D.R.

Date of Hearing : 16 . 05 . 2024

Date of Pronouncement : 30 . 05 . 2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the assessee against the order dated 14.08.2023, impugned herein, passed by the National Faceless Appeal Center (NFAC)/Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2013-14.

2. In the instant case, on the basis of investigation carried out by Investigation Directorate, Kolkata into 84 penny stocks including M/s. Luminare Technologies being one of it, of which the assessee had shares and sold the same during the assessment year under consideration, the Assessing Officer (AO) has given detailed findings indicating bogus Long Term Capital Gains (LTCG)/Short Term Capital Loss (STCL) entries claimed by large number of beneficiaries under section 147 of the Act. Consequently notice under section 148 as well as under section 142(1) of the Act was issued to the assessee, in response to which the assessee filed her details. On perusing the same it was observed by the AO that the assessee had 3000 shares in 1995-96 @ Rs.96.5 per share of M/s. Luminare Technologies (earlier M/s. Nandini Syntex Ltd.) which was subsequently in 2004 splitted to Rs.1 each and holding of 3000 shares became a holding of 30,000 shares. Thereafter all shares were sold out at the Bombay Stock Exchange platform at the average rate of Rs.38.95 approximately to various entities for a total sale consideration of Rs.11,68,688/- during the financial year under consideration, which resulted into LTCG of Rs.8,79,089/-. As the investigation carried out by the Investigation Wing, Kolkata in 84 penny stock companies (Luminare Technologies being one of it), therefore the AO considering the mode of acquisition of shares, sale of shares and unusual rise in the price, findings of the investigation wing, analysis of transactions, ignorance of the assessee about shares/penny stock companies, failure of the assessee to prove the unusual rise and fall of share price to be natural and based on the market forces, financial analysis of the penny stock company and considering the transaction as arranged transaction, ultimately disallowed the exemption claimed to the tune of Rs.11,68,688/- under section 10(38) of the Act and added the same in the income of the assessee under section 68 of the Act.

3. The Assessee, being aggrieved, challenged the said addition before the Ld. Commissioner, however, could not succeed, as the Ld. Commissioner on the similar footing as of the AO affirmed the said addition by dismissing the appeal of the assessee.

4. Being aggrieved, the Assessee has preferred this appeal.

5. Having heard the parties and perused the material available on record and given thoughtful considerations to the peculiar facts and circumstances of the case. Admittedly the assessee had purchased 3000 shares under consideration, in the financial year 1995-96 @ Rs.96.5 per share and thereafter in 2004 the shares were splitted to Rs.1 each and consequently became a holding of 3,000 shares meaning thereby at that time of splitting, the price of share could be considered as Rs.9.65 per share and consequently in 2007 shares got dematerialized and ultimately sold on Bombay Stock Exchange platform @ Rs.38.95 (approx.) on a total consideration of Rs.11,68,688/- resulting into LTCG of Rs.8,79,089/- which goes to show that there was no sharp/unusual rise in the price of the shares involved.

Even otherwise, the Assessee in order to discharge her burden, before the AO has submitted various documents pertaining to the transactions qua shares of M/s. Luminare Technologies including D-mat statement, bank statement, contract notes for executing sale transaction by stock broker M/s. Hemendra K. Shah having trade day, settlement number and order number of the stock exchange, which goes to show that the assessee had discharged her prima-facie onus. Even otherwise, the transactions carried out by the Assessee also do not reflect any element of penny stock transaction as well, as there is no direct allegation and/or material against the Assessee or her broker, but in fact the AO on the basis of assumption and presumption

and mainly on the basis of investigation carried out by the Investigation Directorate, Kolkata, made the addition and the Ld. Commissioner affirmed the same without any corroborative material and therefore the addition under consideration at all is un-sustainable being devoid of merits/relevant documents. Consequently, the exemption claimed under section 10(38) of the Act by the assessee qua sales of 30,000 shares of M/s. Luminare Technologies is allowed by deletion of addition under consideration.

6. In the result, the appeal filed by the assessee stands allowed.

Order pronounced in the open court on 30.05.2024.

**Sd/-
(RENU JAUHARI)
ACCOUNTANT MEMBER**

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

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

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.