

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

**BEFORE JUSTICE (RETD.) C V BHADANG, HON'BLE PRESIDENT &
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

**ITA NO.1026/MUM/2020
Assessment Year 2014-15**

Manju Hiralal Bafna,
C/o.D.C.Bothra & Co. LLP(CIT(A))
(Formerly known as D.C.Bothra & Co.),
297, Tardeo Road, Wille Mansion,
1st Floor, Opp. Bank of India,
Nana Chowk, Mumbai 400 007
PAN: AAEPB-8469-L

- Appellant

Vs.

ITO 19(2)(3), Mumbai
2ND Floor, Matru Mandir,
Tardeo Road,
Mumbai – 400 051

- Respondent

Appellant by : Shri Mani Jain
Respondent by : Shri Ashok Kumar Ambastha, Sr.AR

Date of Hearing : 15/04/2024
Date of Pronouncement : 24/06/2024

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER :

The assessee has filed this appeal challenging the order dated 14.11.2019 passed by Ld CIT(A)-30, Mumbai and it relates to the assessment year 2014-15. The assessee is aggrieved by the decision of Ld CIT(A) in confirming the addition of Rs.4.22 crores made by the Assessing officer (AO) rejecting claim for exemption of long term capital gains arising on sale of shares.

2. The facts relating to the above said issue are discussed in brief. During the year under consideration, the assessee had declared long term capital gains of Rs.4.07 crores on sale of shares of M/s Grandma

Trading and Agencies Ltd and claimed the same as exempt u/s 10(38) of the Act. The AO noticed that the above said company's shares were found to have been manipulated and the trading therein was also found suspended in BSE. The investigation wing had carried out investigation with regard to the price manipulations and generation of bogus long term capital gains in number of stocks, classified as penny stocks. The AO noticed that the shares of the above said company was also identified as one of the penny stocks. The AO noticed that the assessee has sold 1,55,755 shares for a consideration of Rs.4.22 crores and declared Long term capital gains of Rs.4.07 crores. Relying fully upon the report given by the Investigation wing, the AO took the view that the long term capital gain declared by the assessee on sale of shares of M/s Grandma Trading and Agencies Ltd was pre-arranged method employed by the assessee with the connivance of the operators in order to evade taxes.

3. The AO further noticed that the increase in the prices of shares of above said company was no commensurate with the financial results declared by the company and the net worth of the company was negligible. He also noticed that the trading in the above said company was controlled by certain brokers and in the statement taken from one of such persons named Shri Amit Dalmia, he had confessed that to have provided accommodation entries for generating long term capital gains in the shares of M/s Grandma Trading and Agencies Ltd. The AO also relied upon the statement given by another person named Sri Sanjay Vora, who also stated that the trading in shares of certain companies including the above said company are controlled by certain persons. Based on the statements so given by the above said persons, the AO came to the conclusion that the trading in shares of M/s

Grandma Trading and Agencies Ltd are controlled by various entry and exit operators in order to convert unaccounted money.

4. The AO also issued summons u/s 131 of the Act to the assessee and recorded a statement from her. Though the AO had initially observed in the assessment order that the assessee has invested in only on scrip, yet the assessee, in the statement, stated that she had invested in shares of two other companies, viz., Reliance Power and Pipavav Shipyard. She also submitted that she has traded in shares of other companies and during the current year also, she has heard LTCG on sale of shares of Pipavav Shipyard. She further submitted that her son is a Chartered Accountant and she has invested in the shares of M/s Grandma Trading and Agencies Ltd on the basis of market rumours. She also submitted that she was not a frequent traders and makes investment in equity shares out of her surplus money. It is pertinent to note that the assessee was able to answer certain technical questions relating to stock market posed by the AO, meaning thereby, the assessee had reasonable knowledge of share market operations. However, the AO observed that the assessee was not able to explain the basis/reasons for making investment in the shares of M/s Grandma Trading and Agencies Ltd, even though the fundamentals of the above said company was poor. He also observed that assessee's son, being a Chartered Accountant, would not have advised her to invest in shares of these kinds of financially weak companies. The AO also issued further notice u/s 142(1) of the Act asking the assessee to explain the investments viz-a-viz the report of the investigation wing. The assessee duly filed her reply. But the assessing officer, referring to the poor fundamentals and investigation report, took the view that the long term capital gains declared by the assessee is a pre-arranged method adopted to evade tax and to

launder money. Accordingly, the AO took the view that the assessee has not discharged her burden to prove the genuineness of the long term capital gains. Accordingly, he took the view that the entire sale consideration of Rs.4.68 crores is liable to be taxed as unexplained income u/s 68 of the Act.

5. The Ld CIT(A) entirely agreed with the view taken by the AO. Further, the Ld CIT(A) also held that the spectacular increase in the prices of shares of above said company is beyond the scope of human probability and hence the entire transactions resulting in long term capital gains should be considered as sham transactions. With regard to the test of human probability, the Ld CIT(A) referred to the decisions rendered by Hon'ble Supreme Court in the case of Sumati Dayal (214 ITR 801)(SC) and Durga Prasad More (1971)(82 ITR 540)(SC). Accordingly, the Ld CIT(A) confirmed the order passed by the AO. Aggrieved, the assessee has filed this appeal before the Tribunal.

6. The Ld A.R submitted that the assessee had purchased 2 lakhs shares of M/s Grandma Trading Agencies P Ltd under preferential allotment in February, 2012. It was purchased through a share broker. Later on, the assessee has sold 1.55 lakhs shares in Stock exchange platform. The assessee still holds 0.45 lakh shares. The purchase and sale of share have entered and exited in the D-mat account of the assessee. The assessee has also furnished all the documents to prove the purchases and sales. He further submitted that the SEBI has conducted enquiries in respect of the above said company, but neither the assessee nor his share broker was subjected to any enquiry. The Ld A.R also furnished copies of certain news paper reports, which had discussed about the prospects of the above

said company. He also submitted that the turnover and profits of the above said company was growing year after year. Hence the assessee had made investments and the same proved to be right decision also. The Ld A.R further submitted that it was not shown by the AO that the assessee was part of any group which involved in manipulation of the prices of the above said shares. He submitted that the AO has entirely relied upon the report given by the Investigation wing. Further, the AO has not brought any independent material on record to show that the transactions of purchase and sale of shares undertaken by the assessee were not genuine. In fact, the assessing officer has conducted detailed enquiry with the assessee and the assessee has demonstrated her knowledge over the share market operations by giving answers to all the questions asked by the AO. Further, the assessee has also purchased and sold other shares also. Accordingly, the Ld A.R contended that the AO has disbelieved the transactions of purchase and sale of shares on surmises only, that too relying fully upon the generalized report of the Investigation wing. Since it was not shown that the assessee was part of the group which were indulging in the manipulation of prices, the AO was not justified in assessing the sale consideration of shares as unexplained income of the assessee u/s 68 of the Act. Further, the said action of the AO is not justifiable, since the AO had accepted the purchases of shares in the earlier years. In support of his contentions, the Ld A.R placed his reliance on the following case laws:-

- (a) Ziauddin A Siddique (ITA 2012 of 2017 dated 4th March, 2022)(Bom)
- (b) Indravadan Jain (HUF) (ITA 454 of 2018 dated 12th July 2023)(Bom)

(c) Alka Dilip Doshi (ITA No.1837/Mum/2023 dated 28-02-2024)(Mum ITAT)

(d) Shri Jignesh Desai (ITA No.1263/Kol/2018 dated 26-09-2018)

7. The Ld D.R, on the contrary, supported the orders passed by the tax authorities. He submitted that the assessee has purchased the shares through off market under the preferential allotment of shares. The preferential allotment is done to known persons and hence it is possible that the assessee was part of the group. The tax authorities have noticed that financials and fundamentals of this company were very poor. Hence the rise in the prices of shares was not commensurate with the financial strength of the company. The investigation wing has also conducted enquiries with various share brokers and they have confessed to have indulged in manipulating the prices of shares in order to provide bogus long term capital gains. The SEBI has also conducted enquiries on the transactions carried in the shares of this company and the Ld A.R furnished a copy of final order dated 31-01-2019 passed by SEBI in the matter of Grandma Trading and Agencies Ltd. Accordingly, the Ld D.R submitted that the order of Ld CIT(A) does not call for any interference. In support of his arguments, the Ld D.R placed his reliance on the following case laws:-

(a) Saroj Baid vs. ITO (2023)(155 taxmann.com 630)(Kol-ITAT)

(b) Dineshkumar R Tulsyan (HUF) vs. ITO (ITA No. 813/PUN/2018 dated 12-09-2022)

(c) Asha Rajendra Gupta (ITA 7712/Mum/2019)

With regard to the reliance placed by the Ld A.R on the decision rendered by Hon'ble Bombay High Court in the case of Indravadan

Jain (HUF), the Ld D.R submitted that the assessee before the Hon'ble Bombay High Court had purchased and sold shares through the stock exchange. Accordingly, he submitted that the assessee cannot place his reliance on the said decision.

8. In the rejoinder, the Ld A.R submitted that the decision rendered by Hon'ble Bombay High Court in the case of Ziauddin A siddique relates to off-market purchases. He submitted that the assessee has purchased the shares off market through the broker named "Sharekhan", one of the reputed share brokers. With regard to other case laws relied upon by the Ld D.R submitted that they cannot be taken support of. With regard to the decision rendered by the Mumbai bench in the case of Asha Rajendra Gupta (supra), the Ld A.R submitted that it did not consider the binding decisions rendered by Hon'ble Bombay High Court. With regard to the decision rendered by Kolkatta bench in the case of Saroj Baid (supra) and Pune bench in the case of Dineshkumar R Tulsyan, the Ld A.R submitted that they were ex-parte orders passed by the respective benches. He submitted that the ratio of decisions rendered by Hon'ble Bombay High Court is applicable to the facts of the present case. With regard to the order passed by SEBI, the Ld A.R submitted that it has been passed in the case of three different persons and not upon the assessee or its broker. Accordingly, he prayed for deletion of the addition made by the AO u/s 68 of the Act.

9. We have heard rival contentions and perused the record. We notice that the assessing officer has primarily placed reliance on the report given by the Investigation wing of the Income tax department, Kolkata to arrive at the conclusion that the long term capital gains reported by the assessee is bogus in nature. We notice that the

investigation report prepared by Investigation wing, Kolkata is a generalized report with regard to the modus operandi adopted in manipulation of prices of certain shares and generation of bogus capital gains. We notice that the AO has placed reliance on the said report without bringing any material on record to show that the transactions entered by the assessee were found to be a part of manipulated transactions, i.e., it was not proved that the assessee has carried out the transactions of purchase and sale of shares in connivance with the people who were involved in the alleged rigging of prices. It is stated by Ld A.R that the transactions carried on by the assessee were not subjected to scrutiny by SEBI at all.

10. We notice from the statement recorded by the AO from the assessee u/s 131 of the Act that the assessee was able to answer all the technical details relating to stock market. Further, it has been stated by the assessee that she has purchased and sold shares of other companies. In the statement, the assessee has also stated that she is not a regular investor and a long term investor, meaning thereby, she would not be watching the share price movements on day to day basis. With regard to the purchase of shares, she has stated that it was purchased through her broker named "Sharekhan", one of the reputed share brokers on the basis of market information. The Ld A.R also furnished copies of two market reports, wherein the prospects of the above said company have been shown as good. Thus, we are of the view that the assessee has proved as to how she could purchase the shares of above said company. We also notice that the assessee has

(a) purchased these shares by paying consideration through banking channels

(b) dematerialized the shares and kept the same in the Demat account.

(c) sold the shares through stock exchange platform

(d) received the sale consideration through banking channels.

Further, the shares have entered and exited the demat account of the assessee. We notice that the AO himself has not found any defect/deficiencies in the evidences furnished by the assessee with regard to purchase and sale of shares. The assessee and her broker were not subjected to any enquiry by SEBI, meaning thereby, they were carried on by the assessee during the normal course of investment in shares. As noticed earlier, the AO has not brought on record any material to show that the assessee was part of the group which involved in the manipulation of prices of shares. Hence, there is no reason to suspect the purchase and sale of shares undertaken by the assessee.

11. We may now refer to certain decisions rendered by Hon'ble Bombay High Court on identical issue. In the case of Shyam Pawar (supra), the Hon'ble Bombay High Court has observed as under:-

“3. Mr.Sureshkumar seriously complained that such finding rendered concurrently should not have been interfered with by the Tribunal. In further Appeal, the Tribunal proceeded not by analyzing this material and concluding that findings of fact concurrently rendered by the Assessing Officer and the Commissioner are perverse. The Tribunal proceeded on the footing that onus was on the Department to nail the Assessee through a proper evidence and that there was some cash transaction through these suspected brokers, on whom there was an investigation conducted by the Department. Once the onus on the Department was discharged, according to Mr.Sureshkumr, by the Revenue-Department, then, such a finding by the Tribunal raises a substantial question of law. The Appeal, therefore, be admitted.

4. Mr.Gopal, learned Counsel appearing on behalf of the Assessee in each of these Appeals, invites our attention to the finding of the Tribunal. He submits that if this was nothing but an accommodation of cash or conversion of unaccounted money into accounted one, then, the

evidence should have been complete. Change of circumstances ought to have, after the result of the investigation, connected the Assessee in some way or either with these brokers and the persons floating the two companies. It is only, after the Assessee who is supposed to dealing in shares and producing all the details including the DMAT account, the Exchange at Calcutta confirming the transaction, that the Appeal of the Assessee has been rightly allowed. The Tribunal has not merely interfered with the concurrent orders because another view was possible. It interfered because it was required to interfere with them as the Commissioner and the Assessing Officer failed to note some relevant and germane material. In these circumstances, he submits that the Appeals do not raise any substantial question of law and deserve to be dismissed.

5. *We have perused the concurrent findings and on which heavy reliance is placed by Mr.Sureshkumar. While it is true that the Commissioner extensively referred to the correspondence and the contents of the report of the Investigation carried out in paras 20, 20.1, 20.2 and 21 of his order, **what was important and vital for the purpose of the present case was whether the transactions in shares were genuine or sham and bogus. If the purchase and sale of shares are reflected in the Assessee's DMAT account, yet they are termed as arranged transactions and projected to be real, then, such conclusion which has been reached by the Commissioner and the Assessing Officer required a deeper scrutiny.** It was also revealed during the course of inquiry by the Assessing Officer that the Calcutta Stock Exchange records showed that the shares were purchased for code numbers S003 and R121 of Sagar Trade Pvt Ltd. and Rockey Marketing Pvt. Ltd. respectively. Out of these two, only Rockey Marketing Pvt.Ltd. is listed in the appraisal report and it is stated to be involved in the modus-operandi. It is on this material that he holds that the transactions in sale and purchase of shares are doubtful and not genuine. In relation to Assessee's role in all this, all that the Commissioner observed is that the Assessee transacted through brokers at Calcutta, which itself raises doubt about the genuineness of the transactions and the financial result and performance of the Company was not such as would justify the increase in the share prices. Therefore, he reached the conclusion that certain operators and brokers devised the scheme to convert the unaccounted money of the Assessee to the accounted income and the present Assessee utilized the scheme.*

6. *It is in that regard that we find that Mr.Gopal's contentions are well founded. **The Tribunal concluded that there was something more which was required, which would connect the present Assessee to the transactions and which are attributed to the***

Promoters/Directors of the two companies. The Tribunal referred to the entire material and found that the investigation stopped at a particular point and was not carried forward by the Revenue. There are 1,30,000 shares of Bolton Properties Ltd. purchased by the Assessee during the month of January 2003 and he continued to hold them till 31 March 2003. The present case related to 20,000 shares of Mantra Online Ltd for the total consideration of Rs.25,93,150/-. These shares were sold and how they were sold, on what dates and for what consideration and the sums received by cheques have been referred extensively by the Tribunal in para 10. A copy of the DMAT account, placed at pages 36 & 37 of the Appeal Paper Book before the Tribunal showed the credit of share transaction. The contract notes in Form-A with two brokers were available and which gave details of the transactions. The contract note is a system generated and prescribed by the Stock Exchange. From this material, in para 11 the Tribunal concluded that this was not mere accommodation of cash and enabling it to be converted into accounted or regular payment. The discrepancy pointed out by the Calcutta Stock Exchange regarding client Code has been referred to. But the Tribunal concluded that itself, is not enough to prove that the transactions in the impugned shares were bogus/sham. The details received from Stock Exchange have been relied upon and for the purposes of faulting the Revenue in failing to discharge the basic onus. If the Tribunal proceeds on this line and concluded that inquiry was not carried forward and with a view to discharge the initial or basic onus, then such conclusion of the Tribunal cannot be termed as perverse. The conclusions as recorded in para 12 of the Tribunal's order are not vitiated by any error of law apparent on the face of the record either.

7. As a result of the above discussion, we do not find any substance in the contention of Mr.Suresh kumar that the Tribunal misdirected itself and in law. We hold that the Appeals do not raise any substantial question of law. They are accordingly dismissed. There would no order as to costs.

8. Even the additional question cannot be said to be substantial question of law, because it arises in the context of same transactions, dealings, same investigation and same charge or allegation of accommodation of unaccounted money being converted into accounted or regular as such. The relevant details pertaining to the shares were already on record. This question is also a fall out of the issue or question dealt with by the Tribunal and pertaining to the addition of Rs.25,93,150/-. Barring the figure of loss that is stated to have been taken, no distinguishable feature can be or could be placed on record. For the same reasons, even this additional question cannot be termed as substantial question of law.”

12. We may now refer to the decision rendered by Hon'ble Jurisdictional High Court in the case of PCIT vs. Ziauddin A Siddique (Income tax Appeal No. 2012 of 2017 dated 4th March, 2022) and relevant discussions made by Hon'ble Bombay High Court are extracted below:-

"2. We have considered the impugned order with the assistance of learned counsels and we have no reason to interfere. There is a finding of fact by the Tribunal that the transaction of purchase and sale of shares of the alleged penny stock of shares of Ramkrishna Fincap Ltd ("RFL") is done through stock exchange and through the registered Stock Brokers. The payments have been made through banking channels and even Security Transaction Tax ("STT") has also been paid. The Assessing Officer also has not criticized the documentation involving the sale and purchase of shares. The Tribunal has also come to a finding that there is no allegation against the assessee that it has participated in any price rigging in the market on the shares of RFL.

3. Therefore we find nothing perverse in the order of the Tribunal.

4. Mr. Walve placed reliance on a judgement of the Apex Court in Principal Commissioner of Income tax (Central)-1 vs. NRA Iron & Steel (P) Ltd (2019)(103 taxmann.com 48)(SC) but that does not help the revenue in as much as the facts in that case were entirely different.

5. In our view, the Tribunal has not committed any perversity or applied incorrect principles to the given facts and when the facts and circumstances are properly analysed and correct test is applied to decide the issue at hand, then, we do not think that question as pressed raises any substantial question of law."

In the case of CIT vs. Jamnadevi Agarwal (supra), the Hon'ble Bombay High Court held that the transactions of purchase and sale of shares cannot be considered to be bogus, when the documentary evidences furnished by the assessee establish genuineness of the claim. In the case of PCIT vs. Indravadan Jain (HUF) (supra), the broker through whom, the assessee had carried out the transactions have been alleged to have been indulged in price manipulations and the SEBI

had also passed an order regarding irregularities and synchronized trades carried out in the shares by the said broker. However, the evidences furnished by the assessee with regard to purchase and sale of shares were not doubted. Under these set of facts, the Hon'ble Bombay High Court held as under:-

“...The CIT(A) came to the conclusion that respondent bought 3000 shares of RFL, on the floor of Kolkatta Stock Exchange through registered share broker. In pursuance of purchase of shares the said broker had raised invoice and purchase price was paid by cheque and respondent's bank account has been debited. The shares were also transferred into respondent's Demat account where it remained for more than one year. After a period of one year the shares were sold by the said broker on various dates in the Kolkatta Stock Exchange. Pursuant to sale of shares the said broker had also issued contract notes cum bill for sale and these contract notes and bills were made available during the course of appellate proceedings. On the sale of shares respondent effected delivery of shares by way of Demat instruction slips and also received payment from Kolkatta Stock Exchange. The cheque received was deposited in respondent's bank account. In view thereof, the CIT(A) found there was no reason to add the capital gains as unexplained cash credit under section 68 of the Act. The Tribunal while dismissing the appeals filed by the Revenue also observed on facts that these shares were purchased by respondent on the floor of Stock Exchange and not from the said broker, deliveries were taken, contract notes were issued and shares were also sold on the floor of Stock Exchange. The ITAT therefore, in our view, rightly concluded that there was no merit in the appeal.”

In the instant case also, we noticed that the evidences furnished by the assessee to prove the purchase and sale of shares, payment made/received, entry/exit of shares in the demat account of the assessee etc., were not doubted with.

13. In the case of PCIT vs. Smt Krishna Devi (supra), the Hon'ble Delhi High Court has noticed that the reasoning given by the AO to disbelieve the capital gains declared by the assessee, viz., astronomical increase in the price of shares, weak fundamentals of the relevant companies are based on mere conjectures. Accordingly, the

Hon'ble Delhi High Court affirmed the decision rendered by ITAT in deleting the addition of capital gains.

14. With regard to the decisions relied upon by the Ld D.R, we noticed that two decisions have been rendered by the Tribunal ex-parte and one decision did not consider the binding decision of Hon'ble Bombay High Court. In any case, these types of cases revolve around the facts prevailing in each of the case. In the instant case, we have discussed the facts of the present case and noticed that the assessee has proved the transactions of purchase and sale of shares, while the AO did not disprove the same. Accordingly, in the facts and circumstances of the case, we are of the view that the decisions rendered by the jurisdictional Hon'ble Bombay High Court in the cases cited above shall apply to the present case, since the AO has not established that the assessee was involved in price rigging and further the AO did not find fault with any of the documents furnished by the assessee.

15. We noticed earlier that the AO has assessed the Sale consideration of shares as unexplained cash credit u/s 68 of the Act. It is pertinent to note that the purchase of shares made in an earlier year has been accepted by the revenue. The sale of shares has taken place in the online platform of the Stock exchange and the sale consideration has been received through the stock broker in banking channels. Hence, in the facts of the case, the sale consideration cannot be considered to be unexplained cash credit in terms of sec. 68 of the Act.

16. In view of the foregoing discussions, we hold that the sale consideration received on sale of shares cannot be assessed as unexplained cash credit u/s 68 of the Act and the long term capital

gains declared by the assessee cannot be doubted with. Accordingly, we set aside the order passed by Ld CIT(A) and direct the AO to delete the impugned addition made by him.

17. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 24th June, 2024.

Sd/-

Sd/-

[Justice (Retd) C V Bhadang]
President

(B.R. Baskaran)
Accountant Member

Mumbai, Date : 24th June, 2024

VM.

Copy to :

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

By Order

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