

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

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

ITA 4855/Mum/2023
(Assessment year: 2014-15)

Surendra Rameshwardas Gadodia, 903-904, 02, Rustomjee Ozone, Near MTNL Office, Goregaon West, Mumbai-400 062 PAN : AABPG1082H	vs	National Faceless Assessment Centre, New Delhi
APPELLANT		RESPONDENT

Assessee by : Shri Ajay R Singh – Advocate &
Akshay Pawar - Advocate
Respondent by : Shri Dinesh R Chourasia Sr. AR
Date of hearing : 28/05/2024
Date of pronouncement : 11 / 06/2024

ORDER

PER ANIKESH BANERJEE, J.M:

Instant appeal of the assessee is preferred against the order of the National Faceless Appeal Centre, Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2014-15, date of order 18.11.2023. The impugned order was emanated from the order of the Ld. Assistant Commissioner of Income-tax- 31(3), Mumbai (in short, 'the Id. A.O.') passed under section 143(3) of the Act date of order 27/12/2016.

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

- “1. *On facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the denial of exemption claimed u/s. 10(38) of Long-Term Capital gain on sale of STT paid listed share of M/s KJDJ Holidayscapes and Resorts Ltd and adding u/s. 68 sales proceeds of Rs. 93.80.601/-;*
2. *The Ld. CIT(A), before confirming the addition of sale proceeds of shares sold of Rs.93,80,601/-, ought to have considered the understated vital facts, being; a) The correctness of exhaustive documentary evidences such as Contract-cum-bills for purchase and sale both, D-mat statements, bank statements reflecting the payment and receipt transaction, acknowledgement of ITR copy and other documents filed on assessment record had not been disputed by the AO and CIT(A):*
3. *b) The genuineness of capital asset acquired in earlier year ended 31 /3/2012 cannot be disputed impugned year; the period of holding of the listed shares in appellant's D-mat account exceeds 12 months;*
4. *c) The listed shares had been sold on floor of recognized Bombay stock exchange at availing market price on making the payment of STT and Service Tax and mere substantial increase in price of shares cannot be a sole reason to treat the bonafide transactions as non-genuine;*
5. *d) The appellant is not related to any 1 directors/promoters and exit providers and general : statements of 3rd persons recorded at back of the ; appellant without allowing an opportunity examination is incorrect;*
6. *e) The addition has been made on the basis of , circumstantial evidence, since no contrary material and cash trail has been established by the AO;*
7. *3. On the facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the addition u/s 68 of Rs. 40,000 towards sale of shares of SRK Industries by calculating difference between sale proceeds vs. amount disclosed under IDS Scheme' 2016 viz. viz. Rs. 33,95,415/- minus Rs. 33,55,415/- ignoring the provisions of IDS Scheme.*

7. *4. The learned CIT (A) NFAC erred in passing the ex-parte order without providing proper opportunity of being heard, since no SMS of notice served etc. was sent.”*

3. The brief facts of the case are that the assessee in individual capacity filed the return declaring total income at Rs.34,65,620/-. During the impugned assessment year, the assessee earned the long-term capital gain (in short, 'LTCG') from sale of shares of Apollo Tires amount to Rs.40,815/-, SRK Industries Ltd, amount to Rs.33,55,215/- and KDJ Holiday Ltd amount to Rs.87,26,151/- which works out to total amount of Rs. 1,21,22,180/-. The assessee claimed exemption U/s 10(38) of the Act. The assessee has opted to declare income under Income Declaration Scheme, 2016 (in short IDS) against LTCG on sale of shares of SRK Industries Ltd and offered tax on LTCG income of Rs.33,55,215/-. The same was duly accepted by the Revenue. Only the amount of Rs.40,000/- was duly added related to purchase of SRK Industries Ltd under section 68 of the Act during the assessment proceedings. In assessment proceedings, considering the report from Investigation Department, Calcutta, the assessee further added back the entire sale of shares of KDJ Holiday Ltd amounting to Rs.93,80,601/- and rejected the exemption claimed under section 10(38) of the Act. Considering both the additions, the total amount works out to Rs.94,20,601/- which was added back U/s 68 of the Act. The aggrieved assessee filed an appeal before the Id. CIT(A). The Ld.CIT(A) upheld the assessment order. Being aggrieved, assessee filed an appeal before us.

4. The Ld.AR for the assessee filed written submissions, which are kept in the record. The Ld.AR argued and invited our attention in paper book ABP pages 13

to 42. The following documents are duly submitted before the revenue authorities in relation to claim of deduction U/s 10(38) for sale of shares of KDJ Holiday Ltd. The details of the documents are duly reproduced as below:-

<i>Sr.No.</i>	<i>Particulars</i>
1	<i>ROI acknowledgement alongwith computation of total income, Capital A/c and Balance sheet for A.Y. 2014-15.</i>
2	<i>Copy of letter dated 08/12/2016 filed before Assessing Officer along with annexure.</i>
3	<i>Copy of reply to show cause notice filed before AO dated 23/12/2016 along with annexures namely;</i> <i>A. Contract Notes of Purchase and bank statement of Saraswat Bank</i> <i>B. Contract Notes of sales and bank statement of Saraswat Bank.</i> <i>C. Transaction details.</i> <i>D. Overview about the company along with financial statement.</i>
4	<i>Written Submission filed before CIT(A).</i>
5	<i>ROI acknowledgement along with computation of total income, Capital A/c and Balance Sheet for A.Y. 2012-13.</i>
6	<i>ROI acknowledgement along with computation of total income, Capital A/c and Balance Sheet for A.Y. 2013-14.</i>
7.	<i>Annual accounts for F.Y. 2013-14 of KDJ Holidayscapes and Resorts Limited (page No.31-72)</i>

5. The Ld.AR in argument placed that the Ld. AO had not made any verification on his own accord. The entire addition was made on the basis of the report from Investigation Department, Kolkata. No cross verification was allowed. All the evidences were collected from the back of the assessee.

The Ld.AR further placed that the issue was duly covered by the co-ordinate bench of ITAT, Mumbai in case of **Karishma Ajay Agarwal vs ITO ITA No.2586/Mum/2022**, dt of pronouncement **02/03/2023** for A.Y. 2014-15. The relevant two paragraphs are reproduced as below:

“The appellant prefers an appeal against an order passed by Commissioner of Income Tax (Appeals) National faceless Appeal Centre, Delhi dated 18/08/2022 on following amongst other grounds each of which are without prejudice to any other:-

1.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the addition u/s 68 of Long Term Capital gain on sale of STT paid listed share of M/s KDJ Holidayscapes and Resorts Ltd of Rs.4,41,37,566/- and alleged undisclosed commission of Rs 37,07,006/- totalling to Rs 4,78,44,571/-.”

.....

“15. We have considered the overall facts, submissions and the information find that the assessee has furnished the financials, details of broker, affidavit and the transactions status and MCA website details of the company. The AO has doubted the purchase and sale of shares and observed that the price rigging is not commensurate with the financials of the assessee company. The assessee has substantiated with all details and information and the revenue could not make out a case that there is unaccounted money transactions took place in the hands of the assessee and the AO has relied on the investigation report of income tax department and treated the long term capital gains on sale of shares as not genuine. Further the A.O. has not made any enquiry or independent investigation and relied on the statement of the parties and the assessee’s name is not included in the list of investigation report. The fact remains that the assessee has submitted the requisite details in respect of purchase and sale of shares and were not disproved. The transaction of purchase and sale of shares is through banking channel. Further as discussed in the above paragraphs the Honble Tribunal dealt on the same scrip of share and for the same assessment has upheld the relief granted by the CIT(A) and has dismissed the revenue appeal. Accordingly, we considering facts, circumstances, ratio of judicial decisions, submissions, evidences and rely on the judicial precedents and are of the opinion that the addition cannot be

sustained and set aside the order of the CIT(A) and direct the assessing officer to delete the additions and allow the grounds of appeal in favour of the assessee.”

The Ld.AR further relied on the order of **DCITvs Viral Saraf Mittal ITA No.1843/Mum/2022 date of pronouncement 23/02/2024, A.Y. 2014-15**. The relevant paragraph is reproduced as below:-

“3. During the course of assessment proceedings, Assessing Officer observed that assessee has shown exempted long term capital gain of ₹.1,81,82,004/- in the script named KDJ Holidayscapes & Resorts Ltd (previously known as GomtiFinicase). Assessee was asked to give details of long term capital gain. In response, assessee submitted that it earned long term capital gain (LTCG) of ₹.1,81,82,004/- in respect of sale of shares of KIAJ Holidayscapes & Resorts Ltd. The said long term capital gain was claimed as exempt u/s 10(38) of the Act.”

The Ld.AR stated that in both the years, KDJ Holidays & Resources Ltd is duly accepted for sale of shares and the ITAT has allowed the claim of LTCG exempted under section 10(38) of the Act.

6. The Ld.DR vehemently argued and invited our attention in assessment order para 15, which is reproduced as below: -

“15. Thus, considering the findings of the search / survey, inquiries conducted in the case of brokers, operators and the entry providers and the nature of transaction entered into by the assessee. The LTCG of Rs.87,26,151/- claimed exempt u/s 10(38) of the I.T. Act by the assessee cannot be held as genuine and cannot be allowed. Thus, the amount of sale consideration of Rs.93,80,601/- received back as sales proceeds on sale of shares of KDJ Holiday and the cost of acquisition of Rs.40,000/- of SRK Industries of which LTCG has already been declared under IDS 2016, is required to be added back in his taxable income under section 68 of the act. Penalty proceeding u/s 271(1)(c) is initiated for

furnishing inaccurate particulars of income with a view to concealment of income.”

7. We heard the rival submissions and considered the documents available in record. The issue was squarely covered by the order of the ITAT, Mumbai Bench in the same transactions related to sale of shares of KDJ Holiday. Further, the jurisdictional High Court also is in assessee's favour. Considering the impugned appeal order of the assessee, the relevant paragraph is reproduced for finding the observations of the Ld.CIT(A). The para 7.5 of the impugned appeal order is reproduced as below:-

“7.5 I find that the entire amount of the so called receipt on sale of shares has been treated correctly as unexplained credit u/s 68 of the Act, as it has all the ingredients of attracting the rigours of the said section. Section 68 of the Act provides that where any sum is found credited in the books of the appellant maintained for any previous year and the appellant offers no explanation about the nature and source thereof or the explanation offered by him is not in the opinion of the AO satisfactory, the sum so credited may be charged to income tax as income of the appellant of that year. In the present case, the appellant's explanation that the said receipt is on account of investment in shares, whereby shares of unknown company have jumped in no time has been totally rejected by the AO. The appellant has not at all been able to adduce cogent evidences in this regard. There is no economic or financial justification for the rise in price of these shares. The fantastic sale price realization is not at all humanly probable, as there is no economic or financial basis that a share of little known company would jump so high.

7.6 Considering the aforesaid facts and the various decisions as cited above, it is clear that the assessee has manipulated the sale of shares within a short span of time in collusion with the brokers in order to earn tax free exempt Long Term Capital Gain. Further from the above facts and surrounding circumstances,

human conduct, preponderance of probabilities etc. I find that the AO has clearly established that the impugned transaction is not made for an investment i.e. the motive is not to derive income but to earn a profit that too by an arrangement and it is a manipulated transaction in collusion with the brokers to paint creditworthiness to the transaction and claim exemption u/s 10(38). This is in accordance with the ratio laid by the Hon'ble Apex Court in Sumati Dayal Vs Commissioner Of Income-Tax, 214 ITR 801 (SC), that "the apparent must be considered the real until it is shown that there are reasons to believe that the apparent is not the real and that the taxing authorities are entitled to look into the surrounding circumstances to find out the reality and the matter has to be considered by applying the test of human probabilities."

8. In relation to the addition of Rs.40,000/- for sale of shares of SRK Industries, the amount was duly purchase of shares. So section 68 will not be applicable for the assessee. Secondly, as per information from the AR the assessee already declared the amount in IDS and accepted. In our considered view that the addition for claim of exemption under section 10(38) related to sale of shares of KDJ Holiday amounting to Rs.93,80,601/- and purchase of shares of SRK Industries amount to Rs.40,000/- is liable to be quashed. We considered the order of the co-ordinate bench. Accordingly, the impugned appeal order is set aside. In the result, the addition of total amount of Rs.94,20,601/- is quashed.

9. In the result, appeal of the assessee **ITA No.4855/Mum/2023** is allowed.

Order pronounced in the open court on 11th day of June, 2024.

Sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER
Mumbai, दिनांक/Dated: 11/06/2024
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar), **ITAT, Mumbai**