

**IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "A" Bench, Mumbai.**

Before Shri Amit Shukla (JM) & Smt. Renu Jauhri (AM)

I.T.A. No. 3961/Mum/2023 (A.Y. 2011-12)

M/s. ARV Enterprises 17, Vasant Villa Jain Derasar Marg S.V. Road, Santacruz West, Mumbai-400 054. PAN : AAMFA4079M (Appellant)	Vs.	ACIT-22(1) 322, 3 rd Floor Pirmal Chambers Lalbaug, Parel Mumbai-400 012. (Respondent)
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Assessee by	Shri Rajesh Kothari
Department by	Shri Manoj Kumar Sinha
Date of Hearing	16.04.2024
Date of Pronouncement	05.07.2024

ORDER

Per Renu Jauhri (AM) :-

The assessee has filed this appeal challenging the order dated 14.9.2023 passed by the learned CIT(A), National Faceless Appeal Centre, Delhi and it relates to A.Y. 2011-12.

2. Grounds of appeal raised by the assessee read as under :-

Addition of Rs. 74,36,500 under section 68.

1) *The learned Hon'ble Commissioner of Income-tax (A) (the CIT(A)) erred in confirming the addition of Rs. 74,36,500*

- being sale value of the shares of SVC Resource Ltd. u/s. 68 of the Act merely based on the receipt of information from the ADIT (Inv.) without having any corroborative evidence though the assessee had disclosed the Loss of Rs. 45,957 on trading of the said shares held for maximum one day under the head "Profits and gains of business or profession".*
- 2) The learned CIT(A) erred in confirming the addition of Rs. 74,36,500 made by the Id. AO on the wrong presumption that the assessee had claimed exemption of long term capital gain/business loss on shares of SVC Resource Ltd. u/s. 10(38) though in reality the assessee has offered loss on trading of the said shares under the head "Profits and gains of business or profession".*
 - 3) The learned CIT(A) erred in confirming the addition without taking into consideration the contract notes of the broker, global report and other evidences submitted during the assessment/appeal proceeding confirming the genuineness of the transaction of trading in shares of SVC Resource Ltd.*
 - 4) The learned CIT(A) erred in confirming the addition of Rs. 74,36,500 though the learned ACIT erred in not giving the various reports/statements relied for making addition of Rs. 74,36,500 for rebuttal or cross examination.*

Addition of Rs. 2,23,095 u/s. 69C

- 5) The learned CIT(A) erred in confirming the addition of Rs. 2,23,095 being 3% of the trade value of the shares of SVC Resource Ltd. u/s. 69C based on the assumption that the commission is paid for arranging the said loss without any corroborative evidence.*

Set-off of Business Loss

- 6) Without prejudice to above, the learned ACIT erred in not allowing set-off of the current year's business loss of Rs. 1,89,54,904 from the assessee income*

Reopening of Assessment

- 7) *Without prejudice to above, the learned ACIT erred in reopening the assessment under section 147 of the Act, issuing notice under section 148 of the Act and, thereafter, passing the assessment order dated 29th December 2018 without appreciating that the reassessment proceedings were barred by limitation.*
- 8) *Without prejudice to above, the learned ACIT erred in initiating reassessment proceedings after a period of four years from the end of the assessment year even though the requirement of section 149(1)(b) of the Act were not satisfied in the facts of the present case.*
- 9) *The learned ACIT erred in reopening the assessment u/s. 147 and issuing notice u/s. 148 of the Income Tax Act, 1961 merely based on the receipt some information in the garb of exempted long term capital gain/business loss in shares of SVC Resource Ltd. without verifying the correctness of the information or without even establishing any link between information received and escapement of income chargeable to tax.*
- 10) *The learned ACIT erred in reopening the assessment under section 147 of the Income Tax Act, 1961 (the Act) without having any reasonable belief that income has escaped assessment.*

3. The brief facts are that, the assessee filed its return of income declaring loss of Rs. 1,89,54,904/- on 23.9.2011, which was processed under section 143(1) of the I.T. Act. Subsequently, information was received from the Investigation wing vide email dated 29.12.2018 containing a list of buyers and sellers of the scrip viz. SVC Resources Ltd., a shell company. Based on the

information from ADIT(Inv) Unit 2(2), Mumbai vide e-mail dated 20/03/2018 that assessee sold scrip of M/s. SVC Resource Ltd valued at Rs.21,65,638/- and assessee had not shown any profit and loss from the said transaction in the return of income and it is a bogus sale of penny stock, ld. AO had a reason to believe that Rs.21,65,638/- of income chargeable to tax has escaped assessment and accordingly, notice u/s.148 was issued.

4. The Assessing Officer in his order has made general observations about how the penny stock is used by the entry provide operator to provide benefit of Bogus LTCG, which is claimed as exempt or STCL to set off STCG. After detailed observation and finding, he held that it is in the nature of accommodation entry. AO held that assessee had sold 28,500 shares of SVC Resources Ltd through broker M/s. R V Vakil on various dates @246.46 to 255.05 per share and claimed short term capital loss. Accordingly, he made addition of Rs.74,36,500/- u/s.68 holding it to be non-genuine transaction. He further estimated commission of Rs.2,23,095/- being 3% of trade value of Rs.74,36,500 on notional basis u/s.69C. The ld. CIT(A) too has confirmed the said action of the ld. AO.

6. Before us, it was argued by the ld. AR that during A.Y. 2011-12, total loss incurred is Rs. 1,84,52,844/- out of which only a meager loss of Rs. 45,957/- has arisen from the scrip of SRL. The trading in the scrip of SRL was done in July and August 2010 in good faith when nobody was aware about the penny stock

issue. The transactions have been done through stock exchange and confirmed by the broker. Assessee has been consistently trading in shares of various companies since 2006. The books of accounts are regularly audited. Arguments made before the CIT(A) have been reiterated.

7. On the other hand, ld. CIT(DR) relied on the order of the Assessing Officer and the CIT(A) and stressed upon the fact that SVC Resources Ltd. was a shell company hence, the transaction in its scrip by the assessee are bogus.

8. After considering the relevant finding given in the impugned order and the material placed on record, it is seen that assessee is regular trader of shares and showing business income from trading of shares. Assessee had purchased shares of M/s. SVC Resources Ltd. between 14/07/2010 to 05/08/2010 for Rs.74,82,457/-. These shares were immediately sold either on the same date or the next date at Rs.74,36,500/- and thereby, incurring business loss of Rs.45,957/-. In support, assessee had filed the contract note both for online purchases and online sale in the stock exchange. One important fact to be borne here is that assessee is a regular trader of shares and has been dealing in multiple scrips. The assessee has been offering income arising from trading of shares and securities, as regular business income and never claimed any capital gain or capital loss of such activities. Therefore, there is no question of any benefit of bogus long term capital gain or short term capital loss. In support of

trading in share of SVC Resources Ltd, assessee had filed photocopy of contract notes, share trading statement showing date wise trading in the said scrip, statement showing client wise scrip, summary of all the trading transactions carried out during the F.Y.2010-11 and photocopy of bank statement. Overall, assessee had dealt and transacted in 219 scrips during the F.Y.2010-11 and in every scrip, there are numerous transactions made during the year. Another important fact is that a notice u/s. 133(6) was issued to the broker who had confirmed the transaction. He has given the details of the entire scrip wise summary of transactions and all the details before the ld. AO vide letter dated 15/12/2018. Thus, on these facts and circumstances, it cannot be held that assessee was beneficiary of some kind of accommodation entry of bogus LTCG on the scrip of SVC Resources Ltd because it was an intra-trade transaction through bolt in stock exchange. Ld. AO has treated it as a typical case of accommodation entry in penny stock without analyzing the facts of the case brought on record.

9. Another important fact is that in the reasons recorded, ld. AO has mentioned the entry of sale of Rs.21,65,638/- which entry itself is incorrect because there is no such sale entry of that amount. Assessee had already stated that it had purchased the shares at Rs.74,62,857/- and sold it for Rs.74,36,500/- on the same day. Thus, the very basis of information based on which case has been reopened is on wrong presumption of facts. Accordingly, we hold that it is not a case of any accommodation

entry for bogus long term capital gain or short term capital loss as presumed by the ld. AO and ld. CIT (A). Accordingly, the addition of Rs.74,36,500/- is deleted and consequently, notional commission estimated by the ld. AO for purported commission of Rs.2,23,095/- is also deleted. Since we have already deleted the addition on merits, the issue of validity of reopening challenged before us is treated as academic.

10. Lastly, the ground no.6 regarding allowing business loss of Rs.1,89,54,904/- is consequential to above and is also allowed.

11. In the result, appeal filed by the assessee is partly allowed.

Order pronounced on 05.07.2024

Sd/-
(Amit Shukla)
Judicial Member

Sd/-
(Renu Jauhri)
Accountant Member

Mumbai.; Dated : 05/07/2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

Karuna, Sr.PS

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai