

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

BEFORE SHRI PRASHANT MAHARISHI, AM  
AND  
SHRI ANIKESH BANERJEE, JM

**ITA No. 1964/Mum/2024**  
(Assessment Year: 2014-15)

Ashok Onkardas Bissa  
Ground Floor, Devikutir,  
Anand Nagar, Caves Road,  
Jogeshwari East,  
Mumbai-400 060

Vs.

Income Tax Officer,  
Ward 41(4)(1)  
Kautilya Bhavan, BKC,  
Bandra (East),  
Mumbai-400 051

**(Appellant)**

**(Respondent)**

**PAN No. AHOPB7169E**

**Assessee by** : Ms. Sidhi Pawar, AR  
**Revenue by** : Shri Manoj Sinha, Sr. DR

**Date of hearing:** 08.07.2024  
**Date of**  
**pronouncement :** 22.07.2024

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

01. ITA No. 1964/Mum/2024, is filed by Ashok Onkardas Bissa, for A.Y. 2014-15, against the order passed by the National Faceless Appeal Centre, Delhi [the learned CIT (A)], dated 12<sup>th</sup> October, 2023, wherein the appeal filed by the assessee against the assessment order passed under Section 143(3), of the Income-tax Act, 1961 (the Act),

dated 30<sup>th</sup> December, 2016, passed by the Income Tax Officer, Ward 31(1)(2), Mumbai, was dismissed. Therefore, the assessee is aggrieved and is in appeal before us.

02. The assessee has raised following grounds of appeal:-

*"1. On the facts and circumstances of the case and in law the Ld. Commissioner of Income Tax (Appeals) has erred in deciding the appeal ex-parte in view of the fact that no notice was received by the appellant for hearing of appeal.*

*2. On the facts and circumstances of the case and in law the Ld. Commissioner of Income Tax (Appeals) has erred in dismissing the appeal and confirming addition of Rs. 4,16,36,800 as unexplained cash credit under section. 68 of the IT, Act, 1961 ignoring the admitted fact on record and categorical finding of investigation wing of the department that the appellant was one of the entity in the chain to facilitate the accommodation entries for providing Long Term Capital Gains (LTCG). He ought to have directed to the Id. A.O. to assess the commission income at 0.25 percent of the total amount deposited in the bank account.*

*3. On the facts and circumstances of the case and in law the Ld. Commissioner of Income Tax (Appeals) has erred in dismissing appeal and*

*confirming the conclusion of the Id. A.O. that the appellant failed to explain the source of deposit of cheques in the bank account when Id. A.O. himself has given the finding in the assessment order that the appellant was one entity in the chain used for providing exit route to the beneficiaries of bogus Long Term Capital Gain (LTCG). Therefore the conclusion of the Id. A.O. is contrary to his own findings in the assessment order and therefore the impugned addition is bad in law & contrary to the admitted facts on record.*

*4. On the facts and circumstances of the case and in law the Ld. Commissioner of Income Tax (Appeals) has erred in stating that no submissions evidences were filed wherein the fact remains that the appellant filed submission before CIT(A) along with paper book containing 215 pages on 01.12.2017 Copy of the acknowledgement is enclosed herewith for ready reference*

*5 On the facts and circumstances of the case and in law the Ld. Commissioner of Income Tax (Appeals) has erred in confirming the disallowance of the capital loss of Rs 25,752 on sale of shares of Sunrise Asian Ltd.*

*6. The appellant craves leave to alter, amend, modify or substitute any ground/grounds and to*

*add any new ground or grounds on or before the appeal is disposed off.”*

03. Brief facts of the case shows that assessee is an individual who filed his return of income on 28<sup>th</sup> July, 2014, declaring total income of ₹2,07,210/-. The return was picked up for scrutiny. The brother of the assessee and Authorized Representative represented the case. The income of the assessee is commission income and income from other sources. It was found that the assessee has purchased 84,800 shares of Sunrise Asian Limited and out of that assessee has sold 13,888 shares during the year. These shares were purchased at an average rate of ₹491 per share amounting to ₹4,16,36,800/-, as per AIR data. The learned Assessing Officer found that this company was a penny stock company and prices are rigged up. During the course of search on 9<sup>th</sup> February, 2016 on Mr. Vipul V. Bhatt, he admitted the same. Therefore, the assessee was questioned about the transaction and the gain arising from the above transactions. The assessee was also issued a show cause notice in response to which assessee filed an affidavit stating that he himself is engaged in activity of providing accommodation entries and operating as purchaser of shares of beneficiaries, who wanted to book the capital gains. He further stated that he used to receive cross bearer cheque from main hawala operators who are providing capital bogus gains. This cross bearer cheque was deposited in his bank account and against that the cheques were issued to stock exchange brokers against purchase of shares at a higher price when the beneficiaries



wanted to book the capital gain. He also gave the name of hawala operator, Mr. Kamlesh Sanghvi, who provided the funds of purchase of the above shares. He submitted that he has earned a commission income of 0.25% to 0.5% of the deposit amount. It was further stated that all the lenders were fictitious names. The learned Assessing Officer issued notice under Section 133(6) of the Act to Mr. Kamlesh Sanghvi and it was served by affixture. Summons under Section 131 of the Act was issued to the assessee on 20<sup>th</sup> October 2016. The assessee did not appear. Second summons was also issued under Section 131 of the Act on 7<sup>th</sup> November, 2016, which was attended by assessee on 23<sup>rd</sup> November, 2016, and his statement was recorded. He admitted that all these transactions are managed by Mr. Kamlesh Sanghvi and the assessee has merely received commission income. He further stated that he is not aware about company, whose shares he has purchased or transacted. He also stated that no books of accounts are maintained by him. Subsequently, the show cause notice was issued under Section 142(1) of the Act, as to why unexplained investment of ₹2,48,88,704/- on purchase of 70,912 shares of Sunrise Asian Limited should not be treated as income. A further show cause notice with respect to the purchase of 13,888 shares should not be treated as bogus. The assessee replied on 14<sup>th</sup> December 2016, and explained the *modus operandi* of hawala operator Mr. Kamlesh Sanghvi, and stating that he has only received the commission. The learned Assessing Officer after

considering the explanation of the assessee held that since the nature and the source of the cheques deposited into his bank account of ₹4,16,36,800/- is not explained, same were added as unexplained income under Section 68 of the Act. It was further found that assessee has incurred a capital loss of ₹25,752/- on sale consideration of 13,888 shares of Santoshima Trade links Ltd. of sale value of ₹62,96,726/- was considered as bogus loss and same was disallowed. The assessment order under Section 143(3) of the Act was passed on 30<sup>th</sup> December, 2016, determining the total income of the assessee at ₹4,18,44,010/-, wherein the addition on account of unexplained credit of ₹4,16,36,800/- was added.

04. Aggrieved with the assessment order, the assessee filed an appeal before the NFAC, Delhi, who disposed off the appeal vide order dated 12<sup>th</sup> October, 2023, for non prosecution. The assessee was issued notice on four occasions, which were not replied by the assessee. Therefore, the learned CIT (A) upheld the order of the learned Assessing Officer.
05. Aggrieved by the appellate order, the assessee preferred this appeal. Earlier this appeal was posted for hearing on 2<sup>nd</sup> July, 2024, wherein Mr. Ketan Vajani and associates on behalf of the assessee, it was adjourned today. Today also there was a request for adjournment. Ld AR was asked that it is complete non compliance before lower authorities and therefore it needs to be restored to the lower authorities only in terms of ground no 1 of the

appeal. Ld AR agreed with the same. Therefore, Ms pawar was heard and adjournment requested was rejected.

06. Ld DR submits that assessee is claiming him to be an exit provider in case of one penny stock company Sunrise Asian Limited in which Mr. Vipul Vidhur Bhatt and his accomplices provided exit to several beneficiaries for earning bogus long term capital gain. Assessee has also named one Mr. Kamlesh Sanghvai who deposited cross bearer cheques in the account of the assessee for providing funds for pay out in stock exchange. He is not produced. Assessee has failed to produce any of other parties before Id AO and also did not represent before Id CIT (A). Therefore, there is nothing wrong in the order of the lower authorities.
07. We have carefully considered the rival contentions and perused the orders of lower authorities. Assessee claimed that he is an exit provider in the scheme of providing long term capital gain to other beneficiaries in script operated of Sunrise Asian Limited by Mr. Vipul Vidhur Bhatt and his accomplices where in one Mr. kamlesh Sanghavi deposited cross bearer cheques in his account for making payout to stock exchanges when exit provided to beneficiaries. Before LD AO, assessee submitted affidavit to that extent, named various persons who deposited bank cross bearer cheques in his account. But Id AO adopted a short cut and without making proper inquiry made addition in the hands of the assessee, who claims himself to be merely conduit. It is surprising that the Id AO accepted that



assessee has purchased shares of sunrise Asian limited @ Rs 491/- per shares despite it is a matter of common knowledge based on inquiry of Investigation wing that this script is sued for providing bogus long term capital gain to the beneficiaries. Ld AO should have made inquiry [1] from the bankers about whose funds were routed in the bank account of the assessee, [2] from the brokers on stock exchange how did they make transaction on behalf of this person and to whom did they provided exit , [3] from Demat agencies in whose demat accounts such shares were credited and debited, [4] why bankers, Demat agency and brokers did not report such a huge suspicious transaction to RBI and Stock exchanges, [5] How synchronized trade of purchases by the assessee took place and to whom exit was provided , [6] where the shares appearing in Demat account were diverted to, who operated Demat account of this assessee,] should have summoned to Mr. Kamlesh Sanghavi who deposited cross account payee cheques in the bank account of the assessee as alleged by assessee himself. Ld AO should have definitely made a larger inquiry because such a kind of scam cannot happen without connivance of the bankers, demat agencies, brokers [who sold shares on behalf of assessee] on stock exchange platform. After making all these inquires ld AO should also take necessary action in case of all other persons in accordance with law. Assessee is also duty bound to support his affidavit and produce those persons. Ld AO should also make independent efforts to bring all other





person by using the necessary powers bestowed upon him in the act. It is a trite law that real income should be taxed in the hands of right assessee. As the Id AO has not made any inquiry but made the addition in the hands of the assessee, instead of restoring the matter back to the file of the Id CIT (A) , in the interest of justice and give a fair opportunity to the assessee, we restore it back to the file of Id AO to decide the issue afresh in the light of above direction. Accordingly Ground no 1 of the appeal of the assessee is allowed.

08. In view of our decision in Ground no 1 of the appeal, all other ground son merit are not required to be adjudicated and hence those are left open.
09. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 22.07. 2024.

Sd/-  
(ANIKESH BANERJEE)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 22.07. 2024

*Sudip Sarkar, Sr.PS*

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,



True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai