

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

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

ITA No.	A.Y.	Appellant	Respondent
3545/Mum/2023	2015-16	Ramesh Rikhavdas Shah, HUF, A-7, Nanddham Industrial Estate, Marol Maroshi Road,	Asst. Commissioner of Income Tax-24(3), Piramal Chamber,
3546/Mum/2023	2014-15	Andheri East, Mumbai PAN: AAAHR3289L	Lalbaug, Mumbai

Appellant by : Shri Mehul Shah,
Respondent by : Smt. Mahita Nair, Sr.DR

Date of Hearing : 09/07/2024
Date of Pronouncement : 25/07/2024

ORDER

PER B.R. BASKARAN, A.M :

Both these appeals filed by the assessee challenging the order(s) passed by the learned Commissioner of Income Tax (Appeals)-NFAC, Delhi (in short 'Ld.CIT(A)') are related to AYs. 2015-16 and 2014-15. Since the issue in these appeals is identical in nature, both these appeals were heard together and are being disposed of by this common order, for the sake of convenience.

2. In both these years, the assessee is aggrieved by the decision of the Ld.CIT(A) in confirming the addition relating to long term capital gains arising on sale of alleged penny stock made by the AO u/s. 68 of the Income Tax Act, 1961 ('the Act') and also in confirming the estimated commission expenses.

3. The facts relating to the issue are stated in brief. The assessee had purchased 10,000 shares of M/s. Midland Polymers Limited through the Stock Exchange platform at a cost of Rs. 3,03,469/-. The face value of the above said shares was Rs. 10/- per share at the time of purchase. Subsequently, the face value split into Re.1/- per share and accordingly, the assessee received one lakh shares in lieu of 10,000 held by him. Subsequently, the above said company declared bonus shares in the ratio of 1:1. Accordingly, the shareholding of the assessee in the above said company came to be increased to 2 lakhs shares. The assessee sold one lakh shares in each of the years relevant to the AYs. 2015-16 and 2014-15. Accordingly, he declared long term capital gains of Rs.40,04,025/- and Rs.51,28,916/- respectively in the above said years and claimed exemption u/s 10(38) of the Act.

4. Subsequently, the AO received information from the Investigation Wing that the shares of M/s. Midland Polymers Limited is one of the penny stocks and its prices were manipulated by certain operators in order to generate bogus capital gains/losses. On the basis of the above said information, the AO re-opened the assessment of the AY. 2014-15. The return filed by the assessee for the AY. 2015-16 was taken up for scrutiny. Based on the report received from the Investigation Wing, the AO held that the long term capital gains declared by the assessee is bogus in nature. Accordingly, he assessed the entire sale consideration received by the assessee on sale of shares as 'un-explained income' u/s. 68 of the Act. The amount added by the AO was Rs. 41,55,760/- and Rs. 52,80,650/-; respectively for the AYs. 2015-16 and 2014-15. The AO also took the view that the assessee would have incurred expenditure in procuring bogus capital gains, which he estimated at Rs.1,53,867/- and Rs.1,20,121/-; respectively for the AYs. 2015-16 and 2014-15, and assessed it in both the years.

5. In the appellate proceedings, the Ld.CIT(A) confirmed both the additions made by the AO in both the years. Aggrieved, assessee filed these appeals before the Tribunal.

6. The Ld.AR submitted that the assessee has purchased the shares from the Stock Exchange platform and also sold the shares in Stock Exchange platform. Thus, the assessee has purchased the shares in the normal course of making investments. The assessee has furnished all the evidences with regard to the purchase and sale of shares. The payment for purchase of shares was made through banking channels and sale consideration on sale of shares was also received through banking channels. He submitted that the AO did not find fault with any of the documents furnished by the assessee. He submitted that the AO has placed his reliance entirely on the report given by the Investigation wing and he did not conduct any independent enquiry with regard to the transactions carried on by the assessee. The AO has also not shown that the assessee was part of the group, which was indulging in rigging of prices of shares. The assessee was also not subjected to any enquiry by the SEBI. Hence, the AO was not justified in dis-believing the transactions, without bringing any contrary material on the record. He was also not justified in estimating commission expenses without bringing any material on record. The Ld A.R submitted that the Ld CIT(A) was also not justified in confirming the additions. Accordingly, he prayed that the order passed by the tax authorities be set aside and the AO may be directed to delete the additions made in both the years and allow exemption of long term capital gains u/s. 10(38) of the Act. The Ld.AR submitted that the case of the assessee is squarely covered by the decision of the Hon'ble Bombay High Court in the case of PCIT vs. Indravadan Jain, HUF, in ITA No. 454 of 2018.

7. On the contrary, the Ld.DR submitted that the shares of M/s. Midland Polymers Limited has been identified as one of the penny stocks by the Investigation Wing and the market price of the shares of the above said company was not commensurate with the financial strength of the company. He submitted that the share prices of the above said company has been rigged by vested interests. Hence the long term capital gains declared by the assessee has to be considered as bogus in nature. Accordingly, he supported the order(s) passed by the Ld.CIT(A) for both the years.

8. We heard the parties 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, Kolkatta in order to arrive at the conclusion that the long term capital gains reported by the assessee in both the years is bogus in nature. We notice that the investigation report prepared by Investigation wing, Kolkatta 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. The Ld A.R submitted that the transactions carried on by the assessee were not subjected to scrutiny by SEBI at all.

9. We notice that the assessee has purchased the shares from Stock exchange platform and also sold the shares in the stock exchange platform. Both the transactions have been carried out at the prevailing market rates only. The assessee has furnished evidences to prove the

factum of purchase and sale of shares. The financial transactions have also been carried out through banking channels. The shares have entered into and exited from Demat account of the assessee. We notice that the AO did not find any fault with the documents so furnished by the assessee. Under these set of facts, we are of the view that the decision rendered by Hon'ble Bombay High Court in the case of Indravadan Jain (HUF) (supra) will squarely apply to the facts of the present case. In the above said case, 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.”

Accordingly, we are of the view that there is no reason to suspect the transactions of purchase and sale of shares of above said company declared by the assessee in both the years under consideration. Accordingly, the estimated commission expenses added by the AO to the total income of both the years are also liable to be deleted.

*ITA Nos. 3545 &
3546/Mum/2023*

10. Accordingly, we set aside the orders passed by Ld CIT(A) in both the years on the above said two issues and direct the AO to delete the addition of sale consideration of shares and also estimated commission expenses made by him in both the years.

11. In the result, both the appeals filed by the assessee are allowed.

Order pronounced in the open court on 25th July, 2024

Sd/-

(JUSTICE (Retd.) C.V. BHADANG)
PRESIDENT

Sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai,
Date : 25th July, 2024

TNMM

*ITA Nos. 3545 &
3546/Mum/2023*

Copy to :

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

By Order

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