

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "J -SMC", MUMBAI

Before Shri B R Baskaran, Hon'ble Accountant Member &
Shri Anikesh Banerjee, Hon'ble Judicial Member

ITA No. 2697 & 2673/Mum/2024
(Assessment Year : 2020-21)

Umesh M Shah (HUF), 202, Navin Asha, 126 Dadasaheb Phalke Road, Dadar (East), Mumbai 400 014.		NFAC, Delhi
PAN AAAHU3090C (Appellant)		(Respondent)

For the Assessee : Shri Vimal Punmiya - CA
For the Revenue : Shri Pravin Chavan (Sr. DR)

Date of Hearing : 31.07.2024	Date of Pronouncement : 31.07.2024
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ORDER

Per B R Baskaran, Accountant Member:

Both the appeals of the assessee are directed against the very same order passed by Ld CIT(A), NFAC, Delhi for assessment year 2020-21.

2. The Ld A.R clarified that the appeal numbered as ITA No.2673/M/2024 has been filed electronically and the appeal numbered as ITA No.2697/M/2024 has been filed physically. However, the registry has allotted different appeal numbers for both these appeals. Accordingly, he submitted that the appeal numbered as ITA No.2673/M/2024 may be dismissed as infructuous. Accordingly, the appeal numbered as ITA No.2673/M/2024 is dismissed as infructuous.

3. The only issue urged in this appeal relates to the disallowance of Long term capital loss of Rs.12,31,121/- arising on sale of shares of M/s Alankit Limited.

4. The facts of the issue are that the assessee declared long term capital loss of Rs.12,31,121/- on sale of shares of M/s Alankit Limited on the reasoning that it is one of the penny stocks. In this regard, the AO has placed reliance on the report given by Investigation wing, Delhi. It is pertinent to note that the above said addition has been made u/s 68 of the Act by the AO. The Ld CIT(A) also confirmed the addition.

5. We heard the parties and perused the record. From the record, we notice that the assessee has purchased the shares through the stock market and has sold the shares through the stock market only. The shares have entered into and exited from the demat account of the assessee. We also notice that the assessee is a regular investor in shares, which is evident from the return of income filed by the assessee. These facts would prove that the assessee has purchased and sold the shares of Alankit Limited during the normal course of investment activity. We also notice that the assessee has furnished all the documents evidencing the purchase and sale of shares. The assessing officer did not find fault with any of the documents. Further, the AO has placed reliance on the investigation report only and did not make any independent inquiry in order to find out that the assessee was part of the group that was rigging or manipulating the prices of shares of M/s Alankit Limited.

6. We further notice that the assessee has declared long term capital loss, meaning thereby, it was a "debit item". However, the AO has disallowed the claim u/s 68 of the Act, which is applicable to "cash credits", which is not the case here. Hence, the action of the AO in making addition of long term capital loss as unexplained cash credit is not in accordance with law. Under these set of facts, we are of the view that the AO was not justified in disallowing the long term capital loss claimed by the assessee.

In this regard, we rely upon the decision rendered by Hon'ble Bombay High Court in the case of Indravadhan Jain (HUF) (ITA No.454 of 2018 dated 12-07-2023), wherein it was held as under:-

“4. The A.O. did not accept respondent's claim of long term capital gain and added the same in respondent's income under Section 68 of the Act. While allowing the appeal filed by respondent, the CIT[A] deleted the addition made under Section 68 of the Act. The CIT[A] has observed that the A.O. himself has stated that SEBI had conducted independent enquiry in the case of the said broker and in the scrip of RFL through whom respondent had made the said transaction and it was conclusively proved that it was the said broker who had inflated the price of the said scrip in RFL. The CIT[A] also did not find anything wrong in respondent doing only one transaction with the said broker in the scrip of RFL. The CIT[A] came to the conclusion that respondent brought 3000 shares of RFL, on the floor of Kolkata 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 Kolkata 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 instructions slip and also received payment from Kolkata 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 set aside the order passed by Ld CIT(A) and direct the AO to delete the disallowance of long term capital loss arising on sale of shares of M/s Alankit Limited.

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7. In the result,

(a) the appeal of the assessee numbered as ITA No.2697/M/2024 is allowed and

(b) the appeal of the assessee numbered as ITA No.2673/M/2024 is dismissed as infructuous.

Order pronounced in the open court on 31st July, 2024.

Sd/-

(Anikesh Banerjee)
JUDICIAL MEMBER

Mumbai, Dated : 31st July, 2024
SA

Sd/-

(B R Baskaran)
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The PCIT,
4. The CIT
5. The DR, 'J-SMC' Bench, ITAT, Mumbai

BY ORDER

//True Copy//

(Assistant Registrar)
Income Tax Appellate Tribunal, Mumbai