

IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI
BEFORE SHRI B R BASKARAN, AM AND MS. KAVITHA RAJAGOPAL, JM

ITA No.3913/Mum/2023
(Assessment Year: 2012-13)

Kunal Tejesh Gandhi 2 nd Floor, Shehnaz Building, Samarth Ramdas Road, JVPD, 10 th Road, Juhu, Mumbai – 400 049	Vs.	ITO-25(2)(5) Mumbai
PAN/GIR No. ARGPG 7626 P		
(Assessee)	:	(Respondent)
Assessee by	:	Shri Yogesh Thar
Respondent by	:	Shri P. D. Chougule
Date of Hearing	:	06.05.2024
Date of Pronouncement	:	01.08.2024

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), passed u/s.250 of the Income Tax Act, 1961 ('the Act'), relevant to the Assessment Year ('A.Y.' for short) 2012-13.

2. The assessee has challenged the addition of Rs.48,67,625/- made by the Id. Assessing Officer ('A.O.' for short) and upheld by the Id. CIT(A) on account of Long Term Capital Gain ('LTCG' for short) arising from sale of shares alleged to be a penny stock as unexplained cash credit u/s. 68 of the Act. The assessee has also challenged the grounds of violation of principles of natural justice and the reopening of the assessment along with the other consequential ground.

3. The brief facts are that the assessee is an individual and had filed his return of income dated 31.07.2012, declaring total income at Rs.6,38,636/- out of the income from other sources and loss from business. The assessee's case was reopened u/s. 147 of the Act vide notice u/s. 148 of the Act dated 23.09.2016 as per the information received from the Investigation Wing that the assessee was one of the beneficiary of accommodation entries provided by the group entities of Shri Anil Agarwal by way of LTCG on sale of shares. The ld. A.O. then passed the assessment order u/s. 143(3) r.w.s. 147 of the Act dated 12.12.2017, determining the total income at Rs.55,06,265/ after making an addition of Rs.48,67,625/- u/s. 68 of the Act as unexplained cash credit on sale of shares alleged to be a penny stock.

4. Aggrieved the assessee was in appeal before the first appellate authority who vide order dated 08.09.2023 upheld the addition made by the ld. A.O. by relying on the decision of the Hon'ble Kolkata High Court in the case of *PCIT, Kolkata vs. Swati Bajaj* (in IA No. GA/2/2022 In ITAT/6/2022 and 90 others vide order dated 14.06.2022) and the Hon'ble Delhi High Court in the case of *Suman Poddar vs. ITO*.

5. Further aggrieved, the assessee is in appeal before us, challenging the order of the ld. CIT(A).

6. The learned Authorised Representative ('ld. AR' for short) for the assessee contended that the lower authorities have erroneously made an addition u/s. 68 of the Act on factually incorrect data and had pointed out elaborately on the same. The ld. AR contended that the ld. A.O. has held that the assessee has traded mainly in a single scrip. The ld. AR further contended that the assessee has brought the said shares at the

prevailing market rate through the broker by name M/s.JHP Securities P. Ltd. which according to the Id. AR was not alleged by the department to have engaged in providing accommodation entries. The Id. AR also contended that the Id. A.O. has specified about Shri Manish Waghela and Shri Sachin Kadam who is said to have purchased the shares of M/s. Karma Industries along with the director of M/s. Fiber Texfab through the demat account with Kunvarji Finstock Private Limited (Stock Broker) for the purchase of shares of M/s. Karma Industries which the Id. AR states that the assessee is noway related to the said transaction. The Id. AR submitted that the Id. A.O. had not given copies of the statements relied upon during the assessment proceeding to the assessee and had also pointed out that they were unsigned copy without date or any specification. The Id. AR further state that the Id. A.O. has not discussed the financials of the company whose scrip, the assessee has purchased and that the Id. CIT(A) has also not gone into the evidences furnished by the assessee and has merely relied on the decision of the Hon'ble High Court in the case of *Swati Bajaj* (supra) and *Suman Poddar* (supra) and had upheld the addition made by the Id. A.O. The Id. AR distinguished the facts of the assessee's case with that of the above mentioned cases relied upon by the Id. CIT(A). The Id. AR prayed that the addition be deleted, as the assessee was in no way privy to the accommodation entry transactions.

7. The learned Departmental Representative ('Id.DR' for short), on the other hand, controverted the said fact and stated that the assessee has failed to substantiate the increase in the price of the shares in the scrip purchased by the assessee. The Id. DR further stated that the Investigation Wing has reported the said scrip to be a penny stock

and prayed that the addition be upheld. The Id. DR relied on the decision of *Swati Bajaj* (supra) and the order of the lower authorities.

8. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee has purchased 20,000 scrip of M/s. Scana Colour which was then named as Karma Ispat @ Rs.29.55 per share, aggregating to Rs.5,94,469/-. The assessee has purchased the share on 18.01.2010 and had sold the same on 09.05.2010 to 12.05.2011 @ Rs.275/- to Rs.271/- per share, aggregating to Rs.54,62,094/- with a gain of Rs.48,67,625/- and had claimed it as exempt u/s. 10(38) of the Act. The assessee's case was reopened based on the information from the Kolkata Investigation Directorate. The Id. A.O. had in her order detailed about the *modus operandi* of the said transaction and held the shares of M/s. Karma Industries to be apenny stock. It is observed that the assessee has bought the shares at a face value of Rs.29.54/- through stock brokers namely M/s. JHP Securities and had sold the same through BSE at an average rate of Rs.271/- to Rs.275/- to various entities. The Id. A.O. has discussed about the purchases of the said shares who are alleged to be the exit entry providers and to whom notice u/s. 133(6) of the Act was issued and unserved. Some of them had replied stating that they have not traded in shares of M/s. Karma Industries. The Id. A.O. has also relied on the statement of alleged accommodation entry providers and had made an addition based on the above data. The assessee's contention is that the broker through whom the assessee had purchased the alleged penny stock was not the same whose statement the Id. A.O. has relied upon and further the assessee was not furnished with the copy of the said statements neither was an opportunity to cross

examine the entry providers were given to the assessee. It is also pertinent to point out that the Id. A.O. has specified that in case of penny stock, the shares were split and bonus shares were issued for increasing the volume of the shares, which in the present case was neither split nor any bonus shares were issued pertaining to the scrip of Karma Industries. It is also observed that the assessee has not only transacted in the scrip but is also a regular investor of shares through NSE/BSE, which is evidenced by the ledger account maintained by JHP Securities Pvt. Ltd. enclosed at pg. no. 51 of the paper book. The assessee has also contended that the other transactions entered into by the assessee with the said share broker had not been disputed by the lower authorities. The assessee has also contended that the Id. A.O. has failed to establish the cash trail involving the assessee and the share brokers but has rather given a general finding on various scrips that are alleged to be penny stock by the Investigation Report of the Income Tax Department and by the order of SEBI. The Id. A.O. has merely said to have relied on the statement of third parties and the other buyers of the said scrip which does not relate to the assessee or his broker. The assessee has relied on various decisions of the coordinate bench in support of his contention. The assessee has also relied on the decision of Hon'ble Jurisdictional High Court in the case of *Pr. CIT vs. Indravadan Jain HUF* (in ITA No. 454 of 2018 vide order dated 12.07.2023) which on identical facts has deleted the impugned addition holding the share transaction to be genuine.

9. By respectfully following the above said decision, we hereby allow the ground no. III raised by the assessee and direct the Id. A.O. to delete the impugned addition. As we

have decided the issue on the merits of the case, the other grounds raised by the assessee requires no adjudication.

10. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 01.08.2024.

Sd/-

Sd/-

(B R Baskaran)
Accountant Member

(Kavitha Rajagopal)
Judicial Member

Mumbai; Dated : 01.08.2024
Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai