

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

I.T.A No.2929/Mum/2023
(Assessment Year: 2015-16)

Smt. Priyanka Om Prakash Bajaj, 1, Pramukh 19 Friends Society, N.S. Road, J.V.P.D. Vile Parle (West), Mumbai-400056 PAN: AGCPB6476D	vs	Income Tax Officer-25(3)(2), Mumbai (Old Ward) [New Ward – Income Tax Officer-34(3)(2), Mumbai, Room No.834, Kautilya Bhavan, G Block, BKC, Bandra East Mumbai-400 051
APPELLANT		RESPONDENT

Assessee by : ShriRushabh Mehta
Respondent by : Shri Yogendra T.Wakare (Sr. DR)

Date of hearing : 07/08/2024
Date of pronouncement : 13/ 08/2024

ORDER

PER ANIKESH BANERJEE, J.M:

Instant appeal of the assessee was filed against the order of the Learned National Faceless Appeal Centre (NFAC), Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') for Assessment Year 2015-16, date of order 28.06.2023. The impugned order was emanated from

the order of the Ld. Income-tax Officer – 25(3)(2), Mumbai, order passed under section 143(3) of the Act, date of order 13/12/2017.

2. The assessee has taken the following grounds:-

“1) The assessment order passed u/s. 143(3) by the Assessing Officers without Invalid and bad in law and against the principle of natural justice

(2) (a) The Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Center 11. CIT(A) erred in facts and law in confirming the addition made by the Id. Assessing Office u/s. 68 of the Act of sale proceeds of Rs. 96,32,530/-on sale of shares of M/s. MatraKaushal Enterprise Ltd., a listed company, treating it as undisclosed income and thereby no exemption under section 10(38) of the Act merely on his own surmises and ca without finding any defects in any of the documentary evidence placed on without even appreciating the comprehensive explanation and evidences placed by the appellant.

(b)The Id. CIT(A) erred in not appreciating the fact that there is no cogent material brought on record which could establish that the transaction made by the purchase and sale of shares of Mis. Matra Kaushal Enterprise Ltd and long term earned thereon is a bogus transaction except relying upon general and vague contained in the report received from the Kolkata Investigation Wing and correlating the same with the appellant.

(c)The id. CIT(A) failed to appreciate that the price and volume of trade are decided by the independent market forces and also non-financial parameters without the inter appellant at any stage and that the fluctuation and movement of share pr company as in present case, is beyond the control of the appellant.

(d)The Id. CIT(A) also failed to appreciate that the Id. Assessing Officer has not mutual connivance between the appellant and the entry operators, promoters, brokers or the exit providers in order to prove the fact that the appellant has taken any benefit of alleged accommodation entries to claim exemption u/s 10(38) of the Act.

(e)The Ld.CIT(A) failed to appreciate that merely because the notices u/s. 133(6) issued by the Id. Assessing Officer to the alleged exit providers were unserved/not replied, no fault could be placed at appellant's door and no adverse view could be drawn

especially when the appellant does not even know the purchasers of shares as the transaction of sale of shares were done on recognized stock exchange where the counter parties are not known and more so when the Id. Assessing Officer himself failed to provide the details of such exit providers to the appellant during the assessment proceedings which is in complete violation of principles of natural justice.

(f)The Id. CIT(A) failed to appreciate that the Id. Assessing Officer made the addition without providing the copy of SEBI report/order to the appellant and without confronting the appellant with the statements of various operators, entry providers and the stock brokers where they have allegedly admitted of providing the accommodation entries in the form of LTCG/STCL and also denying the appellant the opportunity to cross examine such persons despite of appellant's specific request. The Id. Assessing Officer has not even provided the names of such parties whose statements were recorded and on which reliance was being placed. Therefore, the order, so made in disregard of principles of natural justice, is vitiated.

(g)The Id. CIT(A) failed to appreciate that the Id. Assessing Officer made the addition without providing to the appellant the copy of order of SEBI for suspension in the trading of scrip of M/s. Matra Kaushal Enterprises Ltd. The Id. CIT(A) failed to appreciate that, as per the Suspension order found by the appellant from public domain, the suspension by the SEBI was due to a procedural lapse on part of the company and not for the reason of any price manipulation as alleged by the Id. Assessing Officer and that the said suspension was also revoked later by the SEBI and that such temporary suspension by the SEBI was not invoked during the period when the shares in the alleged scrip were held by the appellant.

(h)The Id. CIT(A) ought not to have upheld the action of the Id. Assessing Officer of making the impugned addition in as much as the Id. Assessing Officer has not proved that any unaccounted money in the form of cash was received by the alleged operators from the appellant.

(i)Without prejudice, the Id. CIT(A) and Id. Assessing Officer failed to appreciate that the appellant is an innocent and gullible investor who acted like a normal investor by investing her surplus funds in the alleged scrip which was a nominal amount, held the scrip for some time and later when there was sufficient appreciation in the price of the scrip, she decided to take an exit and eventually earned good profits without having any link in any manner whatsoever with so called price manipulators, entry operators, etc.

(3) Without prejudice, the Id. CIT(A) is not justified in confirming the action of the Id. Assessing Officer of not restricting the addition to the extent of long-term capital gain of Rs.94,41,530/- without appreciating that the cost of investment in alleged shares to the tune of Rs. 1,91,000/- stood duly explained.

4) Without prejudice, the Id. Assessing Officer and CIT(A) erred in facts and law in making the impugned addition u/s. 68 of the Act without appreciating that no books of accounts are maintained by the assessee and that the transaction entered by the appellant is not a loan transaction or any such transaction which comes under the purview of section 68 of the Act.

5) Your appellant craves leave to add, alter, amend, delete or modify any or all the grounds of appeal.”

3. The brief facts of the case are that the assessee is a salaried person and made an investment in shares. The assessee sold share of “M/s. Matra Kaushal Enterprise Ltd” (in short, MKEL) and earned the capital gain amount to Rs.92,53,101/- by selling 19,100 shares in impugned assessment year. The assessee claimed this income as exempted under section 10(38) of the Act. The assessment was framed by the Ld.AO and rejected the claim under section 10(38) of the Act. Finally, the entire amount to Rs.96,32,530/- was added back under section 68 of the Act. The Id.AO claimed that the entire sale proceeds of the share of MKEL amount to Rs.96,37,530/- is bogus and was added back with the total income of the assessee. The aggrieved assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) upheld the assessment order. Being aggrieved, the assessee filed an appeal before us.

4. The Id.AR submitted the written submission which is kept in the record (in short APB). The Id.AR in argument placed that the assessee is investor of share and mutual funds. The assessee initially purchased 20,000/- shares of M/s

Kaushalya Global Ltd of face value of Rs.10/- each. Subsequently, the company was amalgamated with M/s PL Enterprises Ltd under section 393 of the Companies' Act, 1956 in March, 2013. The scheme of amalgamation was duly approved by the Hon'ble Jurisdictional High Court vide its order dated 24/06/2013. The assessee was allotted 20,000 shares of PL Enterprises Ltd in lieu of its existing shareholding in M/s Kaushalya Global Ltd being the amalgamated company on dated 24/06/2013. Subsequently, M/s PL Enterprises got listed on BSE and changed the name to M/s. Matra Kaushal Enterprise Ltd on dated 20/11/2013. The shares of MKEL are credited to demat account of the assessee on dated 16/12/2013. The shares of MKEL were also split from Rs.10/- to Rs.1/- each in ratio of 1:10. During the impugned assessment year, the assessee, after holding the share for 18 months, sold 1,91,000 shares for a total consideration of Rs.96,32,530/- on 12/1/2014 and earned LTCG of Rs.94,41,530/-. The Id.AO has treated the entire LTCG as bogus and the exemption under section 10(38) is rejected and the entire gross receipt of sale of share was added back with the total income. The Id.AR respectfully relied on the order of the jurisdictional High Court in the case of **CIT vs Sam R Pawar 54 taxman.com 108 (Bom)** and orders of the coordinate bench in the cases of **Pankaj Kantilal Shah vs DCIT ITA NO.576/Mum/2022**, date of pronouncement **16/06/2023**. The observation of the bench in **Rehana Anwar Shaikh vs Assessing Authority, Delhi ITA No.1606/Mum/2022**, dt of pronouncement **31/08/2023** is reproduced as below:-

"15. Accordingly, in the facts and circumstances of the case, we are of the view that the decision rendered by the jurisdictional Hon'ble Bombay High Court in the above said case of Shyam R Pawar (supra) and Ziauddin A Siddique (supra) shall

apply in the present case, since the AO has not established that the assessee was involved in price rigging and further the AO did not find fault with any of the documents furnished by the assessee.

16. We noticed earlier that the AO has assessed the Sale consideration of shares as unexplained cash credit u/s 68 of the Act. It is pertinent to note that the purchase of shares made in an earlier year has been accepted by the revenue. The sale of shares has taken place in the online platform of the Stock exchange and the sale consideration has been received through the stockbroker in banking channels. Hence, in the facts of the case, the sale consideration cannot be considered to be unexplained cash credit in terms sec. 68 of the Act. '

17. In view of the foregoing discussions, we hold that the sale consideration received on sale of shares cannot be assessed as unexplained cash credit u/ 68 of the Act and the long-term capital gains declared by the assessee cannot be doubted with. Accordingly, we set aside the order passed by Ld CIT(A) and direct the AO to delete the impugned addition made by him."

5. The Ld.DR vehemently argued and relied on the assessment order. The relevant paragraph of assessment order is reproduced as follows: -

"14. Findings and conclusion

14.1 The submissions made by the assessee and reply to show cause is considered. The facts of the case, investigations made by various directorates, statements recorded during the assessment proceedings are considered. From the discussion in the preceding paras it is concluded that long term capital gains booked by assessee in its books were pre-arranged method to evade taxes and launder money. Following are the findings and the reasons which substantiates the findings.

*a. **Mode of acquisition of the shares:** The assessee has acquired 191000 shares of Matra Kaushal Enterprise Ltd. by way of preferential allotment through company. However, assessee doesn't know anything about the company, neither the directors nor the financial and credentials of the company. How the deals were arranged was also not explained by the assessee. How the purchase price of Re. 1/- was decided upon for purchase of the shares of Matra Kaushal Enterprise Ltd. is not known to the assessee.*

*b. **Sale of shares and unusual rise in the price:** Further the assessee has sold the 191000 shares at the price of Rs. 53.43p, thus resulting the long term capital gain of Rs. 94,41,530/-, which is nearly 54 times the increase of the cost price, and as discussed the rise in share prices is not holding to any commercial principles and market factors.*

*c. **Findings of Investigation wing:** The findings of the Directorate of Investigation of Mumbai and Kolkata as discussed above have proved that various entry operators and the assessee had worked out an arrangement in which the shares were acquired by the assessee, the share prices were rigged and then with the help of entry operators by routing the cash, shares were sold at high price to arrive at tax free capital gains.*

Analysis of transactions: Facts revealed that such trading transactions of purchase and sale of shares are not been effected, for commercial purpose but to create artificial gains, with a view to evade taxes-

i. Transactions of shares were not governed by market factors prevalent at relevant time in such trade, but same were product of design and mutual connivance on part of assessee and the operators.

ii. *The assessee resorted to a preconceived scheme to procure long-term capital gains by way of price difference in share transactions not supported by market factors.”*

The Id.DR also relied on the appeal order and paragraph 6.3.1 is reproduced as under: -

“6.3.1 The AO drawn pictorial depiction of the whole scheme in the assessment order and also drawn trading pattern of Increase of share price of M/s. Matra Kaushal Enterprise Ltd non-commensuration with financial results. It is also seen from the assessment order that the appellant issued summons to the appellant and recorded statement, wherein it was found that the appellant do not have knowledge of the financials of the company in which she invested. The AO also drawn daily trading details of shares, its price and volume movement of the company from 01.04.2011 to 31.03.2014 in a graphical form. The AO also issued letters u/s. 133(6) of the Act to purchasers of the shares (as mentioned in the assessment order), calling for details of share sale/purchase with the appellant during the year, demat account details, period of holding of these shares, source of fund and return of income. The said letters were returned back to the AO unserved by the postal authorities and held that these buyers are either dummy persons/artificial entities made for the purpose of providing entry or the persons who want to take an artificial short term loss. The AO further held that during this period under consideration, normal returns on savings were 7.80-8.5% and on BSE/Sensex, it was around 15- 19%. Thus, the AO found that the appellant had earned capital gains of Rs.94,41,3507- within a span of 27 months upon sale of 191000 shares at a price of Rs.53.43p as against cost price of shares of 191000 at Rs.1,91,0007- on 17.08.2012 which is unrealistic. After careful examination of the details filed by the appellant and the detailed findings by the Assessing Officer, it

is held that the entire LTCG claimed by the appellant amounting to Rs.4,02,07,850/- is bogus and the action of the Assessing Officer in treating the LTCG as unexplained cash credit u/s.68 of the Act is upheld and Ground No.2 is dismissed.”

6. We heard the rival submission, considered the documents available in the record. The assessee has earned the capital gain through a method of allotment of preferential shares on dated 27/08/2012. The sales were conducted through stock exchange BSE at an average rate of Rs.53.43 per share and total sale of 1,90,000 shares amount to Rs.96,32,530/-. The copy of the demat account is submitted before the Bench. All the relevant documents related to payment for purchase of shares, the sale of shares and payment received through online banking channel and share certificate were also filed by the assessee before the authorities. The Id.AO has made a separate investigation during the assessment proceedings and the statement of the assessee was recorded under section 131 of the Act. The assessee stated that assessee had no knowledge about the dealings of the shares. All dealings were done through the advice of his father Shri Omprakash Bajaj, who is by profession a Chartered Accountant. The Id.AO has not fully depended on the report of the Investigating Authority but also conducted an investigation of the purchasers of shares by issuance of notice under section 133(6) of the Act. But all the notices are unserved, and none of the notices of the Id. AO was complied with. The assessee failed to bring the identity of the exit provider. The Id. AO in assessment had failed to make enquiry related to the father of the assessee, who dealt the matter on behalf of the assessee. In fact, with the SEBI partially suspended the Scrip, but later on the suspension was

withdrawn. So, there is no restriction for dealing in the shares in BSE. But on factual aspect, the verification was carried out by the Ld.AO was unsatisfactory and incomplete. The Id. AO recognized the exit provider but after issuance of notice the reasonable opportunity for assessee is denied. The investigation of fact is incomplete in assessment stage. In our considered view, we remit the matter to the file of the Id.AO for adjudication *de novo* and necessary statement should be recorded related to these transactions. We order accordingly.

7. In the result, appeal of the assessee **ITA No. 2929/Mum/2023** is allowed for statistical purposes.

Order pronounced in the open court on 13th day of August, 2024.

Sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 13/08/2024

Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar), ITAT, Mumbai