

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं  
श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND  
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.50/Chny/2024  
निर्धारण वर्ष/Assessment Year: 2014-15

Mr. Sunil Kumar Ranka, Flat No.5D Prince Paradise Apt., 75 Jermiah Road, Vepey, Chennai-600 007.	v.	The ITO, NCW-6(1), Chennai.
[PAN: ABCPS 0212 R]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Shri D. Anand, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Shri P. Sajit Kumar, JCIT
सुनवाईकीतारीख/Date of Hearing	:	01.07.2024
घोषणाकीतारीख /Date of Pronouncement	:	21.08.2024

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

This is an appeal preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter in short "the Ld.CIT(A)"), Delhi, dated 31.03.2023 for the Assessment Year (hereinafter in short "AY") 2014-15.



:: 2 ::

**2.** At the outset, it is noticed that there is a delay of '224' days in filing of this appeal; and the assessee has filed an Affidavit, requesting to condone the delay, citing the cause of the delay, which we note from the contents of the Affidavit, that he came to know about the impugned order only in the first week of January, 2024; and immediately, he contacted his Chartered Accountant and got the appeal prepared and filed the appeal in ITAT on 09.01.2024. After perusal of the contents of the Affidavit, we note that there is no material to dispute the averments given in Affidavit, and is of the opinion that assessee doesn't neither gain nor derives any benefit, from non-filing of appeal, hence, we are of the view that delay caused in filing the appeal cannot be termed as deliberate/negligent. Therefore, for the ends of justice and fair play, we condone the delay and proceed to hear the appeal on merits.

**3.** The main grievance of the assessee is against the action of the Ld.CIT(A) confirming the action of the AO by disallowing the claim of 'Long Term Capital Gains' (hereinafter in short "LTCG") u/s.10(38) of the Income Tax Act, 1961 (hereinafter in short "the Act").

**4.** The brief facts are that the assessee had filed his return of income for AY 2014-15 on 13.12.2015 admitting total income of Rs. 2,59,810/- and later, the case was selected for scrutiny under CASS. The AO noted that assessee had sold 1250 shares of M/s.Nikki Global (hereinafter in



:: 3 ::

short "M/s.Nikki") for Rs.11,46,790/- and claimed LTCG of Rs.9,58,324/- as exempt u/s.10(38) of the Act. The assessee brought to the notice of the AO that he had purchased 1250 shares on 24.07.2012, at a value of Rs.130.25 per share for total purchase consideration of Rs.1,63,300/-. It was pointed out that the shares were purchased from Bombay Stock Exchange (hereinafter in short "BSE") and consideration passed through banking channel; and to prove the veracity of the claim, had filed the Contract Note dated 24.07.2012 through registered Stock Broker, under the SEBI M/s.Motilal Oswal Securities Ltd; and that these shares were duly credited into the De-mat a/c of the assessee and thereafter, he had sold the said shares on 24.10.2023 through BSE at a price of Rs.920/- per share for a total consideration of Rs.11,68,492/- vide Contract Note dated 24.10.2013 through the same registered Stock Broker of SEBI i.e. M/s.Motilal Oswal Securities Ltd., and the consideration has passed through the bank; and the LTCG claimed by the assessee in this transaction was to the tune of Rs.9,58,324/- as exempt u/s.10(38) of the Act. However, the AO taking note of the report from the Investigation Wing of the Department (Kolkata) that the shares of M/s.Nikki was a penny stock, he was pleased to hold that the LTCG was nothing but bogus gain; and was pleased to add the entire sale value of Rs.11,46,790/- as income of the assessee under the head '*income from other sources*' and added the same to the total income of the assessee.



:: 4 ::

**5.** Aggrieved, the assessee preferred an appeal before the Ld.CIT(A) who was pleased to confirm the action of the AO.

**6.** Aggrieved, the assessee is in appeal before this Tribunal.

**7.** We have heard both the parties and perused the material available on record. We note that the assessee is a *regular Investor* in shares which fact is discernable from the copy of De-mat a/c statement placed before us. We find that the assessee being an Investor has purchased the shares of M/s.Nikki on 24.07.2012 which fact is evident from the Contract Note of purchase of shares a copy of which is found placed at Page Nos.1-2 of the Paper Book; and it shows that the assessee has purchased 1250 shares of M/s.Nikki Global @ Rs.130.25 per share for a purchase consideration of Rs.1,63,300/- which has been purchased from BSE through the registered Stock Broker of SEBI M/s.Motilal Oswal Securities Ltd., and the purchase transaction is evident from the perusal of Page Nos.3-4 of the Paper Book; and it is noted that shares of M/s.Nikki has been credited in the De-mat a/c, copy of which is found placed at Page Nos.5-6 of the Paper Book. Later, on 24.10.2013 (relevant Assessment Year) assessee had sold these shares through BSE on 24.10.2023 @ Rs.920/- per share for a consideration of Rs.11,68,492/- through the same broker, which fact is discernable from Page Nos.7-8 of the Paper Book and the consideration has passed through banking channel which



:: 5 ::

fact is evident from the bank account statement placed at Page Nos.9-10 of the Paper Book. The De-mat a/c statement shows that the assessee is regularly investing in shares of various shares like Squads Ltd., Helios & Math Inf., JSW Ispat, Mardia Chemicals, ONGC Oriental Trimex, Reliance Power, Cinemax Prop. and etc. This crucial fact shows that assessee is a regular Investor and being a regular investor has also purchased the shares of M/s.Nikki in regular course, and has sold the shares when the price was high; and in that process, has made LTCG of Rs.9,58,324/- which was claimed as exempt income, can't be disallowed merely on the report of investigation report, which is a general report; and moreover, it is not the case of AO that in the report it has been alleged that assessee had a role in the wrong deeds stated therein while buying & selling of shares of M/s.Nikki. Therefore, we are of the view that in the facts and circumstance of the case, the AO ought to have allowed the claim of LTCG arising from sale of shares of M/s Nikki as held by the Hon'ble Bombay High Court in the case of PCIT v. Indravadan Jain, HUF in ITA 454 of 2018 and also the Hon'ble Delhi High Court in the case of PCIT & Ors. V. Krishna Devi & Ors in ITA No.125/2020 dated 15.01.2021. Therefore, we don't countenance the action of the AO making entire addition of sale consideration of Rs.11,46,790/- under the head 'income from other sources'. Therefore, in the light of the discussion (supra), we direct the AO to delete Rs.11,46,790/-. Before parting, we note that the decision of



ITA No.50/Chny/2024 (AY 2014-15)  
Mr. Sunil Kumar Ranka

:: 6 ::

the Hon'ble Calcutta High Court in the case of PCIT v. Swati Bajaj reported in [2022] 139 taxmann.com 352 relied by Ld DR, is distinguishable on facts and can't come to the aid of the Revenue.

**8.** In the result, appeal filed by the assessee is allowed.

Order pronounced on the 21<sup>st</sup> day of August, 2024, in Chennai.

**Sd/-**  
(अमिताभ शुक्ला)  
(AMITABH SHUKLA)  
लेखा सदस्य/ACCOUNTANT MEMBER

**Sd/-**  
(एबी टी. वर्की)  
(ABY T. VARKEY)  
न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai,  
दिनांक/Dated: 21<sup>st</sup> August, 2024.  
**TLN, Sr.PS**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीय प्रतिनिधि/DR
5. गार्डफाईल/GF