

| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
SHRI SUNIL KUMAR SINGH, HON'BLE JUDICIAL MEMBER

I.T.A. No. 1144/Mum/2024
Assessment Year: 2006-07

Admire Hotels India Private Limited 61A, Anita Apts 6 th Floor Mount Pleasant Rd. Malabar Hill Mumbai - 400006 [PAN: AAECA3959P]	Vs	Income Tax Officer, 5(1)(1), Mumbai
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Haridas Bhat, A/R
Revenue by :	Shri R.R. Makwana, Sr. D/R

सुनवाई की तारीख/**Date of Hearing** : 26/08/2024
घोषणा की तारीख/**Date of Pronouncement** : 28/08/2024

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM :

This appeal by the assessee is preferred against the order of the ld. CIT(A), Addl./JCIT(A)-4, Kolkata [in short 'ld. CIT(A)], dated 15/01/2024 pertaining to AY 2006-07.

2. The sum and substance of the grievance of the assessee is that, the ld. CIT(A) erred in confirming the order passed by the AO thereby confirming the action of the AO in treating the short term capital gain of Rs. 17,80,156/- as undisclosed income.

3. Briefly stated, the facts of the case are that the assessee is in the business of hospitality and hotels. Return for the year under consideration was filed on 26/05/2006 declaring total income of Rs.24,76,867/-. Subsequently, the assessment was reopened on the basis

of reason to believe that income has escaped assessment and accordingly statutory notices were issued and served upon the assessee. During the course of the scrutiny assessment proceedings, the AO noticed that the assessee has shown short term capital gain on transfer of shares of Maruti Infrastructure Ltd. and Sundaram Multi Pap Limited, as under:-

Name of scrip	No. of shares	Dt. of purchase	Cost of Purchase	Dt. of sale	Sale amount	STC gain
Maruti Infra	24,500	19-05-05	126,175	12-12-05	444,675	318,500
Sundaram Multi	6,500	04-07-05	24,765	15-12-05	93,080	68,315
	32,700	04-07-05	124,587	16-12-05	461,724	337,137
	44,830	04-07-05	170,802	20-12-05	617,757	446,955
	52,814	04-07-05	201,221	21-12-05	720,135	518,914
	10,000	04-07-05	38,100	23-12-05	127,000	88,900
	156	04-07-05	594	02-02-06	2,030	1,436
Total			686,245		2,466,401	1,780,156
Total STC gain						1,780,156

3.1. The assessee furnished complete details relating to the claim of short term capital gains.

3.2. To verify the genuineness of the claim, summons u/s 131 of the Act were issued to Mukesh Choksi, whose statement was recorded. In his statement, Mukesh Choksi admitted that he is providing speculation profit adjustment entries, short term profit adjustment entries, long term & short term capital gains adjustment entries and share application adjustment entries. The statement of Mukesh Choksi was provided to the assessee who kept silent and contended that the purchase and sales of impugned shares were routed through D-mat accounts and payments have been made through banking channels. After considering the facts, submissions and documentary evidence and placing strong reliance on the statement of Mukesh Choksi, the AO came to the conclusion that no genuine purchases were made by the

assessee and the transactions are fabricated transactions, resulting in artificial/bogus capital gains and proceeded by treating the short term capital gain of Rs.17,80,156/- as income from undisclosed sources and further added Rs.2,670/- as alleged commission paid by the assessee for getting the accommodation entries.

3.3. The assessee carried the matter before the ld. CIT(A) but without success.

4. Before us, the ld. Counsel for the assessee reiterated what has been stated before the lower authorities and placed strong reliance on the decision of the Hon'ble High Court of Bombay in the case of *PCIT vs. Indravadan Jain in IT Appeal No. 454 of 2018, judgment dt. 12/07/2023*.

Per Contra, the ld. D/R strongly supported the findings of the AO/ld. CIT(A).

5. We have given a thoughtful consideration to the orders of the authorities below. The undisputed fact is that the assessee has purchased shares of Maruti Infrastructure Ltd. and Sundaram Multi Pap Limited, from Alliance Intermediaries and Network Pvt. Ltd., a concern run by Mukesh Choksi. It is also true that in his statement, Mukesh Choksi admitted that he has been providing accommodation entries but it is equally true that all the transactions have been done through D-mat account with proper banking channel and sales have been made through Lalkar Securities and Sunnidhi Consultancy Services Pvt. Ltd., who were never questioned by the AO. The AO has doubted the genuineness of the purchases but did not examine the sales which were not through Mukesh Choksi but some other brokers. It is also not the case of the AO that the prices at which the shares were

transacted as mentioned in the chart elsewhere, were not the prevailing prices on the stock exchanges. It is also not the case of the AO that the stock exchanges/SEBI has banned the transactions on the impugned shares. Merely because Mukesh Choksi was providing accommodation entries, would not suffice to treat the short term capital gains as income from other sources.

6. Considering the facts in totality, we find that the shares were sold on the floor of stock exchanges through the help of brokers. The Hon'ble Bombay High Court in the case of *Indravadan Jain (supra)*, had the occasion to consider a similar situation. The relevant findings of the Hon'ble High Court read 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."

7. Considering the facts of the case in totality in the light of the decisions of the Hon'ble Bombay High Court (*supra*), we are of the considered view that gain of Rs.17,80,156/- is short term capital gains and should be taxed accordingly.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the Court on 28th August, 2024 at Mumbai.

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated 28/08/2024

S.S.P.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि ,आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai