

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: Hon'ble SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 95/JP/2023
निर्धारण वर्ष/Assessment Year : 2014-15

Shri Parasmal Bhandari 104, Vinayak Apartment, Chomu Circle C-Scheme, Jaipur	बनाम Vs.	The ITO Ward 6 (2) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AFJPB 6961 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Prateek Kedawat, Advocate
राजस्व की ओर से / Revenue by: Mrs. Monisha Choudhary, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 15/05/2024
उदघोषणा की तारीख / Date of Pronouncement: 07/08/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 28-12-2023, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2014-15 raising following grounds of appeal.

“1. That the Ld. Assessing Officer grossly erred in not sharing evidence/information available with him before making the impugned addition and not providing any opportunity of cross examination which is in gross violation of principle of natural justice.

2. That the Ld. Lower authorities has passed the order on presumption despite none of the persons whose statement have been recorded by the Director of Income Tax (investigation), Kolkata during the course of Search and Surveys of those persons none of them have taken name of assessee and none of them was broker to the assessee

3. That the Ld. lower authorities grossly erred in relying on data information/ documents which are wholly unrelated to the shares in which assessee has dealt in and the additions made by the id Assessing Officer was on assumption and presumption basis which is illegal and bad in law.

4. That on the law and in the facts and in the circumstances of the case, the Id. lower authorities grossly erred in adding Rs. 63,702/- on account of commission paid for acquiring bogus accommodation entries by the assessee appellant and treating the same as undisclosed expenditure. Despite none of the persons whose statement have been recorded by the Director of Income Tax (investigation), Kolkata during the course of Search and Surveys of those persons none of them have taken name of assessee and none of them was broker to the assessee.

5. That the lower authorities further erred in rejecting the assessee's claim the assessee's broker is Motisons Shares Pvt Ltd. The lower authorities wrongfully disallowed the assessee's claim, the acquisition of shares by the asseesee was through public issue and sale transactions were through her broker and not through any person who was enquired by the Director of Income Tax (Investigation), Kolkata.

6. That on the law and in the facts and in the circumstances of the case, the Ld. lower authorities grossly erred in rejecting Long Term Capital Gain earned from sale of shares amounting Rs. Rs.

9,83,003.00-claimed by the assessee appellant as exempt u/s 10(38) of the Income Tax Act and wrongly holding that the whole transaction done by the assessee is as a Shame transaction which is illegal and bad in law.’’

2.1 During the course of hearing, the Bench noted that there is delay of two days in filing the appeal for which the assessee has filed an application for condonation of delay giving reason that the delay took place because of taking legal advice from the counsel. Thus the delay in filing the appeal is not intentional which may kindly be condoned. To this effect, the assessee has filed an affidavit deposing the above reasons.

2.2 On the other hand, the ld. DR objected to such delay but submitted that the Court may decide the issue as deem fit and proper in the case.

2.3 After hearing both parties and perusing the materials available on record, it is noted that there is a merit in the submission of the assessee. Hence, the delay is condoned.

3.1 At the very outset of the hearing, the ld. AR appearing on behalf of the assessee submitted that present case of the assessee is covered by M/s. Channel Nine Entertainment Ltd. whose shares have been sold by the assessee and earned long term capital gain has been doubted by the AO and thus the AO made addition by holding that the assessee earned unaccounted income of Rs.9,83,603/- during the year under consideration, camouflaged as long term capital gains which has

been proved as bogus entry. The observation of the AO as made by the Id. CIT(A) at para 6.6 of his order is as under:-

“6.6 Thus, in the end, AO in view of the detailed analysis held that unaccounted income of Rs.9,83,603/- routed back to the assessee, during the year under consideration, camouflaged as Long Term Capital Gains, which has been proved as bogus entry. This way, the assessee was in receipt of cash credit of Rs.9,83,603/- for which he failed to offer any explanation especially in light of credible evidences gathered by the department. The sum of Rs.9,83,603/- was therefore added u/s 68 to the total income of the assessee.”

3.2 Whereas the Id. AR of the assessee strongly submitted that Revenue Authorities have wrongly made addition u/s 68 of the Act by rejecting the claim of exemption u/s 10(38) of the Act. It was also submitted that the AO has merely acted upon the report of Investigation Wing of the Income-Tax Department, Kolkata without independently verifying the said report. It was also submitted that the said the said report do not carry the name of the assessee as beneficiary anywhere and even there is no evidence in the form of documents which have been placed by the AO which gives rise to make disallowance of assessee's claim of exemption as long term capital gain. Even otherwise, veracity and back ground of company M/s. Channel Nine Entertainment Ltd. has already been subject matter of scrutinization before the Coordinate Bench of ITAT Delhi in the case of Amit Rastogi, HUF and another vs ITO Ward 1(1) Meerut in ITA No. 2128 to

2132/Del/2018 for the assessment year 2015-16 decided on 24-10-2018 wherein the back ground and financial statement of said company M/s. Channel Nine Entertainment Ltd. has already been discussed at length and operative portion of the order of the Coordinate Bench in the case of Amit Rastogi, HUF and another (supra) is reproduced as under:-

8.1 have heard the rival submission and also perused the findings given in the impugned orders as well as mater referred to before me. The assessee had purchased 6500 share of M/ Channel Nine Entertainment Ltd. through a broker, M/s. Panchsheel Securities Pvt. Ltd. which is based at New Delhi. The said broker has issued a bill which has been placed at page 11 of the paper book and said purchases has been made on 23.03.2013 through banking channels and amount has been transferred through NEFT from HDFC Bank Defence Colony, Meerut. The said shares were transferred to assessee's DEMAT account with HDFC Bank on 01.04.2013, ie, within a week. Later on, these shares have been sold at Rs.32,23,033/-in the month of December, 2014, i.e., after a period of more than one year and eight months through HDFC Security Ltd. at BSF after paying STT. This is evident from the statement and contract notes issued by the HDFC Securities Ltd. On sale of such shares, DEMAT account of the assessee with IHDFC Bank was duly credited on 19.12.2014.1.T.As. No.2128, 2129,2131, 2132/Del/2018 8 and 12.12.2014. The sale proceeds have been duly received through bank transfer in the assessee's bank account with HDFC. None of these evidences or documents have been negated or have been inquired upon by the Assessing Officer or Id. CIT (A). Learned Assessing Officer without any material or information on record pertaining to the assessee has referred to some inquiry conducted by Investigation Wing Kolkata way back, wherein racket of entities providing bogus entries of Long Term Capital Gain was unearthed. After explaining the general modus operandi how entry providers gives Long Term Capital Gain, Assessing Officer has tried to

see the entire transactions of the assessee with the same lens as if assessee too was involved in such kind of accommodation entry. Heavy reliance has been placed by the authority below over a statement of one employee of some M/s Gateway Financial Services Ltd of Kolkata. Such an entity first of all has nothing to do with the assessee, because assessee has neither dealt with the said company nor has carried out any transaction at any point of time with such entity. Such a reference of statement of employee sans any reference of assessee to draw any adverse inference against the assessee is too farfetched even when he has stated that its Company has been providing accommodation entry in the scrip of Channel Nine Entertainment Ltd., but that does not mean that all the subscribers of the shares in India of the said company are involved in shady transaction of getting accommodation entry in the form of Long Term Capital Gain

I.T. As. No.2128, 21219, 2131, 2132/Del/2018 9 It has been brought on record by the learned counsel from the information available in public domain regarding credentials of M/s Channel Nine Entertainment Ltd. which is a group of Dainik Jagran Newspaper Ltd. and was engaged in the business of marketing, producing various serials, movies, films distribution and is a renowned TV channel which is still in air. It has been regularly carrying out its business and shown huge profits from operations every year. This he has pointed out from the audited balance sheet and the P&I. account of the said Company for the financial years 2013-14, 2014-15 and 2015-16. Further this company has always been listed in BSE and never got delisted. The entire transaction of sale has taken place through HDFC Securities Ltd. against which there is no information or material by the Department that such a reputed company was involved in providing some kind of bogus accommodation entry. It is seen that the authorities below have gone completely by general perception rather than that any contrary evidence or material found against the assessee.

9. Another important fact which is to be noted here is that purchase made in the earlier year has not been disturbed and

once the entire transaction is through DEMAT account with the reputed broker without having any link with any such entities pointed out by the learned Assessing Officer then no adverse inference at all can be drawn against the assessee. If the sales are evidenced through proper contract notes by HDFC Security Ltd., sold on BSE after paying STT I.T.As. No.2128, 3129, 2131, 2132/Del/2018 10 and duly credited in the DEMAT account, then source of the credit has to be accepted that it is from transaction of sale of shares held for a Long Term Capital Gain. If purchase of shares is not doubted and these shares are not in possession with the assessee, then there cannot be any adverse inference that it is unexplained credit to be added u/s 68 of the Act. Thus, on the facts and in the circumstances of the case, we hold that there was a genuine transaction of purchase and sale of shares on which assessee has earned Long Term Capital Gain, and therefore, such Long Term Capital Gain cannot be taxed u/s 68. Since Long Term Capital Gain is exempted u/1.10 (38). therefore, no addition is called for. Accordingly, appeal of the assessee is allowed.

10. Since in all the other appeals, i.e., in the case of Amit Rastogi, Shilpa Rastogi and Ajay Kumar Rastogi, similar facts are permeating and same finding has been given, therefore, my finding given above will apply mutatis mutandis in these appeals also, because the nature of transactions, evidences and documents are exactly the same. Thus, all these appeals of the assessee are treated as allowed.

11. In the result, all the four appeals of the assessee are allowed.”

3.3 Apart from this, the assessee has relied upon the decision of Coordinate Bench Jaipur Bench in the case of ACIT Vs Maverick Commodity Pvt. Ltd. (ITA No.27/JP/2020 and ITA No.155/JP/2020 and ITA No.163/JP/2020 and ITA Nos.

157 & 168/JP/2020 [2022(10) TMI 649-ITAT, Jaipur] wherein the Coordinate Bench of Jaipur has dealt with in detail with regard to identical scrips.

3.4 Whereas on the contrary, the ld DR supported the order of the ld. CIT(A) and also relied upon the following case laws.

1. (2022) 139 taxmann.com 352(Calcutta) HIGH COURT OF CALCUTTA
Commissioner of income tax v Swati Bajal

2. (2019) 112 taxmann.com 330 (SC) SUPREME COURT OF INDIA
Suman Poddar v. Income Tax Officer

3 (2022) 139 taxmann. Com 406(Rajasthan) HIGH COURT OF
RAJASTHAN Jawari tal Lunta v Union of india

4 (2023) Income Tax Appellate Tribunal Jaipur Benches SMC ITO Ward-
5(2), Jaipur Vs Shakuntala Agarwal

5. (2023) 149 taxmann.com 104(Ahmedabad-ITAT) ITAT Ahmedabad
Bench SMC Atmiben Alipitkumar Doshi v. Income-tax officer

6 (2023) In the INCOME TAX APPELLATE TRIBUNAL B Bench
AHMEDABAD Hemil Subhashbhai Shah "Samarpan" v. DCIT, Ward
5(3)(1)

7 (2023) 151 taxmann Com 367(Raipur Trib) in the ITAT RAIPUR BENCH
SMC Rahul Gupta HUF) v. Assistant Commissioner of income-tax

8 (2021) 129 tasmann.com 119(Gujarat) HIGH COURT OF GUJARAT
Nishant Vilaskumar Parekh v. Income-tax officer, Ward-1(3)

3.5 After hearing both the parties and on going through the orders of the Revenue Authorities as well as the documents placed on record by the respective parties and also the judgements cited by both the parties, I found that the case of

the assessee is squarely covered by the decisions of the Coordinate Bench of ITAT Delhi in the case of Amit Rastogi, HUF and another vs ITO, Ward 1(1) Meerut (supra) wherein same scrips i.e. M/s. Channel Nine Entertainment Ltd has been discussed and dealt with at length by the Coordinate Bench ITAT Delhi Bench and even the assessment year of the said case i.e. 2014-15 is also identically same to that of the assessee wherein the Coordinate Bench has discussed the veracity and background of the company M/s. Channel Nine Entertainment Ltd. and has found that the said company is not the penny stock company and given relief to the respective assessee's by deleting the addition made in their cases. It may be noted that the above case laws relied upon by the ld. DR in the case of the assessee is of no help to the Department. Since the case of the assessee is squarely covered by the decision of the Coordinate Bench and the ld. DR has not placed on record any documentary evidence to show that the order of the Coordinate Bench in the case of Amit Rastogi and another vs ITO, Ward 1(1), Meerut, HUF (supra) has been challenged or reversed by Competent Court of Jurisdiction. Therefore, considering the facts and circumstances of the case, it is found that the assessee has made all the payments for purchase of shares of company M/s. Channel Nine Entertainment Ltd. through banking channel and had received the shares in his D Mat account. Since the sale of shares has taken place on the prevailing market price and sold the same through broker and also payment received directly through banking channel

in the account of the assessee, therefore keeping in view the decision of Coordinate Bench in the case of Amit Rastogi and another vs ITO, Ward 1(1), Meerut, HUF (supra) and respectfully following the same, the Bench directs the AO to delete the addition as indicated hereinabove. Thus the appeal of the assessee is allowed.

4.0 In the result, the appeal of the assessee is allowed with no orders as to costs.

Order pronounced in the open court on 07/08/2024.

Sd/-

(संदीप गोसाईं)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 07/08/2024

*Mishra

आदेश की प्रतिलिपि अग्रेशित / Copy of the order forwarded to:

1. The Appellant- Shri Parasmal Bhandari, Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward 6 (2), Jaipur
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No. 95/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar