

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI NARENDRA KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.3418/M/2024
Assessment Year: 2014-15**

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| Sejal Parthiv Kevadia 801, Anchor Tiara, Bajaj Road, Vileparle (West), S.O. Mumbai- 400056. PAN: BRHPK8021J | Vs. | I.T.O. Ward 34(3)(5) Mumbai. (Formally known as I.T.O. Ward 25(3)(4), Mumbai. |
| (Appellant) | | (Respondent) |

Present for :

Assessee by : Shri Bharat Kumar

Revenue by : Ms. Nayana Krishnakumar- Sr. A.R.

Date of Hearing : 26 . 08 . 2024

Date of Pronouncement : 28 . 08 . 2024

O R D E R

Per: Ratnesh Nandan Sahay, Accountant Member:

1. This appeal has been filed by the appellant against the Order of the Ld. CIT (Appeals) passed u/s. 250 of the Income Tax Act [the 'Act' in short]



vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1058791410(1)

Dated 15/12/2023 for the Assessment Year 2014-15.

2. Following grounds of appeal have been raised by the appellant:

1. *“On the facts and circumstances of the case in law, Ld. A.O. erred in reopening of the case which is bad in Law.*
2. *On the facts and circumstances of the case in law, Ld. A.O. erred in invoking section 68 of the Act which is not applicable in assessee case.*
3. *On the facts and circumstances of the case in law, The Ld. CIT (A) has erred in confirming addition of Rs.86,60,141/- on account of Long term capital gain on sale of shares u/s 68 of the Act.*
4. *The assessee craves leave to add, alter or amend the sexisting grounds of appeal on or before the date of hearing.”*

3. The facts of the case, in brief, are that the assessment in this case was made u/s. 143(3) r.w.s.147 of the Income Tax Act dated 19/12/2017 for the assessment year 2014-15 by the ITO Ward 25(3)(4), Mumbai. In this case, the return of income was filed on 21/09/2014 declaring total income at Rs.2,60,000/-. The return was processed u/s. 143(1) of the Income Tax Act. Subsequently, the case was reopened u/s. 147 of the Income Tax Act and notice u/s. 148 was issued by recording reasons as under:-

“Information has been received through ITD system of the department in respect of transactions in Penny Stock done by various assessees. It is further informed that the office of the Pr.

DIT (Investigation), Kolkata had made investigations regarding accommodation entries of bogus capital gain/loss through Penny Stock. The enquiries have revealed that the entire entry providing scam, comprises of various levels of operators who introduced the unaccounted cash of beneficiaries in their accounts through a layer of transactions and utilize the said cash for purchase of shares at manipulated prices which ultimately results in payment of the amount back to the beneficiary in the guise of sale proceeds of shares ostensibly resulting in Long Term Capital Gain to the beneficiary. Reverse modus operandi is adopted in order to provide entry of bogus Short Term Capital Loss. The ultimate purpose of the both is to reduce the tax liability of the assessee.

2. Assessee is one of the beneficiaries as per the information provided on ITD system. As per the information, the assessee has entered in the transactions of shares and securities of the following scripts during F.Y. 2013-14

| <i>Scripts Name</i> | <i>Buy/sell</i> | <i>Qty.</i> | <i>Qty normalized</i> | <i>Capital gain</i> |
|---------------------|-----------------|---------------|-----------------------|---------------------|
| <i>SRK Indus</i> | <i>SELL</i> | <i>44,400</i> | <i>44,400</i> | <i>83,60,142/-</i> |

The assessee earned bogus LTCG/STCL amounting to Rs.83,60,142/-during the A.Y.2014-15. However, the assessee has



not offered the income related to the said transactions in the return of income for A.Y. 2014-15.

3. In view of above, I have reason to believe that income chargeable to tax to the extent of Rs.83,60,142/- has escaped assessment for A.Y. 2014-15 in the case of the assessee within the meaning of section 147 of the I. T. Act, 1961."

4. During the assessment year in consideration, the Ld. AO has noted in the assessment year that assessee in an individual and had originally invested in Transcend company shares having 10,000 in nos. in the year 2012 for value of Rs.1,00,000/-. The source of investments was shown to have income from business. The payment was made by A/c. payee cheque. Thereafter, on 21/12/2012 as per Hon'ble Madras High Court order as a part of the scheme of merger, the assessee received 22,200 shares of SRK industries of Rs.10 each and then on 24/10/2013 shares of Rs.10 was devalued to Rs.5 and the assessee received further shares of Rs.44,400/- As per working of the Long Term Capital Gain attached with return of income, the assessee has claimed Long Term Capital Gain of Rs.82,14,114/- on sale of 44,400 shares during the year and claimed exemption u/s. 10(38) of the Act.
5. The Ld. Ld. AO has further noticed that the Calcutta investigation Directorate has undertaken investigation into 84 penny stocks (Splash



Media being one of it) and has given detailed finding indicating bogus LTCG/STCL entries claimed by large number of beneficiaries. The modus operandi involving operators, intermediaries and beneficiaries has been detailed in the investigation report prepared and disseminated by the Kolkata Directorate. Similar investigations were also conducted by the Directorate of Investigation at Mumbai and Ahmadabad.

6. The Ld. AO has given the details of the modus operandi adopted by such penny stocks cases in the body of the assessment order. Accordingly, the Ld. AO analyzed the data obtained from various sources and made analysis as per fundamentals of share market and found that the LTCG of Rs.82,14,114/- shown in the return as the sales of shares of 'SRK Industries' was pre-arranged through the same methodology employed by the assessee in connivance with the operators and intermediaries to avoid taxes. The Ld. AO, after giving details of analysis of the scrip of M/s. SRK Industries, issued notice u/s. 133(6) of the Income Tax Act to the entry providers calling for details of share sale/purchase with the assessee during the year, demat account details, period of holding these shares, source of funds and their returns of income. However, most of the notices returned 'un-served' from the postal authorities. Some of them have also stated that they have not entered into any transactions with the assessee.



The Ld. AO, therefore, added a sum of Rs.86,60,141/- on account of Long term capital gain on sale of shares u/s 68 of the Act.

7. Aggrieved by the order of the Ld. AO, the assessee filed appeal before the Ld. CIT (A). The Ld. CIT(A) dismissed the appeal of the assessee vide impugned order on the ground that the appellant has not produced any material during the appellate proceeding pending before him to controvert the findings of the Ld. AO and therefore, he confirmed the order of the Ld. AO by stating that the assessee is not interested in pursuing its appeal.
8. Aggrieved by the order of the Ld. CIT (A), this appeal has been filed before us. During the appellate proceedings before us, it was found that the appeal was delayed by 79 days but considering the reasonable cause given by the appellant, we condone the delay of 79 days in filing the said appeal. We also find that Ld. CIT (A) has not decided the issue on merit because of non compliance on the part of the appellant. We, thus, remand the matter back to the file of the Ld. CIT (A) to decide the issue on merit after affording reasonable opportunity of being heard to the appellant. The appellant is also directed to appear before the Ld. CIT (A) to explain his case.
9. In the result, the appeal is allowed for statistical purpose.



Order pronounced in the open court on 28.08.2024.

Sd/-
NARENDRA KUMAR CHOUDHRY
JUDICIAL MEMBER

Sd/-
RATNESH NANDAN SAHAY
ACCOUNTANT MEMBER

Mumbai, Dated: 28.08.2024.
Snehal C. Ayare, Stenographer

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.