

| 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. 1203/Mum/2024
Assessment Year: 2011-12

Meher Ghanshym Lalwani 1301, Manhar Villa Anthony Road Near Poddar School Santacruz (West) Mumbai - 400054 [PAN: AFYPR7135J]	Vs	Income Tax Officer -24(2)(5), Mumbai
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri N.R. Agrawal, A/R
Revenue by :	Shri R.R. Makwana, Sr. D/R

सुनवाई की तारीख/**Date of Hearing** : 29/08/2024
घोषणा की तारीख/**Date of Pronouncement** : 02/09/2024

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM :

This appeal by the assessee is preferred against the order dated 05/03/2024 by NFAC Delhi [in short 'ld. CIT(A)] pertaining to AY 2011-12.

2. The solitary grievance of the assessee is that, the ld. CIT(A) has erred in confirming addition of Rs. 18,30,274/- u/s 68 of the Act and Rs. 54,908/- u/s 69C of the Act on the alleged long term capital gain as unexplained.

3. Briefly stated the facts of the case are that, during the course of scrutiny assessment proceedings and on verification of individual transaction statement, the AO found that the assessee has traded in the stock, namely, M/s. Sampada Chemicals Limited (in short 'SCL'), which according to him was a penny stock. The AO noticed that the

assessee has shown exempt income of Rs. 18,30,274/- by ways of long term capital gain out of which an amount of Rs. 19,98,928/- was received from sale of 5000 shares of SCL.

3.1. The AO went on to examine the financials of SCL and its price movement. The AO came to know that a survey action was initiated on SCL and during the survey proceedings, statement of one of the directors of SCL was recorded u/s 131 of the Act and in this statement, it was stated that a joint account was opened with Mr. Vipul Vidur Bhatt, who happened to be an entry operator and, in his statement Mr. Vipul Vidur Bhatt admitted that SCL is a bogus/paper entity which has been operated by him for providing bogus long term capital gain and accommodation entries to various beneficiaries.

3.2. Taking a leaf out of the statement of Mr. Vipul Vidur Bhatt, the AO formed a belief that long term capital gain shown by the assessee from the sale of the scrip of SCL to the extent of Rs.18,30,274/-, is bogus and added the same as unexplained credit u/s 68 of the Act and further added the alleged commission which must have been paid by the assessee for getting the long-term capital gain entry and made the addition of Rs.54,908/-.

4. The assessee carried the matter before the Id. CIT(A) but without any success.

5. Before us, the Id. Counsel for the assessee, vehemently stated that the purchase and sale transactions of shares of SCL were done through Bombay Stock Exchange, through its registered brokers. The Id. Counsel stated that all the transactions are supported by trade invoices confirmed by the brokers and the transactions have been done through banking channels. Therefore, the long-term capital gain earned on sale

of shares of SCL should be accepted as such. Referring to the statement of Mr. Vipul Vidur Bhatt, the ld. Counsel stated that nowhere he has named the assessee as one of the beneficiaries of his accommodation entries nor the name of the broker has been mentioned by Mr. Vipul Vidur Bhatt, therefore, the statement of Mr. Vipul Vidur Bhatt, has no consequences so far as the assessee is concerned.

Per contra, the ld. D/R strongly supported the findings of the AO and reiterated what has been stated before the AO/ld. CIT(A).

6. We have given a thoughtful consideration to the orders of the authorities below. The details of long-term capital gain on sale of shares of SCL, can be understood from the following chart:-

<i>AY:-2011-12</i>						
<i>Details of Long Term Capital Gains on sale of Shares (STT Paid)</i>						
<i>Scripts</i>	<i>Qty</i>	<i>Date of purchase</i>	<i>Purchase cost</i>	<i>Date of sale</i>	<i>Sale Price</i>	<i>Long Term Capital Gain/Loss</i>
<i>Sampada Chemicals Ltd.</i>	<i>3000</i>	<i>15/10/2009</i>	<i>101,192.30</i>	<i>23/02/2011</i>	<i>1,188,751.94</i>	<i>1,087,559.64</i>
<i>Sampada Chemicals Ltd.</i>	<i>2000</i>	<i>15/10/2009</i>	<i>67,461.54</i>	<i>03/03/2011</i>	<i>788,031.90</i>	<i>720,570.36</i>
<i>HDFC Bank Ltd.</i>	<i>17</i>	<i>10/10/2008</i>	<i>15,105.00</i>	<i>21/12/2010</i>	<i>37,249.00</i>	<i>22,144</i>
					<i>Total</i>	<i>1,830,274.00</i>

7. The purchases are supported by contract notes exhibited pages 6 & 7 of the paper book. The purchases have been duly reflected in the D-mat statement of Angel Broking Ltd., exhibited at pages 9 & 10 of the paper book. The sales are also supported by the contract notes placed at pages 12 & 13 of the paper book. The sale consideration has been received through banking channels as per the bank statement of Standard Chartered Bank, exhibited at page 14 of the paper book.

8. A perusal of the order of the authorities below show that there is not even a whisper of any adverse findings given in respect of the

purchase invoices or the sale invoices or the D-mat statement. *Prima facie*, the assessee has explained the genuineness of the transactions.

9. The Hon'ble Supreme Court in the case of *CIT v. Daulat Ram rawatmull* (1973) 87 ITR 349 (SC), has held that the onus to prove that the apparent is not the real is on the party who claims it to be so. Since the allegation of the revenue authorities is that, the sale transactions are sham transactions, then the onus squarely lies upon them to demonstrate by bringing cogent material on record which in the present case on hand, the lower authorities have grossly failed to do.

9.1. Entire addition is based upon the statement of Mr. Vipul Vidur Bhatt, whereas the Hon'ble Supreme Court in the case of *Umacharan Shaw & Bros. vs Commissioner Of Income-Tax*, [1959] 37 ITR 271 (SC), has held that suspicion, however strong cannot take the place of evidence.

10. 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, had the occasion to consider a similar issue and held 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."

11. Considering the facts of the case in totality in light of the judicial decisions discussed hereinabove, we are of the considered view that the assessee has successfully established that the long-term capital gain from the sale of shares of SCL as genuine and should be accepted as such. We accordingly set aside the findings of the Id. CIT(A) and direct the AO to accept the long term capital gain as shown by the assessee.

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

Order pronounced in the Court on 2nd September, 2024 at Mumbai.

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated 02/09/2024

**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