

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "E" BENCH : MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER

ITA No. 862/Mum/2024
Assessment Year : 2014-15

Asst. Commissioner of Income Tax, Piramal Chambers, Lalbaug, Mumbai.	vs.	Keshavji Nongha Shah, M/s. Ankur Harganga Mahal, Khodad Circle, Dadar T.T., Mumbai PAN : AAEPS6097B
(Appellant)		(Respondent)

For Assessee :	Shri Nishit Gandhi,
For Revenue :	Shri P.D. Chougule, (Addl.CIT) Sr.DR

Date of Hearing :	16-07-2024
Date of Pronouncement :	01-10-2024

ORDER

PER B.R. BASKARAN, A.M :

The Revenue has filed this appeal challenging the order dated 03-01-2024 passed by Ld CIT(A), NFAC, Delhi and it relates to the Assessment Year (AY.) 2014-15. The Revenue is aggrieved by the decision of Ld CIT(A) in deleting the addition of Rs.6.92 crores relating to long term capital gain arising on sale of shares added by the AO u/s. 68 of the Income Tax Act, 1961 ('the Act').

2. The facts relating to the above said issue are discussed in brief. During the year under consideration, the assessee had declared long term

capital gains of Rs.6.92 crores on sale of shares of M/s Global Infratech and Fin Ltd (earlier known as Asianlak Capital and Finance Ltd) and claimed the same as exempt u/s 10(38) of the Act. The assessee had purchased 2,00,000 shares of above said company on preferential basis in June, 2012 @ Rs.15/- per share (Face value Rs.10/- and premium Rs.5/-). The face value of the shares was split from Rs.10/- per share to Re1.00 per share. Consequently, the assessee received 20,00,000 shares of Re1.00 each in lieu of 2,00,000 shares of Rs.10/- each. The Investigation Wing had carried out investigation with regard to the price manipulations and generation of bogus long term capital gains in number of stocks, classified as penny stocks. The AO noticed that the shares of the above said company was also identified as one of the penny stocks. The AO noticed that the assessee has sold 7,88,000 shares for a consideration of Rs.7.04 crores and declared Long term capital gains of Rs.6.92 crores. Relying fully upon the report given by the Investigation wing, the AO took the view that the long term capital gain declared by the assessee on sale of shares of above mentioned company was pre-arranged method employed by the assessee with the connivance of the operators in order to generate bogus long term capital gains.

3. The AO noticed that the Investigation Wing had reported that the increase in the prices of shares of above said company was not commensurate with the financial results declared by the company and further, the net worth of the company was negligible. Investigation Wing also reported that the trading in the above said company was controlled by certain brokers and in the statement taken from one of such persons named Shri Rajkumar Kedia, he had confessed to have provided accommodation entries for generating long term capital gains in the shares of above said company. The AO also noticed that the shares sold by the assessee have been purchased by certain persons who are suspected to be

Exit providers. The AO issued notices u/s 133(6) of the Act to the exit providers, but they were returned back by the postal authorities. Based on the statements so given by the above said person, the AO came to the conclusion that the trading in shares of above company are controlled by various entry and exit operators in order to convert unaccounted money.

4. The AO also issued summons u/s 131 of the Act to the assessee and recorded a statement from him. He noticed that the assessee could not explain as to why he had invested in the above said company, when the fundamentals and financial position were weak. Accordingly, he took the view that the long term capital gain of Rs.6.92 crores is liable to be taxed as unexplained income and accordingly assessed the same u/s 68 of the Act.

5. The Ld CIT(A) noticed that the assessee has furnished all the documents to prove the purchases and sale of shares. He also referred to the decisions rendered by the Hon'ble Delhi High Court in the appeal numbers ITA 125, 130 & 131/2020, wherein the Hon'ble High Court had observed that the theory of human behavior and preponderance of probabilities cannot be cited as a basis to turn a blind eye to the evidences produced by the assessee. The Ld CIT(A) also relied upon the decision rendered by the Hon'ble Gujarat High Court in the case of CIT vs. Himani M Vakil (2013)(10 taxmann.com 326)(Guj), wherein the addition of long term capital gains was deleted. The Ld CIT(A) also relied upon certain decisions rendered by the Tribunal. Accordingly, he deleted the impugned addition and hence the Revenue has filed this appeal before the Tribunal.

6. The Ld D.R supported the orders passed by the AO. He submitted that the assessee has purchased the shares in the off market. The tax authorities have noticed that financials and fundamentals of this company were very poor. Hence the rise in the prices of shares was not

commensurate with the financial strength of the company. The Investigation Wing has also conducted enquiries with various share brokers and they have confessed to have indulged in manipulating the prices of shares in order to provide bogus long term capital gains. The SEBI had also suspended the trading of shares of above said company upto 18-11-2011. Accordingly, the Ld D.R submitted that the AO was justified in denying exemption to the long term capital gains and accordingly, the order of Ld CIT(A) requires to be reversed.

7. The Ld A.R submitted that the assessee has purchased the shares in preferential allotment. He submitted that the shares were issued on preferential basis only after revocation of suspension by SEBI. Hence the Revenue could not have placed reliance on the suspension order of the SEBI for the transactions carried on by the assessee. He submitted that the shares were dematerialized and subsequently sold in Stock exchange platform. He submitted only a part of shares were sold during the year under consideration. The purchase and sale of shares have entered and exited in the D-mat account of the assessee. The assessee has also furnished all the documents to prove the purchases and sales. He further submitted that the SEBI has not conducted any enquiry on the transactions carried on by the assessee. He submitted that the assessee has made investments on the basis of advice given by some known persons and the same was proved to be right decision also. The Ld A.R further submitted that it was not shown by the AO that the assessee was part of any group which involved in manipulation of the prices of the above said shares. He submitted that the AO has entirely relied upon the report given by the Investigation Wing for disbelieving the transactions carried on by the assessee. However, the AO has not brought any independent material on record to show that the transactions of purchase and sale of shares undertaken by the assessee were not genuine. In fact, the AO has

conducted detailed enquiry with the assessee and he could only observe that the assessee could not give the basis for making investments in the above said company. He submitted that the same cannot be a reason to disbelieve the transactions which are otherwise fully supported by the credible documents. The AO has also referred and relied upon the statement given by a person named Shri Rajkumar Kedia, but he did not supply copy of the said statement to the assessee at all. Hence the AO could not have placed reliance on the said statement, since no opportunity was given to rebut the same. Accordingly, the Ld A.R contended that the AO has disbelieved the transactions of purchase and sale of shares on surmises only, that too relying fully upon the generalized report of the Investigation Wing. Since it was not shown that the assessee was part of the group which was indulging in the manipulation of prices, the Ld A.R contended that the AO was not justified in assessing the long term capital gains as unexplained income of the assessee u/s 68 of the Act. In support of his contentions, the Ld A.R placed his reliance on various case laws. He submitted that the ratio of decisions rendered by Hon'ble Bombay High Court is applicable to the facts of the present case.

8. We have heard rival contentions and perused the record. We notice that the AO has primarily placed reliance on the report given by the Investigation Wing of the Income tax Department in order to arrive at the conclusion that the long term capital gains reported by the assessee is bogus in nature. We notice that the investigation report prepared by Investigation Wing is a generalized report with regard to the modus operandi adopted in manipulation of prices of certain shares and generation of bogus capital gains. We notice that the AO has placed reliance on the said report without bringing any material on record to show that the transactions entered by the assessee were found to be a part of manipulated transactions, i.e., it was not proved that the assessee has

carried out the transactions of purchase and sale of shares in connivance with the people who were involved in the alleged rigging of prices. It is stated by Ld A.R that the transactions carried on by the assessee were not subjected to scrutiny by SEBI at all.

9. We notice that the AO has recorded statement from the assessee u/s 131 of the Act, but he could not find any fault with the assessee. The AO has only observed that the assessee could not explain as to why he invested in the shares of company, whose fundamentals are weak. However, the assessee had stated that he has made investment on the basis of advice given by some known person. In our view, the rationale of making investment may not be relevant to arrive at the conclusion that the transactions of purchase and sale of shares are bogus. We also notice that the assessee has

- (a) purchased these shares by paying consideration through banking channels
- (b) dematerialized the shares and kept the same in the Demat account.
- (c) sold the shares through stock exchange platform
- (d) received the sale consideration through banking channels.

Further, the shares have entered and exited the Demat account of the assessee. We notice that the AO himself has not found any defect/deficiencies in the evidences furnished by the assessee with regard to purchase and sale of shares. The assessee was not subjected to any enquiry by SEBI, meaning thereby, they were carried on by the assessee during the normal course of investment in shares. As noticed earlier, the AO has not brought on record any material to show that the assessee was part of the group which involved in the manipulation of prices of shares.

The AO has also referred to a statement given by a person named Shri Rajkumar Kedia before the Investigation wing, but did not furnish the same to the assessee to rebut it. It was not known as to whether Shri Rajkumar Kedia has stated that the transactions entered by the assessee were bogus. In view of the above, we are of the view that there is no reason to suspect the purchase and sale of shares undertaken by the assessee.

10. We may now refer to certain decisions rendered by the Hon'ble Bombay High Court on identical issue. In the case of Shyam Pawar (54 taxmann.com 108)(Bom), the Hon'ble Bombay High Court has observed as under:-

“3. Mr.Sureshkumar seriously complained that such finding rendered concurrently should not have been interfered with by the Tribunal. In further Appeal, the Tribunal proceeded not by analyzing this material and concluding that findings of fact concurrently rendered by the Assessing Officer and the Commissioner are perverse. The Tribunal proceeded on the footing that onus was on the Department to nail the Assessee through a proper evidence and that there was some cash transaction through these suspected brokers, on whom there was an investigation conducted by the Department. Once the onus on the Department was discharged, according to Mr.Sureshkumr, by the Revenue-Department, then, such a finding by the Tribunal raises a substantial question of law. The Appeal, therefore, be admitted.

4. Mr.Gopal, learned Counsel appearing on behalf of the Assessee in each of these Appeals, invites our attention to the finding of the Tribunal. He submits that if this was nothing but an accommodation of cash or conversion of unaccounted money into accounted one, then, the evidence should have been complete. Change of circumstances ought to have, after the result of the investigation, connected the Assessee in some way or either with these brokers and the persons floating the two companies. It is only, after the Assessee who is supposed to dealing in shares and producing all the details including the DMAT account, the Exchange at Calcutta confirming the transaction, that the Appeal of the Assessee has been rightly allowed. The Tribunal has not merely interfered with the concurrent orders because another view was possible. It interfered

because it was required to interfere with them as the Commissioner and the Assessing Officer failed to note some relevant and germane material. In these circumstances, he submits that the Appeals do not raise any substantial question of law and deserve to be dismissed.

5. We have perused the concurrent findings and on which heavy reliance is placed by Mr.Sureshkumar. While it is true that the Commissioner extensively referred to the correspondence and the contents of the report of the Investigation carried out in paras 20, 20.1, 20.2 and 21 of his order, **what was important and vital for the purpose of the present case was whether the transactions in shares were genuine or sham and bogus. If the purchase and sale of shares are reflected in the Assessee's DMAT account, yet they are termed as arranged transactions and projected to be real, then, such conclusion which has been reached by the Commissioner and the Assessing Officer required a deeper scrutiny.** It was also revealed during the course of inquiry by the Assessing Officer that the Calcutta Stock Exchange records showed that the shares were purchased for code numbers S003 and R121 of Sagar Trade Pvt Ltd. and Rockey Marketing Pvt. Ltd. respectively. Out of these two, only Rockey Marketing Pvt.Ltd. is listed in the appraisal report and it is stated to be involved in the modus-operandi. It is on this material that he holds that the transactions in sale and purchase of shares are doubtful and not genuine. In relation to Assessee's role in all this, all that the Commissioner observed is that the Assessee transacted through brokers at Calcutta, which itself raises doubt about the genuineness of the transactions and the financial result and performance of the Company was not such as would justify the increase in the share prices. Therefore, he reached the conclusion that certain operators and brokers devised the scheme to convert the unaccounted money of the Assessee to the accounted income and the present Assessee utilized the scheme.

6. It is in that regard that we find that Mr.Gopal's contentions are well founded. **The Tribunal concluded that there was something more which was required, which would connect the present Assessee to the transactions and which are attributed to the Promoters/Directors of the two companies.** The Tribunal referred to the entire material and found that the investigation stopped at a particular point and was not carried forward by the Revenue. There are 1,30,000 shares of Bolton Properties Ltd. purchased by the Assessee during the month of January 2003 and he continued to hold them till 31 March 2003. The present case related to 20,000 shares of Mantra Online

Ltd for the total consideration of Rs.25,93,150/-. These shares were sold and how they were sold, on what dates and for what consideration and the sums received by cheques have been referred extensively by the Tribunal in para 10. A copy of the DMAT account, placed at pages 36 & 37 of the Appeal Paper Book before the Tribunal showed the credit of share transaction. The contract notes in Form-A with two brokers were available and which gave details of the transactions. The contract note is a system generated and prescribed by the Stock Exchange. From this material, in para 11 the Tribunal concluded that this was not mere accommodation of cash and enabling it to be converted into accounted or regular payment. The discrepancy pointed out by the Calcutta Stock Exchange regarding client Code has been referred to. But the Tribunal concluded that itself, is not enough to prove that the transactions in the impugned shares were bogus/sham. The details received from Stock Exchange have been relied upon and for the purposes of faulting the Revenue in failing to discharge the basic onus. If the Tribunal proceeds on this line and concluded that inquiry was not carried forward and with a view to discharge the initial or basic onus, then such conclusion of the Tribunal cannot be termed as perverse. The conclusions as recorded in para 12 of the Tribunal's order are not vitiated by any error of law apparent on the face of the record either.

7. *As a result of the above discussion, we do not find any substance in the contention of Mr.Suresh kumar that the Tribunal misdirected itself and in law. We hold that the Appeals do not raise any substantial question of law. They are accordingly dismissed. There would no order as to costs.*

8. *Even the additional question cannot be said to be substantial question of law, because it arises in the context of same transactions, dealings, same investigation and same charge or allegation of accommodation of unaccounted money being converted into accounted or regular as such. The relevant details pertaining to the shares were already on record. This question is also a fall out of the issue or question dealt with by the Tribunal and pertaining to the addition of Rs.25,93,150/-. Barring the figure of loss that is stated to have been taken, no distinguishable feature can be or could be placed on record. For the same reasons, even this additional question cannot be termed as substantial question of law.”*

11. We may now refer to the decision rendered by Hon’ble Jurisdictional High Court in the case of PCIT vs. Ziauddin A Siddique (Income tax Appeal

No. 2012 of 2017 dated 4th March, 2022) and relevant discussions made by Hon'ble Bombay High Court are extracted below:-

“2. We have considered the impugned order with the assistance of learned counsels and we have no reason to interfere. There is a finding of fact by the Tribunal that the transaction of purchase and sale of shares of the alleged penny stock of shares of Ramkrishna Fincap Ltd (“RFL”) is done through stock exchange and through the registered Stock Brokers. The payments have been made through banking channels and even Security Transaction Tax (“STT”) has also been paid. The Assessing Officer also has not criticized the documentation involving the sale and purchase of shares. The Tribunal has also come to a finding that there is no allegation against the assessee that it has participated in any price rigging in the market on the shares of RFL.

3. Therefore we find nothing perverse in the order of the Tribunal.

4. Mr. Walve placed reliance on a judgement of the Apex Court in Principal Commissioner of Income tax (Central)-1 vs. NRA Iron & Steel (P) Ltd (2019)(103 taxmann.com 48)(SC) but that does not help the revenue in as much as the facts in that case were entirely different.

5. In our view, the Tribunal has not committed any perversity or applied incorrect principles to the given facts and when the facts and circumstances are properly analysed and correct test is applied to decide the issue at hand, then, we do not think that question as pressed raises any substantial question of law.

In the case of CIT vs. Jamnadevi Agarwal (20 taxmann.com 529 (Bom), the Hon'ble Bombay High Court held that the transactions of purchase and sale of shares cannot be considered to be bogus, when the documentary evidences furnished by the assessee establish genuineness of the claim. In the case of PCIT vs. Indravadan Jain (HUF) (ITA No. 454 of 2018)(Bom), the broker through whom, the assessee had carried out the transactions have been alleged to have been indulged in price manipulations and the SEBI had also passed an order regarding irregularities and synchronized trades carried out in the shares by the said broker. However, the evidences furnished by the assessee with regard to purchase and sale of shares were

not doubted. Under these set of facts, the Hon'ble Bombay High Court held as under:-

“...The CIT(A) came to the conclusion that respondent bought 3000 shares of RFL, on the floor of Kolkatta 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 Kolkatta 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 instruction slips and also received payment from Kolkatta 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.”

In the instant case also, we noticed that the evidences furnished by the assessee to prove the purchase and sale of shares, payment made/received, entry/exit of shares in the demat account of the assessee etc., were not doubted with.

12. In the case of PCIT vs. Smt Krishna Devi (2021 (1) TMI 1008), the Hon'ble Delhi High Court has noticed that the reasoning given by the AO to disbelieve the capital gains declared by the assessee, viz., astronomical increase in the price of shares, weak fundamentals of the relevant companies are based on mere conjectures. Accordingly, the Hon'ble Delhi High Court affirmed the decision rendered by ITAT in deleting the addition of capital gains.

13. Accordingly, in the facts and circumstances of the case, we are of the view that the decisions rendered by the jurisdictional Hon'ble Bombay High Court in the cases cited above shall apply to the present case, since the AO has not established that the assessee was involved in price rigging and further the AO did not find fault with any of the documents furnished by the assessee.

14. Accordingly, we hold that the long term capital gains declared by the assessee cannot be assessed as unexplained cash credit u/s 68 of the Act. Accordingly, we confirm the order passed by Ld CIT(A).

15. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 1st October, 2024.

Sd/-
[SUNIL KUMAR SINGH]
JUDICIAL MEMBER

Sd/-
[B.R. BASKARAN]
ACCOUNTANT MEMBER

Mumbai,
Dated: 01-10-2024

TNMM

Copy to :

1. The Appellant
2. The Respondent
3. The Pr. CIT, Mumbai concerned
4. D.R. ITAT, "E" Bench, Mumbai.
5. Guard File.

//By Order//

//True Copy //

Dy./Asst. Registrar,
ITAT, Mumbai