

आयकर अपीलीय अधिकरण, "ए"/ 'बी'/ 'सी'/ 'डी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

श्री मनु कुमार गिरि, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष
BEFORE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.775 /Chny/2023
निर्धारण वर्ष /Assessment Year: 2015-16

Ramachandran
Old No.9, New No.19,
Jumaulingam Street,
Mylapore,
Chennai-600004
[PAN: AAQHR6150N]

The Asst. Commissioner of
Income Tax,
Non-Corporate Circle-2
Chennai

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Shri Y.Sridhar, F.C.A.
: Ms.Gouthami Manivasagam, JCIT

सुनवाई की तारीख/Date of Hearing

: 31.07.2024

घोषणा की तारीख /Date of Pronouncement

: 23.10.2024

आदेश / ORDER

PER AMITABH SHUKLA, A.M :

This appeal is filed against the order bearing DIN & Order No.ITBA/NFAC/S/250/2023-24/1053343791(1) dated 31.05.2023 of the Learned Commissioner of Income Tax [herein after "CIT(A), National Faceless Appeal Center[NFAC], Delhi, for the assessment years 2015-16. Through the aforesaid appeal the assessee has challenged order u/s 250 dated 31.05.2023 passed by NFAC, Delhi.

2.0 The only issue arising from the grounds of appeal Nos. 2 to 9 raised by the assessee are in respect of an addition of Rs.4,02,07,850/- made by the assessing officer invoking provisions of section 68 and which has been confirmed by the Ld.CIT(A). All the grounds of appeal, save ground of appeal no.1 which is general in nature, are being adjudicated together in view of a common issue. The Ld. Counsel for the assessee submitted that its case was selected for complete scrutiny on account of suspicious sale transaction in shares of the penny stocks. The brief factual matrix emanating from the assessment order dated 31.12.2017 is that the assessing officer has made the addition by relying upon observations of the Special Investigating Team(SIT) on black money which was formed to examine misuse of exemption on long term capital gains for money laundering. The Ld. AO had issued summons and recorded sworn statement of the assessee on 28.12.2017. As per para-15 of the Ld. AO's order dated 31.12.2017, the assessee could neither produce physical share certificates to evidence purchase of shares nor any bank statement for its purchase in 2011 and even failed to even tell the name of the person from whom the purchases were made. The said shares were reportedly dematerialized in Feb-2014 which

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therefore does not confirm to the mandatory period of holding of 12 months. The assessee had not disclosed any sale purchase of shares in his return and only shown an exempt income of Rs.4,02,07,850/- in ITR V. The Ld. AO noticed that the assessee had not traded any shares in FY-2012-13 and 2013-14 and in FY 2014-15. The Ld. AO thus concluded that the shares of KAPPAC (one of the penny stock companies reportedly used for proving bogus entries) were purchased only during FY 2014-15 and the assessee had sold it in the same year. This fact was supported by annexure-v submitted by the assessee to its sworn statement suggesting that share of KAPPAC were held for less than 12 months. The Ld. AO therefore concluded that the facts and circumstances surrounding the abrupt rise in the price of shares itself alluded towards a sinister design to defraud the revenue. While making the impugned addition, the Ld. AO also relied upon the investigation report prepared by the Directorate of Investigation, Kolkata in the case of 84 companies listed on BSE and identified as penny stock companies. As per para-4 of AO's order KAPPAC pharma limited was once such penny stock company and the name and PAN no. of the assessee was figuring in the list of beneficiaries. The Ld. CIT(A) confirmed the action of the assessing officer. While doing so, the recorded in para-6.2 of his order that the assessee had

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declared long term capital gains u/s 10(38) of Rs.4,02,07,850/- in respect of 125000 shares of KAPPAC pharma limited. The Ld. First Appellate Authority placed reliance upon the SIT report as well as investigation conducted by Directorate of Investigation Kolkatta and finally relying upon the decision of Hon'ble Kolkata High Court in the case of Swati Bajaj 139 taxman.com 352 confirmed AO's addition. In the said case Hon'ble Kolkata High Court had confirmed revisionary powers of PCIT u/s 263 in respect of assessment order which was passed without making due addition by the AO's ignoring the investigation in penny stock's scam.

3.0 The Ld. Counsel for the assessee submitted through documents provided in its paper book that the sale purchase of shares were made through banking channels and due entries were made in the demat account. The assessee also provided copy of trading ledger account of one M/s.Aryan share brokers Ltd. The Ld. DR vehemently placed reliance upon the action of the Id.AO and the First Appellate Authority. It was argued that the hypothesis propounded by the Ld. AO in his order regarding inability of the assessee to furnish required documents could not be countered by the assessee. It was urged that

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the AO has done his own independent enquiries also and applied mind before making the impugned addition.

4.0 We have heard rival submissions in the light of material available on records. The case of the assessee that AO has not done any enquiries before making the impugned addition is not made out from the facts on records. The assessee before the AO could not produce the requested documents. The facts surrounding the case therefore confirms the hypothesis raised in the SIT report. The report of investigation directorate indicates mention of assessee's name and PAN No. Before the AO, the assessee has not been able to satisfactorily establish its case through demonstrative evidence. Accordingly, we are of the view that the order of the Ld. AO and the First Appellate Authority are in order and do not require any interference at this stage. Accordingly, the order of Ld. First Appellate Authority is confirmed and the grounds of appeal No. 2 to 9 raised by the assessee are dismissed.

5.0. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on 23rd, October, 2024.

Sd/-
(मनु कुमार गिरि)

(Manu Kumar Giri)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(अमिताभ शुक्ला)

(amitabh shukla)

लेखा सदस्य / **Accountant Member**

चेन्नई/Chennai, दिनांक/Dated: 23rd, October, 2024.

KB/-

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT - Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF