

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

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

ITA No. 1046/Mum/2024
Assessment Year : 2012-13

Uma Chandrashekhar Iyer, Flat No. 802, D-Wing, Casa lake Side, Lodha Palava City Phase-2, Koni Village, Taloja Bypass Road, Dombivali East, Mumbai PAN : AAFPI9327K	vs.	Income Tax Officer, Ward-30(2)(7), 6 th Floor, Kautilya Bhavan, Bandra Kurla Complex, Bandra(East), Mumbai.
(Appellant)		(Respondent)

For Assessee :	Shri Jagdish Shetty
For Revenue :	Ms. Rajeshwari Menon, Sr.DR

Date of Hearing :	24-10-2024
Date of Pronouncement :	24-10-2024

ORDER

PER B.R. BASKARAN, A.M :

The assessee has filed this appeal challenging the order dt. 08-01-2024 passed by the Ld. Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi ['Ld.CIT(A)'] and it relates to AY. 2012-13. In this appeal, grounds urged by the assessee are related to the following issues:

- a. Validity of reopening of assessment;
- b. Addition of sale value of shares of Rs.55,96,619/-;
- c. Addition of estimated commission expenses of Rs.1,11,932/-;
- d. Addition of income from sale of shares of Rs. 22,46,527/-;

2. The AO received information that the assessee has purchased and sold shares of M/s.Exelon Infrastructure Limited, which was identified as one of the penny stocks. The report of the Investigation Wing was that some operators have used many penny stocks to generate bogus capital gains. Since the above said company was identified as one of the penny stocks, the AO re-opened the assessment u/s. 147 of the Income Tax Act, 1961 ('the Act'). Since the assessee did not co-operate with the AO, he completed the assessment to the best of his judgment u/s. 144 of the Act, wherein the AO made the following additions:

- a. Sale value of shares of M/s. Exelon Infrastructure Limited, treating the same as 'bogus' ;
- b. Estimated commission expenses for generating bogus capital gains;
- c. The profit earned on sale of other shares as per ITS data.

3. The Ld.CIT(A) confirmed all the three additions and hence, the assessee filed this appeal before us.

4. As far as the legal issue of validity of reopening of assessment, the Ld.AR did not address the same. Accordingly, we decline to adjudicate on the legal issue and leave it open.

5. The first issue relates to the addition of sale value of shares of M/s. Exelon Infrastructure Limited. The Ld.AR submitted that these shares were purchased from the stock exchange platform in the normal course of investment. The Ld.AR submitted that that the assessee purchased one lac shares in different lots, viz., 50,000 shares on 22-08-2011, 30,000 shares on 23-08-2011 and 20,000 shares 24-08-2011. Subsequently, the entire one lakh shares were sold on 26-08-2011. In this process, the assessee has actually incurred Short Term Capital Loss of Rs.3,01,346/-. Further, the purchases and sales have taken place within a week's time. Accordingly, he submitted that the assessee has purchased and sold the shares of above company in the normal course of her investment activity. Accordingly, he contended that there is no reason to suspect that the assessee was part of the group, which was indulging in manipulating the prices of the alleged bogus penny stock companies. Accordingly, he submitted that the tax authorities are not justified in assessing the sale value of shares of M/s. Exelon Infrastructure Limited as un-explained income in the hands of the assessee and further, there is no reason to estimate commission expenses in this regard as the assessee has not incurred any such expenditure.

5.1. On the contrary, the Ld.DR, supported the order passed by the Ld.CIT(A).

5.2. We heard the parties and perused the record. With regard to the issue of addition of sale proceeds of alleged penny stock, we notice that the assessee has purchased the shares of M/s. Exelon Infrastructure Limited on 22-08-2011 and sold the shares on 26-08-2011; meaning thereby the entire transactions of purchase and sale has taken place within four days. Further, we notice that the assessee is a regular investor and has purchased and sold shares of other companies also. Next, the assessee has actually incurred loss in trading in the shares of

M/s. Exelon Infrastructure Limited. Another important point to be noted is that the purchase and sale of those shares have taken place in the stock exchange platform. All the purchases and sales were supported by proper contract notes and have also been routed through bank accounts. The AO did not find fault of any of the transactions of the assessee to prove the factum of purchase and sale of shares.

5.3. We notice that the AO has simply relied upon the report given by the Investigation Wing, without objectively analyzing the transactions carried on by the assessee. He has not shown that the assessee was part of the group which was manipulating the prices of the shares of above said company. Under these set of facts, we are of the view that the decision rendered by the Hon'ble jurisdictional Bombay High Court in the case of PCIT vs. Indravadan Jain, HUF in ITA No. 454/2018 (Bom) would apply to the facts of the present case. Accordingly we hold that the Ld.CIT(A) was not justified in confirming the addition of Rs.55,96,619/- relating to sale value of above said shares. On the very same reasoning, the Ld.CIT(A) was not justified in confirming the addition relating to the estimated commission expenses. Accordingly, we set aside the order passed by the Ld.CIT(A) on the above said two issues and direct the AO to delete both the additions.

6. The last issue relates to addition of Rs. 22,46,527/- relating to profits earned on sale of shares of other companies. The Ld.AR submitted that the assessee has actually incurred loss from sale of other shares also. He submitted that the AO has not furnished the details collected by him from ITS data to the assessee and hence the assessee could not give proper reply to the AO. However, we notice that the assessee did not appear before the AO and hence, there was no occasion for the AO to supply the details collected by him so that the assessee should explain the same. Hence, the assessee should not find fault with the AO. However, in the interest of natural justice, we are of

the view that the assessee may be provided with one more opportunity to present her case properly before the AO. Accordingly, we set aside the order passed by the Ld.CIT(A) on this issue and restore the same to the file of the AO for examining the same afresh. The AO shall furnish the details of purchase and sale of shares collected by him from ITS data to the assessee, who shall submit her explanation to the same. We also direct the assessee to fully co-operate with the AO for expeditious completion of the assessment. After hearing the assessee, the AO may take appropriate decision in accordance with law.

7. In the result, the appeal filed by the assessee is treated as allowed.

Order pronounced in the open court on 24-10-2024

Sd/-
[ANIKESH BANERJEE]
JUDICIAL MEMBER

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

Mumbai,
Dated: 24-10-2024

TNMM

Copy to :

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

//By Order//

//True Copy //

Dy./Asst. Registrar,
ITAT, Mumbai