

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "H(SMC)" BENCH : MUMBAI

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

ITA No. 3423/Mum/2024
Assessment Year : 2012-13

Rajesh Gaikwad HUF, K-14, Ambekar Nagar, G.D. Ambekar Marg, BEST Staff Quarters, Mumbai PAN : AAHHR4099F	vs.	Income Tax Officer, Ward-20(3)(1), Piramal Chambers, Lalbaug, Parel, Mumbai.
(Appellant)		(Respondent)

For Assessee :	Shri Ajay Daga
For Revenue :	Shri Uodal Raj Singh, Sr.DR

Date of Hearing :	23-10-2024
Date of Pronouncement :	23-10-2024

ORDER

PER B.R. BASKARAN, A.M :

The assessee has filed this appeal challenging the order of Ld CIT(A) passed for AY.2012-13, wherein he has confirmed the assessment of sale proceeds of shares as unexplained cash credit u/s 68 of the Income Tax Act, 1961 ('the Act').

2. The assessee has purchased 5000 shares of M/s Nouveau Global Venture Ltd., from Bombay Stock Exchange platform through a recognised broker named M/s Techno Shares & Stocks Ltd in December, 2007. Subsequently, the assessee subscribed to rights shares and got 10000 shares in September, 2009. Thereafter, the face value of the shares were reduced from Rs.10/- per share to Re 1.00 per

share. Accordingly, the assessee's holding increased to 1,50,000 shares. All the shares were sold through stock exchange platform for a value of Rs.20,02,818/- on 18.05.2011. Accordingly, the assessee computed Long term capital gains at Rs.17,22,133/- and claimed the same as exempt.

3. The AO noticed from the report of the Investigation wing that the above said company has been identified as one of the penny stock companies, whose shares were manipulated to generate bogus capital gains. Accordingly, the AO took the view that the long term capital gains declared by the assessee are bogus in nature. In this regard, the AO issued notices u/s 133(6) of the Act to the alleged Exit providers, but none responded to the same. The AO had also relied upon the statement given by a person before the Investigation wing and hence the assessee asked for cross examining the said person. Though the AO proceeded to provide opportunity, but the same did not happen, since that person did not turn up. The Investigation wing had reported that the share prices were not commensurate with the workings and financial fundamentals of the company. Based on the report of investigation wing and non-response of alleged exit providers to the notice issued by AO, the assessing officer took the view the assessee has got bogus long term capital gains. Accordingly, he assessed the entire sale consideration as unexplained cash credit u/s 68 of the Act. The sale consideration was taken at Rs.20,17,818/- by the AO. The Ld CIT(A) also confirmed the same.

4. We heard the parties and perused the record. We notice that the assessing officer 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. The Ld A.R also submitted that the regulator of stock market SEBI has not conducted any enquiry against the assessee or its broker.

5. We also notice that the assessee has

- (a) purchased these shares by paying consideration through banking channels and also from stock exchange platform through his broker.
- (b) Rights shares were purchased and additional shares were received on stock split.
- (c) dematerialized the shares and kept the same in the Demat account.
- (d) sold the shares through stock exchange platform
- (e) received the sale consideration through banking channels.

The Ld A.R took us through the documents placed in the paper book to prove all the above transactions. 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. Further, 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. Hence, there is no reason to suspect the purchase and sale of shares undertaken by the assessee.

6. The Ld A.R placed his reliance on the decision rendered by Hon'ble jurisdictional Bombay High Court in the case of PCIT vs.

Indravadan Jain (HUF) (ITA No. 454 of 2018)(Bom). In the above said case, 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 our view, the above said decision rendered by Hon'ble jurisdictional Bombay High Court would apply to the facts of the present case. The Ld A.R placed his reliance on the decision rendered by Kolkatta bench of Tribunal and some other decisions rendered by the Tribunal. However, the decision rendered by the jurisdictional High Court should be preferred over other cases.

7. Accordingly, we are of the view that the Ld CIT(A) was not justified in confirming the addition made by the AO. Accordingly, we set aside

the order passed by Ld CIT(A) on this issue and direct the AO to delete the impugned addition.

8. The assessee has raised certain legal issues. At the time of hearing, the Ld A.R did not press those grounds. Accordingly, they are dismissed as not pressed.

9. In the result, the appeal of the assessee is treated as partly allowed.

Order pronounced in the open court on 23-10-2024

Sd/-
[ANIKESH BANERJEE]
JUDICIAL MEMBER

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

Mumbai,
Dated: 23-10-2024

TNMM

Copy to :

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

//By Order//

//True Copy //

Dy./Asst. Registrar,
ITAT, Mumbai