

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.4293/M/2023
Assessment Year: 2014-15**

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| Shri Yash, 301, Blu Ball Vasant Valley, Near Dindoshi Bus Depot, Goregaon East Mumbai Maharashtra - 400097 PAN: AHIPJ7654E (Appellant) | Vs. | Commissioner Of Income Tax Pratishtha Bhavan, 3 rd & 4 th Floors, 101, M.K. Road, Mumbai Maharashtra - 400020 (Respondent) |
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Present for:

Assessee by : Ms. Hema Sharma, CA
Revenue by : Smt Sujatha P. Iyengar, Sr AR

Date of Hearing : 04.09.2024
Date of Pronouncement : 23.10.2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Assessee against the order dated 29.09.2023, impugned herein, passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2014-15.

2. In this case, the Assessee had purchased 1,00,000 shares of Moryo Industries Ltd. on a consideration of Rs.25,00,000/- @ Rs.25/- each on 10.11.2012 and thereafter sold the same in the month of February 2014 on a consideration of Rs.1,92,52,500/- and consequently earned the capital gain of Rs.1,67,52,500/- and claimed the same as exempt u/s 10(38) of the Act by filing its return of income on 27.02.2015 declaring total income at Rs.7,99,480/-.

2.1 The return filed by the Assessee was selected for scrutiny and the Assessee was show caused to justify the share transactions.

2.2 Though the Assessee in order to establish the genuineness of the transactions, before the AO submitted the relevant documents such as allotment letter of shares from the companies from which shares were purchased, extract of bank statement highlighting the purchase, ledger of the Assessee in the books of the broker, copy of Dmat account statement highlighting the holding of shares, copy of contract note of the share broker and in order to discharge his onus cast u/s 68 of the Act.

2.3 However, the AO by considering the findings of the investigation wing and facts and circumstances of the case, disallowed the claim of exemption as claimed by the Assessee u/s 10(38) of the Act and consequently added the amount of Rs.1,67,52,500/- in the taxable income of the Assessee u/s 68 of the Act by observing and holding mainly as under:

“Shares of some penny stock companies were used for providing accommodation entry of bogus loss. The case of the Assessee was scrutinized and data was obtained from various sources and thoroughly verified and analysis was done as per share market fundamentals wherefrom it was found that Long Term Capital Gain (LTCG) of Rs.1,67,52,500/- shown in the return as sale of shares of Moryo Industries Ltd. was prearranged method employed by the Assessee in connivance with operators to evade taxes. The Assessing Officer (AO) also observed that SEBI has made the investigation in the case of operators and by passing an order u/s 11(1) & 11(4) of the Act restrained 99 entities from accessing the secondary stock market and further in buying, selling and dealing in securities in any manner whatsoever till further order. Whole transactions and a series of steps were taken to accomplish such share transactions in an integrated manner and with a view to ascertaining the true nature and character of such purchase and sale of shares and considering the findings of the search/survey, enquiries conducted in the case of Assessee, brokers, operators and the entry providers and the nature of transaction entered into by the Assessee, the claim of exemption as claimed by the Assessee u/s 10(38) of the Act is disallowed and the amount of Rs.1,67,52,500/- is added in the taxable income of the Assessee u/s 68 of the Act”.

3. The Assessee, being aggrieved, challenged the said addition before the Ld. Commissioner, however, could not get succeeded as the Ld. Commissioner more or less on the similar reasons as given by the AO for making the addition, ultimately affirmed the addition.

4. The Assessee, being aggrieved, is in appeal before us.

5. We have heard the parties and perused the material available on record. It is not in controversy that the Assessee had purchased the aforesaid shares on 10.11.2012 by making the payment through banking channel/cheque and subsequently got dematerialized the same in the month of January 2013 and sold the same in the month of February 2014 through recognized stock exchange. The Assessee in response to the notice dated 06.05.2016 u/s 142(1) r.w.s. 129 of the Act and in order to establish the genuineness of its claim, has submitted the copy of allotment letter of shares, bank statements highlighting the payment made for purchase of shares and received on sale of shares, copy of broker ledger, copy of contract notes and copy of Dmat statement etc. Admittedly the AO has not doubted the such relevant documents filed by the Assessee in support of his transaction qua shares, which goes to show that the Assessee has discharged his initial onus cast as cast upon him as per section 68 of the Act to prove the transaction and to substantiate his claim.

5.1 We further observe that the AO doubted the transaction mainly on the basis of investigation carried out by the investigation wing as well as SEBI report/action. Whereas it is a fact as highlighted by the Ld. Counsel Ms. Hema Sharma, CA by drawing our attention to pages No.41-50 of the factual paper book filed before us that the SEBI vide order dated 21.09.2017 has revoked ad-interim order dated 04.12.2014 wherein certain entities were restrained from carrying out activities of the shares, purchases etc. It is an admitted fact as not refuted by the Ld. D.R. that

no action has either been taken by the SEBI against the Assessee and no incriminating material was found against the Assessee. Even otherwise directly or indirectly, no role has been assigned to the Assessee qua rigging of the shares and/or any manipulation in the scrip under consideration.

5.2 We further observe that the Hon'ble Jurisdictional High Court in the case of Pr. CIT vs. Indravadan Jain HUF 454 of 2018 (Bom-HC) dated 12.07.2023 has also dealt with almost identical addition as involved in the instant case and by considered certain facts and circumstances, laid down certain principles by observing and holding as under:

"JUDGEMENT

1. The following question of law is proposed:

"Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal was Justified in deleting the addition of Rs.1,03,33,925/- made by AO u/s 68 of the I.T. Act, 1961, ignoring the fact that the shares were bought/acquired from off market sources and thereafter the same was demated and registered in stock exchange and increase in share price of Ramkrishna Fincap Ltd. is not supported by the financials and, therefore, the amount of LTCG of Rs. 1,03,33,925/- claimed by the assessee is nothing but unaccounted income which was rightly added u/s 68 of the I. T. Act, 19617"

2. We have considered the impugned order with the assistance of the 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 the 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 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 judgment 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.

6. The appeal is devoid of merits and it is dismissed with no order as to costs."

5.3 We further observe that the Hon'ble Jurisdictional High Court in the case of Pr. CIT vs. Ziauddin A Siddique (ITA No.2012 of 2017 decided on 04.03.2022) has also dealt with the identical addition.

5.4 We also observe that the co-ordinate Bench of the Tribunal at Mumbai in the cases of ITO-19(2)(4) vs. Prakashmal Malraj Jain (ITA No.3271/M/2023 decided on 12.08.2024) and Jagdish B. Prajapati (HUF) vs. ACIT-24(2) (ITA No.548/M/2019 decided on 17.06.2021) also considered the identical scrip as involved in the instant case and ultimately on the identical facts, deleted the addition laid down certain principles/confirmed the deletion of the addition.

5.5 On the aforesaid analyzations, in our considered view, the Assessee has been able to discharge his prima-facie onus as cast u/s 68 of the Act by producing the relevant documents. The Assessee was also not involved in any rigging of the shares/scrip under consideration and even otherwise no adverse order as on date is against the Assessee by any of the investigation authority or SEBI and therefore, considering the peculiar facts and circumstances referred above in totality, we are inclined to allow the claim of the Assessee u/s 10(38) of the Act by deleting the addition under consideration. Thus, the claim of the Assessee u/s 10(38) of the Act is allowed and addition is in hand is deleted.

6. In the result, the appeal filed by the Assessee stands allowed.

Order pronounced in the open court on 23.10.2024.

**Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER**

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.