

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

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER

ITA No.	A.Y.	Appellant	Respondent
3255/Mum/2023	2014-15	Nidhi Manan Shah, Flat No. 5, 1 st Floor, The India House No.4 Hsg. Soc., Opp: Om Chambers, Kemps Corner, Mumbai PAN: BRUPM3111N	Income Tax Officer, Ward-20(2)(1), Piramal Chambers, Mumbai.
3256/Mum/2023	2015-16		
3257/Mum/2023	2016-17		

For Assessee :	Shri Bhupendra Shah,
For Revenue :	Shri Ashok Kumar Ambastha, Sr.DR

Date of Hearing :	07-10-2024
Date of Pronouncement :	06-11-2024

ORDER

PER B.R. BASKARAN, A.M :

All the three appeals filed by the assessee are directed against the orders passed by Ld CIT(A), NFAC, Delhi and they relate to the assessment years 2014-15 to 2016-17. Since the issue urged in all these appeals are identical in nature and further based on common set of facts, these appeals were heard together and are being disposed of by this common order, for the sake of convenience.

2. In all the three appeals, the assessee is aggrieved by the decision of Ld CIT(A) in confirming the addition of Long term capital gains claimed by the assessee as exempt u/s. 10(38) of the Income Tax Act, 1961 ('the Act') treating the sale of shares as bogus in nature.

3. The facts relating to the above said issue are discussed in brief. The AO received information that the assessee has sold shares of a company named M/s. Excel Castronics Limited during the three years under consideration and earned long term capital gains, which was claimed to be exempt u/s 10(38) of the Act. The Investigation Wing of Income Tax Department, Ahmedabad had conducted enquiries with regard to the manipulations done in the shares of certain companies named as 'Penny stock companies'. It revealed that certain persons are manipulating and rigging the prices of shares of penny stock companies and in that process were generating bogus capital gains/capital losses. M/s. Excel Castronics Limited was identified as one of the penny stock companies and the prices of its shares were rigged by certain individuals. It was noticed that the assessee herein has purchased and sold the shares of M/s. Excel Castronics Limited in these three years, thus earning Long term capital gains and claiming the same as exempt. Since the Investigation Wing has reported that the transactions in the shares of above said company are bogus in nature, the AO took the view that the long term capital gains declared by the assessee is bogus in nature and accordingly formed the belief that there is escapement of income in the hands of the assessee herein in these three years. Hence, the AO reopened the assessment of these three years under consideration by issuing notices u/s. 148 of the Act. In the reopened assessment, the AO rejected the claim of exemption u/s. 10(38) of the Act and added the following amounts to the total income of the assessee:-

Assessment year	Amount Added (Rs.)
2014-15	55,37,746
2015-16	1,12,91,924
2016-17	25,80,038

The Ld CIT(A) also confirmed the above said additions and hence the assessee has filed these three appeals.

4. The Ld A.R submitted that the assessee has purchased One lakh shares of Rs.10/- each of M/s Excel Castronics Ltd on 01-02-2012 from the company itself by paying consideration of Rs.10.00 lakhs through banking channels. He submitted that all these shares were sold through stock exchange platform during the years relevant to AYs. 2014-15 to 2016-17. He submitted that there was stock split on 21-11-2014, i.e., face value of shares was reduced from Rs.10/- to Rs.2/- per share and hence, the assessee received additional shares. The Ld A.R explained the details of availability of shares as under:-

Initial purchase of shares	-	1,00,000
shares		
Sold during the years relevant to		
AY 2014-15	21,423 shares	
AY 2015-16	41,500 shares	
	-----	62,923 shares

Balance available		37,077 shares
		=====

Due to split of face value of shares from Rs.10/- to Rs.2/-, the assessee received five shares in lieu of one share held by her. Accordingly, the

assessee received 1,85,385 shares in lieu of 37,077 shares. All the 1,85,385 shares were sold during the year relevant to AY 2016-17.

5. The Ld A.R submitted that the assessee has furnished all the documents evidencing purchase and sale of shares. Further the payments were made/received through banking channels only. The shares have entered and exited the demat account of the assessee. The AO has not found fault with any of the documents furnished by the assessee. He submitted that the AO has mainly relied upon the report given by the Investigation Wing without making any independent enquiry with regard to the transactions carried on by the assessee. Further, the AO has not shown that the assessee was part of the group that were allegedly rigging and manipulating the prices of shares of above said company. The SEBI has not conducted any enquiry with regard to the transactions carried on by the assessee. Accordingly, he submitted that there is no reason to suspect the transactions of the assessee. Accordingly, he prayed that the orders passed by the tax authorities be set aside.

6. On the contrary, the Ld D.R submitted that the Investigation Wing has found that the share prices of M/s Excel Castronics Ltd has been rigged, which is proved by the fact that the shares prices were not commensurate with the fundamentals of the company. The astronomical rise in the prices is beyond the preponderance of human probability. In this regard, the Ld.CIT(A) has placed reliance on the decision rendered by Hon'ble Kolkatta High Court in the case of PCIT vs. Swati Bajaj (IA No.GA/2/2022)(ITAT No.06 of 2022). Accordingly, he contended that the orders passed by Ld.CIT(A) do not call for any interference.

7. In the rejoinder, the Ld A.R submitted that the decisions rendered by the Hon'ble Bombay High Court would state that it is required to show that the assessee was also involved and part of the group which was rigging the prices of shares. Further, the AO should find deficiencies or fault in the documents furnished by the assessee in support of purchase and sale of shares. Then only, the AO could disbelieve the transactions. However, in the instant cases, the AO has simply placed his reliance on the generalized report given by the Investigation Wing and did not find fault with any of the documents furnished by the assessee. He further submitted that the AO has not shown that the assessee was part of the group allegedly manipulating the prices of shares. He submitted that the assessee has invested and sold the shares as an ordinary investor. Accordingly, he submitted that the tax authorities are not justified in disbelieving the long term capital gains declared by the assessee.

8. We heard rival contentions and perused the record. On the perusal of the documents furnished by the assessee, we notice that the copies of share certificates were not furnished by the assessee. The assessee has only furnished a copy of bank statement evidencing the payment of Rs.10.00 lakhs to M/s Excel Castronics Ltd. There should not be any doubt that the payment made by the assessee to the company, *per se*, cannot be taken as purchase of shares. The factum of date of purchase of shares can be recognized only when the shares were allotted to the assessee. In this case, the assessee has not furnished any evidence to show the actual date of allotment of shares to her. In the absence of evidence for allotment of shares to the assessee, it would be difficult to identify the date of purchase of shares. Thus, we notice that the assessee has failed to prove the date of purchase of shares.

9. We noticed that the assessee has furnished copies of Demat statement and in that statement, the shares of above said company are shown. The said statement only gives the date on which the physical shares were dematerialized. It will not show the date of allotment of shares. One thing that can be accepted is that the dematerialization of shares shall take place only when physical shares were surrendered to the bank/broker for getting it dematerialized, meaning thereby, the assessee had been allotted shares sometime earlier to dematerialization of shares. In this view of the matter, we are of the view that the purchase of shares cannot be doubted, but the date of purchase/allotment of shares is still required to be proved by the assessee.

10. We notice that the assessee has furnished all the evidences to support the claim of sale of shares in the stock exchange platform. Hence, sale of shares has been proved by the assessee.

11. With regard to the genuineness of capital gains declared by the assessee, we notice that the AO has not conducted any independent enquiry to show that the trading transactions conducted by the assessee were not genuine. Further, the AO has not shown that the assessee was part of the group which was indulging in manipulation of prices of the shares of above said company. Further, it is not shown that the transactions entered by the assessee were found to be bogus by SEBI. On the contrary, the contention of the assessee is that she was not subjected to any enquiry by SEBI. Barring the failure of the assessee to prove actual date of purchase of shares, the assessee has furnished the details of demat account and details of sale of shares and those documents were not found to be not correct. Under these set of facts, we are of the view that the claim of purchase and sale of shares cannot be doubted with, in the

facts and circumstances of the case. Depending upon the actual date of allotment/purchase of shares, the capital gains earned by the assessee are required to be categorized into Short term or Long term.

12. Thus, for determining the question – whether the assessee has earned long term capital gains or short term capital gains, it is necessary to ascertain the holding period of shares, i.e., time period commencing from the date of allotment of shares and ending with the date of sale of shares needs to be found out. We noticed that the assessee has failed to prove the date of allotment/purchase. Accordingly, in the interest of natural justice, we are of the view that the assessee may be provided with one more opportunity to prove the date of allotment/purchase of shares. Accordingly, the orders passed by the Ld.CIT(A) in all these years are set aside and all the matters are restored to the file of the AO. The assessee is directed to furnish details regarding date of allotment/purchase of shares and on that basis, the AO may compute the capital gains either short term or long term in accordance with law. The assessee shall be provided adequate opportunity of being heard. We also direct the assessee to fully co-operate with the AO for expeditious completion of the assessment.

13. In the result, all the three appeals are treated as allowed for statistical purposes.

Order pronounced in the open court on 06-11-2024

Sd/-

[RAJ KUMAR CHAUHAN]
JUDICIAL MEMBER

Sd/-

[B.R. BASKARAN]
ACCOUNTANT MEMBER

Mumbai, Dated: 06-11-2024

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "B" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai