

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

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

ITA Nos. 1487/Mum/2024 : A.Y. : 2011-12
1503/Mum/2024 : A.Y. : 2011-12

C.O. No. 91/Mum/2024 : A.Y. : 2011-12
(Arising out of ITA No. 1503/M/24)

Asst. Commissioner of Income Tax,
Piramal Chambers,
Lalbaugh, Parel,
Mumbai.
(Appellant)

Vs. Mrs. Rehana Mohammed Ali
Gheewala, (Legal heir of
Mohammed Ali Ebrahim
Gheewala),
202, Bombay Market,
Mumbai Central,
TARDEO, Mumbai.
PAN : AEIPG5619P
(Respondent/Cross Objector)

For Assessee : Shri Vimal Punmiya
For Revenue : Shri Ashish Kumar, Sr.DR

Date of Hearing : 30-10-2024
Date of Pronouncement : 11-11-2024

ORDER

PER B.R. BASKARAN, A.M :

The Revenue has filed two appeals and the assessee has filed one Cross objection challenging the orders passed by Ld.CIT(A). All of them are related to Assessment Year (AY.) 2011-12. The appeal of Revenue numbered as ITA No.1487/Mum/2024 is directed against the order of the Ld.CIT(A) passed against the original assessment order passed u/s. 143(3) of the Income Tax Act, 1961 ('the Act'). The other appeal of the

Revenue numbered as ITA No.1503/Mum/2024 is directed against the order of the Ld.CIT(A) passed against the re-assessment order passed u/s. 143(3) r.w.s 147 of the Act. The assessee has filed Cross Objection challenging the validity of reopening of assessment.

2. The facts relating to the case are discussed in brief. The original assessment in the hands of the assessee was completed u/s.143(3) of the Act on 28-12-2017. The assessee had declared income from business, Income from Capital Gains and Income from other sources. During the year under consideration, the assessee had sold shares of M/s. Splash Media & Infra Ltd. (now known as M/s. Luharuka Media & Infra Ltd.) for an aggregate consideration of Rs.3,34,06,445/- and declared long term capital gains of Rs.3,18,24,691/-, which was claimed as exempt u/s 10(38) of the Act. Besides the above, the assessee also sold shares of M/s. Comfort Intech Ltd.,for an aggregate consideration of Rs.41,03,617/- and declared short term capital gains of Rs.29,72,705/-. During the year under consideration, the assessee had incurred short term capital loss of Rs.6,66,049/- on sale of shares of M/s. Ravi Kumar Dist Ltd. After adjusting current year loss mentioned above, the assessee declared net short term capital gains of Rs.23,06,655/-. The net short term capital gains of Rs.23,06,655/- was set off against the short term capital loss brought forward from earlier years.

3. The Assessing Officer (AO) noticed that the Investigation Wing of Kolkata has reported that the bogus capital gains were generated by rigging the price of shares of certain companies, which were named as "penny stocks". It was noticed that M/s. Splash Media & Infra Ltd. was identified as one of the penny stocks. The Investigation Wing had examined the financial statements of the above said company and has reported that the market value of shares was not commensurate with the actual fundamentals of that company. Thus, the AO noticed from the report given by the Investigation Wing of Kolkata that certain

operators were rigging the prices of shares of penny stock companies. The said report also included the statements taken from some of the operators wherein they had admitted that they were providing accommodation entries in the form of bogus long term capital gains in the shares of Penny stocks. The AO also noticed that the shares sold by the assessee have been purchased by certain persons identified as Exit providers, who were part of the group, manipulating the prices. Based on this information, the AO issued show cause notice to the assessee, but found that the assessee had expired by that point of time. The legal heir of the assessee submitted that the long term capital gains is exempt u/s 10(38) of the Act. Based on the report of the Investigation Wing, the AO concluded that the assessee has also obtained bogus long term capital gains and accordingly assessed the entire sale consideration of Rs.3,34,06,445/- as unexplained income of the assessee in the original assessment completed u/s 143(3) of the Act. The AO also took the view that the assessee would have incurred commission expenses in procuring the bogus capital gains and estimated the same at Rs.6,68,128/- and assessed it as unexplained expenditure.

4. In the appellate proceedings, the Ld.CIT(A) deleted both the additions mentioned above and hence the Revenue has filed appeal numbered as ITA 1487/M/2024.

5. The AO subsequently noticed that the assessee has sold shares of M/s. Comfort Intech Ltd., and declared short term capital gains thereon. The above said company has also been identified as one of the penny stock companies. Since the sale proceeds of shares of M/s Comfort Intech Ltd was omitted to be assessed in the original assessment proceedings, the AO reopened the assessment by issuing notice u/s. 148 of the Act. In the reopened assessment, the AO assessed the sale consideration arising on sale of M/s. Comfort Intech Ltd., amounting to Rs. 41,03,617/- as unexplained income of the

assessee. The Ld.CIT(A) deleted this addition also and hence the Revenue has filed another appeal numbered as ITA 1503/M/2024.

6. In the appeal filed before Ld CIT(A) against the reassessment order, the assessee had challenged the validity of reopening of assessment. Since the Ld.CIT(A) dismissed the said legal ground, the assessee has filed cross objection, contending that the reopening of assessment is not valid.

7. The Ld D.R supported the orders passed by the AO by submitting that the Investigation Wing had made detailed investigation about the modus operandi adopted by the operators and found that a group of people have been manipulating the prices of shares of penny stock companies in order to generate bogus capital gains. He submitted that the SEBI has conducted enquiries in the transactions carried in the shares of M/s. Splash media & Infra Ltd and levied penalty on the above said company. He submitted that the assessee has also dealt in the penny stock companies and hence the long term capital gains & short term capital gains declared by the assessee have been rightly assessed as unexplained income.

8. On the contrary, the Ld A.R submitted that the assessee has purchased the shares of M/s. Splash Media & Infra Ltd., in the stock exchange platform and also sold the shares in the stock exchange. The purchases have been made through a recognised broker and the consideration was paid through banking channels. Similarly, the sales were also made through recognised broker and the sale consideration was received through banking channels. The Ld A.R submitted that the assessee has furnished all documents evidencing purchase and sale of shares. He submitted that the AO did not find fault with any of those documents. He also submitted that the AO did not make any independent enquiry with regard to the transactions carried on by the assessee and he has simply relied upon the report given by the

Investigation Wing. He submitted that the assessee herein was not subjected to any enquiry by the SEBI. He submitted that the SEBI has levied penalty on the above said company on account of failure to file certain documents and the same is nothing to do with the trading of shares. He further submitted that the assessee is a regular investor and has been dealing in shares of other companies and also investing in mutual funds. Accordingly, he submitted that the Ld.CIT(A) has rightly deleted the addition of sale value of M/s. Splash Media & Infra Ltd., and also the estimated commission expenses.

9. With regard to the purchase and sale of shares of M/s.Comfort Intech Ltd, the Ld A.R submitted that the assessee has purchased the shares through a rights issue offered by the above said company and sold the shares in the stock exchange platform. He submitted that the AO has simply relied upon the report of Investigation Wing in respect of this share also and did not make any independent enquiry. He submitted that the AO did not find fault with the documents furnished by the assessee for purchase and sale of shares. Accordingly, he submitted that the Ld.CIT(A) has rightly deleted the addition of sale value of shares of M/s.Comfort Intech Ltd.

10. We heard rival contentions and perused the record. Since the reasoning given by the AO in the original assessment order and reassessment order for assessing the sale consideration of sale of shares of M/s. Splash Media & Infra Ltd., and M/s. Comfort Intech Ltd., is identical in nature, we proceed to dispose of both the appeals of the Revenue together. We notice that the AO has primarily placed reliance on the report given by the Investigation Wing of the Income Tax Department, Kolkata in order to arrive at the conclusion that the long term capital gains/short term capital gains reported by the assessee are bogus in nature. We notice that the investigation report prepared by Investigation Wing, Kolkata 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.

11. We notice that the assessee has furnished reply to the notice issued by the AO and the AO could not find any adverse features from the said reply. Further, the AO could not disprove the share transactions done by the assessee by bringing any contrary material on record. We also notice that the assessee has -

- (a) purchased these shares by paying consideration through banking channels. The shares of M/s Splash Media & Infra Ltd were purchased through stock exchange platform and the shares of M/s Comfort Intech Ltd were purchased in a rights issue.
- (b) dematerialized the shares and kept the same in the Demat account.
- (c) sold the shares through stock exchange platform
- (d) received the sale consideration through banking channels.

Further, the shares have entered and exited the demat account of the assessee. 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. We notice that the shares were purchased in an earlier year and the said purchase has

not been suspected by the AO. Hence, there is no reason to suspect the purchase and sale of shares undertaken by the assessee.

12. It is noticed that the AO did not establish any link between the assessee and the reports of Investigation Wing. At this stage, we may refer to the decision rendered by the Hon'ble Supreme Court in the case of Adamine Construction P Ltd (99 taxman 45), wherein, while dismissing the appeal of Revenue, the Hon'ble Supreme Court has referred to the following observations made by Hon'ble Delhi High Court:-

“What is evident is that the AO went by only the report received and did not make the necessary further enquiries – such as into the bank accounts or other particulars available with him but rather received the entire findings on the report, which cannot be considered as primary material. The assessee had discharged the onus initially cast upon it by providing the basic details which were not suitably enquired into by the AO.”

We may also gainfully refer to the decision rendered by the Hon'ble jurisdictional Bombay High Court in the case of Shyam Pawar (54 taxmann.com 108)(Bom), wherein the Hon'ble Bombay High Court has observed as under:-

“3. Mr.Sureshkumar seriously complained that such finding rendered concurrently should not have been interfered with by the Tribunal. In further Appeal, the Tribunal proceeded not by analyzing this material and concluding that findings of fact concurrently rendered by the Assessing Officer and the Commissioner are perverse. The Tribunal proceeded on the footing that onus was on the Department to nail the Assessee through a proper evidence and that there was some cash transaction through these suspected brokers, on whom there was an investigation conducted by the Department. Once the onus on the Department was discharged, according to Mr.Sureshkumr, by the Revenue-Department, then, such a finding by the Tribunal raises a substantial question of law. The Appeal, therefore, be admitted.

4. Mr.Gopal, learned Counsel appearing on behalf of the Assessee in each of these Appeals, invites our attention to the finding of the Tribunal. He submits that if this was nothing but an accommodation of cash or conversion of unaccounted money into accounted one, then,

the evidence should have been complete. Change of circumstances ought to have, after the result of the investigation, connected the Assessee in some way or either with these brokers and the persons floating the two companies. It is only, after the Assessee who is supposed to dealing in shares and producing all the details including the DMAT account, the Exchange at Calcutta confirming the transaction, that the Appeal of the Assessee has been rightly allowed. The Tribunal has not merely interfered with the concurrent orders because another view was possible. It interfered because it was required to interfere with them as the Commissioner and the Assessing Officer failed to note some relevant and germane material. In these circumstances, he submits that the Appeals do not raise any substantial question of law and deserve to be dismissed.

*5. We have perused the concurrent findings and on which heavy reliance is placed by Mr.Sureshkumar. While it is true that the Commissioner extensively referred to the correspondence and the contents of the report of the Investigation carried out in paras 20, 20.1, 20.2 and 21 of his order, **what was important and vital for the purpose of the present case was whether the transactions in shares were genuine or sham and bogus. If the purchase and sale of shares are reflected in the Assessee's DMAT account, yet they are termed as arranged transactions and projected to be real, then, such conclusion which has been reached by the Commissioner and the Assessing Officer required a deeper scrutiny.** It was also revealed during the course of inquiry by the Assessing Officer that the Calcutta Stock Exchange records showed that the shares were purchased for code numbers S003 and R121 of Sagar Trade Pvt Ltd. and Rockey Marketing Pvt. Ltd. respectively. Out of these two, only Rockey Marketing Pvt.Ltd. is listed in the appraisal report and it is stated to be involved in the modus-operandi. It is on this material that he holds that the transactions in sale and purchase of shares are doubtful and not genuine. In relation to Assessee's role in all this, all that the Commissioner observed is that the Assessee transacted through brokers at Calcutta, which itself raises doubt about the genuineness of the transactions and the financial result and performance of the Company was not such as would justify the increase in the share prices. Therefore, he reached the conclusion that certain operators and brokers devised the scheme to convert the unaccounted money of the Assessee to the accounted income and the present Assessee utilized the scheme.*

*6. It is in that regard that we find that Mr.Gopal's contentions are well founded. **The Tribunal concluded that there was something more which was required, which would connect the present Assessee to the transactions and which are attributed to the Promoters/Directors of the two companies.** The Tribunal referred*

to the entire material and found that the investigation stopped at a particular point and was not carried forward by the Revenue. There are 1,30,000 shares of Bolton Properties Ltd. purchased by the Assessee during the month of January 2003 and he continued to hold them till 31 March 2003. The present case related to 20,000 shares of Mantra Online Ltd for the total consideration of Rs.25,93,150/-. These shares were sold and how they were sold, on what dates and for what consideration and the sums received by cheques have been referred extensively by the Tribunal in para 10. A copy of the DMAT account, placed at pages 36 & 37 of the Appeal Paper Book before the Tribunal showed the credit of share transaction. The contract notes in Form-A with two brokers were available and which gave details of the transactions. The contract note is a system generated and prescribed by the Stock Exchange. From this material, in para 11 the Tribunal concluded that this was not mere accommodation of cash and enabling it to be converted into accounted or regular payment. The discrepancy pointed out by the Calcutta Stock Exchange regarding client Code has been referred to. But the Tribunal concluded that itself, is not enough to prove that the transactions in the impugned shares were bogus/sham. The details received from Stock Exchange have been relied upon and for the purposes of faulting the Revenue in failing to discharge the basic onus. If the Tribunal proceeds on this line and concluded that inquiry was not carried forward and with a view to discharge the initial or basic onus, then such conclusion of the Tribunal cannot be termed as perverse. The conclusions as recorded in para 12 of the Tribunal's order are not vitiated by any error of law apparent on the face of the record either.

7. As a result of the above discussion, we do not find any substance in the contention of Mr.Sureshkumar that the Tribunal misdirected itself and in law. We hold that the Appeals do not raise any substantial question of law. They are accordingly dismissed. There would no order as to costs.

8. Even the additional question cannot be said to be substantial question of law, because it arises in the context of same transactions, dealings, same investigation and same charge or allegation of accommodation of unaccounted money being converted into accounted or regular as such. The relevant details pertaining to the shares were already on record. This question is also a fall out of the issue or question dealt with by the Tribunal and pertaining to the addition of Rs.25,93,150/-. Barring the figure of loss that is stated to have been taken, no distinguishable feature can be or could be placed on record. For the same reasons, even this additional question cannot be termed as substantial question of law.”

13. We may also refer to the decision rendered by the Hon'ble Bombay High Court in the case of PCIT vs. Ziauddin A Siddique (Income tax Appeal No. 2012 of 2017 dated 4th March, 2022), wherein the Hon'ble Bombay High Court has observed as under:-

"2. We have considered the impugned order with the assistance of 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 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 the 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 judgement 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."

Further, in the case of CIT vs. Jamnadevi Agarwal (20 taxmann.com 529 (Bom), the Hon'ble Bombay High Court has held that the transactions of purchase and sale of shares cannot be considered to be bogus, when the documentary evidences furnished by the assessee establish genuineness of the claim. In the case of PCIT vs. Indravadan Jain (HUF) (ITA No. 454 of 2018)(Bom), 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.”

14. We noticed earlier that the AO has assessed the sale consideration of shares as unexplained cash credit u/s. 68 of the Act. It is pertinent to note that the purchase of shares made in an earlier year has been accepted by the Revenue. The sale of shares has taken place in the on-line platform of the Stock Exchange and the sale consideration has been received through the stock broker in banking channels. Hence, in the facts of the case, the sale consideration cannot be considered to be unexplained cash credit in terms of sec. 68 of the Act.

15. We notice that, in the instant case, the AO has not established that the assessee was involved in price rigging and further the AO did not find fault with any of the documents furnished by the assessee. Hence, the ratio laid down in the above said cases by the jurisdictional Hon'ble Bombay High Court shall apply to the facts of the present case.

Accordingly, we are of the view that the Ld.CIT(A) was justified in deleting the addition made by the AO in respect of long term capital gains in the original assessment order and short term capital gains in the reassessment order.

16. In view of the above, the Ld.CIT(A) was justified in deleting the estimated addition of commission expenses. Accordingly, we confirm the orders passed by the Ld.CIT(A) on the three issues, viz., addition of sale value of M/s. Splash Media & Infra Ltd, and addition of commission expenses on estimated basis in the original assessment proceedings and addition of sale value of M/s. Comfort Intech Ltd., in the reassessment proceedings.

17. In the cross objection, the assessee has challenged the decision of the Ld.CIT(A) in upholding the validity of reopening of assessment. Since we have decided the issues on merits in favour of the assessee, the above said legal issue shall become academic in nature. Accordingly, we leave the same open.

18. In the result, both the appeals of the Revenue and the cross objection filed by the assessee are dismissed.

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

Sd/-
[ANIKESH BANERJEE]
JUDICIAL MEMBER

Mumbai,
Dated: 11-11-2024

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

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