

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "J (SMC)", MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.3147/M/2024
Assessment Year: 2012-13**

DCIT Central Circle 2(1), 804, 8 th Floor, Pratishtha Bhawan, C.G.O. Maharshi Karve Road, Mumbai - 400020	Vs.	Shri Arihant Suresh Jain, B-702, Tridev-II Apartment, Bhakti Marg, Mumbai - 400080 PAN: AFXPJ1386C
(Appellant)		(Respondent)

Present for:

Assessee by : Shri J.R. Bhatt, A.R.
Revenue by : Shri Asif Karmali, Sr. D.R

Date of Hearing : 15.10.2024
Date of Pronouncement : 29.11.2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Assessee against the order dated 05.03.2024, impugned herein, passed by the Ld. Commissioner of Income Tax (A)- Pune-12 (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2012-13.

2. The brief facts relevant for adjudication of the instant case are that the Assessee by filing his return of income for the assessment year under consideration on 30.03.2013, had declared its income of Rs.56,790/-. Subsequently, search action u/s 132 of the Act was conducted on 20.10.2016 on Ranka Group and a warrant was executed in case of the Assessee. Thereafter notice u/s 153 of the Act was issued, in response to which the Assessee filed its return of income on 19.09.2018 declaring the same income of Rs.56,790/- as declared by filing the original return of income. Subsequently the case of the Assessee was reopened u/s 147 of the Act mainly on the ground that as per information, the Assessee is one of the beneficiaries of the bogus Long Term Capital Gains (LTCG)/ Short Term Capital Loss (STCL), qua trading in the identified scrips as detailed below:

<i>Scrip Code</i>	<i>Scrip Name</i>	<i>Sale Value inAY2012-13</i>
533427	VMS Industries Ltd,	Rs.6,74,550/-
SI 2673	Scan Steels Limited	Rs.1,72,772/-
<i>Total</i>		Rs.8,47,321/-

3. The Assessing Officer (AO) vide show cause notice dated 19.11.2019 show caused the Assessee *“as to why the LTCG of Rs.8,47,921/- earned on account of sale of shares of aforesaid scrips as claimed as exempt, be not disallowed and treated as unexplained income and taxed accordingly”*. The Assessee did not file any reply and therefore the AO by presuming that non-compliance of the Assessee clearly means that the Assessee has accepted the reason for reopening, ultimately disallowed the claim of the Assessee u/s 10(38) of the Act by treating the LTCG of Rs.8,47,921/- as bogus and unexplained cash credit and added back to the income of the Assessee u/s 68 of the Act mainly on the reason that price of the scrips was rigged in preplanned and manipulated manner and the Assessee did not disclose that the money that was used to buy shares was his own money and was routed with the help of Shri Naresh Jain.

4. The Assessee, being aggrieved, challenged the said addition before the Ld. Commissioner on legal issue i.e. reopening of case as well as on merit. The Ld. Commissioner vide impugned order not only held the reopening of the case as bad in law but also deleted the addition on merits mainly on the reasons *“that the Assessee during the course of assessment proceedings duly filed the copies of contract notes, bank statement, details of STT paid and also computation of income. It is not the case of the AO that the broker through whom the Assessee had entered into the transaction of bolt, had ever admitted having indulged in any rigging as alleged. It is also not the case of the AO that the documentary evidence filed before him had any flaws or the AO could point out any fault with the same. Though the AO has held that Shri Naresh Jain had facilitated the Assessee to earn the bogus gain, however, the AO has not brought on record any material which showed that Shri Naresh Jain had either paid the money to the Assessee or for that matter any cash trail is there, which is prime to support the claim of the AO”*.

The Ld. Commissioner further observed that it is true that price fluctuation does rise doubt about the transactions being non-genuine but presumption how so ever strong and it cannot partake the character to prove. Since the AO has failed to bring any evidence or found fault with the evidence produced, therefore the Ld. Commissioner by following the judgments of Hon’ble Delhi High Court as well as Hon’ble Gujarat High Court respectively rendered in the cases of PCIT vs. Krishna Devi (Smt.) (2021) 431 ITR 361 and PCIT vs. Parasben Kasturchand Kochar (2021) 130 taxman.com 176 (Gujarat HC) ultimately held that the addition made by the AO deserves to be deleted. The Ld. Commissioner further observed that the AO failed to appreciate that the Assessee has not claimed any LTCG/STCG. All purchases and sales are part of the profit & loss account, therefore the addition of Rs.8,47,321/- made by the AO is deleted.

5. The Revenue Department, being aggrieved, is in appeal before us.

6. We have heard the parties and perused the material available on record. We observe as stated above that the Ld. Commissioner thoroughly examined the case of the Assessee and also taken into consideration the peculiar facts and circumstances that the Assessee has duly supported its transactions by filing the relevant documents such as copies of contract notes, D-mat statement, bank statements evidencing the transactions and prima-facie discharged onus cast upon him. Further, the Ld. Commissioner also taken into consideration the fact that the Assessee has not claimed any LTCG/STCG but in fact purchases and sales have been shown part of profit and loss account, meaning thereby the addition in our considered view, on this aspect itself is un-sustainable. Therefore, we are of the considered view that the Ld. Commissioner rightly deleted the addition made by the AO and thus order deleting the addition does not require any interference and consequently the same is upheld.

7. In the result, the appeal filed by the Revenue Department stands dismissed.

Order pronounced in the open court on 29.11.2024.

**Sd/-
(GAGAN GOYAL)
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.