

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

**BEFORE JUSTICE (RETD.) SHRI C.V. BHADANG, PRESIDENT
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No. 4456/Mum/2024
Assessment Year : 2014-15

Income Tax Officer-10(1)(1), Room No. 509, 5 th Floor, Aayakar Bhavan, M.K. Road, Mumbai.	vs.	Manoj Kumar Agarwal, 4, Kingston, Lokhandwala Complex, Shashtri Nagar, Andheri (West), Mumbai. PAN : AABPA4070D
(Appellant)		(Respondent)

For Assessee :	Shri Prakash Jhunjhunwala,
For Revenue :	Shri R.R. Makwana, Sr.DR

Date of Hearing :	03-12-2024
Date of Pronouncement :	03-12-2024

ORDER

PER B.R. BASKARAN, A.M :

The Revenue has filed this appeal challenging the order dated 11-07-2024 passed by Ld.CIT(A)-NFAC, Delhi and it relates to the Assessment Year (AY.) 2014-15. The Revenue is aggrieved by the decision of the Ld.CIT(A) in deleting the addition of Rs.2,23,81,175/- added by the AO, rejecting the exemption claimed u/s 10(38) of the Income Tax Act, 1961 ('the Act') Act in respect of Long Term Capital Gains arising on sale of shares.

2. The facts relating to the case are discussed in brief. The assessee filed his return of income declaring a total income of Rs.9,54,120/-. The AO received information from the Investigation Wing that certain

share brokers are manipulating the prices of certain companies (identified as penny stock companies) in order to generate bogus capital gains. It was noticed that the assessee has declared long term capital gains on sale of shares of one of the penny stock companies named, M/s. Surabhi Chemicals and Investments Ltd. Hence the AO reopened the assessment u/s 148 of the Act.

3. The facts relating to the generation of long term capital gains are set out in brief. The assessee purchased 4000 shares of M/s Surabhi Chemicals & Investments Ltd in off market from M/s Akriti Advisory Services P. Ltd., on 26-06-2012 for a sum of Rs.250/- per share. The total purchase consideration was Rs.10.00 lakhs and the same was paid by way of cheque. Subsequently, the assessee received 36,000 bonus shares on 14-08-2012 and hence his holding increased to 40000 shares. Thereafter, the par value of shares was split into Re1.00 from Rs.10.00 on 13-04-2013 and accordingly, the holding of the assessee increased to 4,00,000 shares. Subsequently, the assessee sold his entire holding in stock exchange in various instalments commencing from 02-11-2013 to 06-12-2013 for a sum of Rs.2,33,81,175/- and accordingly generated long term capital gains of Rs.2,23,81,175/-, which was claimed as exempt u/s 10(38) of the Act.

4. The AO placed his reliance entirely on the report given by the Investigation Wing in order to conclude that the long term capital gains declared by the assessee was not genuine. Accordingly, he assessed the entire amount of long term capital gains of Rs.2,23,81,175/- as income of the assessee.

5. The Ld.CIT(A), however, deleted the above said addition and hence the Revenue has filed this appeal.

6. The Ld.DR supported the order passed by the AO. He submitted that M/s Surabhi Chemicals & Investments Ltd., has been identified as one of the penny stock companies and the prices of its shares have been

manipulated in order to generate bogus capital gains. He submitted that the market prices were not commensurate with the financial results and fundamentals of the above said company. He submitted that the Investigation Wing of the Income Tax Department has investigated the modus operandi adopted by the brokers and hence, the AO has placed his reliance on the report of the Investigation Wing.

7. The Ld.AR, on the contrary, submitted that the assessee has purchased the shares of M/s Surabhi Chemicals & Investments Ltd., as an ordinary investor. He submitted that the AO did not carry on any independent enquiry with regard to the transactions carried on by the assessee. He submitted that the AO has simply placed reliance on the generalised investigation report given by the Investigation Wing, without pointing out as to how it is related to the assessee. He submitted that the AO has not proved that the assessee was part of the group that were manipulating the prices of shares. He submitted that the assessee has furnished all documents to prove the factum of purchase and sale of shares and the AO did not find fault with any of those documents. He submitted that the purchase consideration was paid through banking channels and the sale consideration has been received through banks only. The shares were sold through stock exchange platform. Accordingly, he submitted that the long term capital gains declared by the assessee should not be doubted with. He further submitted that the Ld.CIT(A) has granted relief following the decision rendered by the Tribunal in the case of Chirag Tejprakash Dangi vs. ITO (ITA No.3256/Mum/2022 dated 20-02-2024), wherein the Tribunal has deleted the addition of sale of value shares of M/s Surabhi Chemicals & Investments Ltd. Accordingly, he submitted that the order passed by Ld.CIT(A) does not call for any interference.

8. We heard rival contentions and perused the record. We notice that the assessee, before the Ld.CIT(A), has submitted as under and

furnished following documents to support the purchase and sale transactions of above said shares:-

In respect of sale transactions

Sale bills-cum-Contract notes of stock broker : In this regard, the appellant is submitting that the order number, order time, trade number, trade time, Service Tax, stamp duty and STT paid are disclosed. The entire sale of shares had been made on floor of Bombay Stock Exchange (BSE) through SEBI registered stock broker M/s Shilpa Stock Brokers Pvt. Ltd., from 20/11/2013 to 06/12/2013 at Rs.2,33,81,175/-. The contents of contract notes match exactly with online data available in public platform of the Bombay Stock Exchange (BSE);

1. Confirmation of account of SEBI registered stock broker M/s. Shilpa Stock Broker Pvt. Ltd;
2. Appellant's bank statement disclosing the receipt of sale consideration by RTGS. The appellant had not withdrawn the cash against sale of shares;
3. D-mat statement disclosing the delivery of shares to Bombay Stock Exchange (BSE) made from 06/11/2013 and 22/11/2013;
4. Bhav copy (rate publication) of Bombay Stock Exchange (BSE) evidencing the sale of shares made at prevailing market price;
5. CIN master data (ROC) disclosing the status of M/s Surabhi Chemicals and Investments Ltd as "Active" and "Listed" and also disclosing the names, address of directors of such company.

In respect of Purchase transaction:-

- (a) Purchase bill dated 26/06/2012 evidencing the purchase of shares;
- (b) Appellant's bank statement disclosing the payment made for purchase of shares of Rs. 10,00,000/- through A/c payee cheque on 26/06/2012;
- (c) Receipt issued by the seller, thereby confirming the sale of shares to the appellant;
- (d) Share certificate endorsed in the name of appellant on 29/06/2012 of 4000 shares;
- (e) Allotment of 36000 bonus shares on 14/08/2012 and thereafter stock splitted into 4,00,000 shares;
- (f) D-mat statement converting the physical shares in electronic mode on 27/08/2012 and 19/10/2012;
- (g) Balance sheet of appellant of earlier year ended 31/03/2013 wherein the purchase of shares are disclosed under "Investments".

9. We notice that the Ld.CIT(A) has deleted the addition with the following observations:-

“7.5 I have carefully gone through the above evidence as well as the information filed before me; which was also submitted before the assessing officer. From a careful consideration of the facts on record, I of the considered opinion that the assessing officer has not properly examined the above evidence submitted by the appellant at the assessment stage. Based on the facts of the case, I am convinced that the AO has simply relied on the information received from the Investigation Wing and has not done any further enquiry to confirm the information. Further, the appellate has sold the said shares on real time basis through a SEBI approved broker. The contract note cum bill issued by the broker is on record. The appellant does not have any dealings with Exit providers. The modus operandi mentioned by the AO at Para number 7 of his order is general in nature and doesn't bring out any specific

conduct of the appellant which warrants addition in his case. In view of this, I am in agreement with the allegation of the appellant that the addition in question was made based on suspicion, assumptions and surmises.

7.6 As held by Hon'ble ITAT, Kolkata in the case of Shri Navneet Agarwal, legal heir of late Kiran Agarwal vs. ITO in ITA No. 2281/KOL/ 2017 dated 27 2018, even if an alleged scam has taken place, it has to be established in each case by the party alleging so (Revenue in this case). It has to be established whether this assessee in question was part of this scam. The chain of events and the live link of the assessee's action giving his involvement in the scam should be established. No such attempt has been made by the AO in this case. Hon'ble ITAT in the above case, further held that just the modus operandi, generalizations, preponderance of human probabilities cannot be the only basis for rejecting the claim of the assessee. Unless the specific evidence is brought on record to counteract the validity and correctness of the documentary evidences produced, the same cannot be rejected by the department. Hon'ble Supreme Court in the case of Omar Salav Mohammad Sait reported in (1959) 37 ITR. 151 (SC) held that no addition can be made on the basis of surmises, suspicion and conjunctures. The appellant has quoted several decisions in its favour to put forth the above proposition.

7.7 In addition, the following judgments advocate the above proposition, where exactly identical issue regarding allowability of long term capital gain on sale of shares of same listed company, M/s. Surabhi Chemicals & investments Ltd. had been decided by the Hon'ble Tribunals in favour of the respective assessees :

- (i) Chirag Tejprakash Dangi vs. ITO (ITA No. 3256/Mum/2022)
- (ii) M/s. Anusmriti Sarkar vs. ITO (ITA No. 390/M/2020 dated 07-06-2021)
- (iii) Shri Udit Agarwal vs. DCIT (ITA NO. 1839/KOL/2017 dated 26-12-2018)
- (iv) Shashi Bala Bajaj vs. ITO (ITA No. 1457/KOL/2018 dated 16-11-2018)

The Hon'ble Tribunals, in above four cases, had carefully analysed the facts of the case and judicial decisions of various Courts and Tribunals and held that the Long term capital gain earned on sale of M/s. Surabhi Chemicals & investments Ltd. is genuine in nature.

7.8 Applying the proposition of law as laid down in the above mentioned judgements, to the facts of this case, I am of the considered opinion that the evidences produced by the appellant in support of its claim before the assessing officer outweigh the suspicion or preponderance of probabilities. No material has been brought on record by the assessing officer to counteract the evidence furnished by the appellant. Under these circumstances, I hold that the assessing officer is not justified in taxing the LTCG of Rs. 2,23,81,175 as "Unexplained cash credit" under section 68 of the Act. Based on the facts, circumstances and legal issues brought out in the foregoing paragraphs, I allow the claim that the income in question as a bona fide LTCG arising from the sale of M/s. Surabhi Chemicals & investment Ltd. Accordingly, I delete the above addition of Rs. 2,23,81,175 made under section 68 of the Act. Therefore, Grounds No. 2 and 3 succeed."

10. In the case of Chirag Tejprakash Dangi (supra), the Tribunal has followed the decisions rendered by Hon'ble High Court of Bombay in the following cases:-

- i) PCIT Vs. Indravadan Jain HUF (ITA No. 454 of 2018)(Bom)
- ii) PCIT Vs. Ziauddin A. Siddiquie (ITA No. 2012 of 2017)
(Bom)
- iii) CIT Vs. Shyam R. Pawar (54 taxmann.com 108)(Bom)
- iv) CIT Vs. Smt. Jamnadevi Agrawal (20 taxmann.com 529)
(Bom)

In the above said cases, the Hon'ble Bombay High Court has held that the AO is required to show that the assessee was part of the group, which were rigging the prices of shares or he should find deficiencies in the documents furnished by the assessee to prove the purchases and sale of shares, before assessing the capital gains. In the instant case,

the AO has not done so and he simply placed reliance on the report given by the Investigation wing. Hence, his order cannot be sustained.

11. In view of the foregoing discussions, we confirm the order passed by the Ld.CIT(A) on this issue.

12. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 03-12-2024

Sd/-

(JUSTICE (RETD.) C.V. BHADANG)
PRESIDENT

Sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai,

Date: 03-12-2024

TNMM

Copy to :

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

By Order

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