

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

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER

ITA No. 3084/Mum/2023
Assessment Year : 2013-14

Hiren D. Kubadia HUF, 601, Sunshine Heights, 243 P.L. Kale Guruji Marg, Dadar (West) Mumbai PAN : AACHH9591P	vs.	Income Tax Officer, Ward-21(1)(4), Piramal Chamber, Mumbai.
(Appellant)		(Respondent)

Assessee by : Shri Aakash Kumar
Revenue by : Shri Hemanshu Joshi, Sr. DR

Date of Hearing : 29-11-2024
Date of Pronouncement : 09-12-2024

PER B.R. BASKARAN, A.M :

The assessee has filed this appeal challenging the order dated 21-08-2023 passed by the Ld.CIT(A)-National Faceless Appeal Centre (NFAC), Delhi and it relates to assessment year (AY.) 2013-14. The assessee is aggrieved by the decision of the Ld.CIT(A) in confirming the addition of sale proceeds of shares of alleged penny stock as unexplained cash credit u/s. 68 of the Income Tax Act, 1961 ('the Act') and also the addition of estimated commission expenses.

2. The facts relating to the case are stated in brief. During the course of assessment proceedings, the AO noticed that the assessee has declared long term capital gain of Rs.79,67,422/- on sale of shares of M/s. Tuni Textiles Limited and claimed the same as exempt u/s.10(38) of the Act. It was noticed that the assessee had purchased 5000 shares of above said company on 28-03-2011 @ Rs. 250.25/- per share from stock exchange platform through M/s.MNS Securities Ltd, a SEBI registered stock broker. The shares were received in the demat account of the assessee. Subsequently, the face value of shares was split from Rs.10/- per share to Re.1/- per share. Consequently, the assessee's holding increased to 50000 shares. The assessee sold all the shares during the period from June, 2012 to November, 2012 in various installments for an aggregate sale value of Rs.91,18,672/- and it resulted in long term capital gain of Rs.78,67,422/-. (We noticed earlier, the AO computed the LTCG at Rs.79,67,422/- by taking sale consideration of shares at Rs.91,27,800/-). The assessee claimed the same as exempt u/s 10(38) of the Act.

3. The 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. Tuni Textiles Ltd. was identified as one of the penny stocks. The Investigation Wing had reported that the fundamentals and financial strength of the above said company do not justify the market value of shares. He also noticed from the report given by the Investigation Wing of Kolkata that certain operators were rigging the prices of shares. Some operators had admitted they have provided accommodation entries in the firm of bogus long term capital gains.

4. Accordingly, the AO asked the assessee to prove the genuineness of long term capital gains declared by it. In reply, the assessee contended that the purchase and sale of M/s.Tuni Textiles Ltd were genuine transactions. The assessee also furnished all the documents evidencing purchase and sale of shares. The AO did not accept the same. He recorded a statement from the Kartha of the assessee, but nothing adverse was found from it. Yet, the AO disbelieved the claim of long term capital gains on the basis of report given by the investigation wing. Accordingly, he assessed the entire sale consideration of Rs.91,27,800/- (as noted down by the AO) as income of the assessee u/s 68 of the Act. He also held that the assessee would have incurred commission expenses in procuring the long term capital gains and the AO estimated the commission expenses at Rs.2,73,834/- and assessed the same u/s 69C of the Act. The Ld.CIT(A) also confirmed both the additions and hence, the assessee has filed this appeal.

5. The Ld.AR submitted that the assessee has furnished all the evidences to prove the purchase and sale of shares of M/s. Tuni Textiles Ltd. He submitted that the assessee has purchased shares from the stock exchange platform in the ordinary course at the prevailing market prices and sold the shares also through the stock exchange plat form. He submitted that the AO did not find fault with any of the evidences furnished by the assessee. On the contrary, the AO has placed his reliance entirely on the report given by the Investigation Wing. He submitted that the AO has not proved that the assessee was part of the group that was manipulating the prices of shares. Further, the AO did not find any fault in the replies given by the assessee in the statement taken from him by the AO u/s 131 of the Act. Accordingly, the Ld.AR contended that the AO could not have disbelieved the documents furnished by the assessee and

assessed the sale price of shares as unexplained cash credit and he was also not justified in estimating commission expenses. In support of his submissions, the Ld.AR relied upon following case laws:-

- (a) CIT vs. Shyam R Pawar (2015)(54 taxmann.com 108)(Bom);
- (b) PCIT vs. Indravadan Jain HUF (ITA No.454 of 2018);
- (c) PCIT vs. Ziauddin A Siddique (ITA No.2012 of 2017)

Accordingly, he submitted that the transactions of the assessee should not have been doubted merely on the basis of generalized report given by the Investigation Wing. He submitted that the AO did not carry on any other investigation to show that the transactions carried on by the assessee were not genuine.

6. The Ld.DR submitted that the report of the Investigation Wing clearly shows that the prices of M/s.Tuni Textiles Ltd were manipulated. The fundamentals of this company were very weak and hence a prudent investor could not have invested in such kinds of shares. Further, the operators from Kolkata have confessed that they were providing accommodation entries in sale of shares of above said company. Accordingly, he submitted that the surrounding circumstances would show that the transactions carried on by the assessee in this share were not genuine and accordingly contended that the order passed by the Ld. CIT(A) should be upheld.

7. The Ld.AR, on the contrary, submitted that, unlike the facts available in other cases, the assessee herein has purchased the shares through the stock exchange platform, which would show that the assessee did not have any connection with any of the operators.

8. We heard the parties and perused the record. 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 reported by the assessee is 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. AR also submitted that the regulator of stock market SEBI has not conducted any enquiry against the assessee.

9. 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 also could not disprove the share transactions by bringing any material on record. We also notice that the assessee has –

- (a) purchased and sold these shares by paying consideration through banking channels and through stock exchange platform;
- (b) the shares were received and issued through the Demat account of the assessee.

We notice that the assessee is a regular investor in shares. Further, the AO 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 purchase 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.

10. We noticed earlier 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.”

Further, the facts available in the present case are that the shares were purchased and sold through the stock exchange platform. In the case of PCIT vs. Indravadan Jain HUF (ITA No.454 of 2018 dated 12th July, 2023), 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."

11. The facts available in the instant case are similar to the above said case. Accordingly, following above said decision, we hold that, in the facts and circumstances of the instant case, there is no reason to suspect the genuineness of purchase and sale of shares of M/s.Tuni Textiles Ltd. Accordingly, we set aside the order passed by the Ld.CIT(A) on this issue and direct the AO to delete the addition of sale proceeds of shares made. Since the above said addition is deleted, the addition relating to alleged expenses in procuring bogus long term capital gain is also liable to be deleted. Accordingly, the estimated commission expense added by the AO is also liable to be deleted. Accordingly, we set aside the order passed by the Ld.CIT(A) and direct the AO to delete both the additions. We order accordingly.

12. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 09-12-2024

Sd/-

[SUNIL KUMAR SINGH]
JUDICIAL MEMBER

Mumbai, Dated: 09-12-2024

TNMM

Sd/-

[B.R. BASKARAN]
ACCOUNTANT MEMBER

Copy to :

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

By Order

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