

**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. 3697/Mum/2024
Assessment Year : 2015-16

RNR Trading Private Limited, C-404, 4 th Floor, Marathon Nextgen Innova, Off.G.K. Marg, Lower Parel, Opp. Peninsula Corporate Park, Mumbai. PAN : AABCS1149N	vs.	Income Tax Officer, Ward-2(3)(1), Aayakar Bhavan, M.K. Road, Mumbai.
(Appellant)		(Respondent)

For Assessee :	Shri B.V. Jhaveri
For Revenue :	Shri R.R. Makwana, Sr.DR

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

ORDER

PER B.R. BASKARAN, A.M :

The assessee has filed this appeal challenging the order dated 11-06-2024 passed by the Ld. Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi [‘Ld.CIT(A)’] and it relates to AY. 2015-16. The grounds of appeal urged by the assessee are related to the following issues:

- a. Validity of re-opening of assessment;
- b. Addition of Long Term Capital Gain of Rs. 1.32 crores treating it as bogus in nature.

2. The facts relating to the case are stated in brief. The assessee-company was earlier known as Sterling Rerolling Mills Pvt. Ltd. During the year under consideration, the assessee has generated income by way of interest in inter corporate deposits, dividend on investments, profit on sale of shares/redemption of securities etc. It filed its return of income of the year under consideration declaring a total income of Rs. 64.95 lakhs and it was processed u/s. 143(1) of the Income Tax Act, 1961 ('the Act').

3. Subsequently, the AO received information that the Revenue has carried out search and seizure action in the hands of various persons led by Shri Naresh Jain. The search action revealed that they were manipulating the prices of shares of certain companies (called as "penny stocks") in order to generate bogus capital gains. One of the companies identified by the Investigation Wing in which they have manipulated prices was M/s. Nyssa Corporation Ltd. It was noticed that, during the year under consideration, the assessee has declared long term capital gains on sale of shares of M/s. Nyssa Corporation Ltd., and the same was claimed as exempt u/s 10(38) of the Act.

4. Based on the information received from Investigation wing, the AO took the view that there was escapement of income in the hands of the assessee. Accordingly, he re-opened the assessment of the year under consideration by issuing notice u/s. 148 of the Act. The report given by the Investigation Wing stated that the Long Term Capital Gain earned by the assessee from the sale of shares of above said company was Rs. 1.32 crores. In the reopened proceedings, the AO issued a show cause notice to the assessee calling for various details. The assessee replied to the said notice and requested for adjournment of one week for submitting the documents. However, the AO did not grant time. Upon perusing the

income tax returns and other documents filed by the assessee, the AO noticed that the assessee has claimed exemption of Long Term Capital Gain. The AO held the same to be 'bogus in nature' and accordingly assessed the sum of Rs. 1.32 crores, being the amount of Long Term Capital Gain claimed as exempt by rejecting the claim of exemption.

5. Before the Ld.CIT(A), the assessee challenged the validity of re-opening of assessment and also the addition made by the AO. The Ld.CIT(A) did not accept the contentions of the assessee and accordingly dismissed the appeal. Aggrieved, the assessee has filed this appeal before the Tribunal.

6. The Ld.AR raised various contentions on the issue of validity of re-opening of assessment by placing reliance on the decisions rendered by the Hon'ble Bombay High Court in the case of Hexaware Technologies Ltd., vs. ACIT [464 ITR 430]; the Hon'ble Supreme Court in the case of Union of India vs. Ashish Agarwal [444 ITR 1] (SC) and the Hon'ble Supreme Court in the case of Union of India vs. Rajeev Bansal (2024) [167 taxmann.com 70]. Accordingly, the Ld.AR contended that the re-opening of assessment was bad in law on several grounds.

7. With regard to merits of the additions, the Ld.AR submitted that M/s. Nyssa Corporation Ltd., is a group company. It was earlier known as M/s Ravinay Trading Company Ltd. He submitted that the assessee had made investment in the shares of M/s Ravinay Trading Company Ltd long back in the years 2003 and 2006. The details of purchases of shares are given below:-

- a. On 13-03-2003, the assessee purchased 10,942 shares@ Rs.3/- per share. The face value of shares was split in the year 2013.

Accordingly, the assessee got 1,09,420 shares in the place of 10,942 shares.

- b. On 07-02-2006, the assessee purchased 6662 shares @ Rs.10/- per share. On account of split in the year 2013, the assessee got 66,620 shares in the place of 6662 shares.
- c. On 07-02-2006, the assessee purchased 34,600 shares of Rs.10/- per share. On account of split in the year 2013, the assessee got 3,46,000 shares;

8. Subsequently, the assessee sold the shares mentioned in (a) and (b) above through Stock Exchange platform on 10-06-2014 and 12-06-2014 by paying security transaction tax, which resulted in generating Long Term Capital Gain of Rs. 1,30,46,297/-. The assessee claimed the same as exempt u/s. 10(38) of the Act. The Ld.AR further submitted that the assessee sold 3,46,000 shares mentioned in (c) above, in the off-market on 12-03-20215 and it has generated Long Term Capital Gain of Rs.1,34,94,000/-. Since the shares were sold in off-market without paying securities transaction tax, the Long Term Capital Gain will be taxable. Accordingly, the assessee paid income tax thereon calculated @ 10% of long term capital gains.

9. The Ld.AR submitted that all the purchases and sales were duly supported by proper evidences. The shares in which the assessee had claimed exemption u/s. 10(38) of the Act has been held by the assessee for about 11 years and 08 years, since M/s. Nyssa Corporation Ltd. is a group company. Hence the AO was not correct in treating the long term capital gains declared by the assessee as 'bogus in nature'. Accordingly, the Ld.AR submitted that the addition made by the AO needs to be deleted.

10. On the contrary, the Ld.DR, supported the order passed by the Ld.CIT(A) He submitted that M/s. Nyssa Corporation Ltd., has been identified as one of the penny stocks, in which M/s. Naresh Jain Group was manipulating the prices of shares for generating bogus capital gains. He contended that, in view of the report given by the Investigation Wing, the AO was justified in rejecting the exemption u/s 10(38) of the Act in respect of long term capital gain

11. We heard the parties and perused the record. We notice that the AO has made addition of Rs. 1.32 crores as bogus Long Term Capital Gain generated by the assessee, by rejecting the exemption u/s 10(38) of the Act claimed by the assessee. It appears that the AO has taken the above said figure from the report given by the Investigation Wing. However, the details furnished by the assessee would show that the assessee has claimed exemption of Long Term Capital Gain u/s. 10(38) of the Act only to the extent of Rs. 1,30,46,297/-.

12. Be that as it may, we notice that the assessee has purchased shares of M/s. Nyssa Corporation Ltd. in the year 2003 and 2006 and sold the shares in June, 2014. Thus, we notice that the assessee has held these shares for a period ranging from 8 years to 11 years. The Ld.AR further submitted that M/s. Nyssa Corporation Ltd. is one of the group companies of the assessee. It was submitted that Mr Ravindra Kumar V Ruia was a major shareholder in M/s Ravinay Trading Co Ltd (now known as M/s Nyssa Corporation Ltd) in the years 2003 to 2006. He was also a major shareholder in the assessee company in the years 2014-15 and 2015-16. Thus, we notice that the assessee had held the shares of M/s Nyssa Corporation Ltd for quiet long period, which is not the *modus Operandi* adopted in generation of alleged bogus long term capital gains. The Ld.AR

further submitted that the purchase and sale of shares is supported by proper evidences and bank transactions. We notice that the AO has simply placed reliance on the information received from the Investigation wing for rejecting the exemption claimed by the assessee. He has not conducted any independent enquiry with regard to the transactions carried out by the assessee. The AO also did not mention as to how the search conducted in the hands of Naresh Jain Group would implicate the assessee.

13. Under these set of facts, we find no reason for the AO/Ld.CIT(A) to disbelieve the exemption of Long Term Capital Gain claimed by the assessee. Accordingly, we set aside the order passed by the Ld.CIT(A) on this issue and direct the AO to delete the impugned addition of Rs.1.32 crores made by the him rejecting the exemption claimed u/s.10(38) of the Act.

14. We noticed earlier that the assessee has raised various legal contentions challenging the validity of re-opening of assessment. Since we deleted the addition on merits, all those legal contentions are rendered academic in nature. Accordingly, we leave them open.

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

Order pronounced in the open court on 11-12-2024

Sd/-
(JUSTICE (RETD.) C.V. BHADANG)
PRESIDENT

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai, Date: 11-12-2024

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