

| आयकर अपीलिय अधिकरण न्यापीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI

SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
BEFORE SUNIL KUMAR SINGH, HON'BLE JUDICIAL MEMBER

I.T.A. No. 444/Mum/2023
Assessment Years: 2012-13

Sejal Jignesh Shah, B-01, 19 th Floor, Prithvi Apartment, 21 Alta Mount Road, Mumbai - 400026 [PAN: APMPS2582N]	Vs	Income Tax Officer, Ward - 19(3)(3), Mumbai.
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Fenil Bhatt, Advocate.
Revenue by :	Shri Bhangapatil Pushkaraj Ramesh, Sr. DR

सुनवाई की तारीख/**Date of Hearing** : 15/01/2025
घोषणा की तारीख /**Date of Pronouncement**: 20/01/2025

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

This appeal by the assessee is preferred against the order dated 31/01/2023 by the Commissioner of Income Tax (Appeals), NFAC, Delhi [hereinafter 'the ld. CIT(A)'], pertaining to AY 2012-13.

2. The grievance of the assessee reads as under:-

"1. Whether on the facts and circumstances of the case of the appellant and in law, the Ld. Commissioner of Income Tax Appeals erred in not considering the impugned notice dated 29.03.2019 issued under u/s 148 of the Act by the Assessing Officer (AO) as bad in law, illegal and invalid and that the same is required to be quashed and set aside, without appreciating the facts that the reopening proceedings were initiated on the borrowed satisfaction, without the Assessing Officer forming her own independent opinion, Change of opinion and also without following and complying with other mandatory provisions of the Act.

2. Whether on the facts and circumstances of the case of the appellant and in law, the Ld. Commissioner of Income Tax Appeals A.O. has erred in confirming the addition of Rs.8,01,06,478/- made by the AO, u/s 68 of the Act against genuine Long Term Capital Gain claimed exempt u/s 10(38) of the Act by the appellants, without appreciating the fact that the appellant having proved genuineness of the transaction, established identity of the concerned party (creditor) and also creditworthiness thereof and that not only the initial burden but whole of the burden as envisaged u/s

68 of the Act having been fully discharged and that there is absolutely no justification for making impugned addition under the provision of Section 68 of the Act.”

3. Representatives of both the sides were heard at length. Case records carefully perused and the relevant documentary evidences brought on record duly considered in the light of Rule 18(6) of the ITAT Rules.

4. Briefly stated the facts of the case are that the assessee filed her return of income on 31.07.2012 declaring total income of Rs.1,89,170/-. The return was processed under section 143(1) of the Act. The statement of total income is as under:

<u>Mrs. Sejal Shah</u>		ASSESSMENT YEAR 2012-2013	
ACCOUNTING YEAR ENDED AS ON 31ST MARCH 2012			
<u>STATEMENT OF TOTAL INCOME</u>			
	Amount Rs.	Amount Rs.	
<u>SALARY INCOME</u>			
Taxable Salary from Ceejay Investment & Leasing Co. Pvt Ltd.	2,75,000		
Less: Exempt Allowances	9,600		
		2,65,400	
<u>INCOME FROM CAPITAL GAIN</u>			
Taxable Long term capital gain (As per statement)	NIL		20,291
Short term capital Gain on sale of shares (STT paid)			
<u>INCOME FROM OTHER SOURCES</u>			
Bank Interest			3,479
			<u>2,89,170</u>
GROSS TOTAL INCOME RS :			
<u>Less : Deductions under chapter VI A</u>		1,00,000	
<u>U/sec 80-C - PPF</u>			<u>1,00,000</u>
		Restricted to	
		TOTAL TAXABLE INCOME RS :	<u>1,89,170</u>
On which Tax payable		NIL	
Total tax payable		<u>NIL</u>	
Note:			
1. PPF Interest of Rs.1,20,270/- is not considered since exempt u/s10(11).			
2. Long Term Capital Loss of Rs. 2,97,293/- of A.Y. 2009-10 and Rs. 50,099/- of A.Y. 2010-11 is to be c/f			
3. Long Term capital Gain of Rs. 7,73,59,590 is not considered since exempt u/s10(38)			
<u>STATEMENT 'A'</u>			
Long Term Capital Gain on sale of Shares		3,82,073	
Long Term Capital Gain on sale of Shares - PMS		<u>2,75,000</u>	
Total Long Term Capital gain		<u>6,57,073</u>	

5. The reasons for reopening the assessment are as under:

“Reasons for reopening of the assessment u/s 147 of the Act.

1. The assessee, Sejal Jignesh Shah, PAN: APMPS2582N is assessed to tax in this charge. Assessee filed its return of income on 31.07.2012 showing income of Rs.1,89,170/-. The return was duly processed under section 143(1) of the Act:
2. Subsequently, information received from DDIT (Inv.)- Unit 8(2), Mumbai that, assessee transacted in shares of M/s Banas Finance Limited. As per the information, after detailed investigations it has been found that scrip of M/s Banas Finance Limited is a penny stock listed on BSE with scrip code (509053) and this company has been used to facilitate introduction of unaccounted income of members of beneficiaries in the form of exempt capital gain or short term capital loss in their books of account.
3. On verification of said information, it was found that the assessee was identified as seller of the scrip and the sale value was worked out at Rs.8,01,06,478/- during FY 2011-12 relevant to the A.Y.2012-13.
4. On receipt of information, the ITR of assessee for AY 2012-13 was verified wherein, it was found that, assessee has shown Short term capital gain of Rs.20,291/-.
5. Section 147 of the Act specifically states that, if AO has reason to believe that any income chargeable to tax has escaped assessment, the AO subject to provisions of section 148 to 153 of the Act, assess/reassess such income or any other income which comes to his notice at the time of proceeding under section 147 of the Act.
6. The information as forwarded is definite and concrete. As per the provisions of the Act, long term capital gain exemption on sale of listed securities is available provided the transaction is genuine. However, in the case, the scrip of M/s Banas Finance Limited was systematically rigged by operators for the purpose of providing LTCG entries to beneficiaries who wanted to introduce their unaccounted funds in books. The entire transaction was structured in order to provide gain entries and claim bogus exemption thereon. Further, the information being new and said information was not in possession of this office earlier, and assessee being one of the beneficiary of scrip of M/s Banas Finance Limited, hence it is not wrong to conclude that, in the case of assessee there is failure on part of assessee to disclose truly and fully all material facts necessary for assessment for AY 2012-13 resulting in escapement of income of Rs.8,01,06,478/-.
7. In this case, return of income was filed for AY 2012-13, however no assessment under section 143(3) has been done. Accordingly, in order to initiate the proceeding under section 147 of the Act, the requirement is reason to believe that income has escaped assessment by reason of failure on the part of assessee in making true and full disclosure of total income for assessment for AY 2012-13, which is recorded above.
8. In view of above, I find that this is a fit case for proceeding under section 147 of the Act. Since, period of 4 years has elapsed from the end of relevant assessment year, hence necessary sanction to issue notice under section 148 of the Act has been obtained separately from Pr. CIT-17, Mumbai as per the provisions of section 151 of the Act.”

6. The entire assessment revolves around the information received from DDIT (Inv.), Unit-8(2) Mumbai that the assessee transacted in

shares of M/s. Banas Finance Ltd. (hereinafter 'BFL'). As per the information, it has been found that scrip of BFL is a penny stock listed on BSE and this company has been used to facilitate introduction of unaccounted income of members of beneficiaries in the form of exempt capital gain. During the course of scrutiny assessment proceedings, vide notice dated 14.12.2019, the assessee was asked to explain the transaction in the shares of BFL. In its reply, the assessee provided contract notes for sale of the shares, brokers ledger account, bank statements wherein the sale consideration received from the broker is reflected, bank statement giving evidence of purchase of shares and payment towards these shares purchase, Demat account statement for two years, details of investment in shares for three years.

7. It was explained that the shares of BFL were acquired in F.Y. 2010-11 through preferential allotment and private placement. As per the details exhibited from pages 30 to 33 of the paper book, the assessee was allotted 1,50,000 shares at face value of Rs.10/- and at a premium of Rs.10/- per share. The shares were dematerialized on 19.01.2011 as per the Demat statement at page 59 of the paper book. Keeping these demonstrative evidences in mind, we find that the name of the assessee is nowhere in the investigation report, not even the broker of the assessee is mentioned in the said report. The entire action of the AO is based upon the following observations:

"6. In response to the said show cause notice, the assessee filed reply on 16.12.2019. The submission filed by the assessee is considered but found not tenable. From the above set of circumstances, coupled with the fact as discussed in the above paragraphs wherein the modus operandi have been discussed in detail, it is not out of place to mention here that the entire transaction is concocted one and has been carried out with the intention to reduce the short term capital loss. In view of the above, an amount of Rs. 8,01,06,478/- received by the assessee on sale of shares of BANAS FINANCE LIMITED is treated as an accommodation entry and added to the total income of the assessee as per the

provisions of section 68 of the Income Tax Act. Similarly, the loss booked by the assessee in the garb of short term capital loss is disallowed to the extent of loss on shares of BANAS FINANCE LIMITED to the tune of Rs. 8,01,06,478/- Penalty provisions u/s.271(1)(c) r.w.s. 274 of the IT Act are hereby initiated separately for furnishing inaccurate particulars of income."

8. A perusal of the above shows that the AO has hurriedly made the addition without realizing that the assessee has not booked any loss in the garb of Short Term Capital Loss as is evident from the statement of total income exhibited elsewhere. The AO has placed heavy reliance on the order of Adjudicating Officer, SEBI by which BFL was penalized for SEBI violation. What has lost the sight of the AO is the order of the Securities Appellate Tribunal dated 26.07.2019 by which the Tribunal held that BFL had shown that the required disclosure was made.

9. Coming back to the merits of the case, neither the assessee nor her broker is named in the alleged price regime of BFL. On the contrary, the documents mentioned hereinabove go on show that the assessee had done transactions through stock exchange and the consideration received is through banking channel, therefore, on such evidences no adverse inference can be drawn.

10. The Sr.DR placed strong reliance on the decision in the case of PCIT vs. Swati Bajaj as reported in 446 ITR 56 (Cal). The decision relied by the Ld. DR in the case of Pr. CIT v. Swati Bajaj [446 ITR 56 (Calcutta)] is misplaced for the primary reason that in the case of Swati Bajaj sale/purchase was not from the Demat Accounts. In most of the cases the purchases were through private placements. Whereas, in the case on hand, the trades were made on the stock exchange. Further, in the case of Swati Bajaj (supra) there were statements recorded from the brokers of the assessee, who had agreed to price manipulation and therefore

adverse view was taken. In the case on hand, neither the broker of the assessee was examined nor his name is surfaced in any of the Investigation Report and the Hon'ble High Court of Bombay in the case of PCIT vs. Ziauddin A Siddique was dealing with the following question of law.

"Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal was justified in deleting the addition of Rs.1,03,33,925/- made by AO u/s 68 of the I.T. Act, 1961, ignoring the fact that the shares were bought/acquired from off market sources and thereafter the same was demated and registered in stock exchange and increase in share price of Ramkrishna Fincap Ltd. is not supported by the financials and, therefore, the amount of LTCG of Rs. 1,03,33,925/- claimed by the assessee is nothing but unaccounted income which was rightly added u/s 68 of the I. T. Act, 1961?"

And the Hon'ble High Court held as under:

"2. We have considered the impugned order with the assistance of the 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 the 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 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 judgment of the Apex Court in Principal Commissioner of Income-tax (Central)-1 vs. NRA Iron & Steel (P.) Ltd.' 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."

11. Considering the facts of the case in totality, in the light of the judicial decisions discussed hereinabove, we do not find any merit in the additions made by the AO. The same are directed to be deleted.

12. Before parting, it would be apt to refer to the decision of the Co-ordinate Bench in the case of Sonal Snehal Shah, in ITA

No.1653/Mum/2024 wherein the Co-ordinate Bench was considering the same scrip BFL. The relevant findings read as under:

“Even otherwise on the merits of the case, the learned assessing officer was confronted with all the evidences available with the assessee of purchase, dematerialization, sale, transaction by cheque. The names of all the persons from whom the assessee has purchased the shares, the manner of purchasing the shares and how assessee has sold the shares and through which broker assessee has sold the shares are provided to the assessing officer. The learned assessing officer did not make any enquiry and merely on the basis of the report of investigation wing confirmed the addition under section 68 of the act. Therefore, according to us the assessee has discharged his onus under section 68 of the act by proving the nature and source of the amount received. It is for the learned assessing officer to throw back onus on the assessee which the learned assessing officer has failed to do so. Therefore, in the circumstances even the addition under section 68 on the merits of the case is not sustainable.”

13. Since we have deleted the addition, challenging the reopening of the assessment has been left open.

14. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 20th January, 2025.

Sd/-

**(SUNIL KUMAR SINGH)
JUDICIAL MEMBER**

Sd/-

**(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER**

Mumbai, Dated 20/01/2025

**Prabhat S.P.*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

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Assistant Registrar
आयकर अपीलीय अधिकरण
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