

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

BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

ITA No.6213/Mum/2024
(Assessment Year: 2006-07)

Sandeep Agarwal, 36/40, Mahalaxmi Bridge Arcade, Mahalaxmi, Mumbai- 400 034 PAN: AACPA5201H	vs	Deputy Commissioner of Income Tax 6(3), Mumbai, Ayakar Bhavan, M.K. Road, Mumbai-400 020
APPELLANT		RESPONDENT

Assessee by : Shri Haridas Bhat
Respondent by : Shri Asif Karmali (SR DR)

Date of hearing : 16/01/2025
Date of pronouncement : 27/01/2025

ORDER

PER ANIKESH BANERJEE:

Instant appeal of the assessee was filed against the order of the National Faceless Appeal Centre (NFAC), Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (for brevity, 'the Act'), date of order 04/10/2024 for A.Y. 2006-07. The impugned order was emanated from the order of the Ld.Deputy Commissioner of Income-tax 6(3),Mumbai, passed under section 143(3) read with section 147 of the Act, date of order 05/12/2013.

2. The assessee has taken the following grounds of appeal:-

“a. On the facts and circumstances of the case, and in Law, CIT(A), NFAC erred in confirming the addition of Rs. 5,32,900/- u/s 69 of the Act as Unexplained Investment towards the alleged bogus purchase of shares as undisclosed income based on surmises and conjectures, without any evidence.

b. The CIT(A) Failed to appreciate that: -

- i. The all the sales and purchases were made through recognized brokers.*
- ii. The sales and purchases were properly reflected in the Demat statements.*
- iii. All the payments and receipts are made from bank Accounts.*

c. Your appellant prays that the addition of Rs. 5,32,900/ u/s 69 of the Act as Unexplained Investment towards the alleged bogus purchase of shares as undisclosed income may please be deleted.”

3. The brief fact of the case is that the assessee's case was reopened under section 148 of the Act on the ground that the assessee has purchased the shares of “Sudaram Multi Pap Ltd”, number of shares 13,000 and “Maruti Infrastructure Ltd”, number of shares 8000 valued amount to Rs.4,95,300/- and 37,600/- respectively which works out to total Rs.5,32,900/-. In this respect, the assessee sold the shares with a value amount to R.17,35,429/- and assessee earned short term capital gain amount of Rs.12,02,349/-. During the assessment proceedings, the Ld.AO found that the purchase of share are sham transaction and the contract notes issued are invalid. So, the Ld.AO had recalculated the purchase value of share amount to Rs.10,28,199/- and added back as unexplained investment in shares under section 69 of the Act. Being aggrieved on the assessment order, the assessee filed an appeal before the Ld. CIT(A). The Ld.CIT(A) has upheld he

impugned assessment order. Being aggrieved on the appeal order, the assessee filed an appeal before us.

4. The Ld. AR filed a paper book comprising pages 1 to 26, which has been placed on record. The Ld. AR submitted that the assessee purchased shares and made payment of the consideration amounting to Rs.5,33,648.52 through an HDFC Bank account (Account No. 0051000032302) on December 1, 2005. The shares were duly delivered to the demat account of the assessee.

It was further stated that the shares of "Sundaram Multi Pap Ltd." underwent a stock split in the ratio of 1:10 on 01/12/2005. Consequently, the total number of shares held by the assessee increased proportionately from 13,000 to 1,30,000, without any change in the overall value. Subsequently, the assessee sold the shares in a staggered manner, totaling 1,38,000 shares, and received a sale consideration of Rs.17,35,429/-. After deducting the purchase cost of Rs.5,32,900/-, the assessee declared a profit of Rs.12,02,349/-, which was offered for taxation as short-term capital gains in the return of income.

The Ld. AO upon verification of the nature of the shares and relying on the recorded statement of Mr. Mukesh Chokshi, observed that the purchase of shares was non-genuine. The Ld. AO treated the purchase transaction as a bogus transaction and recalculated the purchase value based on 1,38,000 shares, determining it to be Rs.10,28,199/-. Consequently, the Ld. AO rejected the reported purchase value and made an addition of Rs.10,28,199/-.

During the appellate proceedings, the Ld. CIT(A) rejected the Ld. AO's view regarding the valuation of shares amounting to Rs.10,28,199/-. Instead, the Ld. CIT(A) confirmed only the purchase value of Rs.5,32,900/- for addition and deleted the balance amount of Rs.4,95,300/-.

The aggrieved assessee has now challenged the addition of the purchase value of Rs.5,32,900/- before the ITAT.

5. The Ld.DR argued and relied on the orders of revenue authorities. He argued that the Ld.AO had made the verification and notices under section 133(6) were sent to NSE, which replied that this particular party was suspended from Exchange on 19/02/2004. The relevant para of the assessment order, paragraphs Nos 5 to 14 on pages 3 to 5 are reproduced below:-

"5. Further hearing was fixed on 4th December 2013. However the assessee did not attend. Nor did the assessee submit any request for adjournment. Therefore I complete the assessment on the basis of information available on record.

6. As mentioned above, the assessee had shown purchase of shares Maruti Infrastructure Ltd and Sundaram Multi Pap Ltd from M/s Alliance Intermediateries & network P Ltd which is a group company of Mahasagar Securities Group.

The shares of Maruti Infrastructure Ltd were claimed to have been purchased on 16th May 2005 and that of Sundaram Multi Pap Ltd on 4th July 2005.

7. As per the contract note submitted by the assessee, M/s Alliance Intermediateries & network P Ltd was member of NSE stock exchange (NSE hereafter). Therefore, notice u/s 133(6) was sent to NSE who replied that this particular party was suspended from exchange from 19th February 2004. The copy of the letter of NSE has since been provided to the assessee.

8. Further enquiries were made from Registrar of transfer of shares of both the companies. M/s Link Intime India P Ltd has replied that the assessee did not purchase the shares of Maruti Infrastructure Ltd during the period April 2005 to July 2005. Similarly M/s Sharex Dynamic India P Ltd has reported that the assessee did not purchase the

shares of M/s Sundram Multi Pap Ltd during the period April 2005 to July 2005. Replies of both the Registrar have since been provided to the assessee.

9. From the above, it becomes ample clear that the purchases shown by the assessee from M/s Alliance Intermediateries & network P Ltd is bogus and fictitious. The assessee also did not submit any documentary evidence to establish the genuineness of the purchase.

10. Payments to M/s Alliance Intermediateries & network P Ltd: -

The assessee submitted its bank statement showing payments of Rs 5,33,648/- to M/s Alliance Intermediateries & network P Ltd. Mere fact that the payments have been made through bank does not prove the genuineness of the purchases/ expenses. The payments through bank only prove a transaction but not nature. The onus was on the assessee to establish the genuineness of the transaction. Moreover, when M/s Alliance Intermediateries & network P Ltd had been debarred from NSE much before the date of purported purchase of shares, it only prove that the impugned payment for not towards purchase of shares under consideration. Further the respective Registrar of Shares of the companies have also denied the relevant transactions.

Therefore the payments to M/s Alliance Intermediateries & network P Ltd cannot be considered as payment for purchase of shares.

11. The above facts only prove that the assessee purchased these shares in off market in cash and obtained the fictitious bills from M/s Alliance Intermediateries & network P Ltd. Therefore the investment in shares under consideration remained unexplained.

The onus was on the assessee to establish that the genuineness of the aforesaid purchases in given circumstances where the contract note was found to be bogus and there was no purchase so such shares as claimed to have been done by the assessee. However the assessee failed to discharge its onus.

12. During the year, the assessee declared short term capital gain of Rs 32,03,596/-. Out of which the transactions pertaining to purchase of shares of Maruti Infrastructure Ltd and Sundaram Multi Pap Ltd as provided by the assessee are as under: -

Date	Script	No. of shares	Amount
16.5.2005	Maruti Infrastructure Ltd	800	37600
4.7.2007	Sundaram Multi Pap Ltd	13000	495300
		7506	28598
		5100	19431
		48394	184381
		20000	76200
		4920	18745
		9000	34290
		9000	34290
		1200	4572
		18880	71932
		4000	15240
		2000	7620
Total amount			1028199

13. It is seen that the assessee submitted purported contract notes only for the first two transactions i.e. Rs 37600/- and Rs 495,300/-. The assessee also provided payments details for these two transactions only. As discussed above, the contract notes for these transactions have been proved to be fictitious.

The assessee did not submit any details for the balance transactions also.

The assessee did not explain the source of payments made at the time of purchase of shares. Therefore, the source of purchases of these shares also remained unexplained.

14. Under the circumstance, I hold that the assessee failed to explain the source of investment of Rs 10,28,199/- in the shares of Maruti Infrastructure Ltd and Sundaram Multi Pap Ltd and the same is taxed as unexplained investment u/s 69 of the Income Tax

Act 1961. Since the assessee concealment his income, penalty proceedings u/s 271(1)(c) has been separately initiated.”

6. We heard the rival submissions and considered the documents available in the record. The addition was made by the Ld.AO without considering the proper transactions and the addition was confirmed, Rs.10,28,199/-. The Ld.CIT(A) only restricted the addition related to payment for purchase of the shares amount to Rs.5,32,900/-. The Ld.CIT(A) has taken a view in para 5, which is as follows: -

“In this ground the appellant has challenged the re-opening of the case. The appellant has submitted that sufficient and relevant materials are not on record. It has also been submitted that all the transactions were through banking channel. The appellant relied on various judgments of the Hon'ble Tribunals wherein it has been held that mere information received from the Dy. Director of Income-tax, (Inv.) and directions from Higher Authority to initiate proceedings u/s 147 of the Act cannot constitute valid reason for initiating re-assessment proceedings in absence of anything to show that the Assessing Officer has independently applied his mind.

I find that in this case the Assessing Officer received information regarding bogus accommodation entries received from Mahasagar Securities Group. In this case the objection raise by the appellant was rejected vide letter dated 18.11.2013 wherein the Assessing Officer informed the appellant about the various details available with him including a letter from NSE stating that the registration of M/s Alliance Intermediaries and Networks P. Ltd. (a company of Mahasagar Securities Group) was cancelled on 19.02.2004 whereas the appellant had shown purchases during period April, 05 to July 05. Further the registrars of the Companies Maruti Infrastructure Ltd. and Sundram Multi Pap Ltd. informed that there were no purchase shares by appellant during the period April, 05 to July, 05. Thus it is clear that the case was re-opened on the basis of concrete information and not only on the report of Investigation Wing of the department. Therefore, the ground of appeal is not tenable and is dismissed.”

7. We observe that the Ld. CIT(A) restricted the addition to Rs.5,32,900/-. The Ld. AO had accepted the sale proceeds and the short-term capital gains as declared by the assessee in the ROI. However, the Ld. AO's observation regarding the calculation of the purchase value was found to be incorrect and was duly rectified by the Ld. CIT(A), who deleted the excess addition.

It is noted that no allegations were made against the sale transactions, or the profits declared by the assessee. The Ld. AO's focus was solely on the purchase of shares for the purpose of making the addition. Upon verification through notice issued under Section 133(6) of the Act, it was observed that the contract note issued by the broker had been suspended by the National Stock Exchange (NSE). Nonetheless, the sales transactions and the corresponding profits were duly accepted, and only the purchase aspect was disallowed.

In this regard, we respectfully rely on the judgment of the Hon'ble **Bombay High Court** in the case of **PCIT vs. S.V. Jiwani, (2022) 145 taxmann.com 230 (Bom)**, which involved a similar set of facts and circumstances. In that case, the Hon'ble Jurisdictional High Court upheld the decision of the Hon'ble ITAT, Mumbai Bench, holding that restricting the addition to 12.5% of the bogus purchases was fair and reasonable.

In the present case, the assessee declared a profit of Rs.12,02,349/- on the sale of shares amounting to Rs.17,35,429/-. Respectfully following the ruling of the Hon'ble Jurisdictional High Court, we hold that the addition of Rs.5,32,900/- confirmed by the Ld. CIT(A) is unwarranted and deserves to be deleted.

8. In the result, the appeal of the assessee bearing **ITA No. 6213/Mum/2024** is allowed.

Order pronounced in the open court on 27th day of January 2025.

Sd/-

(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 27/01/2025
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

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BY ORDER,

(Asstt. Registrar), **ITAT, Mumbai**