

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH MUMBAI

**BEFORE SHRI SAKTIJIT DEY, HON'BLE VICE PRESIDENT
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 5986/MUM/2024
Assessment Year: 2016-17**

Income Tax Officer-23(3)(6), Mumbai	Vs.	Rachana Suresh Chokhani, 7, Bhangwadi Shopping Arcade, Kalbadevi Road, Mumbai – 400002 (PAN : AADPC5895J)
(Assessee)		(Respondent)

Present for:

Assessee : None
Revenue : Shri R.R. Makwana, Addl. CIT

Date of Hearing : 06.01.2025
Date of Pronouncement : 28.03.2025

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the Revenue is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide order no. ITBA/NFAC/S/250/2024-25/1069128699(1), dated 26.09.2024 passed against the order by the National Faceless Assessment Centre, Delhi, u/s. 147 of the Income-tax Act (hereinafter referred to as the "Act"), dated 30.05.2023 for Assessment Year 2016-17.

2. Grounds taken by the Revenue are reproduced as under:

1 "Whether on the facts and circumstances of the case and in lay the Id. CITYA) is earned in deleting the entire addition of Rs. 84,50,000/- which was made on account of unexplained cash u/s 68 of the LT. Act, as the assessee was unable to offer any satisfactory explanation with supporting evidences to show and establish that the money received was actually from so called sale of stock are genuine and out of real transactions?"

2. *Whether on the facts and circumstances of the case and in law, the Ld. CIMA is erred in deleting the entire addition of Rs. 84,50,000/- which was made on account of unexplained cash u/s. 68 of the LT Act, by ignoring the fact that the action of the Assessing officer was based on the report of the Principal Director Investigation Wing Calcutta, in respect of transactions of share of some penny stock companies carried out at NSS and BSS, which was found to be controlled by some hawala Traders used either for giving artificial gain in the form of LTCG/STCU or STCL to the beneficiaries as per their requirements to evade tax and assessee was found to be one of such beneficiaries, who has treated in the penny script Ms. Virtual Global Education Ltd / Scrip Code 534741), used to bring her unaccounted money, into her books in the guise of Capital Gain P*

3. *"Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is erred in deleting the entire addition of Rs. 84,50,000/- which was made on account of unexplained cash u/s. 55 of the Income Tax Act 1961, without considering the fact that that scheme was hatched by promoter/brokers/operators, who have in collusion rigged the prices of penny stock company. M/s. Virtual Global Education Ltd, which involved the series of preconceived steps and lack of commercial content and totally an artificially structured transaction entered into with the sole intent to evade taxes?"*

4. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the entire addition of Rs. 84,50,000/- which was made on account of unexplained cash u/s. 68 of the IT Act, by considering the fact that M/s. Virtual Global Education Ltd, was not a blue chip company and was virtually unknown with unknown promoters/directors having Nil or insignificant net wealth and the company does not have established business worth, and does not have any real fixed assets, these findings are established that the assessee's transaction with M/s. Virtual Global Education Ltd, was a bogus or sham transactions which was nothing but used as a colorable device to defraud the revenue with the clear and planned intension to evade tax?*

5. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the entire addition of Rs. 84,50,000/, which was made on account of unexplained cash u/s. 68 of the IT. Act, without considering that there was huge price jump in the price of Penny Stock in question, without any economic rationale which was an arrangement of converting the unaccounted income into legitimate income under the garb of exempt LTCG/STCG, without paying any taxes and it was found that the assessee was one of the beneficiary from such transactions?"*

6. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the entire addition of Rs. 84,50,000/- which was made on account of unexplained cash u/s. 68 of the I.T. Act, without appreciating the nature of the transactions by accepting the documentation presented by the assessee at face value, without adequately considering the underlying fraudulent intent and the orchestrated steps taken to present these transactions as genuine. The assessment of the true character and intent behind these transactions was crucial and has been overlooked."*

7. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the entire addition of Rs. 84,50,000/- which was made on account of unexplained cash u/s. 68 of the 17. Act, without appreciating the fact that in such cases where there was a suspicious or bogus trade, the onus is on*

the assessee to establish the genuineness of price hike and to prove that the price of penny stock in which he was traded to claimed LTCG/STCG or loses was not manipulated, as reliance is placed on Hon'ble Calcutta High Court in the decision in the case of Pr. CIT Vs. Swati Bajaj (L.A.No. GA/2/2022 in ITAT No. 6 of 2022, Dated. 14.06.2022 wherein it was held that merely demonstrating the financials of the company, volume of trade, transactions through banking channels inter alia will not suffice. The assessee has to prove that the price of the share or penny stock was not manipulated?"

8. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the entire addition of Rs. 84,50,000/- which was made on account of unexplained cash u/s, 68 of the IT Act, by ignoring the direct and circumstantial evidences in view of the decision in Durga Prasad More (1971) 82 ITR 540 decision in Durga Prasad More (1971) 82 ITR 540 (SC) and Sumati Dalal (1995) 80 Taxmann 89(SC)/1995) 2014 ITR 801(SC) (1995), rendered by the Hon'ble Supreme Court, wherein it was held that the court and tribunal have to judge the evidence before it by applying the test of human probabilities, the surrounding circumstances, which had been exercised by the Assessing Officer?"

9. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the entire addition of Rs. 84,50,000/- which was made on account of unexplained cash u/s. 68 of the LT. Act, without appreciating the facts that, the Hon'ble ITAT, Kolkata in the case of Manoj Jain (HUF) in ITA No.1782/KOL/2018, treated the penny stock transaction as income from other sources instead of LTCG/STCG, and the same was upheld by the Hon'ble High Court Calcutta (2024) 164 taxmann.com 133 (Calcutta), which has been confirmed by the Hon'ble Supreme Court by dismissing SLP in SLP (c) of 21636/2024 Dated. 20.09.2024?"

10. The tax effect involved in this case is Rs. 26,11,050/ which is below the prescribed limit as per CBDT's Circular No. 05/2024 Dated. 15.03.2024 and Circular No. 09/2024 Dated. 17.09.2024 However, this case falls under the exception within the ambit of exceptional clause 3.1(h), of the CBDT's Circular mentioned above, wherein it is stated that in cases involving Organized Tax Evasion" including of bogus LTCT/STCG/losses through penny stocks, the decision to file appeal/ SLP shall be taken on merit without regard to the tax effect and the monetary limit Hence, the appeal u/s 253 of the Act, is being filed before Hon'ble ITAT.

2.1. Revenue has raised as many as 10 grounds of appeal which are more in the nature of peripheral arguments. From these, the moot point which arises is in respect of addition of Rs.84,50,000/- u/s.68 towards the entire sale proceeds of shares of Virtual Global Education Ltd. by alleging the scrip as penny stock. None represented the assessee before us. However, we heard the matter with the able assistance of ld. Sr. DR

and take it up for adjudication by considering the material on record and order of the authorities below.

3. Brief facts of the case are that assessee filed her return of income on 30.06.2016, reporting total income at Rs.29,96,740/- which included income from salaries, short term capital gain and income from other sources. From the information updated by DDIT(Inv), Unit-5(1), New Delhi on the Insight portal of the Department, ld. Assessing Officer observed that Virtual Global Education Ltd. (scrip code 534741) is a paper entity with no genuine business and its scrip is a penny stock which has been used to provide bogus profit/loss to the beneficiaries. According to ld. Assessing Officer, based on the said information, assessee was identified as one of the beneficiaries who has traded in the said scrip in the year under consideration, for which assessee had entered into transaction with total trade value of Rs.26,90,891/-. Ld. Assessing Officer took note of the modus operandi as discussed in the investigation report to note that this scrip was used to facilitate introduction of unaccounted income of beneficiaries in the form of exempt long term capital gain or short term capital loss in their books of accounts. Based on this information, reopening proceedings were initiated by issuing a notice u/s.148 on 18.06.2021.

3.1. On facts relating to trading in scrip of Virtual Global Education Ltd., it is noted in the impugned assessment order that during the Assessment Year 2015-16, assessee had purchased 11 lakh shares of this scrip for a total value of Rs.1,06,70,000/- and sold 5 lakh shares for a total value of Rs.69,18,000/-. Thereafter, during Assessment Year 2016-17, i.e., the year under consideration, assessee sold remaining 6 lakhs shares for a total value of Rs.84,50,000/-, thereby earning short term capital gain of Rs.26,90,891/-. On the show cause notice issued

by Id. Assessing Officer, seeking explanation and details along with documentary evidences in respect of this alleged transaction in the scrip of Virtual Global Education Ltd., assessee strongly contented that she had earned short term capital gain of Rs.26,06,248/- from the sale of investments in the shares of Virtual Global Education Ltd. On this short term capital gain, assessee had paid applicable taxes at the rate of 15% and had duly offered in the regular return filed by her. It is not a case of assessee claiming exemption u/s.10(38) of the Act which deals with long term capital gain from sale of shares. Assessee had strongly objected on the initiation of the reopening proceedings, since it was based on incorrect information and while placing reliance on the data noted by the Investigation Wing, New Delhi on the Insight portal. It was asserted that impugned re-assessment proceedings were initiated under a mistaken belief that assessee had claimed exempt income for long term capital gain from trading in Virtual Global Education Ltd., whereas she had actually reported short term capital gains from these trades and had duly paid taxes at the rate of 15%. It was evidently demonstrated that no part of her income was exempt from trading in the scrip of Virtual Global Education Ltd. and thus, reopening of the assessment was without jurisdiction.

3.2. Assessee placed on record corroborative documentary evidences, which included contract notes, DEMAT account statements and bank statements to prove the transaction undertaken by her in the scrip of Virtual Global Education Ltd., being genuine.

4. We have heard both the parties and perused the material on record. From the perusal of the impugned assessment order, we take note of the conclusion drawn by the Id. Assessing Officer in para-3.6, which is extracted below for ready reference.

“During the year under consideration the assessee has shown income from salaries of Rs. 5,63,300/- and income from other sources of Rs. 74. But it is seen that during the F. Y. 2014-15 the assessee had purchased 11,00,000 shares of Virtual Global Education Ltd for a total value of Rs. 1,06,70,000/- and sold 5,00,000 shares for a total value of Rs. 69,18,000/-. Thereafter, during the F. Y. 2015-16 the assessee sold the remaining 6,00,000 shares for a total value of Rs. 84,50,000/-thereby earning Short Term Capital Gain of Rs. 26,90,891/-. The assessee has not furnished any explanation regarding the source of investment in share. Hence, It is clear that, it is the assessee's unaccounted money which she has brought into her books in the guise of capital gain. Here it is pertinent to mention that the assessee did not opt for LTCG or STCL for the reasons that if she would wait for 1 year the price of the scrip would fall and it would result in Loss. As having no business income there was no option to adjust the loss hence, she opted for STCG.”

4.1. Admittedly, it is a fact on record that assessee had earned short term capital gain on the trading of scrips of Virtual Global Education Ltd. which was duly accounted and reported in the return filed by her in the year under consideration which was subjected to tax. The conclusion drawn is like throwing mud in the air so that some part of it get stuck to meet the objective. There is no corroboration of the correct factual matrix about the income reported by the assessee in her return, vis-à-vis the information utilised by Id. Assessing Officer for initiating the impugned re-assessment proceedings. From the above extraction, it is evident that Id. Assessing Officer himself is not sure of the nature of the transaction and income therefrom which has escaped assessment though already reported by the assessee in her return which was subjected to tax and on which applicable taxes were duly deposited. The conclusion drawn by Id. Assessing Officer as extracted above is nothing but surmises and presumption which do not have any base.

4.2. In this respect, from the order of Id. CIT(A), we take note of the findings and decision contained in para-6 which have objectively dealt with the explanation and corroborative material furnished by the assessee, explaining the nature and source of transaction undertaken by her in respect of shares of Virtual Global Education Ltd. The finding arrived at by Id. CIT(A) are extracted below:

*“6 Findings and Decision
Genuineness of the Transactions*

The appellant has maintained that her transactions in Virtual Global Education Ltd. were genuine and conducted through recognized stock exchanges via a registered SEBI broker, M/s. Asian Markets Private Limited. The purchase and sale were made through regular banking channels, and shares were transferred to and from the appellant's Demat account as per the rules of the stock exchange. The appellant has presented comprehensive documentation, including contract notes, Demat account statements, and bank records, which clearly show the purchase and sale transactions. The share price and trade time have been confirmed through Global Reports issued by the stock exchange, and no off-market transactions were involved. This demonstrates that the trades were executed in compliance with standard procedures and that the income from these transactions has been fully accounted for in the appellant's return of income. The AO's conclusion that the appellant's transactions were part of a bogus LTCG scheme lacks substantive evidence. The AO relied solely on generalized information from the Insight Portal without considering the specific facts of the appellant's case. The appellant has proven beyond doubt that her STCG was genuine, and taxes on this income were duly paid. Judicial precedents, including the Hon'ble Bombay High Court's decision in CIT v. Shri Mukesh Ratilal Marolia [2011-TIOL-138-HC-MUM-IT], have held that if an assessee provides sufficient documentary evidence to substantiate the genuineness of transactions, the burden shifts to the revenue to prove otherwise. In the present case, the AO has failed to provide any evidence discrediting the appellant's transactions, thus confirming their legitimacy.

Addition under Section 68

The AD made an addition of Rs.84,50,000 under Section 68 of the Income Tax Act, treating the entire sale proceeds from Virtual Global shares as unexplained cash credits. This addition is based on the AO's assumption that the entire transaction was bogus. However, the appellant has already declared STCG on the sale of these shares in her return and has paid applicable taxes on this income. The AO's decision to tax the entire sale proceeds without considering the already taxed STCG is against the established principles of taxation. Section 68 requires that for an amount to be treated as unexplained credit, there must be no explanation regarding the source or nature of the credit. In this case, the appellant has provided detailed explanations and supporting evidence, demonstrating the source of funds, the genuineness of the transactions, and the payment of taxes. Therefore, the conditions for invoking Section 68 are not met. Moreover, as held by the Hon'ble Supreme Court in CIT v. Lovely Exports (P.) Ltd. [216 CTR 195 (SC)], if an assessee provides a satisfactory explanation for the source and nature of a credit, the onus shifts to the revenue to prove that it is unexplained. The revenue has failed to discharge this burden in the present case, and the addition under Section 68 is unsustainable. The AO's reliance on investigation reports and generic information without conducting a detailed examination of the appellant's facts renders the addition of Rs.84,50,000 incorrect. Further, the AO's approach of taxing the gross sale proceeds rather than the net gain (on which tax has already been paid) is flawed. Even if the AO were to treat the transaction as an accommodation entry, only the net cash (i.e, the gain) could be considered for taxation under Section 68, not the entire sale proceeds.

7. In light of the detailed findings discussed above and after considering the submissions of the appellant, the appeal of the appellant, is allowed.”

4.3. Reliance placed by ld. Assessing Officer on the investigation report with generic information, is not tenable since, ld. Assessing Officer failed to conduct any detailed examination of the correct set of facts before making the addition, by applying provisions of Section 68, treating the entire sale proceeds as unexplained cash credits.

5. In the given set of facts and circumstances and considering the discussion made above, we do not find any reason to interfere on fact based objective findings arrived at by ld. CIT(A). Accordingly, grounds raised by the Revenue are dismissed.

6. In the result, appeal of the Revenue is dismissed.

Order is pronounced in the open court on 28 March, 2025

Sd/-

(Saktijit Dey)
Vice President

Sd/-

(Girish Agrawal)
Accountant Member

Dated: 28 March, 2025

MP, Sr.P.S.

Copy to :

- 1 The Assessee
- 2 The Respondent
- 3 DR, ITAT, Mumbai
- 4 Guard File
- 5 CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai