

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "G", MUMBAI

Before Shri D Karunakara Rao, Accountant Member  
& Shri Ram Lal Negi, Judicial Member

ITA Nos 5182 & 5183/Mum/2011  
Assessment Year : 2005-06 & 2006-07

ACIT Cen Cir. 24 & 26 Mumbai.	Vs.	Shri Ziauddin A Siddique 401, Alice Villa, Opp Almedia Park, Road No.5, Bandra (W), Mumbai – 400 050 PAN AHLPS0554P
(Appellant)		Respondent)

Appellant By : Ms. Vidisha Kalra – CIT -DR  
Respondent By : Shri Rajesh Sanghavi

Date of Hearing : 10.08.2016

Date of Pronouncement : 09.09.2016

**ORDER**

**Per D Karunakara Rao, Accountant Member**

There are two appeals under consideration involving two different assessment years, namely 2005-06 and 2006-07.

2. ITA No. 5182/Mum/2011 for A.Y. 2005-06.

This is an appeal by the Revenue. The ground raised by the Revenue is as under :-

*"On the facts and in the circumstances of the case and in law, the Ld. CIT(A), erred in deleting the addition made after thorough investigation on account of unexplained cash credit u/s. 68 of the I.T. Act amounting to Rs.1,03,33,955/- instead of Long Term Capital Gain as adopted by the assessee in his return of income."*

3. Briefly stated relevant facts are that the assessee filed return of income for the A.Y. 2005-06 originally u/s. 139(1) of the Act declaring the income of Rs.18,96,007/-. Subsequently, there was search action u/s. 132 of the Act on 08.05.2007 at the residential and business premises of Bindra Rohira Group of cases. The assessee was also covered in the search operation. The assessee is engaged in the business of construction of buildings. Consequent to search action, the AO issued notice u/s. 153A of the Act calling for return of income. The assessee responded and filed the return of income declaring the same income as done u/s. 139 (1) of the Act. In the return of income, there is a claim of exemption of capital gains. In the assessment proceedings u/s. 153A r.w.s. 143(3) of the Act, the AO determined the assessed income at Rs.1,44,63,135/- after making additions on account of capital gains. The details of the transactions and conclusions of the AO are given in para 5 of the assessment order. In the re-assessment u/s. 153A of the Act, the AO made the addition of Rs.28,58,138/- in the regular assessment qua the transactions revolving around the purchase and sale of penny stock of shares of Eltrol Ltd. Further the AO made addition of Rs.1,03,33,925/- involving the purchase and sale of penny stock of shares of Ramkrishna Fincap Ltd. (RFL in short), and there were other additions too. The above said addition of Rs.28,58,138/- involving Eltrol Ltd., was subject matter of dispute in the regular assessment dated 31.12.2007 and the assessee was in appeal before the CIT(A) and then before the Tribunal. The Tribunal vide its composite order dated 25.04.2014 for A.Ys. 2002-03 to 2008 – 09 confirmed the said addition of Rs.28,58,138/-. Further, the Tribunal also gave a finding mistakenly in connection with the share trading activity involving RFL too, inadvertently ignoring the fact that

the same was not the subject matter of appeal. In the Miscellaneous Application proceedings of the assessee, the Tribunal expunged the said adverse conclusions on the trading transaction involving shares of RFL vide its order in Miscellaneous Application dated 10.12.2014. In effect, the Tribunal appreciated and distinguished the facts relating to the transactions involving the purchase and sale of shares of RFL from the purchase and sale of shares of Eltrol Ltd., and also mentioned that the Tribunal has no jurisdiction on such transactions involving RFL, as it is the subject matter of addition in the assessment made u/s. 153A of the Act and not the regular assessment.

4. Therefore, the issue for adjudication before us relates to the addition of Rs.1,03,33,925/- made on account of purchase and sale of shares of RFL in the assessment made u/s. 153A of the Act. Referring to the said transactions of purchase and sale of shares of RFL held by the assessee, learned counsel narrated the facts that the assessee purchased these shares at par in February 2004 and demated the same immediately in March 2004. Payments were made involving banking channels and there was no splitting of shares unlike the shares of Eltrol Ltd., referred above. All these transactions of purchase and sale were done through stock market. There are no negative statements against the transactions involving RFL, many person connect to the purchase and sale. Per contra, bring our attention to the transactions involving the shares of Eltrol Ltd., are that the assessee purchased 1,43,000 shares in July 2002 and the same was demated on 03.03.2003. Subsequently, these shares with the fact value of Rs.10/- were split into shares with face value of Re. 1/- on 03.05.2003. Thus, 1,43,000 shares became 14,30,000 shares after splitting. Subsequently, these shares were sold after one year between

August 2003 and March 2004. Purchase and sale of these shares happened in the off market and not through exchange. Payments were not done through banking channels. Eventually, the AO noticed that the said shares of RFL were sold by the assessee at a rate as high as Rs.185/- in the Kolkata Stock Exchange. The AO gathered various details in the assessment proceedings and proceeded to made addition of Rs.1,03,33,925/- u/s. 68 of the Act. The AO held the financials of RFL are too weak to command such a high price and, therefore, he came to the conclusion that the transactions related to the shares were sham and not genuine. It is a case of colourable device. Aggrieved with the above addition, the assessee filed an appeal before the CIT(A).

5. The assessee submitted before the CIT(A) that the shares of RFL were purchased through SEBI registered brokers. The shares of the assessee were demated immediately thereafter. Subsequently, the shares were sold through SEBI registered brokers and STT was paid on sale of said share transactions. The payments were made through banking channels and transfer of shares took place through demat account. The assessee relied on the contract notes issued by these brokers and transactions were confirmed by the share brokers and the related parties. There were no adverse witnesses or statements gathered by the revenue during the search action involving these transactions. He argued that since the sale of shares was done at higher rates it does not constitute conclusive evidence against the assessee. Therefore, the addition is not justified as the same is done based on surmises and conjectures. Considering the above, the CIT(A) granted relief to the assessee as per the discussions given in para 14.13 to 14.18 of the

order of the CIT(A). The contents of para 14.18 are extracted hereunder for the sake of convenience:-

*"14.18. The facts in the applicant's case is more favourable to the appellant compared to the facts of the above mentioned Jamnadevi Agarwal's case. The Hon'ble Bombay High Court decision is squarely applicable in this case. Respectfully following the Hon'ble Bombay High Court judgment, I hold that the claim of long term capital gains is genuine in this case and I delete the addition of Rs.1,03,33,955/- made u/s. 68 of the Act."*

Aggrieved with the said relief granted by the CIT(A), the revenue is in appeal before us.

6. To start with, the DR for the Revenue relied heavily on the order of the AO. The learned DR filed written submissions, which basically contains her arguments made before us. Her arguments includes that the shares of RFL constitutes penny stocks. They were purchased at a rate as low as Rs.2.5/- to Rs.3/- per share in February 2004 and they were sold at a rate extremely as high as Rs.125/- to Rs.185/- per share. This rate difference in about a gap of one year. Referring to the financial status of Ramakrishna Fin Corp Ltd., the CIT-DR submitted that the market value of the shares is not in any way nearer to the net asset value of the company. She also mentioned that M/s. Basant Periwal & Co., is a broker through whom the assessee purchased shares and the said broker was found guilty of certain discrepancy by the SEBI. Referring to the discrepancy on the client code, the CIT-DR submitted that there was an error in this regard in the books maintained by the said broker. Although, the same was explained as a mistake of the staff of the broker, the explanation is unacceptable and raises doubts about the genuineness of the purchase transactions of the shares from the broker.

The learned CIT-DR also relied on the judgment of the Hon'ble Supreme Court in the case of Sumati Dayal [214 ITR 801] and requested us to apply the test of human probability against the assessee. Referring to the impugned order of the CIT(A), the CIT-DR submitted that the jurisdictional High Court judgements in the case of Jamnadevi Agarwal [328 ITR 656] was heavily relied for granting relief to the assessee. In this regard, the CIT-DR is of the opinion that the said judgment only mentioned about the absence of any question of law and there is no finding of fact by the Hon'ble High Court that helps this assessee. Further referring to the penalty order imposed by the SEBI on Basant Periwal & Co., the CIT-DR submitted that penalty of Rs.3,00,000/- was levied on the broker in connection with the allegation against the broker on price rigging of the RFL shares. For this reason, the CIT-DR submitted that the order of the CIT(A) should be reversed on this issue and that of the AO should be revived.

7. Per contra, the learned AR for the assessee opened his remarks by stating that the case was adjourned periodically by the Bench. Mentioning the requirement of filing of copies of the decision of the Tribunal of Kolkata Bench involving the transactions of sale and purchase of shares of RFL, in this regard, learned counsel submitted that there is no such decision in existence from Kolkata Bench involving RFL. In this regard, learned counsel brought attention to the assessee's clarification vide his letter dated 16.06.2016. Thus, the AR for the assessee categorically submitted that this issue involving transactions of sale of purchase of RFL has to be independently decided/adjudicated not influenced by the decision of the Tribunal on the transactions involving purchase and sale of shares of Eltrol Ltd. The adverse comments if any are eventually expunged by the Tribunal

vide miscellaneous application proceedings (supra). Otherwise, learned counsel for the assessee narrated that there is no iota of deficiencies of any kind found by the AO with regard to the documentation i.e. purchase and sale bills, contract notes, cheque payments, SEBI transactions etc. It is a straight case of buying shares of RFL through bona fide transactions involving the stock exchange and selling of the same for earning Long term capital gains. The gains are exempt from tax. The AO has not brought out any incriminating evidence or material to demonstrate that the transactions are sham or bogus or entered with any mala fide intentions of converting unaccounted money into accounted gains. Referring to the other judgments of the Tribunal involving similar transactions of purchase and sale of shares of same RFL, the learned counsel filed a copy of the order of the Tribunal in the case of Ms/. Indravardhan Jain & Shri Indravadan Jain (HUF) dated 27.05.2016, wherein the Tribunal granted relief to the assessee. In this case also, the shares involved are shares of RFL and the broker involved is same as Basant Periwal & Co. Further, referring to the decision of this Tribunal in the case of Ranjeet Singh Bindra in ITA No. 6254 & 6255/Mum/2012 dated 19.11.2014, the learned counsel submitted that similar transactions of RFL shares was allowed in favour of the assessee though the said transactions in the said case happened in the off market transactions and there were no cheque payments but only ledger entries. He also referred to another decision of the Tribunal in the case of Ranjeet Bindra [ITA No. 5534/Mum/2011 for AY 2004-05], which was also decided in favour of the assessee, of course, the script involved in the case is Bluechip India Ltd. The counsel also relied heavily on the jurisdictional High Court judgment in the case of Jamnadevi Agrawal (supra). The Hon'ble High Court is of the opinion that when the documents

produced are in order and the transactions are confirmed by the exchanges and the purchase and sale prices are in sync with the prices appeared on the stock exchanges, other discrepancies relating to off market/cash transactions etc. are no ground for making additions u/s. 68 of the Act. Referring to the decision of jurisdictional High Court in the case of Shyam R Pawar [Income Tax Appeal No. 1568 to 1571 of 2012], the learned counsel submitted the discrepancy with reference to the rectification of client code is not a ground for denying benefits to the assessee as the same constitute flimsy evidence and confirmed the applicability of the Jamnadevi Agrawal judgment while granting relief to the assessee. With reference to the financials of RFL the learned counsel for the assessee submitted that what matters to the assessee, who is a buyer and seller of shares in exchange, is the market rates of the listed shares of RFL and he is not to be bothered by the financials of the company. This is for the experts in the capital markets to know and not for the persons like the assessee, who is involved in investing in shares for selling after a period of holding of the shares. The price of the shares in the capital market goes up and down and the same is not solely controlled by the financials of the said company. Lots of other facts such as emotions, projections, liquidity, volumes etc. have impact on the price rise of the shares in the market. Therefore, the learned AR is of the opinion that the order of the CIT(A) , which was decided based on the jurisdiction High Court judgment is fair and reasonable and the same should be confirmed.

8. We have heard both the parties and perused the relevant material available before us. We find that there is no dispute on the facts relating to the number of shares, rates/price etc. The transactions of purchase and sale of RFL

shares is done through the stock exchange involving registered brokers in stock. The payments are made through banking channels. We find that the transaction of purchase and sale of shares are executed without violating any procedures prescribed by any law. So far as the assessee is concerned, the documentation involving the said purchase and sale of shares is without any criticism by the AO. The assessee maintained relevant papers properly. In our view, the AO proceeded to invoke the provisions of section 68 of the Act despite the clarity with reference to the issues relating to identity and credit worthiness of the assessee. It appears that the AO is predominantly influenced by the penny stock related issues on the shares of RFL and treated the said transactions as sham. In our view, the decision of the AO is not valid and appropriate as there is no adverse criticism on the relevant documentation involving these share transactions. There is no allegation against the assessee individually as involved in price rigging. Unlike in the shares of Eltrol Ltd., there are no adverse witnesses or statements given by third parties questioning the genuineness of the transactions. In this case, the transactions are done very much through the exchange and the payments are made involving banking channels. No evidence is gathered by the search team during the proceedings u/s. 132 to support the allegation about the genuineness of the transactions. No evidence is gathered about the cash transfers if any either at the purchase point or at the sale point of share transaction. Nothing adverse was brought about by the search team that the assessee is personally involved in price raising of shares from Rs.2.5/- to Rs.185/- per share. There is no adverse inference about the bona fides of the assessee in buying and selling of the said shares of RFL. In such circumstances when there is no evidence against the assessee on the

transactions involved, we are of the opinion that why not the assessee should be one genuine investor and, therefore, there is no case for invoking the provisions of section 68 for making the additions on account of transactions involving the shares of RFL.

9. Further we have also perused the cited decisions of the Tribunal in the case of Ms/. Indravardhan Jain & Shri Indravadan Jain (HUF) dated 27.05.2016 [ITA No. 4861/Mum/2014 & ITA 5168/Mum/2014], Ranjeet Singh Bindra [ITA No. 6254 & 6255/Mum/2012 dated 19.11.2014], Jamnadevi Agarwal [328 ITR 656 (Bom)], M/s. Subhlakshmi Vanijya Pvt. Ltd.[ITA No. 1104/Kol/2014] dated 30.07.2015 etc. In the case of Ms/. Indravardhan Jain & Shri Indravadan Jain (HUF), where similar transactions involving RFL shares on one side and the broker M/s. Basant Periwal & Co. on the other, Bombay Bench of the Tribunal gave a finding that the transactions involved are genuine and the additions were deleted. The contents at para 8 of the said order of the Tribunal are relevant and we proceed to extract the same here as under:

*8. We have considered rival contentions and carefully gone through the orders of authorities below and found from the record that the AO has treated the share transaction as bogus on the plea that SEBI has initiated investigation in respect of Ramkrishna Fincap Pvt. Ltd. The AO further stated that investigation revealed that transaction through M/s Basant Periwal and Co. on the floor of stock exchange was more than 83%. We found that as far as initiation of investigation of broker is concerned, the assessee is no way concerned with the activity of the broker. Detailed finding has been recorded by CIT(A) to the effect that assessee has made investment in shares which was purchased on the floor of stock exchange and not from M/s Basant Periwal and Co. Against purchases payment has been made by account payee cheque, delivery of shares were taken, contract of sale was also complete as per the Contract Act, therefore, the assessee is not concerned with any way of the broker. Nowhere the AO has alleged that the transaction by the assessee with these particular broker or share was bogus, merely*

*because the investigation was done by SEBI against broker or his activity, assessee cannot be said to have entered into ingenuine transaction, insofar as assessee is not concerned with the activity of the broker and have no control over the same. We found that M/s Basant Periwal and Co. never stated any of the authority that transaction in M/s Ramkrishna Fincap Pvt. Ltd. on the floor of the stock exchange are ingenuine or mere accommodation entries. The CIT(A) after relying on the various decision of the coordinate bench, wherein on similar facts and circumstances, issue was decided in favour of the assessee, came to the conclusion that transaction entered by the assessee was genuine. Detailed finding recorded by CIT(A) at para 3 to 5 has not been controverted by the department by brining any positive material on record. Accordingly, we do not find any reason to interfere in the findings of CIT(A). Moreover, issue is also covered by the decision of jurisdictional High Court in the case of Shyam R. Pawar (supra), wherein under similar facts and circumstances, transactions in shares were held to be genuine and addition made by AO was deleted. Respectfully following the same vis-à-vis findings recorded by CIT(A) which are as per material on record, we do not find any reason to interfere in the order of CIT(A).*

10. We have also perused the decision of the 'D' Bench of the Mumbai Benches of the Tribunal in the case of Ranjeet Singh Bindra and find that the Tribunal granted relief to the assessee on merits and find the contents of para 5 for the proposition that there is no case for making additions on account of transactions involving shares of RFL.

*“4. On a perusal of the order passed by Ld CIT(A), we notice that the assessee has proved the sources for the purchase of shares of M/s Ramakrishna Fincap Ltd and also furnished broker bill and Contract note in support of the same. The brokers have also confirmed the fact of purchase. Since it was an off market transaction, the purchases were not available with the Stock exchange. Thereafter, the assessee has demated the shares in Sep, 2004 and started selling the shares in installments from 4.11. 2004 to 25.4.2005. All the sale have been carried through stock exchange. The Ld CIT(A) have also noticed that the purchase of shares have been duly accounted for in the Balance sheet filed along with the return of income pertaining to assessment year 2004-05 on 1.11.2004. The sale transactions have also been accounted for in the books. The assessee has pointed out that the share price of the above said company has gone up further*

*after its sale by the assessee. Under these set of facts, the Ld CIT(A) held that the assessing officer has merely disbelieved the evidences furnished by the assessee only on surmises and suspicion. Accordingly he allowed the appeal of the assessee in respect of this ground.*

*5. During the course of hearing before us, the Ld D.R could not produce any material to contradict the findings given by Ld CIT(A). Even though the Ld D.R submitted that the Ld CIT(A) has accepted additional evidences, we notice that the first appellate authority has confronted the same with the AO by calling for a remand report. Later, the Ld CIT(A) has decided the issue in both the years in favour of the assessee by examining the documents filed by the assessee. Under these set of facts, we do not find any infirmity in the view taken by Ld CIT(A). Accordingly, we uphold his orders in both the years.”*

Regarding the discrepancies with regard to the client code, we find that this discrepancy should constitute a flimsy ground for the AO to invoke the provisions of section 68 of the Act. To sum up, we are of the opinion that the grounds raised by the Revenue in this appeal stand covered by the various decisions cited above and in favour of the assessee. Accordingly, the ground raised by the revenue is dismissed.

11. In the result, the appeal by the revenue is dismissed.

12. ITA No. 5183/Mum/2011 for A.Y. 2005-06.

This appeal by the revenue is against the order of the CIT(A) dated 28.04.2011 for A.Y. 2006-07. The ground raised in this appeal is identical to the one raised by the Revenue for A.Y. 2005-06. The details are given above. The only difference is with reference to the figure of addition of Rs.80,44,460/- u/s. 68 of the Act on account of Long term capital gain.

13. At the outset, both the parties submitted that the facts relating to purchase and sale transactions of RFL are identical and arguments of the counsels

are also common for this appeal. On considering the arguments of the representatives of both sides, we find that the facts are identical. Therefore, the conclusion formed by us in connection with the transactions for A.Y. 2005-06 applies equally for A.Y. 2006-07 also. Accordingly, the ground raised by the Revenue is required to be dismissed in this appeal also.

14. In the result, the revenue's appeal is dismissed.

Order pronounced in the open court on this day of 09<sup>th</sup> September 2016.

**Sd/-  
(Ram Lal Negi)  
JUDICIAL MEMBER**

Mumbai, Dated :09<sup>th</sup> September, 2016.  
SA

**Sd/-  
(D Karunakara Rao)  
ACCOUNTANT MEMBER**

**Copy of the Order forwarded to :**

1. The Appellant.
2. The Respondent.
3. The CIT(A), Mumbai.
4. The CIT
5. The DR, 'G' Bench, ITAT, Mumbai

BY ORDER

//True Copy//

(Assistant Registrar)  
Income Tax Appellate Tribunal, Mumbai