

**IN THE INCOME TAX APPELLATE TRIBUNAL
"F" Bench, Mumbai**

**Before Shri Jason P. Boaz, Accountant Member
and Shri Sandeep Gosain, Judicial Member**

ITA No. 5847/Mum/2014
(Assessment Year: 2004-05)

Smt. Falguni Sanghavi
B-1607, Sankarseth Palace
Tardeo Road, Grant Road
Mumbai 400007

Vs.

ACIT, Circle 16(2)
Mumbai

PAN - ACAPS6640J

Appellant

Respondent

Appellant by: Shri Rishabh Shah
Respondent by: Shri K. Rajneesh K. Arvind

Date of Hearing: 20.09.2016
Date of Pronouncement: 23.09.2016

ORDER

Per Jason P. Boaz, A.M.

This appeal by the assessee is directed against the order of the CIT(A)-27, Mumbai dated 27.03.2014 for A.Y. 2004-05.

2. The facts of the case, briefly, are as under: -

2.1 The assessee, an individual deriving income from business, capital gains and house property, filed her return of income for A.Y. 2004-05 on 29.03.2005 declaring total income of ₹23,20,279/- including long term capital gains (LTCG) of ₹6,94,327/- on sale of shares of M/s. Talent Infoway Ltd. Subsequently, in view of the search and survey action conducted in the case of Shri Mukesh Choksi and his companies, it came to light that the said companies were engaged in the business of providing accommodation entries to various persons to book bogus capital gains. The Assessing Officer (AO), on receipt of information in this regard from the Investigation Wing of the Income Tax Department that the assessee is one of the parties who sold the shares of M/s. Talent Infoway Ltd. through Shri Mukesh Choksi's companies initiated proceedings to reopen the case under section 147 of the Income Tax Act, 1961 (in short 'the Act'), after

recording reasons in this regard and taking necessary approval, then issued notice under section 148 of the Act.

2.2 The AO then required the assessee to explain the mode of purchase of 9500 shares of Talent Infoway Ltd. claimed to be made through Goldstar Finvest Ltd. The assessee submitted that it had purchased the 9500 shares of M/s. Talent Infoway Ltd. through Goldstar Finvest Pvt. Ltd. vide bill No. CC/2003/044/21 dated 04.03.2003 for ₹14,655.21 and sold them in the year under consideration for a consideration of ₹7,08,982/-, thereby resulting in LTCG of ₹6,94,327/- which has been included in the computation of income attached to the return of income. The AO, however, did not accept the assessee's explanation and treated the said LTCG of ₹6,94,327/- as income from undisclosed sources and also made an addition of ₹8,679/- under section 69C of the Act on account of alleged commission paid in cash @1.25% of ₹6,94,327/-. The assessment was accordingly completed under section 143(3) r.w.s. 147 of the Act vide order dated 21.12.2011.

2.3 Aggrieved by the order of assessment for A.Y. 2004-05 dated 21.12.2011, the assessee preferred an appeal before the CIT(A)-27, Mumbai, inter alia, challenging the action of the AO in reopening the assessment under section 147 of the Act and treating the LTCG of ₹6,94,327/- earned on sale of shares as income from undisclosed sources and consequent commission of ₹8,679/- @ 1.25% thereon. The learned CIT(A) apart from upholding the AO's action in reopening the assessment for A.Y. 2004-05, also upheld the AO's action in treating the LTCG as income from undisclosed sources as he was of the view that it is amply clear that the assessee had failed to produce details of purchase of shares alleged to have been obtained in the earlier years. Observing that in view of the statement of Shri Mukesh Choksi, that he took money from the parties (which included the assessee) who came to him for accommodation bills on the basis of which he used to prepare bogus and back dated accounts in the names of these parties for profit, which in turn were shown to have been utilized for purchase of shares of the bogus companies floated by him, the learned CIT(A) held that the assessee was completely involved in

routing of her unaccounted income and converting it into allege LTCG through bogus transaction which remained on paper. The learned CIT(A) accordingly dismissed the assessee's appeal vide the impugned order dated 23.07.2014.

3. Aggrieved by the order of the CIT(A)-27, Mumbai dated 23.07.2014 for A.Y. 2004-05, the assessee has preferred this appeal raising the following grounds: -

- “1. On the fact and circumstances of the case as well as in Law, the Learned CIT(A) has erred in confirming the action of Learned Assessing Officer in reopening the case, without considering the provision of law.
2. On the fact and circumstances of the case as well as in Law, the Learned CIT(A) has erred in confirming the action of Learned Assessing Officer in treating the Long Term Capital Gain of Rs.6,94,3271- earned on account of sale of share of MIs. Talent Infoways Ltd. as alleged Income from Undisclosed sources, without considering the facts and circumstances of the case.
3. On the fact and circumstances of the case as well as in Law, the Learned CIT(A) has erred in confirming the action of Learned Assessing Officer in making an addition u/s. 69C of the Income Tax Act, 1961 of Rs.8,679/-on account of alleged commission paid in cash @ 1.25% of Rs.6,94,327/-, without considering the facts and circumstances of the case.
4. The appellant craves leave to add, amend, alter or delete the said ground of appeal.”

4.1.1 The learned A.R. for the assessee was heard in support of the ground No. 1. According to the learned A.R., the AO's action in reopening the assessment for A.Y. 2004-05 under section 147 of the Act was bad in law since the income returned in the return of income filed, i.e. ₹23,20,278/- and the assessed income is the same in the order of assessment dated 21.12.2011, except for the fact that the income which had been admitted as LTCG has been treated as undisclosed income of the assessee from other sources. Secondly, section 149 of the Act provides that if the notice under section 148 is issued after the period of four years from the end of the relevant A.Y. 2004-05, i.e. after 31.03.2009, then the income chargeable to tax which has escaped assessment should be ₹ 1 lakh or more, whereas in the case on hand for the year under consideration, the income chargeable to tax that has escaped assessment is actually 'Nil', the

only difference being the tax rate applicable. The learned A.R. for the assessee contends that section 147 of the Act requires that income chargeable to tax must have escaped assessment and in the case on hand no income chargeable to tax had actually escaped assessment. The learned A.R. for the assessee submits that the reasons recorded by the AO are not based on a correct appreciation of facts. It was further contended that reliance on the statement recorded under section 131 of the Act of a third party cannot constitute the basis for the AO entertaining 'reason to believe' for initiating proceedings under section 147 of the Act for reopening the case.

4.1.2 In respect of grounds 2 and 3, the learned A.R. for the assessee submitted that there is neither any dispute with respect to the purchase on 04.03.2003 and sale of 9500 shares of Talent Infoway Ltd. in the year under consideration nor purchase and sale consideration and all details in this regard to establish the genuineness such as; contract note for shares sold, bank statement reflecting amounts invested, investment account, details of transfer of share certificate in physical form, etc. has been filed before the AO. Without making any enquiry, the AO has made the addition on the basis of information from Investigation Wing of I.T. Department based on statement of third party without providing the assessee opportunity to cross examine Shri Mukesh Choksi that his companies were giving bogus entries for capital gain. The learned A.R. contended that the AO's view that these shares are undisclosed and that the income on sale thereof has not been offered for taxation is without basis and therefore the addition of the same as undisclosed income requires to be deleted, since he has not only brushed aside the stack of evidence which the assessee had filed, but also not given cogent reasons or basis for reaching the conclusion he did.

4.2 Per contra, the learned D.R. placed strong reliance on the impugned order of the learned CIT(A).

4.3.1 We have heard the rival contentions of both the parties and perused and carefully considered the material on record. On an appreciation of the records and assessee's contentions, we, prima facie, find that on merits it is not in dispute that the assessee has purchased the 9500 shares of Talent

Infoway Ltd. for ₹14,655/- vide bill dated 04.03.2003 (contract Note placed at page 23 of the paper book) and that the same have been sold for a total consideration amounting to ₹7,08,982/- in the year under consideration on 20.03.2004 and 26.03.2004 (details/summary placed at page 47 to 59 of paper book). Once the date and source of purchase of the said shares and the date and sale consideration thereof are not disputed, in our considered view, the transaction is one of LTCG as declared by the assessee in the return of income for A.Y. 2004-05 and therefore the treatment of the same as income from undisclosed source by the authorities below is incorrect. Accordingly, in the facts and circumstances of the case as discussed from para 4.1.1 to 4.3.1 of this order, on merits of the issue we hold that the gain of ₹6,94,327/- on sale of 95000 shares of Talent Infoway Ltd. by the assessee in the year under consideration is to be assessed under the head long term capital gain and we therefore delete the finding of the authorities below that this income of ₹6,94,327/- be assessed as undisclosed income alongwith the addition of ₹8,679/- under section 69C of the Act on account of alleged commission @1.25% thereon. Consequently, **grounds 2 and 3** of the assessee's appeal are allowed.

5. As regards ground No. 1 raised by assessee, on the validity of the initiation of proceedings under section 147 of the Act for reopening the assessment for A.Y. 2004-05, the same are rendered academic in nature in view of our finding rendered on merits on the grounds 2 and 3 raised by the assessee.

6. **Ground No. 4** is general in nature and therefore no adjudication is called for thereon.

7. In the result, the assessee's appeal for A.Y. 2004-05 is allowed as indicated above.

Order pronounced in the open court on 23rd September, 2016.

Sd/-
(Sandeep Gosain)
Judicial Member

Sd/-
(Jason P. Boaz)
Accountant Member

Mumbai, Dated: 23rd September, 2016

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -27, Mumbai*
4. *The CIT - 16, Mumbai*
5. *The DR, "F" Bench, ITAT, Mumbai*

By Order

//True Copy//

*Assistant Registrar
ITAT, Mumbai Benches, Mumbai*

n.p.