

आयकर अपीलीय अधिकरण
मुंबई पीठ "ए", मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री नवीन कुमार प्रधान, लेखा सदस्य के समक्ष
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI N.K.PRADHAN, ACCOUNTANT MEMBER
आअसं. 4369/मुं/2018 (नि.व. 2014-15)
ITA NO.4369/MUM/2018 (A.Y.2014-15)

Smt. Anjana Sandeep Rathi,
A-53, Shravan Building,
Tarangam Complex, Samata Nagar,
Thane (W).
PAN: AAPPR5975C

..... अपीलार्थी /Appellant

बनाम Vs.

The ACIT – Circle 1,
B-Wing, 6th Floor, Ashar IT Park,
Road No.16-Z, Wagle Indl. Estate,
Thane 400 604.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Devendra Jain

प्रतिवादी द्वारा/Respondent by :

सुनवाई की तिथि/ Date of hearing : 01/07/2020

घोषणा की तिथि/ Date of pronouncement : 20/07/2020

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals) -3 Nasik (in short 'the CIT (A)') dated 20/04/2018 for the assessment year 2014-15.

2. The assessee in appeal has raised following grounds:-

“(1) In the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in upholding the action of the Assessing Officer of completing the assessment under section 143(3) and making addition of Rs.14,99,917/- and disallowing the LTCG claim of Rs.14,99,917/- under section 10(38) merely on the basis of alleged statements of third parties, without providing the copies of such statements and without providing the opportunity to cross examine such parties, thus, violating the principles of natural justice as upheld by Hon’ble Supreme Court in the case of Andaman Timber Industries vs. Commissioner of Central Excise (Civil Appeal No.4228 of 2006) and Kishanchand Chellaram vs. CIT, AIR 1980 SC 2117.

2. In the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in upholding the action of the Assessing Officer of holding that the transaction of the sale of share of M/s. Sunrise Asian Ltd. is bogus and sham and making addition of Rs.14,99,917/-.

3. In the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in upholding the action of the Assessing Officer of not granting the exemption of long term capital gain under section 10(38) of the Act on sale of listed equity shares sold through recognized stock exchange, which has duly been subjected to Security Transaction Tax (S.T.T) on surmises, conjecture and suspicion.

4. In the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in upholding the action of the Assessing Officer of treating the transaction of sale of shares of M/s. Sunshine Asian Ltd. as income from undisclosed sources and making addition under section 68 of the Act for the amount credited in bank account.

5. The appellant craves leave to add, alter, delete or modify all or any of the above grounds of appeal.”

3. Shri Devendra Jain appearing on behalf of the assessee submitted that the assessee/appellant is trader in shares. During the period relevant to the assessment year under appeal the assessee sold shares of M/s. Sunrise Asian Limited for a total consideration of Rs.14,99,917/-. The aforesaid amount was directly credited to the bank account of the assessee. The long term capital gain on sale of shares was claimed as exempt u/s 10 (38) of the Act. The Assessing Officer in scrutiny assessment proceedings held the aforesaid amount as unexplained credit and made addition under section 68 read with section 115BBE of the Income Tax Act, 1961 (in short ‘the Act’). The Id. Authorized Representative of the assessee pointed that the assessee had

furnished various documents to substantiate that the amount credited to the bank was sale proceeds of shares of M/s. Sunrise Asian Ltd. The Assessing Officer rejected all the submissions of the assessee. In first appellate proceedings, the CIT (A) also brushed aside the evidences and contentions of the assessee and upheld the findings of Assessing Officer.

3.1. The Id. Authorized Representative of the assessee contended that father –in-law of the assessee Shri Narayan R. Rathi had also sold shares of M/s. Sunrise Asian Ltd. during the period relevant to the assessment year 2014-15. The benefit of exemption under section 10(38) of the Act was denied to him for similar reasons and addition under section 68 was made holding sale of shares as bogus and sham transaction. After remaining unsuccessful before the first appellate authority, he carried the issue in appeal before the Tribunal in ITA No.4811/Mum/2018 titled Narayan Ramachandra Rathi vs. ITO. The Tribunal vide order dated 08/08/2019 reversed the findings of CIT (A) and allowed the appeal. The Id. Authorized Representative of the assessee pointed that the facts in case of the assessee are identical. Drawing parity between both the cases, the Id. Authorized Representative of the assessee submitted that:-

- (a) the transactions of sale of shares are in same assessment year;
- (b) the issue involved in both the appeals is denial of exemption under section 10(38) and addition made under section 68 of the Act;
- (c) the scripts transacted in both the cases is same i.e. M/s. Sunrise Asian Ltd.;
- (d) the modus operandi of dealing in scripts and the evidences furnished with respect to acquisition and sale of shares are similar;

(e) in fact the shares in question were jointly purchased by the assessee and Narayan R. Rath; and

(f) the grounds of appeal raised in both the appeals are identical.

4. On the other hand, the Id. Departmental Representative vehemently defended the impugned order and prayed for dismissing the appeal of assessee.

5. We have heard the submissions made by rival sides and have perused the orders of authorities below. The assessee in appeal has assailed the findings of CIT (A) in disallowing benefit of section 10(38) of the Act on long term capital gain arising from sale of shares. The assessee during the relevant period had sold shares of M/s. Sunrise Asian Ltd. for a consideration of Rs.14,99,917/-. The authorities below held the sale transaction in aforementioned scripts as bogus and thus, made addition under section 68 of the Act. We find that similar disallowance was made in the case of Narayan R. Rath (father-in-law of the present assessee/appellant) for the assessment year 2014-15. Narayan R. Rath had also sold the shares of same company i.e. M/s. Sunrise Asian Ltd. The issue travelled to the Tribunal. The Co-ordinate Bench of the Tribunal in ITA No. 4811/Mum/2018 (supra) deleted the addition. The Tribunal while allowing the appeal of Narayan R. Rath held that the principles of natural justice were violated, the benefit of cross examination was not afforded to the assessee, hence, the addition is unsustainable. The relevant extract of the finding of Tribunal are reproduced herein below:-

“11. The authorities below have not doubted the documentary evidence produced by the assessee to prove the genuineness of the transaction of sale and purchase of the shares in question. Further, the authorities below have not pointed out any evidence on record to hold that the assessee has obtained bogus entries in connivance with

*entry operators and brokers etc., in order to claim bogus LTCG. As pointed out by the Ld. counsel, the assessee was not given an opportunity to cross examine the witnesses whose statements were relied upon and on the basis of their statements it was concluded that the transaction in question was a part of penny stock scam. So, in view of the cases discussed in the foregoing paras, particularly the ratio laid down by the Hon'ble Supreme Court in the case of M/s Andaman Timber Industries (supra), **we are of the considered view that the Ld. CIT (A) has wrongly confirmed the assessment order passed by the AO in violation of the principles of natural justice. Hence, the impugned order passed by the Ld CIT (A) suffers from legal infirmity. We, therefore, allow the sole ground of appeal of the assessee and set aside the impugned order passed by the Ld. CIT (A). Accordingly, we direct the AO to allow the claim of the assessee.***

6. The Id. Departmental Representative has failed to controvert the findings of Tribunal in the case of Shri Narayan R. Rathi whose case is on the same pedestal with identical set of facts. In fact a perusal of the assessment order in the case of assessee reveal that the Assessing Officer in para 8.3 has observed that 3000 shares were jointly held by the assessee and Narayan Ramachandra Rathi. The facts of present case are similar to the facts of case in the case of Narayan R. Rathi decided by the Co-ordinate Bench. No distinction in facts has been brought to our knowledge by the Department. Thus, for the parity of reasons, addition made under section 68 of the Act deserves to be deleted. Further, the Assessing Officer is directed to allow the benefit of section 10(38) of the Act to the assessee.

7. In the result, **the appeal of the assessee is allowed.**

Order pronounced on Monday the 20th day of July, 2020.

Sd/-

(N.K.PRADHAN)

लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated: 20/07/2020

Vm, Sr. PS (O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai