

IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.3122/Mum./2022
(Assessment Year : 2014-15)

Shri Abhishek Doshi
Room no.1, 37th Floor
Shreepati Arcade, August Kranti Marg
Nana Chowk, Mumbai 400 036
PAN – AEGPD9279J

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Circle-19(1), Mumbai

..... Respondent

Assessee by : Shri Anil Sathe
Revenue by : Shri Pratap N. Sharma

Date of Hearing – 29/05/2023

Date of Order – 31/05/2023

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 11/10/2022, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], for the assessment year 2014-15.

2. In this appeal, the assessee has raised the following grounds:-

"1. The learned CIT(A) erred in upholding the action of the assessing officer in treating the long-term capital gains accruing to the appellant as non-genuine

only on the basis of general finding of Directorate of Investigation and various statements recorded by it without any cogent material on record and no nexus / connection with the appellant being established to prove the impugned transaction as bogus.

2. The learned CIT(A) failed to take cognizance of documentary evidence provided by the appellant such as bank statements, brokers' contract notes and ledger accounts, demat accounts, etc. to substantiate the transactions of purchase and sale of shares. The addition made u/s 68 is merely presumptions, suspicion, surmises, and on conjectures disregarding the direct evidence placed on record.

3. The learned CIT(A) erred in confirming the action of the AO denying the exemption under sec. 10(38) of the Act to the appellant to the extent of Rs 1,83,03,470 when all the conditions for claiming exemption are satisfied by the appellant, and the concessional rate of tax under section to short term capital gains to the extent of Rs. 69,21,151.

5. The learned CIT(A) erred in treating the transaction of the appellant as non-genuine relying only on circumstantial evidence such as price movements of the equity share which is beyond the control of the appellant.

6. The learned CIT(A) erred in relying on certain judicial pronouncements facts of which were distinct and distinguishable, and ignoring other decisions including that of the jurisdictional High Court.

7. Without prejudice to the above and strictly in the alternative the learned CIT(A), erred in not appreciating that if the transaction of sale is to be treated as non-genuine, the addition should be restricted to Rs, 2,52,24,621 the net gain made by the appellant.

7. The appellant craves leave to add, alter or amend any of the grounds of the appeal, at any time before or at the time of hearing."

3. The brief facts of the case, as emanating from the record, are: The assessee is an individual and derives income from business, capital gains, and income from other sources. For the year under consideration, the assessee filed its return of income on 30/09/2014 declaring a total income of Rs.82,60,580. The return filed by the assessee was selected for scrutiny and statutory notices under section 143(2) as well as section 142(1) of the Act were issued and served on the assessee. During the assessment proceedings, it was noticed that the assessee has shown long-term capital gains of Rs.1,85,47,659 on the sale of shares of M/s Parag Shilpa Investments Ltd,

which was claimed as exempt under section 10(38) of the Act. It was further observed that the assessee has also earned short-term capital gains in respect of shares of M/s Ashika Credit and Capital Ltd. Since the quantum of huge long-term capital gains and short-term capital gains were earned from virtually unknown scrips, further investigation was undertaken by the Assessing Officer ("AO"). During the assessment proceedings, the AO noted that the scrip of M/s Ashika Credit and Capital Ltd. was purchased by the assessee in the month of September 2013 and October 2013 and the same was sold in November 2013. It was further observed that the market price of the shares of M/s Ashika Credit and Capital Ltd. at around Rs.100 for the share having a face value of Re.1 in September 2013 and around Rs.140 in October 2013 rose to Rs.240 to 250 in just one or two months. Similarly, the assessee purchased the shares of M/s Parag Shilpa Investments Ltd at the rate of Rs.10 per share on 17/07/2012, which were sold in March 2014 at the average rate of Rs. 537 (approx.) per share. It was further observed that both the entities, i.e. M/s Parag Shilpa Investments Ltd and M/s Ashika Credit and Capital Ltd had very low net worth and the promoter/directors had no financial creditworthiness to fetch high-value of shares on the market. The AO also referred to the statements of certain persons who were found to have either obtained bogus long-term capital gains through share transaction, inter-alia, in the aforesaid companies or have been found to be entry operators who have provided bogus long-term capital gains to the beneficiaries in companies, including the aforesaid companies. The AO also took note of the statement of the assessee recorded on oath regarding the share transaction in the aforesaid companies, wherein he denied having any knowledge of the penny stock company and

submitted that he purchased the shares on the basis of the tip from his friend. The AO also noted that the stockbroker from whom the shares of M/s Parag Shilpa Investments Ltd were purchased by the assessee was penalised and restrained from the trading/adding clients by the SEBI due to its involvement in rigging the share price of certain companies. Accordingly, the AO vide assessment order dated 28/12/2016 passed under section 143(3) of the Act came to the conclusion that the aforesaid companies are penny stock companies and transaction of shares were not governed by market factors prevalent at the relevant time. The AO also held that the assessee resorted to preconceived scheme to procure long-term capital gains and short-term capital gains by way of price differences in share transactions not supported by market factors. Thus, the assessee has prearranged method in connivance with the operators to evade taxes. The AO also alleged that the associated brokers, entry operators, and the assessee had worked out an arrangement in which the shares were acquired by the assessee, the share prices were rigged, and then with the help of entry operators by routing the cash, shares were sold at a high price to arrive at tax-free long term capital gains and short term capital gains at a reduced tax rate. Accordingly, the AO made the addition of the entire amount of sale proceeds of Rs.3,10,51,461 received by the assessee as unexplained taxable income and added the same under section 68 of the Act. The learned CIT(A) vide impugned order dismissed the appeal filed by the assessee. Being aggrieved, the assessee is in appeal before us.

4. We have considered the submissions of both sides and perused the material available on record. The only dispute in the present appeal is against

the addition made under section 68 of the Act on account of proceeds from the sale of shares by treating the scrips as penny stocks. It is undisputed that the assessee has transacted in the shares of M/s Parag Shilpa Investments Ltd and M/s Ashika Credit and Capital Ltd. The shares of M/s Parag Shilpa Investments Ltd were purchased via a preferential allotment basis, while the assessee has placed on record the contract notes for the purchase of shares of M/s Ashika Credit and Capital Ltd. From the sale of shares of M/s Parag Shilpa Investments Ltd, the assessee earned long-term capital gains, which was claimed as exempt under section 10(38) of the Act. While from the sale of shares of M/s Ashika Credit and Capital Ltd, the assessee earned short-term capital gains. On the basis that the aforesaid companies were part of the investigation by the Directorate of Income Tax (Investigation), Kolkata, Mumbai, and Ahmedabad, and certain investors as well as entry operators have earned bogus long-term capital gains from transacting in shares of the aforesaid companies, the AO treated these companies as paper entities and disallowed the claim of exemption under section 10(38) on account of long-term capital gains and a lower rate of tax on short-term capital gains earned by the assessee. The AO also referred to the value of the shares at a different point in time including the period during which the assessee was holding the shares. However, from the perusal of the assessment order, it is evident that neither in the findings of the Investigation Wing, referred by the AO from pages 4-6 of the assessment order, nor in the statements of beneficiaries and entry providers recorded during the aforesaid investigation, as mentioned from pages 12-22 and thereafter from 24-31 of the assessment order, there is any mention of the name of the assessee. Further, the aforesaid findings also do

not establish any nexus of these tainted investors, exit providers, or entry operators with the assessee in any manner.

5. In the assessment order in para-7.2, the AO also referred to the order passed by the SEBI penalising and restraining the stockbroker, through whom the assessee purchased shares of M/s Parag Shilpa Investments Ltd, as it was involved in rigging the share price of certain shares. However, we find that there is no allegation that such a broker was involved in rigging the price of the shares in which the assessee has invested. Further, no finding of the SEBI has been brought on record to show that such rigging of price was for the benefit of the assessee or has any nexus with the assessee. This is also not a case wherein either the directors/promoters of the aforesaid Companies, in which the assessee had invested, has accepted that the company is merely a paper company and provides the benefit of bogus long-term capital gains to its shareholders. Further, despite the Revenue having the information regarding the stockbrokers through whom the shares were sold, there is no evidence on record that even these shareholders were named in the investigation conducted by the Investigation Wing of the Department. It is also pertinent to note that the AO has not given any adverse comments or drawn adverse inferences on the documentary evidence submitted by the assessee. Thus, in the present case, the Revenue has failed to prove with any cogent evidence on record that the assessee was involved in converting his unaccounted money into long-term capital gains and short-term capital gains by conniving with any entry operator/exit provider, who was involved in artificial price rigging of shares. Thus, this is the case wherein the AO merely on the basis of suspicion

rejected the claim of the assessee, without establishing any link between the assessee with the entry operators/exit providers, who were allegedly involved in price rigging of shares artificially of the aforesaid companies. Therefore, in view of the above, we are unable to persuade ourselves to accept the conclusion reached by the Revenue on the basis of findings recorded in the orders passed by the lower authorities. Accordingly, we direct the AO to delete the impugned addition made under section 68 of the Act and accept the plea of the assessee in respect of the long-term capital gains and short-term capital gains earned during the year. As a result, the grounds raised by the assessee are allowed.

6. In the result, the appeal by the assessee is allowed.

Order pronounced in the open Court on 31/05/2023

Sd/-
B.R. BASKARAN
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 31/05/2023

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai