

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "C" Bench, Mumbai.

Before Justice (Retd.) C.V. Bhadang (President) & Shri B.R. Baskaran (AM)

I.T.A. No. 3256/Mum/2022 (A.Y. 2014-15)

Chirag Tejprakash Dangi 5D, Kamgar Nagar S.G. Barve Marg, Kurla Mumbai-400 024. PAN : AJYPD2884J (Appellant)	Vs.	ITO, Ward-26(1)(5) C-11, 7 th Floor Pratyaksh Kar Bhavan, BKC Bandra East Mumbai-400 051. (Respondent)
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Assessee by	Shri Prakash Jhunjunwala
Department by	Shri P. Suresh
Date of Hearing	29.11.2023
Date of Pronouncement	20.02.2024

ORDER

Per B.R. Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 14.12.2022 passed by the learned CIT(A), National Faceless Appeal Centre, Delhi and it relates to A.Y. 2014-15. The grievance of the assessee is that the learned CIT(A) was not justified in confirming the addition of Rs.1.51 crores made by the Assessing Officer under section 68 of the I.T. Act, being sale process of shares alleged penny stock companies.

2. Though the assessee has raised a ground challenging the validity of notice issued under section 148 of the I.T. Act, the learned AR did not press the same at the time of hearing. Accordingly, the said ground is dismissed as not pressed.

3. Facts relating to the addition of Rs.1.51 crores relating to sale value of shares of alleged penny stocks are stated in brief. During the course of assessment proceedings, the Assessing Officer noticed that the assessee has

disclosed long term capital gains of Rs. 1.45 crores arising out of sale of shares and claimed the same as exempt under section 10(38) of the Act. The relevant details thereof are tabulated below:-

Name of scrip	Sale value	Long term capital gain
Radford Global Ltd. (Earlier known as PS Global Ltd)	39,19,667	38,19,670
Surbhi Chemicals & Investment Ltd.	92,19,378	87,19,378
Pyramid Trading & Finance Ltd. (Now known as Mishka Finance & Trading Ltd)	20,14,740	19,89,740
	151,53,785	145,28,788

4. The Assessing Officer noticed that all the three companies mentioned above have been identified as 'penny stock' by the Investigation Wing, Kolkata, in which prices of the shares have been rigged in order to generate bogus capital gains/capital losses. The Assessing Officer also noticed from the report prepared by the Investigation wing of Kolkata that the prices of shares of certain penny stock companies have gone up unusually and the same was not commensurate with the financial results of these companies. Accordingly, the Assessing Officer asked the assessee to explain as to how he has invested in these shares. The assessee replied that he got information that there are reasonable chances of getting good returns in these scrips and accordingly made the investments. The assessee also submitted that the purchase and sale of the transactions are genuine and also furnished all the evidences in support of the same. The Assessing Officer recorded statement from the assessee u/s 131 of the Act, wherein he stated that he makes investments on long term basis. However, the AO concluded that the assessee failed to show that he was having any knowledge about the shares. Accordingly, the Assessing Officer took the view that the transactions in shares are not genuine and rejected the exemption claimed u/s 10(38) of the Act. However, the AO assessed the sale value of shares amounting to

Rs.1.51 crores u/s 68 of the Act. The AO also took the view that the assessee may have incurred commission expenses in getting bogus long term capital gains and accordingly estimated the commission expenses incurred on procuring bogus long term capital gains as Rs. 7 lakhs and assessed the same u/s 69C of the Act. The learned CIT(A) confirmed the addition and hence the assessee has filed this appeal before the Tribunal.

5. The Learned AR submitted that the assessee is a regular investor in shares. He submitted that the assessee has purchased shares in physical mode by paying purchase consideration through banking channel. Subsequently, the shares were dematerialized. Later on, they were sold in the platform of the Bombay Stock Exchange. The sale consideration has been received by way of account payee cheque. He submitted that the assessee has furnished all the required documents to prove the factum of purchase and sale of shares. He submitted that the Assessing Officer did not find any deficiency/defect in the documents so furnished by the assessee. The learned AR submitted that all the companies are still active in the stock exchange and hence it cannot be considered as bogus companies. He submitted that the assessee is an ordinary investor in shares and it was not shown that the assessee was a part of the group, which was involved in the alleged prices rigging of the shares. Accordingly he submitted that the tax authorities are not justified in disbelieving the transactions of shares carried on by the assessee. In support of his submission, he placed reliance on the following decisions :

- i) PCIT Vs. Indravadan Jain HUF (ITA No. 454 of 2018)(Bom)
- ii) PCIT Vs. Ziauddin A. Siddiquie (ITA No. 2012 of 2017) (Bom)
- iii) CIT Vs. Shyam R. Pawar (54 taxmann.com 108)(Bom)
- iv) CIT Vs. Smt. Jamnadevi Agrawal (20 taxmann.com 529 (Bom)
- v) Pr. PCIT Vs. Smt. Krishna Devi (126 Taxmann.com 80 (Del)

6. The Learned AR further submitted that the companies M/s. Radford Global Ltd. and M/s. Mishka Finance Ltd. were subjected to scrutiny by the

SEBI and Interim orders passed by the SEBI against both the above said companies, have been revoked subsequently. In respect of Surbhi Chemicals & Investment Ltd., SEBI has not passed any adverse order. The Learned AR also submitted that the assessee has not been subjected to any inquiry by the SEBI. Accordingly he contended that the Assessing Officer was not justified in disbelieving the transactions carried on by the assessee are not genuine by placing reliance on the general investigation report given by the Investigation Wing of Kolkata.

7. On the contrary, the learned DR heavily placed reliance on the order passed by the Assessing Officer. He submitted that the Assessing Officer has conducted inquiry with the assessee and has come to the conclusion that the assessee was ignorant about the fundamentals of the penny stock companies. He further submitted that the Assessing Officer has examined financial performance and fundamentals of these companies and it has been proved that the price rise was not commensurate with the financial performance of the companies, which would lead to the conclusion that there was rigging of the price of these shares. Accordingly, the learned AR submitted that all these transactions of purchase and sale of shares have been preconceived and artificially structured with the sole intention to evade tax. Accordingly he contended that the order passed by the learned CIT(A) should be confirmed.

8. In the rejoinder, the A.R further submitted that Hon'ble Supreme Court in the case of PCIT Vs. Smt. Renu Aggarwal (456 ITR 249) has affirmed the decision rendered by Hon'ble Allahabad High Court, wherein the Hon'ble High Court had held that the Assessing Officer could not have made the addition on the basis of the facts pertaining to completely unrelated person. In the instant case also, the Assessing Officer has drawn adverse inference on the basis of the general report given by the Investigation Wing.

9. We heard the parties and perused the record. We notice that the assessing officer has primarily placed reliance on the report given by the Investigation wing of the Income tax department, Kolkata to arrive at the conclusion that the long term capital gains reported by the assessee is bogus in nature. We notice that the investigation report prepared by Investigation wing, Kolkatta is a generalized report with regard to the modus operandi adopted in manipulation of prices of certain shares and generation of bogus capital gains. We notice that the AO has placed reliance on the said report without bringing any material on record to show that the transactions entered by the assessee were found to be a part of manipulated transactions, i.e., it was not proved that the assessee has carried out the transactions of purchase and sale of shares in connivance with the people who were involved in the alleged rigging of prices. The Ld A.R submitted that the SEBI, who is regulator of stock market operations, have conducted enquiries and the interim order passed by it suspending the trading in two of the companies mentioned above, has since been revoked. In any case, it is stated by Ld A.R that the transactions carried on by the assessee were not subjected to scrutiny by SEBI at all.

10. We notice from the statement recorded by the AO from the assessee u/s 131 of the Act that the assessee herein is a Chartered Accountant. In the statement, the assessee has specifically stated that he is a long term investor, meaning thereby, he would not be watching the share price movements on day to day basis. Hence, we are unable to understand as to how that AO could observe that the assessee herein was ignorant of stock market operations. We also notice that the assessee has

- (a) purchased these shares by paying consideration through banking channels
- (b) dematerialized the shares and kept the same in the Demat account.
- (c) sold the shares through stock exchange platform
- (d) received the sale consideration through banking channels.

Further, the shares have entered and exited the demant account of the assessee. We notice that the AO himself has not found any defect/deficiencies in the evidences furnished by the assessee with regard to purchase and sale of shares. As noticed earlier, the AO has not brought on record any material to show that the assessee was part of the group which involved in the manipulation of prices of shares. Hence, there is no reason to suspect the purchase and sale of shares undertaken by the assessee.

11. We may now refer to certain decisions rendered by Hon'ble Bombay High Court on identical issue. In the case of Shyam Pawar (supra), the Hon'ble Bombay High Court has observed as under:-

“3. Mr.Sureshkumar seriously complained that such finding rendered concurrently should not have been interfered with by the Tribunal. In further Appeal, the Tribunal proceeded not by analyzing this material and concluding that findings of fact concurrently rendered by the Assessing Officer and the Commissioner are perverse. The Tribunal proceeded on the footing that onus was on the Department to nail the Assessee through a proper evidence and that there was some cash transaction through these suspected brokers, on whom there was an investigation conducted by the Department. Once the onus on the Department was discharged, according to Mr.Sureshkumr, by the Revenue-Department, then, such a finding by the Tribunal raises a substantial question of law. The Appeal, therefore, be admitted.

4. Mr.Gopal, learned Counsel appearing on behalf of the Assessee in each of these Appeals, invites our attention to the finding of the Tribunal. He submits that if this was nothing but an accommodation of cash or conversion of unaccounted money into accounted one, then, the evidence should have been complete. Change of circumstances ought to have, after the result of the investigation, connected the Assessee in some way or either with these brokers and the persons floating the two companies. It is only, after the Assessee who is supposed to dealing in shares and producing all the details including the DMAT account, the Exchange at Calcutta confirming the transaction, that the Appeal of the Assessee has been rightly allowed. The Tribunal has not merely interfered with the concurrent orders because another view was possible. It interfered because it was required to interfere with them as the Commissioner and the Assessing Officer failed to note some relevant and germane material. In these circumstances, he submits that the Appeals do not raise any substantial question of law and deserve to be dismissed.

5. We have perused the concurrent findings and on which heavy reliance is placed by Mr.Sureshkumar. While it is true that the Commissioner extensively referred to the correspondence and the contents of the report of the Investigation carried out in paras 20, 20.1, 20.2 and 21 of his order, **what was important and vital for the purpose of the present case was whether the transactions in shares were genuine or sham and bogus. If the purchase and sale of shares are reflected in the Assessee's DMAT account, yet they are termed as arranged transactions and projected to be real, then, such conclusion which has been reached by the Commissioner and the Assessing Officer required a deeper scrutiny.** It was also revealed during the course of inquiry by the Assessing Officer that the Calcutta Stock Exchange records showed that the shares were purchased for code numbers S003 and R121 of Sagar Trade Pvt Ltd. and Rockey Marketing Pvt. Ltd. respectively. Out of these two, only Rockey Marketing Pvt.Ltd. is listed in the appraisal report and it is stated to be involved in the modus-operandi. It is on this material that he holds that the transactions in sale and purchase of shares are doubtful and not genuine. *In relation to Assessee's role in all this, all that the Commissioner observed is that the Assessee transacted through brokers at Calcutta, which itself raises doubt about the genuineness of the transactions and the financial result and performance of the Company was not such as would justify the increase in the share prices. Therefore, he reached the conclusion that certain operators and brokers devised the scheme to convert the unaccounted money of the Assessee to the accounted income and the present Assessee utilized the scheme.*

6. It is in that regard that we find that Mr.Gopal's contentions are well founded. **The Tribunal concluded that there was something more which was required, which would connect the present Assessee to the transactions and which are attributed to the Promoters/Directors of the two companies.** The Tribunal referred to the entire material and found that the investigation stopped at a particular point and was not carried forward by the Revenue. There are 1,30,000 shares of Bolton Properties Ltd. purchased by the Assessee during the month of January 2003 and he continued to hold them till 31 March 2003. The present case related to 20,000 shares of Mantra Online Ltd for the total consideration of Rs.25,93,150/-. These shares were sold and how they were sold, on what dates and for what consideration and the sums received by cheques have been referred extensively by the Tribunal in para 10. A copy of the DMAT account, placed at pages 36 & 37 of the Appeal Paper Book before the Tribunal showed the credit of share transaction. The contract notes in Form-A with two brokers were available and which gave details of the transactions. The contract note is a system generated and prescribed by the Stock Exchange. From this material, in para 11 the Tribunal concluded that this was not mere accommodation of cash and enabling it to be converted into accounted or regular payment. The discrepancy pointed out by the Calcutta Stock Exchange regarding client Code has been referred to. But the Tribunal concluded that itself, is not enough to prove that the transactions in the impugned shares were bogus/sham. The details received from Stock Exchange have been relied upon and for

the purposes of faulting the Revenue in failing to discharge the basic onus. If the Tribunal proceeds on this line and concluded that inquiry was not carried forward and with a view to discharge the initial or basic onus, then such conclusion of the Tribunal cannot be termed as perverse. The conclusions as recorded in para 12 of the Tribunal's order are not vitiated by any error of law apparent on the face of the record either.

7. As a result of the above discussion, we do not find any substance in the contention of Mr.Suresh kumar that the Tribunal misdirected itself and in law. We hold that the Appeals do not raise any substantial question of law. They are accordingly dismissed. There would no order as to costs.

8. Even the additional question cannot be said to be substantial question of law, because it arises in the context of same transactions, dealings, same investigation and same charge or allegation of accommodation of unaccounted money being converted into accounted or regular as such. The relevant details pertaining to the shares were already on record. This question is also a fall out of the issue or question dealt with by the Tribunal and pertaining to the addition of Rs.25,93,150/-. Barring the figure of loss that is stated to have been taken, no distinguishable feature can be or could be placed on record. For the same reasons, even this additional question cannot be termed as substantial question of law.”

12. We may now refer to the decision rendered by Hon'ble Jurisdictional High Court in the case of PCIT vs. Ziauddin A Siddique (Income tax Appeal No. 2012 of 2017 dated 4th March, 2022) and relevant discussions made by Hon'ble Bombay High Court are extracted below:-

“2. We have considered the impugned order with the assistance of learned counsels and we have no reason to interfere. There is a finding of fact by the Tribunal that the transaction of purchase and sale of shares of the alleged penny stock of shares of Ramkrishna Fincap Ltd (“RFL”) is done through stock exchange and through the registered Stock Brokers. The payments have been made through banking channels and even Security Transaction Tax (“STT”) has also been paid. The Assessing Officer also has not criticized the documentation involving the sale and purchase of shares. The Tribunal has also come to a finding that there is no allegation against the assessee that it has participated in any price rigging in the market on the shares of RFL.

3. Therefore we find nothing perverse in the order of the Tribunal.

4. Mr. Walve placed reliance on a judgement of the Apex Court in Principal Commissioner of Income tax (Central)-1 vs. NRA Iron & Steel (P) Ltd (2019)(103 taxmann.com 48)(SC) but that does not help the revenue in as much as the facts in that case were entirely different.

5. In our view, the Tribunal has not committed any perversity or applied incorrect principles to the given facts and when the facts and circumstances are properly analysed and correct test is applied to decide the issue at hand, then, we do not think that question as pressed raises any substantial question of law.

In the case of CIT vs. Jamnadevi Agarwal (supra), the Hon'ble Bombay High Court held that the transactions of purchase and sale of shares cannot be considered to be bogus, when the documentary evidences furnished by the assessee establish genuineness of the claim. In the case of PCIT vs. Indravadan Jain (HUF) (supra), the broker through whom, the assessee had carried out the transactions have been alleged to have been indulged in price manipulations and the SEBI had also passed an order regarding irregularities and synchronized trades carried out in the shares by the said broker. However, the evidences furnished by the assessee with regard to purchase and sale of shares were not doubted. Under these set of facts, the Hon'ble Bombay High Court held as under:-

“...The CIT(A) came to the conclusion that respondent bought 3000 shares of RFL, on the floor of Kolkatta Stock Exchange through registered share broker. In pursuance of purchase of shares the said broker had raised invoice and purchase price was paid by cheque and respondent's bank account has been debited. The shares were also transferred into respondent's Demat account where it remained for more than one year. After a period of one year the shares were sold by the said broker on various dates in the Kolkatta Stock Exchange. Pursuant to sale of shares the said broker had also issued contract notes cum bill for sale and these contract notes and bills were made available during the course of appellate proceedings. On the sale of shares respondent effected delivery of shares by way of Demat instruction slips and also received payment from Kolkatta Stock Exchange. The cheque received was deposited in respondent's bank account. In view thereof, the CIT(A) found there was no reason to add the capital gains as unexplained cash credit under section 68 of the Act. The Tribunal while dismissing the appeals filed by the Revenue also observed on facts that these shares were purchased by respondent on the floor of Stock Exchange and not from the said broker, deliveries were taken, contract notes were issued and shares were also sold on the floor of Stock Exchange. The ITAT therefore, in our view, rightly concluded that there was no merit in the appeal.”

In the instant case also, we noticed that the evidences furnished by the assessee to prove the purchase and sale of shares, payment made/received, entry/exit of shares in the demat account of the assessee etc., were not doubted with.

13. In the case of PCIT vs. Smt Krishna Devi (supra), the Hon'ble Delhi High Court has noticed that the reasoning given by the AO to disbelieve the capital gains declared by the assessee, viz., astronomical increase in the price of shares, weak fundamentals of the relevant companies are based on mere conjectures. Accordingly, the Hon'ble Delhi High Court affirmed the decision rendered by ITAT in deleting the addition of capital gains.

14. Accordingly, in the facts and circumstances of the case, we are of the view that the decisions rendered by the jurisdictional Hon'ble Bombay High Court in the cases cited above shall apply to the present case, since the AO has not established that the assessee was involved in price rigging and further the AO did not find fault with any of the documents furnished by the assessee.

15. We noticed earlier that the AO has assessed the Sale consideration of shares as unexplained cash credit u/s 68 of the Act. It is pertinent to note that the purchase of shares made in an earlier year has been accepted by the revenue. The sale of shares has taken place in the online platform of the Stock exchange and the sale consideration has been received through the stock broker in banking channels. Hence, in the facts of the case, the sale consideration cannot be considered to be unexplained cash credit in terms of sec. 68 of the Act.

16. Since we have held that the sale transactions of shares cannot be doubted with, the addition made by the AO with regard to estimated commission expenses is also liable to be deleted.

17. In view of the foregoing discussions, we hold that the sale consideration received on sale of shares cannot be assessed as unexplained cash credit u/s 68 of the Act and the long term capital gains declared by the assessee cannot be doubted with. Accordingly, we set aside the order passed by Ld CIT(A) and direct the AO to delete the impugned additions made by him.

Order pronounced on 20.2.2024.

Sd/-
[Justice (Rtd.) C.V. Bhadang]
President

Sd/-
(B.R. Baskaran)
Accountant Member

Mumbai.; Dated : 20/02/2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS