

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

Before Shri B.R. Baskaran (AM) & Shri Narender Kumar Choudhry (JM)

I.T.A. No. 6168/Mum/2019 (A.Y. 2011-12)

I.T.A. No. 6169/Mum/2019 (A.Y. 2012-13)

ITO-33(3)(3) Room No. 751 7 th Floor Kautilya Bhavan BKC, Bandra East Mumbai-400 051.	Vs.	Sanjay Mahabir Maheshka 1702, No. 4B, Whispering Palms, Lokhandwala Complex, Kandivali East Mumbai-400 101. PAN : AAFPM5407L
(Appellant)		(Respondent)

Assessee by	Shri Bhupendra Shah, CA
Department by	Shri Naganath B. Pasale
Date of Hearing	20.07.2023
Date of Pronouncement	27.07.2023

O R D E R

Per B.R.Baskaran (AM) :-

Both the appeals filed by the Revenue are directed against the orders passed by the learned CIT(A)-45, Mumbai and they relate to A.Y. 2011-12 and 2012-13. The Revenue is aggrieved by the decision of the learned CIT(A) in deleting the additions made u/s 68 of the Act, which related to the sale proceeds of sale of shares. Both the appeals were heard together and are being disposed of by this common order, for the sake of convenience.

2. The facts relating to the case are stated in brief. The assessee had purchased 2000 shares of M/s. Global Capital Market Ltd. @ Rs. 63 per share on 8.9.2009. The above said shares were split into 1:10 ratio. Accordingly, the assessee received 20000 shares of the above said company. The assessee sold 10000 shares @ Rs. 14.75 per share in A.Y. 2011-12 and sold remaining 10000 shares @ Rs. 24.86 per share in A.Y. 2012-13. The

total sales consideration received in the above said two years was Rs. 1,47,500/- and Rs. 2,48,683/- respectively.

3. The Assessing Officer received information from the Investigation Directorate, Kolkata that the prices of certain stocks are manipulated by certain people in order to generate bogus capital gains, business loss etc. Those types of shares were named as 'penny stocks'. It was noticed that the M/s. Global Capital Market Ltd. was included in the list of penny stocks. Since the assessee has sold shares of M/s. Global Capital Market Ltd., based on the above said information received from the Investigation Wing, the Assessing Officer reopened the assessment of both the years under consideration by issuing notice under section 148 of the Act.

4. Before the Assessing Officer, the assessee submitted that he has purchased and sold shares of M/s. Global Capital Market Ltd. through a registered stock broker. It was submitted that the shares have entered and exited the Demat account of the assessee and further all the transactions have been carried out through the banking channel. Accordingly, it was submitted that there was no reason to suspect capital gains declared by the assessee. The Assessing Officer did not agree with the submissions made by the assessee. Based on the report given by the Investigation Wing, the Assessing Officer took the view that the share transactions shown by the assessee are bogus in nature and hence the sale value of the shares needs to be assessed as unexplained income. Accordingly, the AO assessed the sale value of Rs. 1,47,500/- and Rs. 2,48,683/- declared by the assessee in A.Y. 2011-12 and 2012-13 respectively as unexplained cash credit under section 68 of the Act.

5. The assessee challenged the above said addition by filing appeal before the learned CIT(A). The first appellate authority noticed that the transactions of purchase and sale of shares were carried out on recognized stock exchange

through registered broker. Further purchase and sale of shares have been carried out through the Demat Account of the assessee. Accordingly he agreed with the submissions of the assessee that there was no reason to suspect the genuineness of the transactions. The learned CIT(A) further placed reliance on the following case laws :-

- ITO Vs. Indravadan Jain (HUF) (ITA No. 4861/Mum/2014) (Mum-Tri)
- CIT Vs. Orchid Industries Ltd. (ITA No. 1433 of 2014) (Bom HC)
- M/s. Farah Marker Vs. ITO (ITA No. 3801/Mum/2011)(Mum-Tri)
- Mukesh B. Sharma Vs. ITO (ITA No. 6249/Mum/2018)(Mum-Tri)

Accordingly, the learned CIT(A) deleted the additions in both the years under consideration. Aggrieved by the orders passed by the learned CIT(A), the Revenue has filed these appeals before us.

6. We heard the parties and perused the record. There is no dispute with regard to the facts that the assessee has purchased the shares through a broker by paying the consideration in cheque. The said shares were split and were sold through a broker in a recognized stock exchange. The said shares have been held for more than one year. We further notice that the assessee has furnished all the documents in support of purchase and sale of shares. However, the AO did not examine those documents and find fault with them. It is the finding of Ld CIT(A) that the shares have entered and exited his demat account of the assessee. There is also no allegation made that the assessee was part of ring which indulged in the alleged price rigging. The AO has placed reliance on the report of Investigation wing to hold that the assessee has availed accommodation entries by way of long term capital gains. We notice that an identical case of allegations that the assessee has availed accommodation entries for bogus capital gains was examined by the Hon'ble jurisdictional Bombay High Court in the case of Shyam Power (2015) 55 taxman.com 108(Bom). The decision rendered by Hon'ble Bombay High Court in the above said case is extracted below:-

“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.Sureshkumar, 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.Sureshkumar 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.”

7. The Hon’ble Jurisdictional High Court has considered an identical issue in yet another 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.

8. Accordingly, in the facts and circumstances of the case, we are of the view that the decision rendered by the jurisdictional Hon’ble Bombay High Court in the above said case of Shyam R Pawar (supra) and Ziauddin A Siddique (supra) are squarely applicable in the present case. Accordingly, we hold that the long term capital gains declared by the assessee cannot be doubted with. Accordingly, we hold that the AO was not justified in assessing the sale value of shares as unexplained cash credit in both the

years under consideration. Accordingly, we confirm the order passed by Ld CIT(A) in both the years.

9. In the result, both the appeals of the revenue are dismissed.

Pronounced in the open court on 27.7.2023.

Sd/-
(Narender Kumar Choudhry)
Judicial Member

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

Mumbai.; Dated : 27/07/2023

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//

PS

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai