



IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "C" BENCH : MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

ITA No. 3271/Mum/2023
Assessment Year 2014-15

ITO-19(2)(4), Piramal Chambers, Parel, Mumbai.	vs.	PrakashmalMalraj Jain, 43/45, Pathan Street, 1 st Floor, Room No. 7 Mumbai PAN : ACRPJ0370M
(Appellant)		(Respondent)

For Assessee :	Shri Vishnu Agarwal
For Revenue :	Shri Yogendra T. Wakare, Sr.DR

Date of Hearing :	07-08-2024
Date of Pronouncement :	12-08-2024

ORDER

PER B.R. BASKARAN, A.M :

The Revenue has filed this appeal challenging the order dt. 25-07-2023 passed by the learned Commissioner of Income Tax (Appeals)-NFAC, Delhi (in short 'Ld.CIT(A)') and it relates to AY. 2014-15. Though the Revenue has raised as many as 11 grounds, yet all of them are directed against a single issue with regard to the relief granted by the Ld.CIT(A) in respect of the addition relating to Long Term Capital Gain made by the AO by treating it as bogus in nature.

2. The facts relating to the case are stated in brief. The assessee had filed its original return of income on 24-09-2014, declaring a total income of Rs.4,22,420/-. During the current year, the assessee had earned Long Term Capital Gain of Rs.59,74,380/- on sale of 32,000

shares of M/s. Moryo Industries Limited for a consideration of Rs.63,51,287/-. The assessee claimed the same as exempt u/s.10(38) of the Income Tax Act, 1961 ('the Act').

3. Subsequently, the AO received information that a person named, Giriraj Kishore Agarwal was providing accommodation entries by way of bogus Long Term Capital Gains in the shares of M/s. Moryo Industries Limited. Accordingly, the AO took the view that the Long Term Capital Gain declared by the assessee is bogus in nature and accordingly, reopened the assessment of AY 2014-15 by issuing notice u/s. 148 of the Act. In this regard, the AO fully placed his reliance on the report given by the Investigation Wing and accordingly concluded that the Long Term Capital Gain of Rs.59,74,380/- declared by the assessee is bogus in nature. However, he preferred to assess the sale proceeds of Rs.63,51,287/- as income of the assessee on the presumption that the assessee would have received back this amount.

4. In the appellate proceedings, Ld.CIT(A) deleted the addition on the reasoning that the assessing officer has not found fault with any of the documents furnished by the assessee in support of purchase and sale of shares. In this regard, Ld.CIT(A) took support of the decision rendered by the Mumbai Bench of the Tribunal in the case of Srichand Chaturmal (HUF) vs. ACIT in ITA No.6537/Mum/2018 and other decisions rendered on the similar lines. Accordingly, she deleted the addition made by the AO and hence, the Revenue is in appeal.

5. We heard the parties and perused the record. We notice that the assessee has purchased the shares from the market in physical form, got it transferred to his name and later dematerialised the same. The payment for purchase of shares was made through banking channels. Later, the assessee has sold the shares in the stock exchange platform through a registered broker and received the sale consideration through banking channels. The assessee has furnished copy of demat

statement, which shows entry and exit of the shares. As observed by the Ld CIT(A), the AO has not found fault with any of the documents furnished by the assessee evidencing the purchase and sale of shares. Further, the AO has also not carried out any independent enquiry with regard to the transactions carried on by the assessee, i.e., he has simply relied upon the generalised report given by the Investigation wing.

6. We may refer to the decision rendered by Hon'ble Bombay High Court in the case of PCIT vs. Ziauddin A Siddique (Income tax Appeal No. 2012 of 2017 dated 4th March, 2022), wherein the Hon'ble Bombay High Court has observed as under:-

“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.”

7. The decision rendered by Hon'ble Bombay High Court is applicable to the facts of the present case. We further notice that the Ld CIT(A) has followed the decision rendered by the co-ordinate bench in the case

of Srichand Chaturmal (HUF) (supra). Since the decision rendered by Ld CIT(A) is in accordance with the above cited two decisions, we do not find any infirmity in his order passed on this issue. Accordingly, we uphold the same.

8. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 12th August, 2024.

Sd/-
[ANIKESH BANERJEE]
JUDICIAL MEMBER

Sd/-
[B.R. BASKARAN]
ACCOUNTANT MEMBER

Mumbai,
Dated: 12-08-2024

TNMM

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1.	The Appellant
2.	The Respondent
3.	The Pr. CIT, Mumbai concerned
4.	D.R. ITAT, "C" Bench, Mumbai.
5.	Guard File.

//By Order//

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Dy./Asst. Registrar,
ITAT, Mumbai