

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI**

BEFORE SHRI.NARENDER KUMAR CHOUDHRY (JUDICIAL MEMBER)
AND
MISS. PADMAVATHY S. (ACCOUNTANT MEMBER)

I.T.A. No.6698/Mum/2019
(Assessment year : 2014-15)

Shantaben Fathechand Mehta 7/B, 2 nd Floor, Poornima Building, M.G. Road, Mulund (West), Mumbai-400 080 PAN : AKNPM8981D	vs	Income-tax Officer 29(3)(4), Mumbai, C-10, 3 rd Floor, Room No.308, Pratyakshakar Bhavan Bandra Kurla Complex, Bandra East, Mumbai-400 051
APPELLANT		RESPONDENT

Present for the Assessee	Shri. Viraj Mehta
Present for the Department	Shri. Srinivas

Date of hearing	10/01/2024
Date of pronouncement	31/01/2024

ORDER

Per N.K. Choudhry (JM):

This appeal has been preferred by the Assessee, against the order dated 25/07/2019 impugned herein passed by the Commissioner of Income-tax (Appeals)-40, Mumbai (in short, 'Ld. Commissioner') under section 250 of the Income-tax Act, 1961 (in short, 'the Act') for the A.Y.2014-15.

2. In the instant case, the Assessee had declared its income at Rs.2,47,370/- by filing its return of income on 31/01/2015, which was processed under section 143(1) of the Act. The case of the Assessee was subsequently selected for scrutiny under CASS and accordingly statutory notices were issued, in response to which, the Assessee from time to time filed its reply and documents. On perusing the same, the Assessing Officer observed that the Assessee has derived income from Other Sources, Salary and House property. Further, the Assessee as per working of short term capital gain attached with the return of income has earned a short term capital gain of Rs. 2,41,865/- on sale of shares of the companies, i.e. Asian Lac Cap. (now known as M/s Global Infratech and Finance Ltd) and Jyoti Structures Ltd on dated 26/03/2014. Though the Assessee had shown purchase cost for purchase of the shares of the aforesaid companies respectively to the tune of Rs.3,14,000/- and Rs.76,394/-. However, not given the date of purchase. Therefore, the Assessing Officer on verification of the information available on record *“that the Assessee is indulging in trading in penny stock shares of M/s Global Infratech and Finance Ltd and during the year has sold 8000 shares of the aforesaid stock on 26/03/2014 for a consideration of Rs.5,30,578/- @ 66.32/- per share and the cost*

of purchase of the aforesaid 8000 shares was taken at Rs.3,14,000/-“, doubted the transaction of the Assessee and accordingly, asked the Assessee to furnish the details of the purchase of aforesaid 8000 shares of M/s Global Infratech and Finance Ltd .

2.1 In response to the said query, the assessee, by filing a letter dated 07/12/2016 claimed that details related to purchase of equity shares were lost due to the shifting of the residential home of the Assessee. However, the Assessee has communicated with the Registrar maintaining the share details of the company to provide the records related to ownership of shares. The same shall take time.

2.2 The Assessing Officer, in the absence of details of the purchase of the 8000 shares of the aforesaid company and on the basis of investigation carried out by the investigation wing of IT at Kolkata, into 84 penny stocks including M/s Global Infratech and Finance Ltd. , observed *“that cost of purchase of aforesaid shares taken by the Assessee in her books were pre-arranged method to evade tax and launder money and the cost of purchase of shares is manipulated and reduced the capital gain to avoid tax”* and ultimately, treated the amount of Rs.3,14,000/- {being difference between the sale proceeds of Rs.5,30,578/- (-) the purchase price of

shares to the tune of Rs.2,16,578/-} as bogus and consequently disallowed the same being purchase price of the shares and added the amount of Rs.5,30,578/- as sale proceeds, in the total income of the Assessee.

3. The Assessee being aggrieved challenged the said addition before the Ld. Commissioner, who more or less on the same reasoning as given by the Assessing Officer, affirmed the said addition.

4. The Assessee being aggrieved is in appeal before us.

5. We have heard the parties and perused the material available on record. The Assessee before us claimed that the Assessee before the Assessing Officer filed the demat transaction statement qua M/s Global Infratech and Finance Ltd, dematization request form, broker's ledger and sample contract note copy, relevant bank statements to prove sales credited in the bank, etc.. The Assessee further claimed that the Assessee before the Ld. Commissioner also filed the share certificates to prove the purchase of share dated 30/01/1996 and, therefore, the addition under challenge is liable to be deleted. On the contrary the Ld. DR refuted the said claim of the Assessee and supported the impugned order specifically.

We observe that both the authorities below doubted the transaction of the Assessee mainly on the ground that the Assessee has failed to bring on record the details of the purchase of shares. Even nothing appears from the impugned order as well that the Assessee has ever produced the share certificate as claimed. However, we observe as it appears from the share certificates (paper book pages 12 to 19) filed before us, that the Assessee has purchased equity shares of Asian Lac Cap. (now known as M/s Global Infratech and Finance Ltd) on dated 30/01/1996 @10/- each and, therefore, it goes to show that the Assessee in fact earned long term capital gain but not the short term capital gain as computed by the Assessing Officer. May be the Assessee is at fault as she did not produce the relevant documents pertaining to the purchase of the shares before the authorities below specifically before the Assessing Officer, mainly on the ground that the same were not traceable. As the mandate of the Article 265 of the Constitution of India is that no tax shall be levied or collected except by authority of law. And it is also settled law that the income has to be assessed in accordance with law and as per the statute and, therefore, we are inclined to set aside the impugned order and consequently remanding the case to the file of AO with direction to verify factual aspects vis. a vis. the share certificates and / or other relevant documents pertaining to the purchase of the shares in consideration and re-compute the liability accordingly.

6. In the result appeal filed by the Assessee is allowed for statistical purposes.

Order pronounced in the open court on 31/01/2024.

Sd/-

sd/-

(MISS. PADMAVATHY S.)	(NARENDER KUMAR CHOUDHRY)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Pavanan

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
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BY ORDER,

//True Copy//

Asstt. Registrar, **ITAT, Mumbai**