

IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” BENCH, MUMBAI  
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 1773/Mum/2023  
(A.Y: 2014-15)

Rajesh Lakhmshi Nisar, 1404, Rite Galaxy, Sodawala Lane, Borivali (W), Mumbai- 400092.	Vs.	ITO-Ward 32(3)(1), Kautilya Bhavan, BKC,Bandra(E), Mumbai-400051.
PAN/GIR No. : ADNPN2986L		
Appellant	..	Respondent

Appellant by :	Shri.Ajay R. Singh and Shri.Akshay Pawar.AR
Respondent by :	Ms. Shakuntala.N.Shet.DR

Date of Hearing	02.11.2023
Date of Pronouncement	22.01.2024

आदेश / O R D E R

**PER PAVAN KUMAR GADALE JM:**

The assessee has filed the appeal against the order of the National Faceless Appeal Centre (NFAC)/CIT(A), Delhi passed u/sec143(3) and U/sec 250 of the Act. The assessee has raised the following grounds of appeal:

*I Addition of Rs.45,30,950/- of Long term capital gains alleging dealing in penny stock:*

- 1. The learned CIT(A) erred in upholding the assessment order disallowing the LTCG of Rs. 44,08,310 and*

*treating the same as non genuine and adding the entire sale consideration of Rs45,30,950/- on sale of shares, without appreciating that the shares were purchased and sold through the demat account on stock exchange platform and consideration for purchase and sales were through banking channel, all the primary evidence like contract notes, bank statement highlighting payments and receipt, demat statement, ledger of broker etc were provided further there is no adverse report or action taken by SEBI against the assessee or his broker in regards to the said transaction.*

*2. The learned CIT(A) erred in upholding the Assessment order treating the LTCG as non genuine on basis of general information without bringing on record any material/ evidence showing assessee involvement in the alleged transaction. Further department failed to provide the opportunity of cross examination of parties on whose statement were relied in the assessment order.*

*3. The Assessee craves leave to add, alter modify or delete one or more ground before or at the time of hearing of Appeal.*

2. The brief facts of the case are that, the assessee is engaged in the business. The assessee has filed the return of income for the A.Y 2014-15 disclosing income from house property, Income from Business and Income from other sources on 24.09.2014 with the total income of Rs.3,68,630/-and the return was

processed u/sec 143(1) of the Act. Subsequently, the case was selected for scrutiny under CASS and notice u/sec 143(2) and U/sec 142(1) of the Act are issued. In compliance to the notice, the Ld. AR of the assessee appeared from time to time, submitted the details and the case was discussed. The Assessing Officer (AO) on perusal of the information found that the assessee has claimed Long Term Capital Gains(LTCG) on sale of share of M/s Cressenda Solutions Ltd ('CSL') u/sec10(38) of the Act of Rs. 44,08,310/- and the assessee was asked to furnish the details of shares purchase, mode of payment, share certificate, broker details, contract note, dematerialization details, bank details etc. It was explained that, the assessee has purchased 10,000 shares of Rs. 10/- each of M/s Smart champs IT & Infra Ltd for a consideration of Rs.1,00,000/-. Subsequently the company was amalgamated with CSL and the assessee was allotted 1,00,000 shares of Rs.1/- each on 14.01.2014 and the shares of CSL were dematerialized and during the F.Y 2013-14 the assessee has sold entire shares between 03.05.2013 to 29.05.2013 at an average price of Rs. 46/- for a

consideration of Rs. 45,30,950/-.Whereas the AO has dealt on the information of the investigation wing ITBA data, BSE data and investigation wing report and has called for the purchase confirmation, sale contract notes, bank statement and demat Account Statement in respect of shares purchase and sale transactions. The A.O has relied on the various facts, modus operandi and the report of the Kolkata investigation wing and statements recorded and has doubted the earning of Long Term Capital Gains (LTCG). The A.O also relied on the statement of the persons recorded u/sec 131 of the Act. The A.O finds that there is a no correlation of the share price rise and the performance of the company. Finally the A.O was not satisfied with the explanations and material information and observed that the transactions are not genuine and made addition as unexplained cash credit u/sec 68 of the Act of Rs.45,30,950/- and passed the order u/sec143(3) of the Act dated 26.12.2016.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). The CIT(A) considered the grounds of appeal, submissions of the assessee and

findings of the AO but has confirmed the action of the AO and dismissed the assessee appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Hon'ble Tribunal.

4. At the time of hearing the Ld. AR submitted that the CIT(A) erred in sustaining the additions u/sec 68 of the Act overlooking the facts and submissions that the purchase & sale of shares are genuine and the assessee has substantiated with various details with the both the authorities. The Ld. AR explained the basis and reasons for purchase of shares which were in physical form in F.Y. 2011-12 and credited to the demat account and the holding is from F.Y. 2012-13 and were sold in F.Y. 2013-14. Further, the Ld. AR submitted that the assessee has a good case on merits and has filed an application for admission of additional evidences Under Rule 29 of the Income Tax Rules, 1962. The Ld. AR substantiated the submissions with the paper book and judicial decisions and prayed for allowing the appeal. Per Contra, the Ld. DR submitted that the share transactions are dubious, not genuine and are doubted and the Ld. DR

supported the order of the CIT(A) and relied on the submissions and report.

5. Heard the rival submissions and perused the material on record. The sole matrix of the disputed issue envisaged by the Ld.AR that the CIT(A) has erred in confirming the action of the assessing officer in sustaining the addition under sec 68 of the Act. The Ld. AR submitted that the assessee has furnished the information with evidence of purchase price, summary of shares sold in the F.Y 2013-14, ledger account copy, copies of bank statement, copy of contract notes for sale of impugned shares, demat account statement, copy of physical shares certificates evidencing the shares in the name of assessee etc. Whereas the assessee has purchased 10,000 shares of M/s Smart champs IT & Infra Ltd on 27.08.2011 by cheque placed at page 34 of the paper book and the assessee was allotted 10,000 physical shares as per certificate placed at page 35 of the paper. The Ld.AR mentioned the scheme of amalgamation of the M/s Smart champs IT & Infra Ltd with M/s Cressenda Solutions Ltd were the assessee, who has holding 10,000 shares of Rs. 10/-

each were allotted in the case of Cressenda Solutions Ltd 100000 shares of Rs.1/- paid up and the share certificate evidencing the allotment of shares in Cressenda Solutions Ltd vide certificate dated 21.02.2013 placed at page 37 of the paper book. Subsequently the assessee has demat the shares and during the F.Y 2013-14, the shares were sold through SEBI registered broker of BSE and NSE and STT has been paid. The Ld. AR further demonstrated the sales cum contract notes, computation of long term capital gains, ledger account, copy of the broker and bank statement disclosing the receipt and sale consideration of page 33 of the paper book. Further the Ld. AR also relied on global report and the copy reflecting the prices of the share trends on BSE portal. The Ld. AR also relied on the material information, submissions made before the CIT(A). The Ld. AR contended that the assessee has held the shares for more than one year and the AO has not accepted the fact of genuineness of the share transaction and the assessee is only investor.

6. The Ld.AR submitted that in similar transaction in F.Y.2013-14, the Kolkata tribunal has allowed the

relief and the Assessing officer in the assessee's proceedings has relied on SEBI report on the findings of entirely different scrip and statements. Whereas the Ld.DR has filed detailed submissions on the facts and relied on the Honble High Court of Delhi decision on the same scrip. Whereas the assessee has filed the application for admission of additional evidences under Rule 29 of ITAT rules with ITR for A.Y.2012-13 & ITR for A.Y.2013-14 along with the computation of total income, balance sheet and profit & loss account and Annual Audit Report of Cressenda Solutions Ltd as on 31-03-2014. Which were not available earlier and could not produce before the lower authorities. Further the evidences play important role in decision making in the adjudicating proceedings. Therefore, considering the facts, circumstances and additional evidences and the assessee should not suffer for non filing of material information, as the evidences plays a vital role in decision making and accordingly admit the additional evidence. Further, to meet the ends of justice, set aside the order of the CIT(A) and restore the entire disputed issues along with the additional evidence to

the file of the assessing officer to decide afresh on merits and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information. And allow the grounds of appeal of the assessee for statistical purposes.

7. In the result, the appeal filed by assessee is allowed for statistical purposes.

Order pronounced in the open court on 22.01.2024.

Sd/-  
(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

Mumbai, Dated 22.01.2024

KRK, PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//()

1.

( Asst. Registrar)  
ITAT, Mumbai