

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

BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER

ITA No. 2799/MUM/2015  
(Assessment Year : 2009-10)

Mr. Arvind Asmal Mehta,  
450, Lotwala Building,  
Patthe Bapurao Marg,  
Near Sindhi Gally, Mumbai 400 004  
PAN: AAIPS 2754 B

... Appellant

Vs.

The Income Tax Officer 16(2)(2),  
Mumbai 400020

.... Respondent

Appellant by : Shri Rahul Sarda  
Respondent by : Shri Vishwas Jadhav

Date of hearing : 10/12/2015  
Date of pronouncement : 29/02/2016

**ORDER**

The captioned appeal is preferred by the assessee and is directed against the impugned order dated 27/02/2015 of CIT(A)-30, Mumbai, pertaining to the assessment year 2009-10, which in turn has arisen from an order passed by the Assessing Officer dated 24/01/2014 under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short "the Act").

2. In this appeal, the assessee has raised multiple Grounds of appeal, which I shall deal in seriatim.

3. The first issue relates to an addition of Rs.8,80,332/- made by the income tax authorities on the ground that it was income from undisclosed sources. In this connection, brief facts are that the appellant is an individual, who was deriving income from business and other sources. For the year under consideration, he had filed the return of income declaring a total income at Rs.2,75,400/-, which, inter-alia, included capital gain on sale of shares. The assessee had sold 3450 shares of Essar Oil Ltd. through stock broking firm M/s. Hem Securities Ltd. for a net consideration of Rs.8,80,332/-. 950 shares were purchased by the assessee on 04/04/2007 and 2500 shares had been purchased on 13/04/2007 through another broker, namely, M/s. Alliance Intermediaries & Network Pvt. Ltd. for a total net consideration of Rs.1,78,580/-. Thus, assessee had declared a long term capital gain of Rs.7,01,773/- on the sale of said shares of M/s. Essar Oil Ltd.

3.1 The Assessing Officer noted that certain information was received from the Investigation Wing as a consequence of a search and seizure action carried out under section 132 of the Act in the case of M/s. Mahasagar Securities Pvt. Ltd. on 25/11/2009. As per such information received, it was noted that there was some companies which were under the control of one Shri Mukesh Chokshi which, inter-alia, included M/s. Alliance Intermediaries & Network Pvt. Ltd., broking concern from whom assessee had claimed the purchase of shares of M/s. Essar Oil Limited. As per such information, such companies were involved in fraudulent billing activities and were engaged in the

business of providing speculation profit/loss, etc. The Assessing Officer also referred to the statement recorded of Shri Mukesh Chokshi, wherein he had admitted of having provided accommodation entries to various persons. The Assessing Officer has observed that on verification of the data it was found that the assessee had obtained accommodation entries from M/s. Alliance Intermediaries & Network Pvt. Ltd. in respect of the transaction of shares of M/s. Essar Oil Ltd. As a consequence, the Assessing Officer reopened the assessment and passed an order under section 143(3) r.w.s. 147 of the Act and held that there was no real purchase and sale of shares carried out by the assessee. As a consequence, the entire sale consideration of Rs.8,80,332/- was added to the returned income as 'income from undisclosed sources'. Primarily, such position has been affirmed by the CIT(Appeals) also and accordingly, the assessee is in further appeal before the Tribunal.

4. The Ld. Representative for the assessee vehemently pointed out that the entire addition is based on mere conjectures and surmises. The Ld. Representative for the assessee referred to a detailed Paper Book filed, wherein the relevant documents, namely, contract note for purchases of shares, bank statement, D-mat account statement, ledger account of M/s. Hem Securities Ltd., ledger account of M/s. Alliance Intermediaries & Network Pvt. Ltd., etc. have been placed. On the basis of the aforesaid documents, it was sought to be pointed out that the purchase of shares was in the previous year relevant to the immediately preceding assessment year of 2008-09 and it is further pointed out that the assessment made by the Assessing Officer under

section 143(3) r.w.s. 147 of the Act dated 04/02/2014 for assessment year 2008-09 shows that the purchases of the shares has been accepted. A copy of such assessment order has been placed on record, wherein no addition has been made on the ground of any unexplained purchases of the shares of M/s. Essar Oil Ltd. from M/s. Alliance Intermediaries & Network Pvt. Ltd. Be that as it may, Ld. Representative for the assessee pointed out that the sale of shares is duly reflected in the D-mat account, a copy of which has been placed in the Paper Book at page-8. It is further canvassed that the sale consideration has been received through banking channel, which is also evidenced by the copy of the bank statement placed at page-7 of the Paper Book as well copy of the ledger account of the M/s. Hem Securities Ltd. placed at page-9 of the Paper Book . It was therefore, contended that where sale of the shares stand established, there is no justification to infer that there was no actual purchase of shares by the assessee of M/s.Essar Oil Ltd. Furthermore, it is pointed out that the reference made by the Assessing Officer to the enquiries from National Stock Exchange is not relevant in as much as the aforesaid purchase has been made in off-market deals and, therefore, it would not be in the knowledge of the stock exchange authorities. It was pointed out that merely because the assessee has purchased the shares in off-market transactions, it cannot be a ground to disbelieve them so long as the transaction is duly supported by the contract notes and in the present case it is further evidenced by the factum of sale of shares. The Ld. Representative for the assessee further pointed out that the reliance placed by the Assessing Officer on the statement of Shri Mukesh

Chokshi is not relevant in as much as no opportunity to cross-examine him was given to the assessee and nor such statement has been confronted to the assessee at all. In the course of the hearing the Ld. Representative for the assessee relied upon the following decisions:-

1. Mukesh R. Marolia vs. Addl. CIT, (2006) 6 SOT 0247,(Mum) (Trib)
2. CIT vs. Shri Mukesh Ratilal Marolia, ITA 456 of 2007 (Bom)
3. Dalpat Singh Choudhary v. ACIT, (2012) 25 taxmann.com 153 (Jodhpur-Trib)
4. Smt. Smita P. Patil & Others, ITA No.1407,1408 & 1409/PN/2012 order dated 29/07/2013, wherein under identical circumstances, based on the investigations done in the case of Shri Mukesh Chokshi, the additions have been deleted.

5. On the other hand, Ld. Departmental Representative has reiterated the stand of the lower authorities by pointing out that the information received by the Assessing Officer, based on the investigation in the case of Shri Mukesh Chokshi, established that the purchase and sale of shares of M/s. Essar Oil Ltd. in as much as was a bogus transaction.

6. I have carefully considered the rival submissions. In the present case, it is undeniable that the total sale consideration of Rs.8,80,332/- received by the assessee is on account of sale of the shares of M/s. Essar Oil Ltd., in as much as such sale is clearly evidenced by the D-mat account maintained by the assessee and further such consideration has been received through banking channels. The only point of difference

between the assessee and the Revenue is with regard to the determination of purchases of such shares, which is claimed to have been made from one M/s. Alliance Intermediaries & Network Pvt. Ltd. The assessee claimed that 950 shares and 2500 shares of M/s Essar Oil were purchased by him on 04/04/2007 and 13/04/2007 respectively through M/s. Alliance Intermediaries & Network Pvt. Ltd. for a total consideration of Rs.1,78,550/-. It is further claimed that such purchase was reflected in the balance sheet for the preceding year ending on 31/3/2008, copy of which has been placed in Paper Book at page-20. It is further canvassed that such balance sheet accompanied the return of income, which has been subject to an assessment under section 143(3) r.w.s. 147 of the Act dated 04/02/2014 for assessment year 2008-09. The copy of the assessment reflects that no adverse remarks have been made qua the reported purchase of such shares through M/s. Alliance Intermediaries & Network Pvt. Ltd. In fact, the balance sheet as on 31/3/2008 shows a credit balance in the account of M/s. Alliance Intermediaries & Network Pvt. Ltd. of Rs.1,78,854/-. Therefore, if on one hand, in the scrutiny assessment for assessment year 2008-09, the Assessing Officer does not challenge the acquisition of shares, it is quite inappropriate to hold such acquisition as bogus in the year when subsequently such shares are sold. In the present case, the D-mat account which evidences the sale of shares does justify an inference that the assessee was indeed in possession of the shares of M/s. Essar Oil Ltd. prior to its sale. There is no material on record to suggest that the sale consideration received by the assessee in question i.e. Rs.8,80,332/- is on account of any transaction other than

the sale of shares of M/s. Essar Oil Ltd. Therefore, under these circumstances the onus was entirely on the Assessing Officer to establish that the purchase and sale of the shares of M/s. Essar Oil Ltd. was bogus. If the orders of the authorities below are examined in this context, it is clear that there is no clinching material to say that the impugned transaction was bogus. Though a reference has been made to the investigation in the case of Shri Mukesh Chokshi, but no effort has been made by the Assessing Officer to demonstrate that qua the instant transaction of the assessee, any infirmity has been confessed by Shri Mukesh Chokshi. Be that as it may, assessee has been consistently canvassing before the lower authorities that the statement of Shri Mukesh Chokshi be confronted to him. I do not find anything on record to suggest that any specific statement Shri Mukesh Chokshi has been confronted to the assessee.

6.1 Considering the entirety of circumstances and the material on record, in my view, there is no justification for the Assessing Officer to hold that that the sale consideration received on the sale of shares of M/s. Essar Oil Ltd. of Rs.8,80,332/- is unexplained or from undisclosed sources. Therefore, I set aside the order of the CIT(Appeals) and direct the Assessing Officer to delete the addition of Rs.8,80,332/-. Thus, on this aspect assessee succeeds.

7. Another addition made by the Assessing Officer is of a sum of Rs.2,10,998/-, which is stated to have been the purchase amount of another scrip of M/s. Kiri Dyes and Mahar Poly. In this context, the Ld. Representative for the assessee vehemently pointed out that assessee did not purchase any such shares and therefore, there was no question

of selling such shares. My attention has been invited to the D-mat statement, which does not reflect any such transaction.

8. I have examined the orders of the authorities below in the context of aforesaid plea of the assessee and find no material to suggest that any such transaction has been undertaken by the assessee. Therefore, in my opinion there is no justification to sustain the addition of Rs.2,10,998/-, which is hereby directed to be deleted.

9. The last issue is with regard to an amount of Rs.21,826/-, which was added by the Assessing Officer as commission payable on the accommodation entries reflected by the purchase and sale of shares of M/s. Essar Oil Ltd. and Kiri Dyes. Since additions on account of purchase and sale of shares amounting to Rs.10,91,320/- itself has been deleted, the said addition of Rs.21,826/- does not survive and is directed to be deleted.

10. In the result, the appeal of the assessee is allowed, as above.

Order pronounced in the open court on 29/02/2016.

Sd/-  
(G.S. PANNU)  
ACCOUNTANT MEMBER

Mumbai, Dated 29/02/2016



**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//

Vm, Sr. PS

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**