

आयकर अपीलीय अधिकरण
मुंबई पीठ "डी"
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री राजेशकुमार, लेखा सदस्य के समक्ष
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER
आअसं. 3001/मुं/2019 (नि. व. 2015-16)
ITA NO. 3001/MUM/2019 (A.Y.2015-16)

Mrs. Manisha Ajay Shah,
601/602 Adarsh Harmony,
Adarsh Vihar Complex, Off Marve Road,
Mumbai 400 064
PAN: ANGPS 4878K

..... अपीलार्थी /Appellant

बनाम Vs.

Principal CIT-30,
Room No.401, 4th Floor, Bldg. No.C-13,
Pratyaksha Kar Bhavan, Bandr Kurla Complex,
Bandra(E) Mumbai- 400 051

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : None

प्रतिवादी द्वारा/Respondent by : Shri Purushottam Tripuri

सुनवाई की तिथि/ Date of hearing : 01/10/2020

घोषणा की तिथि/ Date of pronouncement : 14 /10/2020

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Principal Commissioner of Income Tax -30, Mumbai (in short 'the PCIT") dated 07/03/2019 passed under section 263 of the Income Tax Act, 1961 (herein after referred to as 'the Act').

2. The brief facts of the case as emanating from records are: The assessee filed return of income for assessment year 2015-16 on 20/07/2015 declaring her total income of Rs.16,46,420/-. The case of assessee was selected for scrutiny under CASS. During the pendency of scrutiny assessment, the assessee made declaration of Rs.32,86,815/- under Income Declaration Scheme 2016 (in short 'IDS') in respect of Long Term Capital Gains (LTCG) from sale of shares claimed as exempt in return of income. Thereafter, the Assessing Officer vide order dated 21/12/2017 completed the assessment accepting the income declared by the assessee without making any addition/disallowances.

2.1. At the time of filing return of income, the assessee claimed long term capital gain of Rs.32,86,815/- on sale of shares of GCM Securities Ltd. as exempt under section 10(38) of the Act. The Assessing Officer issued notice U/s 142(1) of the Act along with a questionnaire raising a specific query on LTCG/STCG arising from sale of equity shares. The assessee in reply dated 28/6/2017 to the said specific question on LTCG/STCG on sale of shares informed that Declaration has been made under 2016 Scheme offering LTCG to tax.

2.2. Thereafter, the PCIT invoked the provisions of section 263 of the Act on the ground that the assessee has made declaration of Capital Gain only in IDS 2016. The assessee ought to have declared gross sale price of the shares i.e. Rs.34,30,000/-. Before the PCIT, the assessee contended that it is only profit element on sale of shares that is taxable and not the gross sale price. The purchase price i.e. Rs.1,43,185/- has to be deducted from the sale price. The assessee in order to substantiate that assessee in fact paid for purchase of shares, furnished copy of share application form and copy of Dena Bank

statement (at page 22 and 28 of the Paper Book, respectively). The contention of the assessee before the PCIT was that the purchase and sale of GCM Securities shares is genuine and through authorized broker. To substantiate her contentions the assessee filed contract notes and ledger account. The only reason for making declaration under IDS 2016 was to buy peace of mind. The assessee has filed Paper Book wherein the notice issued under section 142(1) dated 19/06/2017 and the questionnaire issued alongwith that notice is at pages 15 and 16 of the Paper Book. The reply to the said notice dated 28/06/2017 is at pages 17 to 27 of the Paper Book.

3. Shri Purushottam Tripuri, representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of the assessee. The Id. Departmental Representative submitted that in the return of income the assessee has wrongly claimed exemption under section 10(38) of the Act on long term capital gains from sale of shares of GCM Securities Ltd. The purchase and sale of aforesaid scrip falls under the category of penny stock. Thus, in the case of bogus long term capital gains, entire sale proceeds are to be added to the total income.

4. We have heard the submissions made by Id. Departmental Representative and have examined the material available on record. The PCIT has invoked revisional jurisdiction under section 263 of the Act on the ground that the Assessing Officer has failed to examine the transaction of purchase and sale of shares. Another reason for invoking revisional jurisdiction by the PCIT is, that the assessee in IDS 2016 has only declared long term capital gain on penny stock, whereas, the assessee should have declared gross sale receipt of the shares. The immunity is granted to the assessee to the extent

declaration is made under IDS 2016 and not against the entire transaction. The PCIT invoked revisional jurisdiction to tax the difference between gross sale price of the shares Rs.34,30,000/- and Long Term Capital Gains declared by the assessee Rs.32,86,815/-. In other words, the PCIT seeks to tax even the purchase cost of the shares i.e. Rs.1,43,185/- stating it to be a bogus purchase transaction.

5. After examining the documents on record we do not concur with the view of the PCIT. The assessee has demonstrated from the bank statement that the amount has been paid for purchase of shares of GCM Securities Ltd. through cheque. This is further corroborated by share application form of GCM Securities at page 22 of the Paper Book and transaction-cum-holding statement in the case of assessee issued by Stock Holding Corporation of India Ltd. at page 19 of the Paper Book. The documents furnished by the assessee clearly indicates that the shares were indeed purchased by the assessee through banking transactions. It is not the case of the Revenue that the amount paid by the assessee for purchase of shares has travelled back to the assessee in the form of cash or any other manner.

6. The provisions of section 263 of the Act can be invoked if, the twin conditions mandated under the section are satisfied, i.e:

- (i) the order of the Assessing Officer sought to be revised is erroneous;
- and**
- (ii) it is prejudicial to the interests of the revenue.

If any one of these two conditions is absent, the Commissioner of Income Tax cannot take recourse to section 263 of the Act.

7. In the present case, we find that the Assessing Officer has issued a questionnaire wherein specific information was sought on transaction of equity shares and working of short term capital gain/long term capital gain. The assessee furnished a detailed reply to the notice issued under section 142(1) of the Act, wherein the assessee while replying to the query on transaction of shares, informed that a declaration under IDS 2016 has been made in respect of long term capital gain arising on sale of shares to GCM Securities Ltd. Ostensibly, the Assessing Officer after examining the documents accepted the same and made no addition. Merely for the reason that the Assessing Officer has taken a plausible view after examining the records that is not acceptable to the PCIT, would not make the assessment order erroneous. In the present case twin conditions set out in section 263 are not satisfied and hence, the PCIT wrongly assumed revisional jurisdiction.
8. In view of our above finding, we find merit in the appeal of the assessee. The impugned order is quashed and the appeal of assessee is allowed.
9. In the result, appeal of the assessee is allowed.

Order pronounced in open Court on Wednesday the 14th day of October, 2020.

Sd/-

(RAJESH KUMAR)

लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated: 14/10/2020

Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai