



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

**BEFORE SHRI SAKTIJIT DEY, V.P.
AND
SHRI AMARJIT SINGH, AM**

ITA No.412/MUM/2024		A.Y. 2016-17
ACIT, Circle 4(1)(1), Mumbai	Vs.	Ranu Vohra, 701 A Wing, Lodha Bellissimo Building, N.M. Joshi Marg, Mahalaxmi, 400011
CO No.124/Mum/2024 [In ITA No.412/Mum/2024]		A.Y. 2016-17
Ranu Vohra, 701 A Wing, Lodha Bellissimo Building, N.M. Joshi Marg, Mahalaxmi, 400011		ACIT, Circle 4(1)(1), Mumbai
(Appellant)		(Respondent)
PAN		AAEPV 7672H
Assessee by		Shri Rahul Sarda
Revenue by		Shri R.R. Makwana, Sr. DR
Date of hearing		19.11.2024
Date of pronouncement		29.11.2024

ORDER

PER SAKTIJIT DEY, V.P.:

The Captioned Appeal by the Revenue and Cross
Objection by the assessee arise out of order dated 07.11.2023



passed by the National Faceless Appeal Centre (NFAC), Delhi pertaining to Assessment Year (A.Y.) 2016-17.

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2. The grounds raised by the Revenue are as under:

- "1. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) is justified in deleting the disallowance made by the AO of Rs. 9,11,83,666/- on account of STCL on sale of shares of M/s Mindtree Ltd. without appreciating the findings of the AO that the assessee has used colourable device to reduce its tax liability during AY 2016-17?*
2. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was correct in holding that the deletion of the disallowance of Rs. 9,11,83,666/- on account of STCL on sale of shares of M/s Mindtree Ltd. is fair and justified, failing to appreciate the decision of the Hon'ble Supreme Court in the case of Mc Dowell & Co. Ltd. vs. CTO (1985) 154 ITR 148 (SC) wherein the Apex Court in its judgement has mentioned that Colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by resorting to dubious methods?"*
3. *The appellant craves leave to amend or alter any ground or add new ground which may be necessary."*

3. As could be seen from grounds raised, solitary issue arising for consideration is in relation to set off of short term



capital loss of Rs.9,11,83,666/- against long term capital gain of Rs.16,81,07,825/-.

4. Briefly, the facts relating to this issue are, assessee is a resident individual. In the assessment under dispute, assessee filed its return of income on 30.07.2016, declaring income of Rs.15,87,53,630/-. In course of assessment proceedings, Assessing Officer, while verifying the return of income noticed that in the year under consideration, assessee had sold 1,23,73,872 shares of Avendus Capital Pvt. Ltd. on 02.02.2016 and derived long term capital gain of Rs.16,81,07,825/-. As against the capital gain so derived, the assessee has set off short term capital loss of Rs.9,14,39,681/-, comprising mainly of short term capital loss of Rs.9,11,83,666/- from sale of shares of M/s. Mindtree Ltd. On further verification, he found that the shares of Mindtree Ltd. were purchased by the assessee between 17.02.2016 to 04.03.2016. Whereas, they were sold during the period of 09.03.2016 to 31.03.2016. As stated by the Assessing Officer upon a search being made in the internet, he found that M/s Mindtree Ltd. had announced issuance of bonus shares on 18.01.2016 at the ratio of 1:1. He



observed that as a result of issue of bonus shares, the price of share reduced almost to half its original price. According to Assessing Officer, taking advantage of such reduction in price of shares, the assessee sold the shares purchased earlier resulting in short term capital loss of Rs.9,11,83,666/-. According to the Assessing Officer, by adopting colorable device of selling the shares of M/s Mindtree Ltd. having anticipated the reduction in price due to issuance of bonus shares, assessee arranged its affairs in a manner so as to derive maximum benefit by selling the shares purchased earlier at loss and deferring the sale of bonus shares to future dates so as to derive exempt long term capital gain. Thus, ultimately, he concluded that adopting unfair means the assessee has reduced its tax liability on account of long term capital gain derived on sale of shares of Avendus Capital Pvt. Ltd. Accordingly, he disallowed the short term capital loss of Rs.9,11,83,666/- and added back to the income of the assessee as long term capital gain. The assessee contested the aforesaid addition before learned First Appellate Authority.



5. After considering the submissions of the assessee and verifying the facts and material on record, learned First Appellate Authority deleted the addition holding that the short term capital loss having arisen out of legitimate transaction has to be set off against the long term capital gain.

6. Before us, learned Departmental Representative (DR) relied upon the observations of the Assessing Officer. Whereas, learned counsel appearing for the assessee strongly supported the decision of learned First Appellate Authority.

7. We have considered rival submissions and perused the material on record. In so far as the factual aspect of the issue is concerned, there is no dispute that during the year under consideration, the assessee had sold 47,376 shares (AO has wrongly taken the number at 1,73,723 shares) of M/s Avendus Capital Pvt. Ltd. and derived long term capital gain of Rs.16,81,07,825/-. Further, in the year under consideration, the assessee had sold part of the shares of M/s Mindtree Ltd. and derived short term capital loss of Rs.9,11,83,666/-. The shares of M/s Mindtree Ltd. were purchased by the assessee between the period 17.02.2016 to 04.03.2016 and were sold



during the period 09.03.2016 to 31.03.2016. The Assessing Officer, neither has disputed these facts nor has any dispute with regard to the genuineness of the acquisition and sale of shares. The only grievance of the Assessing Officer is that after the issuance of bonus shares by M/s Mindtree Ltd., which resulted in reduction in the price of shares of M/s Mindtree Ltd. purchased by the assessee, the assessee, to reduce its tax liability had sold the shares of M/s. Mindtree Ltd. to derive short term capital loss and set it off against long term capital gain. The Assessing Officer has further alleged that the assessee has deliberately deferred the sale of bonus shares to future dates to derive long term capital gain and claim exemption.

8. In our view, the conclusion drawn by the Assessing Officer is wholly irrational and unsustainable. When the transactions relating to purchase and sale of shares are beyond doubt and are not in the nature of sham transaction even there is no such allegation by the Assessing Officer, the short term capital loss derived by the assessee from sale of shares cannot be prevented from being set off against the long term capital



gain by alleging adoption of colorable device. There is no requirement under the law that the assessee has to pay more tax. If the assessee arranges her affairs within the legal framework and through legitimate means to reduce its tax liability, the Assessing Officer cannot prevent her from doing so. When there is no evidence on record to doubt the genuineness of the transactions entered into by the assessee, the resultant capital loss derived out of such transaction cannot be disallowed. More so, when the Assessing Officer has not expressed any doubt or dispute regarding the nature of loss, being capital. Even, as rightly observed by the learned First Appellate Authority, the Assessing Officer has accepted the computation of short term capital loss made by the assessee. It is further relevant observe, the long term capital gain shown by the assessee on sale of bonus shares of M/s Mindtree Ltd. have been accepted in subsequent assessment year i.e. A.Ys. 2017-18 and 2018-19. That being the factual position emerging on record, we do not find any infirmity in decision of the learned First Appellate Authority. While coming to the aforesaid conclusion, we have drawn support from the decision



of Hon'ble Jurisdictional High Court in case of PCIT vs. Cyrus Poonawalla [2018] 100 taxmann.com 227. Accordingly, grounds are dismissed.

9. In the result, the appeal is dismissed.

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10. In view of our decision above, the Cross Objection of the assessee being merely in support of the order of the learned First Appellate Authority, having become infructuous is dismissed.

11. In the result, both appeal and cross objection are dismissed.

Order pronounced in the open court on 29/11/2024.

Sd/-

(AMARJIT SINGH)
(ACCOUNTANT MEMBER)

Sd/-

(SAKTIJIT DEY)
(VICE PRESIDENT)

Mumbai, Dated: 29.11.2024

Aks/-



Copy of the Order forwarded to :

The Appellant, The Respondent, The CIT, The DR ITAT & Guard
File

BY ORDER,

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai