

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “SMC”, PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT

आयकर अपील सं. / ITA No.1168/PUN/2019

निर्धारण वर्ष / Assessment Year : 2015-16

Mr. Akshay Ashok Choure, 44, Chandan, Jay Nagar, Dashmesh Nagar, Aurangabad – 431005 PAN : AXVPC0180D	Vs.	ITO, Ward-3(1), Aurangabad
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(Appellant)

(Respondent)

Appellant by
Respondent by

Shri Nikhil Pathak
Shri S. P. Walimbe

Date of hearing	15-01-2020
Date of pronouncement	16 -01-2020

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the assessee arises out of the order passed by the CIT(A)-2, Aurangabad on 01-04-2019 in relation to the assessment year 2015-16.

2. The only issue raised in this appeal is against the disallowance of exemption claimed u/s.10(38) of the Income-tax Act, 1961 (hereinafter also called `the Act') amounting to Rs.14,89,662/- in respect of long term capital gain earned on sale of equity shares of Pine Animation Limited (PAL).

3. Briefly stated, the facts of the case are that assessee's case was selected for scrutiny on the ground of 'Suspicious sale transaction in shares (Penny stock tab in ITS)'. The Assessing Officer (AO) observed that the assessee declared exempt long term capital gain on sale of shares pertaining to Four K Animation (Pine Animation Limited) amounting to Rs.14.89 lakh. As per the investigation report available with him, the AO noticed that the scrip of PAL was used for providing accommodation entries to several parties, which was also banned by the SEBI for its illegal activities. The assessee was called upon to establish the genuineness of the transaction of long term capital gain. The assessee tendered reply, which was considered by the AO. He found that the assessee purchased 1600 shares of Four K Animation (later known as PAL) in physical form @ Rs.6.25 per share during the financial year 2012-13 for a consideration of Rs.10,000/- through a broker, namely, Bhushit Trading Private Limited. Thereafter, PAL declared shares split in the ratio of 1:10. The assessee sold 16000 converted shares in the year under consideration, namely, 7500 shares on 21-05-2014 @ Rs.94.11 per share; 5000 shares on 09-06-2014 at Rs.93.51 per share and 3500

shares on 10-06-2014 at Rs.93.81 per share. The AO reproduced extract of Balance sheet and Profit and loss account of the company from March 2011 to March 2015 for demonstrating that there was negligible profit earned by PAL, which did not justify such a huge increase in the share price. He also took note of the fact that the scrip was listed on Bombay Stock Exchange on 25-03-1994 which was subsequently suspended from trading w.e.f. 09-11-1998. Such suspension was revoked only on 22-06-2012. The AO did not accept the genuineness of the transaction of earning huge capital gain on the ground that the assessee allegedly purchased his shares in physical form during financial year 2012-13 which was in contravention of the SEBI circular. He further took note of statement of Mr. Anil Khemka recorded on 30-03-2015 in which he admitted to be involved in providing accommodation entries. Name of PAL was also there in the list given by Mr. Anil Kumar Khemka through which he was providing accommodation entries. The AO has also referred to statement of Mr. Subrata Halder recorded on 31-12-2014 in which he also described similar *modus operandi* of providing bogus long term capital gain through accommodation entries. He also admitted

of have given accommodation entries in various scrips including PAL. The AO has also referred to statements of Sh. Praveen Kumar Agrawal recorded on 10-02-2015, Sh. Soumen Choudhary recorded on 10-02-2015, Sh. Anil Kedia recorded on 16-06-2016 and Sh. Sumit Kumar Jain on 16-06-2015 and several others who admitted the activity of providing accommodation entries and also used the scrip of PAL for this purpose. The AO also observed that the SEBI passed an interim order on 08-05-2015 suspending trading in the scrip of PAL. Relevant part of the SEBI order has been reproduced on page 8 of the assessment order. Placing reliance on the judgment of Hon'ble Supreme Court in *Sumati Dayal vs. CIT (1995) 214 ITR 801 (SC)* and *CIT vs. Durga Prasad More (1971) 82 ITR 540 (SC)*, the AO applied the test of human probabilities and declared the long term capital gain shown by the assessee as non-genuine. Considering the judgment of Hon'ble Bombay High Court in *Sanjay Bimalchand Jain, L/H of Shantidevi Bimalchand Jain vs. The Pr. CIT*, the AO made addition of Rs.14,89,662/-. The ld. CIT(A) confirmed the action of the AO. The assessee is in appeal against the confirmation of the addition.

4. I have heard the rival submissions and gone through the relevant material on record. It is found as an admitted position that the assessee purchased 1600 shares of PAL at Rs.6.25 per share on 20-02-2013 and after conversion in the ratio of 1:10, sold such shares in the year under consideration at a price of more than Rs.90/- per share. In other words, the converted share of this company purchased at mere 62 paise was sold after a year and few months at close to Rs.94/- per share, giving phenomenal increase in price of more than 150 times. The AO extracted the summary of the Profit and loss account and Balance sheet of PAL for the relevant years, which fairly indicates that there was no foundation for such a magical increase in the price of its shares. The AO has also referred to the statements of various persons, all of whom admitted to be providing accommodation entries with the help of companies including PAL. The SEBI suspended share trading activity of this company for various violations. All these facts cumulatively take me to the irresistible conclusion of the non-genuineness of the transaction of long term capital gain of Rs.14.89 lakh as declared by the assessee.

5. At this juncture, it will not be out of place to refer to the judgment of the Hon'ble Supreme Court in *CIT vs. Durga Prasad More (1971) 82 ITR 540 (SC)*, in which the assessee claimed before the ITO that income of certain property should not be taxed in his hands as it was a trust property. The ITO rejected the claim and included the income in the hands of the assessee. The Tribunal affirmed the decision of the ITO, which was reversed by the Hon'ble High Court. Reversing the verdict of the Hon'ble High Court, their Lordships noticed that though the assessee made a claim that income of the property was not his and produced conveyance executed in his favour and the deed of settlement executed by his wife, nearly about a year after the conveyance, however, when the ITO asked the assessee about the source from which his wife got the amount, apart from saying that it was 'sthridhan' property, he failed to disclose any source from which his wife could have got the amount for purchasing the premises. In this backdrop of facts, the Hon'ble Supreme Court held that although the apparent must be considered as real, but, if there are reasons to believe that the apparent is not real, as is the case under consideration

as well, then the apparent should be ignored to unearth the harsh reality.

6. Similar view has been canvassed in *Sumati Dayal vs. CIT (1995) 214 ITR 801 (SC)*. The question for consideration in that case was whether the assessee purchased winning tickets after the event. It was observed that in all cases in which a receipt is sought to be taxed as income, the burden lies on the Department to prove that it is within the taxing provision and if a receipt is in the nature of income, the burden of proving that it is not taxable because it falls within exemption provided by the Act, lies upon the assessee. But, in view of section 68, where any sum is found credited in the books of the assessee for any previous year the same may be charged to income-tax as the income of the assessee of that previous year if the explanation offered by the assessee about the nature and source thereof is, in the opinion of the Assessing Officer, not satisfactory. In deciding the issue against the issue, their Lordships held that :
`Apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real and that the taxing authorities are entitled to look into the surrounding circumstances to find out the reality and the matter has to be

considered by applying the test of human probabilities'. This shows that a decision based on the attending circumstances and human probabilities does not get vitiated if there are compelling reasons to reject the frontage of a transaction based on the so-called evidence, which is nothing more than a mere paper work.

7. In view of the factual and legal position discussed above, it is crystal clear that PAL is a penny stock company and the assessee obtained only accommodation entries in the garb of long term capital gain from transfer of its shares, for which an appropriate addition has rightly been made and upheld by the authorities below. My view is fortified by the judgment dated 10.4.2017 of the Hon'ble jurisdictional Bombay High Court in Sanjay Bimalchand Jain vs. Pr. CIT in ITA 18/2017, which has been briefly referred to by the AO. The Hon'ble High Court in that case has held that the assessee did not tender cogent evidence to explain how the shares in an unknown company worth Rs.5 had jumped to Rs.485 in no time. The fantastic sale price was not at all possible as there was no economic or financial basis to justify the price rise. It was held that the assessee had indulged in a dubious share transaction meant to account for the undisclosed income in the garb of long term

capital gain. The gain was accordingly held to be rightly assessed as undisclosed income. Similar view has been taken by the Hon'ble Delhi High Court in Suman Poddar vs. ITO in ITA 841/2019 vide its judgment dated 17.09.2019. In view of the foregoing discussion, I accord my imprimatur to the view adopted by the Id. first appellate authority on this score and accordingly countenance the impugned order.

8. In the result, the appeal is dismissed.

Order pronounced in the Open Court on 16th January, 2020.

Sd/-

(R.S.SYAL)

उपाध्यक्ष/ VICE PRESIDENT

पुणे Pune; दिनांक Dated : 16th January, 2020
Satish

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) /
The CIT (Appeals)-2, Aurangabad
4. The Pr. CIT-2, Aurangabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे “SMC” /
DR ‘SMC’, ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,**// True Copy //**Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	15-01-2020	Sr.PS
2.	Draft placed before author	15-01-2020	Sr.PS
3.	Draft proposed & placed before the second member	--	JM
4.	Draft discussed/approved by Second Member.	--	JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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