आयकर अपीलीय अधिकरण "ए" न्यायपीठ मुंबई में।

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

श्री पी.एम. जगताप, लेखा सदस्य एवं श्री विवेक वर्मा, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI P.M. JAGTAP, ACCOUNTANT MEMBER
AND SHRI VIVEK VARMA, JUDICIAL MEMBER

आयकर अपील सं. : 5154/मुम/2011
निर्धारण वर्ष A.Y. 2005-06
ITA No. : 5154/Mum/2011
(Assessment year: 2005-06)

The ITO, Ward 3[1], Aayakar Bhavan, 5th Floor, Mumbai -400 020स्थयी लेखा	Vs	Shri K. Nareshchandra (HUF), 204/77, Arjun, Vasant Vihar, Pokhran No. 2, Thane सं.:PAN: **AAEHK 0680 C**
अपीलार्थी (Appellant)		प्रत्यर्थी (Respondent)
Appellant by	:	Shri Manoj Kumar
Respondent by	:	Shri Subodh L. Ratnaparkhi

सुनवाई की तारीख /Date of Hearing : 03-06-2013
घोषणा की तारीख /Date of Pronouncement : 12-06-2013

आ दे श

O R D E R

श्रि विवेक वर्मा, न्या स:
PER VIVEK VARMA, JM:

The appeal arises from the order of CIT(A) I, Mumbai, dated 31.03.2011, wherein, the department has raised the following grounds:

1. *On the facts and in the circumstances of the case, the CIT(A)-I, Thane erred in deleting the addition of Rs. 18,65,220/- made u/s. 68 of the I.T. Act by holding that there was no sufficient evidence to disprove the claim for purchase and sale of equity shares made by the assessee, overlooking the fact that the transaction was denied by DPS Securities Pvt. Ltd. and corroborated by evidence from Bombay Stock Exchange.*
2. *On the facts and in the circumstances of the case, the CIT(A)-I, Thane erred in overlooking the fact that Bombay Stock Exchange has confirmed the trade executed by DPS Shares & Securities Ltd. was during the period 15.06.2004 to 21.06.2004 in the scrip Robinson Worldwide Ltd. for its client code A055 which pertains to Ashok Ambani and not the assessee K. Nareshchandra (HUF).*
3. *On the facts and in the circumstances of the case, the CIT(A)-I, Thane erred in overlooking the fact that Bombay Stock Exchange has further*

confirmed that DPS Shares & Securities Ltd. has not dealt in the scrip Robinson Worldwide Ltd as on 04.04.2003 where as the assessee has claimed to have purchased the shares on 04.04.2003.

4. The appellant prays that the order of the CIT(A)-1, Thane, may be vacated and that of the Assessing Officer be restored."

2. Basically, the appeal pertains to one single issue, i.e. the deletion of Rs. 18,65,220/-, as unexplained cash credit.

3. The facts in brief are that in the assessment proceedings, the AO required the assessee to produce balance sheet for assessment year 2004-05 along with details of demat account for financial years 2003-04 & 2004-05 and payments made for purchase of shares and the assessee request to convert the physical shares to demat.

4. These details were provided vide letter dated 14.06.2007. The assessee also submitted the contract notes for purchase & sale of the shares done through DPS Shares and Securities Pvt. Ltd., Mumbai. The assessee also submitted confirmation dated 18.10.2007, received from Robinson Impex (I) Ltd. (name changes to Robinson World Wide Trade Ltd.) that the assessee held 20,000 shares in that company.

5. The AO conducted detailed enquiry from BSE, who responded that the details of contract notes pertaining to purchases, pertained to client code belonging to one Shri Ashok Ambani and not the assessee. The BSE also confirmed that no trade was made pertaining to the scrip named Robinson Worldwide Trade Ltd. as on 04.04.2003. To further investigate the genuineness of the claim made by the assessee, the AO sent a letter to DPS Securities, who responded that there were no purchase contract notes, but the assessee did sell its stock through BSE in various settlements.

6. When these anomalies were confronted to the assessee, the assessee vide letter dated 04.12.2007, which reads as under,

"The assessee had purchased 20,000 equity shares of Robison Implex (I) Ltd. on 04.04.2003 through broker M/s. DPS Shares Securities Pvt.

Ltd., Mumbai for which assessee has submitted copy of bill dated 05.04.2003 and copy of contract note dated 04.04.2003 issued by M/s. DPS Shares Securities Pvt Ltd., Mumbai and submitted the following documents in support of his claim

1. *Copy of the ledger account of the assessee in the books of M/s. DPS Shares Securities Pvt. Ltd., Mumbai reflecting payment received by the said company.*
2. *Copy of shares certificate issued in physical form by Robinson Implex (I) Ltd. dated 30.04.2003 bearing certificate No. 75061 DIST No. 1830701 to 1850700 register folio No. T59.*
3. *Confirmation dated 18.10.2007 obtained from Robinson World Wide Trade Limited (Formerly known as Robinson Impex (I) Ltd. confirming that the assessee held 20,000 shares of the company on 30.04.2003.*
4. *A copy of original certificate of the company issued in physical form duly defaced with stamp "surrendered for dematerialization" with details of DP M/s. Sodhani Securities Limited noted thereon.*

Assessee sold 20,000 shares of M/s. Robinson Impex (I) Ltd on various dates in support of the same assessee has submitted the following documents

1. *Copies of contract notes and bills issued by M/s. DPS Shares Securities Pvt Ltd., Mumbai*
2. *Receipt of sale consideration by account payee cheque from M/s. DPS Securities Pvt Ltd, Mumbai and its credit to the assessee's bank accounts.*
3. *Statement of transaction dated 07.07.2004 in respect of assessee's demat account with DP M/s. Sodhani Securities Limited which reflect the sale and subsequent debit of 20,000 shares of M/s Robinson Impex (I) Ltd."*

7. On taking into account complete details, as received from BSE and DPS, the AO concluded,

The undersigned has carefully considered the facts of the case, letters received from the Bombay Stock Exchange & DPS Shares Securities Pvt Ltd as above and the explanation of the assessee. On the basis of information gathered from BSE, it is very clear that though the sale transaction of the said shares have been executed by the trading member DPS shares securities Pvt Ltd, but it was not in the name of assessee but in the name of some other person. It is therefore proved that the so called 20,000 shares of M/s. Robinson Impex (I) Ltd were not sold <u>by the assessee</u> through DPS Shares Securities Pvt Ltd as confirmed by the BSE also.

M/s. DPS Shares Securities Pvt Ltd., Mumbai, in their letter dated 23.07.2007 has clearly confirmed that no transaction of purchase of the shares in question was materialized in the name of assessee and only an accommodation bill was issued on the request of the assessee. It is also confirmed by them that they have not received any payments for issuing of the accommodation bill. This letter of the said M/s. DPS Shares Securities Ltd. proves that the assessee had not purchased any shares of the Robinsons Impex (I) Ltd as claimed by it. When there is no purchase of the shares by the assessee, the question of selling it by him also does not arise.

On the above facts and circumstances of the case and as proved beyond doubt by the letters received from BSE and the broker, M/s. DPS Shares & Securities Pvt Ltd as discussed above that the assessee had not sold the 20,000 shares of the Robinson Impex (I) Ltd as claimed *by it. Therefore, as the assessee could not satisfactorily explain the nature and the source of sum of Rs. 18,65,220/- credited in his books of accounts for the previous year relevant to the AY 2005-06, the said sum of Rs. 18,65,220/- is treated as unexplained cash credit u/s 68 of the Act and the same is brought to tax as assessee's income out of undisclosed and unexplained sources."*

8. The AO, therefore, added the sum of Rs. 18,65,220/- to the income of the assessee.

9. Aggrieved, the assessee approached the CIT(A), before whom complete details were placed, who after considering the complete information available, held,

"I have considered the findings of the A.O. as contained in the asst. order as well as the written submissions of the appellant and evidences produced before me. The concerned documents evidencing the purchase and sale of shares by the appellant, the confirmation dt. 18.10.2007 from M/s. Robinson Worldwide Trade Ltd. (formerly known as M/s. Robinson Impex (I) Ltd.) and the statement of d'mat holding of shares by the appellant with DP : M/s. Sodhani Securities Ltd. have been examined. I have also gone through the decisions relied upon by the appellant.

5.1 The appellant has claimed to have purchased 20,000 equity shares of M/s. Robinson Impex (I) Ltd. on 04.04.03 through the broker M/s. D.P.S. Shares and Securities Pvt. Ltd. The said shares have been sent for dematerialization and dematerialized shares have been credited to the appellant's d'mat account with DP : M/s. Sodhani Securities Ltd. (under NSDL). The concerned shares have been sold through the same broker M/s. D.P.S. Shares and Securities Pvt. Ltd. on 3 different dates, all in June 2004. On sale of shares, the d'mat account of the appellant has been debited by the relevant quantity of shares either on the same date or the immediate subsequent date. The appellant in support of the transaction has produced before the A.O. and before me, the bills and contract notes for purchase and sale of shares, the photocopy of physical share certificate before and after dematerialization, written confirmation from the company M/s. Robinson Impex (I) Ltd. that the appellant was a share holder of the company on 30.04.2003, the d'mat statement with depository participant. No defect or deficiency in the genuineness of these documents has been pointed out by the A.O. In the result, these evidences cannot be over looked lightly. The 20,000 equity shares of M/s. Robinson Impex (I) Ltd. are found credited to the d'mat account of the appellant maintained with a depositary participant under the auspices of National Securities Depositary Ltd. (NSDL). On sale of shares on 3 different dates in June 2004, the relevant quantity of shares have been debited to the d'mat account of the appellant on the immediate subsequent date. Examination of the sale bills and the d'mat statement of the appellant reveal the following.

Quantity of shares sold	*Date of sale as per bill*	*Date of Debit to the d'mat a/c.*
6800	*15.06.2004*	*16.06.2004*
7100	*16.06.2004*	*17.06.2004*
6100	*12.06.2004*	*22.06.2004*

5.2 The broker, M/S. D.P.S. Shares and Securities Pvt. Ltd. has claimed that he has not purchased shares for the appellant but has sold the shares on behalf of the appellant, though both purchase and sale bills were issued by him. The Id A.O. has blindly relied on this statement without making any further enquiries. The Id A.O. also did not permit the appellant to cross examine the said broker inspite of the appellant making a specific written request for the same which the A.O. admits in para 21/page no. 10 of the asst. order. In absence of any corroborative evidences in respect of the genuineness of such a strange claim made by the broker, the same cannot be relied upon to take any decision adverse to the interest to the appellant. According to me, the claim of the broker cannot be accepted as ultimately the appellant was found to hold the relevant shares in his d'mat account which is beyond dispute.

5.3 Further, the stock exchange has confirmed that sales were executed by the broker M/s. D.P.S. Shares and Securities Pvt. Ltd. as claimed except for the anomaly that the code of the client executing the trade was that of one Shri. Ashok Ambani and not the appellant. Errors in submission of client code by the brokers during execution of trades are common and a regular feature. The ld A.O. has not carried out any further enquiries but has relied upon this information to take and adverse view. The appellant during asst. proceedings had requested the A.O. to have this anomaly sorted out by examining the broker. However, this was not done by the A.O. In absence of any further confirmation, I do not feel that the same is sufficient evidence of any wrong doing on the part of the appellant.

5.4 The appellant in the course of asst. proceedings has filed a confirmation letter dt.18.10.2007 from the company M/s. Robinson Worldwide Trade Ltd. (Formerly known as M/s. Robinson Impex (India) Ltd.) that the appellant held 20,000 equity shares of the company on 30.04.2003 under folio no's. T-59, Dist. No's. 1830701 to 1850700 issued under certificate no. 75061. The said certificate by the concerned company that the relevant shares were in fact held by the appellant cannot be ignored.

5.5 The A.O. has made the addition u/s 68 of the I.T. Act 1961 as unexplained cash In the present case, the source of receipt of Rs. 18,65,220/- is from sale of 20,000 equity shares of M/s. Robinson Impex (I) Ltd., through the brokers M/s. D.P.S Shares and Securities Pvt. Ltd. The said broker has confirmed the transaction of sale, the requisite shares have been sold by the said broker on the Bombay Stock Exchange on the given dates albeit in the client code of a third person. The amount credited in the books of the appellant is received from M/s. D.P.S. Shares and Securities Pvt. Ltd. through banking channels. The existence of shares with the appellant in view of the same being in dematerialized form in the d'mat account of the appellant cannot be denied. The shares have been debited to the d'mat account of the appellant and have thus flown through the d'mat account on relevant dates. In view of the above facts, in my opinion addition u/s 68 of the I.T. Act 1961 in the case of the appellant is not justified'

The CIT(A), *suo moto*, relied on the following decisions:

"5.6 <u>The Hon. Mumbai ITAT, in the case of ACIT — Vs — Claridges Investments & Finances Pvt. Ltd., 18 SOT 390 (Mum)</u> in a similar case pertaining to shares transactions while upholding the claim of the appellant has held that "the A.O. has acted upon grossly inadequate

material and his conclusions are in the realm of suspicion, conjectures and surmises".

5.6.1 *Similarly, the Hon. Mumbai ITAT, in the case of Mukesh R. Marolia — Vs — Addi. CIT, 6 SOT 247 (Mum) (2006) has held that whatever may be the provocation to the A.O. to jump to a conclusion that the transaction were bogus, an assessment has to be completed on the basis of records and materials available before the A.O. Personal knowledge and excitement of events, should not lead the A.O. to a state of affairs where salient evidences are over looked.*

5.6.2 *In the case of CIT - Vs - Anupam Kapoor, 299 ITR 179 (P & H) (2008), on the given facts it was held that there was no material before the A.O. which could have lead to a conclusion that the transaction was simply citer a device to camouflage activities, to defraud the revenue. No such presumption could be drawn by the A.O. merely on surmises and conjectures.*

5.6.3 *Similarly, the Hon. Mumbai ITAT, in the case of ITO Ward 2(3) Thane — Vs – Shri Paresh R. Gala, ITA No. 3634/M/07 dt. 11.06.2009 while upholding the claim of the appellant has held that where shares were sold through d'mat account the same could not be disputed."*

and deleted the addition.

10. Aggrieved, the department is in appeal before the ITAT.

11. Before us, the DR heavily placed reliance on the order of the AO and submitted that though the sale of shares have been confirmed as genuine, but since the purchase of the same has not been evidenced and proved, in such a circumstance positive inference could be drawn that, the sale too could be not genuine. He also accepted that since there is no broker confirmation with regard to purchases and also no BSE details available, the purchase could be off market.

12. Since, the main argument rested on unconfirmed purchase of 20,000 shares, according to the DR, the entire transaction could not be held to be genuine. He also pointed out that even the name of the assessee does not tally, because some places it is K Naresh Chandra (HUF) and some placed it is K Nareshchandra. The DR, placed reliance on the decision Arvind M Kariya, ITA no. 7024/Mum/2010 (Mumbai ITAT).

13. The AR on the other hand submitted that there are no adverse remarks so far as the sale of shares were considered and the proceeds pertaining to that sale. He also referred to the fact that the assessee

was holding shares prior to this sale. With regard to the confusion on name, the AR submitted that the HUF name of the assessee was K Naresh Chandra (HUF) and there is no ambiguity on this aspect.

14. We have heard both the parties and have also gone through the details placed before us, as well as the case laws cited by either side.

15. Strictly going through the facts that the addition can be made u/s 68 when all the ingredients of the provision are not met / satisfied. The undisputed facts are that assessee was holding 20,000 shares of Robinson World Wide Trade Ltd., which it sold and the sale proceeds were entered in the books of account. The fact that the assessee held shares of the above named company has been confirmed by the company itself.

16. The fact that the assessee sold the shares in three lots is confirmed by the broker, i.e. DPS.

17. These facts have been considered by the CIT(A) in para 5.5 of the impugned order (as reproduced earlier in this order). The CIT(A) also made observations with regard to errors in client codes, which are prevalent, and creep into while execution of contract notes. It is also seen that the CIT(A) looked into the conditions for making an addition u/s 68, which, in his opinion did not exist.

18. From the reading of the relevant para, and also taking into consideration the ratios of various decisions cited by either side, we are of the opinion, that addition u/s 68 cannot be made.

19. In these circumstances, we do not find any reason to disturb the decision taken by the CIT(A) in deleting the addition of Rs. 18,65,220/-

20. In the result, the appeal filed by the department is dismissed.

Order pronounced in the open Court on 12th June, 2013.

Sd/-	**Sd/-**
(पी.एम. जगताप)	**(विवेक वर्मा)**
लेखा सदस्य	**न्याईक सदस्य**
(P.M. JAGTAP)	**(VIVEK VARMA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai, Date: **12th June, 2013**

प्रति/Copy to:-

1) अपीलार्थी /The Appellant.
2) प्रत्यर्थी /The Respondent.
3) आयकर आयुक्त(अपील) -I Thane / The CIT (A)-1, Thane.
4) आयकर आयुक्त – II, Thane /The CIT–II, Thane,
5) विभागीय प्रतिनिधि "ए" , आयकर अपीलीय अधिकरण, मुंबई/ The D.R. "A" Bench, Mumbai.
6) गार्ड फाईल Copy to Guard File.

आदेशानुसार/By Order

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आयकर अपीलीय अधिकरण, मुंबई
Dy./Asstt. Registrar
I.T.A.T., Mumbai

∗चव्हान व.नि.स

∗Chavan, Sr. PS