

THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" Bench, Mumbai  
Shri B.R. Baskaran (AM)

I.T.A. No. 1493/Mum/2022 (A.Y. 2008-09)

I.T.A. No. 1494/Mum/2022 (A.Y. 2009-10)

Vishnunarayan R. Modani 15, Dadiseth Agiary lane Kalbadevi Road Mumbai-400 002.  PAN : ANVPM1839R (Appellant)	Vs.	CIT(A) Mumbai    (Respondent)
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Assessee by	Shri Vishnunarayan Modani
Department by	Shri Vivek Upadhyay
Date of Hearing	18.08.2022
Date of Pronouncement	02.09.2022

ORDER

Both the appeals filed by the assessee are directed against the orders passed by learned CIT(A), National Faceless Appeal Centre, Delhi and they relate to A.Y. 2008-09 & 2009-10.

2. In both the appeals, the assessee is aggrieved by the decision of learned CIT(A)

- (a) in rejecting the claim of capital gains disclosed by the assessee and assessing the same as income under the head 'income from other sources'.
- (b) further assessing the value of purchases of shares as unexplained investment and
- (c) assessing estimating commission expenses in procuring capital gains.

3. The facts relating to the issues are discussed in brief. The income tax department conducted a search in the hands of M/s. Mahasagar Securities Pvt. Ltd. Group and found that they were indulging in providing

accommodation bills for generating capital gains through suspicious transactions. It was noticed that the assessee is one of the beneficiaries of the above said group. During the year relevant to the A.Y. 2008-09, the assessee has purchased shares of Reliance Energy on 20.9.2007 for a sum of Rs. 2,93,653/- and sold them on 1.10.2007 for a sum of Rs. 4,34,465/-. Thus the assessee has generated capital gain for a sum of Rs. 1,36,812/-. However, the assessee did not disclose the above said capital gains in his return of income filed for A.Y. 2008-09. Before the Assessing Officer the assessee submitted that no detail is available with him and further submitted that he has not made any payment to M/s. Mahasagar Group in the year relevant to AY 2008-09. The Assessing Officer did not accept the submissions of the assessee and proceeded to assess the capital gains of Rs. 1,36,812/- as 'income from other sources'. The Assessing Officer also assessed the purchase value of Rs. 2,97,653/- as unexplained investment under section 69 of the Act. Further the Assessing Officer assessed a sum of Rs. 2,000/- as brokerage expenses for procuring the above said capital gains.

4. In A.Y. 2009-10, the assessee admitted that he has purchased shares of Spice Communication on 11.2.2009 for a sum of Rs. 1,68,145/- from M/s Alliance Intermediaries & Network Pvt. Limited ( a company belonging to Mahasagar group) and sold them on 13.2.2009 for a sum of Rs. 3,18,720/-. In the return of income filed by him, the assessee declared short term capital gains of Rs. 1,51,188/- from the above transactions. The Assessing Officer, however, computed the profit from purchase and sale of above said shares at 1,50,575/- and assessed the same as income under the head 'income from other sources' rejecting the claim of capital gains. The Assessing Officer also assessed the purchase value of Rs. 1,68,145/- as unexplained investment under section 69 of the Act. He also assessed a sum of Rs. 2,000/- as brokerage expenses towards procuring the capital gains.

5. The Learned CIT(A) confirmed the additions made by the Assessing Officer in both the years and hence the assessee has filed these appeals before the Tribunal.

6. I have heard the parties and perused the record. Before me, the assessee appeared in person and submitted that he has not paid any money for purchase of shares, which is also evidenced by the fact that his bank account does not depict any such payment. Accordingly he submitted that the Assessing Officer was not justified in assessing the purchase value of shares as unexplained investment. He further submitted that he has not dealt in any share transactions in A.Y. 2008-09. He submitted that he has purchased and sold shares only in AY 2009-10 and the short term capital gains has been duly disclosed in the return of income.

7. The Learned DR, on the contrary, submitted that the assessee has furnished copy of ledger account available in his name with M/s. Alliance Intermediaries & Network Pvt. Limited. He submitted that a perusal of the above said Ledger account would show that the Opening credit balance available in the name of the assessee as on 1.4.2008 was Rs. 1,36,812/-, which is exactly the profit generated by the assessee in the year relevant to A.Y. 2008-09 on sale of shares of Reliance Energy Ltd.

8. He submitted that during the year relevant to A.Y. 2009-10 the assessee has purchased and sold share of Spice Communication and both these transactions are reflected in the above said ledger account. The assessee has also disclosed the purchase and sale of shares of Spice Communications in his return of income. Having admitted the transactions entered in the year relevant to AY 2009-10, the assessee could not deny the transactions entered in the year relevant to AY 2008-09. Accordingly he submitted that the claim of the assessee that he has not transacted in shares in AY 2008-09 is liable to rejected. He submitted that the assessee has availed only accommodation

entries in both the years and hence the orders passed by the learned CIT(A) in both the years should be confirmed.

9. I have heard the rival contentions and perused the record. As submitted by learned DR the assessee has furnished copy of ledger account available in his name with M/s. Alliance Intermediaries and Network Pvt. Limited. The transactions shown in that ledger account are furnished below:-

Alliance Intermediaries & Network Pvt. Ltd.

Financial Statement from 01.04.2008 to 31.3.2009

Mr. Vishnunarayan R. Modani

Date	Description	Dr. Amount	Cr. Amount
01.04.2008	Opening balance		136,812.00
11.02.2009	To Bill	1,68,145.04	
13.02.2009	By Bill		318,719.98
	Total	168,145.04	455,531.98
31.03.2009	Closing Balance		287,386.94

I noticed that the assessee has admitted purchase and sale transactions of shares carried on by him on 11.2.2009 and 13.2.2009 in the return of income filed by him for A.Y. 2009-10. It can be noticed that the above said ledger account shows Opening credit balance of Rs. 136,812/- brought forward from the preceding year. In my view, the Learned DR rightly pointed out that the above said sum of Rs. 136,812/- represented capital gains generated by the assessee in A.Y. 2008-09. I notice that

- (a) The above said ledger account copy has been furnished by the assessee himself
- (b) Further the assessee himself has disclosed the share transactions entered by him in the year relevant to AY 2009-10, which are reflected in the above said ledger account and

- (c) The above said ledger account shows an opening balance of Rs.1,36,812/-, which actually represented the profit generated on sale of shares.

Accordingly, I am of the view that the claim of the assessee that he did not enter any share transactions in the year relevant to AY 2008-09 is liable to be rejected. I notice that the assessee has not furnished any material to show that the share transactions entered by him are genuine transactions. Accordingly, I am of the view that the Assessing Officer was justified in treating the capital gain of Rs.136,812/- and Rs.150,575/- as income under the head 'income from other sources' respectively in A.Y. 2008-09 & 2009-10, since the information available with the AO was that the assessee has only availed accommodation entries only.

10. I noticed that the assessee has purchased and sold shares within short period of ten days in A.Y. 2008-09 and two days in A.Y. 2009-10. The assessee has furnished copy of bank statement and it has shown no movement of funds from the assessee to M/s. Alliance Intermediaries & Network Pvt. Limited. The ledger account available in the name of the assessee with M/s. Alliance Intermediaries & Network Pvt. Limited also does not show receipt of funds from the assessee towards purchase of shares. Under these set of facts I am of the view that there is no scope for making any addition u/s 69 of the Act towards unexplained investment. Accordingly, I am of the view that the Assessing Officer was not justified in assessing purchase cost of shares in both the years as unexplained investment. Accordingly I direct the Assessing Officer to delete the addition of Rs. 297,653/- and Rs. 168,145/- made respectively in A.Y. 2008-09 and 2009-10 as unexplained investment.

11. Other additions made by the Assessing Officer, in my view, require to be sustained. The Orders passed by learned CIT(A) would stand modified accordingly.

12. In the result, both the appeals filed by the assessee are partly allowed.

Order pronounced in the open court on 02.09.2022.

Sd/-  
(B.R. BASKARAN)  
ACCOUNTANT MEMBER

Mumbai; Dated : 02/09/2022

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//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

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