

**ACIT Vs. Shri Ravindrakumar Toshniwal (ITAT Mumbai)-**

AO has treated the said transactions as bogus transactions on the ground that-

- a) The sale transactions were not on the floor of the ASEL but were off market transactions;
- b) The address of the M/s Buniyad Chemical Ltd. and M/s Talent Infoway Ltd. was the same and the contact person for M/s Buniyad Chemical Ltd. on the floor of ASEL was Shri Mukesh Chokshi.
- c) Mr. Mukesh Chokshi had stated that the sale proceeds have been paid to the assessee through the funds provided by the assessee.

As regards point (a) above, we find that the issue is covered by the decision of the Tribunal in the case of **Mukesh R. Marolia** wherein it has been held that **off market transaction is not a unlawful activity and there is no relevance in seeking details of share transaction from stock exchange when the sale was not on stock exchange and relying upon it for making addition.**

As regards points (b) & (c) above, we find that the assessee has filed relevant documentary evidence before the AO but the AO has failed to consider the same. The CIT[A] in his order has considered the said evidence and has come to the conclusion that the share transactions are genuine. However, as held by the Tribunal in the case of Rajinidevi A. Chowdhary [cited supra], which is on similar set of facts, the AO could have verified from the Registrar of companies as to whether the shares have been transferred and the names of the shareholders in whose names shares have been transferred. The decision of the Tribunal in the case of Rajinidevi A. Chowdhary has also been upheld by the jurisdictional High Court as taken note of by this Tribunal in the case of Shri Pinakin L. Shah [cited supra], to which one of us i.e. the Judicial Member, is a party. In these facts and circumstances of the case, we do not see any reason to interfere with the order of the CIT[A] and the same is upheld.

**INCOME TAX APPELLATE TRIBUNAL. MUMBAI**  
**I.T.A.NO.5302/Mum/2008 – A.Y 2005-06**  
**Asst. Commissioner of I.T. Vs. Shri Ravindrakumar Toshniwa**

**Per P.MADHAVI DEVI, JM:**

1. This appeal of the revenue is directed against CIT(A)'s order dated 24/06/2008.

2. The only grievance of the revenue in this appeal is against the order of the CIT[A] in deleting the addition of Rs.89,59,383/- made by the AO as income from other sources in respect of long term capital gains shown by the assessee on the sale of shares of M/s Buniyad Chemical Ltd. and M/s Talent Infoway Ltd.

3. Brief facts of the case are that the assessee is an individual who filed his return of income declaring total income of Rs.32,87,897/-. During the assessment proceedings u/s.143[3], AO observed that the assessee has credited Rs.91,19,608/- as share profit in his capital account from the sale of shares of M/s Buniyad Chemical Ltd. and M/s Talent Infoway Ltd. and claimed long term capital gain on the sale proceeds. To verify the genuineness of the transaction notices u/s.133(6) of the Act were sent to the share brokers through whom assessee had carried on the said transactions. he observed that the assessee had sold shares of M/s Buniyad Chemical Ltd. and M/s Talent Infoway Ltd. through share brokers M/s Alliance Intermediaries & Network Pvt. Ltd. and M/s Mahasagar Securities Pvt. Ltd., both of whom are located at the same address. In reply to the notices sent u/s.133[6] of the Act, the share brokers vide letter dated 16-10-07 stated that the shares are sold by them on behalf of Shri Ravindrakumar Toshniwal through stock Exchange in the market and it is difficult to submit the details of the buyer as they are not available with them. The relevant daily quotations of Ahmedabad Stock Exchange were enclosed. To verify the genuineness of the said transaction, AO issued notice u/s.133(6) to the Ahmedabad Stock Exchange Ltd. (ASEL) and in response to the same, (ASEL) vide letter dated 16-11-07 replied that there is no transaction reported at ASEL in the scrip M/s Buniyad Chemical Ltd. and M/s Talent Infoway Ltd. during the period from April 1, 2004 to March 31, 2005. Thus, AO came to the conclusion that the brokers M/s Alliance Intermediaries & Network Pvt. Ltd. and M/s Mahasagar Securities Pvt. Ltd., have given false information about the sale of shares of M/s Buniyad Chemical Ltd. and M/s Talent Infoway Ltd. Therefore, summons u/s.131 were issued to the directors of both the companies. In response thereto, Shri Mukesh M. Chokshi, director of the above two companies attended on 23-11-07 and his statement under oath was recorded u/s.131 of

the Act. In the said statement the director stated that the shares of M/s Buniyad Chemical Ltd. and M/s Talent Infoway Ltd. on behalf of Shri Ravindrakumar Toshniwal were listed on the floor of ASEL and they were off market transactions.

4. As regards the payment of sale proceeds through Shri Ravindrakumar Toshniwal , he stated that they have been made through Akola Urban Co-operative Bank Ltd. out of the funds provided by Shri Ravindrakumar Toshniwal. AO also asked Mr. Mukesh Chokshi about the business transactions of M/s Buniyad Chemical Ltd. and M/s Talent Infoway Ltd. to which he replied that he was not aware of the business transactions and was not related to the said companies.

5. After considering the said statement of Shri Mukesh Chokshi, AO observed that the letter received from ASEL indicated that the contact person of M/s Buniyad Chemical Ltd. was Shri Mukesh M. Chokshi and for M/s Talent Infoway Ltd. the contact person was Shri Ram P. Mankad. He, therefore, came to the conclusion that Shri Mukesh M. Chokshi in reality was a person operating bogus/sheil companies and the contact telephone numbers of M/s Buniyad Chemical Ltd. and M/s Talent Infoway Ltd. is that of M/s Alliance Intermediaries & Network Pvt. Ltd. and M/s Mahasagar Securities Pvt. Ltd., and it is also the address of Shri Mukesh Chokshi and M/s Buniyad Chemical Ltd. AO also summoned the assessee u/s.131 of the Act and recorded his statement on oath on 30-11-07 in which the assessee stated that the transactions of sale were concluded on his instructions by the brokers. Thereafter, AO came to the conclusion that the entire transactions i.e. the purchase and sale of shares are part of accommodation entry of sale by the assessee and through the guise of capital gains, it is the unaccounted money of the assessee which has been converted into accounted money. Accordingly, he added the entire sale consideration of Rs.89,59,383/- to the total income of the assessee as income from other sources and taxed the same accordingly.

6. Aggrieved, **assessee filed an appeal before the CIT[A] stating that it has produced contact notes, bills, copies of cheques, copies of bank statements, copies of account with the share brokers duly confirmed by the share brokers, confirmation letters from concerned banks and copies of demat accounts before the AO**, but the AO has not referred to or considered any of these documents during the assessment proceedings. The assessee also submitted that the statement given by Shri Mukesh Chokshi that the payments have been made through Akola Urban Co-operative Bank Ltd. out of the funds provided by the appellant was also incorrect

as the statement was without understanding the implications. The assessee stated that there is no supporting evidence to show that the funds were provided by the assessee through the broker before issuing the cheques against the sale proceeds.

7. As regards the validity of the off market share transactions, assessee placed reliance upon the decision of the Tribunal in the case of Mukesh R. Marolia vs. Addl. CIT reported in (2006) 6 SOT 247 (Mum). The assessee also challenged the finding of the AO on taking adverse inference against him on the basis of material relied upon by him from survey action taken u/s.133 upon the premises of the director Shri Mukesh Chokshi without providing an opportunity to the assessee to rebut the same. It was submitted that the AO cannot rely upon the statement of a director in part and reject the other part.

8. The CIT[A] after considering the documentary evidence on record filed by the assessee and after taking into consideration the decision of the Tribunal in the case of Mukesh R. Marolia [cited supra], came to the conclusion that the sale transactions of the assessee cannot be held to be bogus as held by the AO. He accordingly deleted the addition made by the AO. Aggrieved, by the relief given by the CIT[A], the revenue is in appeal before us.

9. The Id. DR strongly relied upon the findings of the AO and drew our particular attention to the statement of Shri Mukesh Chokshi u/s.133(6) of the Act reproduced in the assessment order.

10. The Id. counsel for the assessee, on the other hand, supported the order of the CIT[A] and placed before us the copies of the following decisions of the Tribunal in support of his contentions:

- I. Mukesh R. Marolia vs. Addl.CIT 6 SOT 247 [Mum]
- II. Order of 'D' Bench of the Tribunal in the case of Mrs. Rajinidevi A. Chowdhary vs. ITO , in I.T.A.No.6455/M/07 dated 30-4-2008.
- III. Order of 'C' Bench of the Tribunal in the case of Dy. CIT vs. Shri Pinakin L. Shah in I.T.A.Nos.3030 & 3453/M/08 dated 14/7/09.

11. Having heard both the parties and having considered their rival contentions, we find that the AO has treated the said transactions as bogus transactions on the ground that-

- a) The sale transactions were not on the floor of the ASEL but were off market transactions;

b) The address of the M/s Buniyad Chemical Ltd. and M/s Talent Infoway Ltd. was the same and the contact person for M/s Buniyad Chemical Ltd. on the floor of ASEL was Shri Mukesh Chokshi.

c) Mr. Mukesh Chokshi had stated that the sale proceeds have been paid to the assessee through the funds provided by the assessee.

12. As regards point (a) above, we find that the issue is covered by the decision of the Tribunal in the case of **Mukesh R. Marolia** wherein it has been held that **off market transaction is not a unlawful activity and there is no relevance in seeking details of share transaction from stock exchange when the sale was not on stock exchange and relying upon it for making addition.**

13. As regards points (b) & (c) above, we find that the assessee has filed relevant documentary evidence before the AO but the AO has failed to consider the same. The CIT[A] in his order has considered the said evidence and has come to the conclusion that the share transactions are genuine. However, as held by the Tribunal in the case of Rajinidevi A. Chowdhary [cited supra], which is on similar set of facts, the AO could have verified from the Registrar of companies as to whether the shares have been transferred and the names of the shareholders in whose names shares have been transferred. The decision of the Tribunal in the case of Rajinidevi A. Chowdhary has also been upheld by the jurisdictional High Court as taken note of by this Tribunal in the case of Shri Pinakin L. Shah [cited supra], to which one of us i.e. the Judicial Member, is a party. In these facts and circumstances of the case, we do not see any reason to interfere with the order of the CIT[A] and the same is upheld.

14. In the result, revenue's appeal is dismissed.

***Order pronounced on this 24<sup>th</sup> day of February, 2010.***