

(2023) 12 SEBI CK 0038

Securities Appellate Tribunal Mumbai

Case No: Appeal No. 45 Of 2023

Shiv Dayal Gupta HUF

APPELLANT

Vs

Securities And Exchange Board Of
India

RESPONDENT

Date of Decision: Dec. 14, 2023

Acts Referred:

- Securities And Exchange Board Of India Act, 1992 - Section 15I(3), 15T

Hon'ble Judges: Tarun Agarwala, Presiding Officer; Meera Swarup, Technical Member

Bench: Division Bench

Advocate: Vikas Bengani, Manish Chhangani, Sumit Yadav, Abhay Chauhan, Kumar Agrawal

Final Decision: Dismissed

Judgement

Tarun Agarwala, Presiding Officer

1. We have heard the learned counsel for the parties.
2. The facts leading to the filing of the present appeal is, that a show cause notice dated September 21, 2021 was issued in the name of Shiv Dayal Gupta. The matter was contested and it was brought to the knowledge of the Adjudicating Officer (hereinafter referred to as 'AO') of Securities and Exchange Board of India (hereinafter referred to as 'SEBI') that Shiv Dayal Gupta had died on January 20, 2017 and taking the said death into consideration, the proceedings were dropped against Shiv Dayal Gupta by an order dated October 20, 2021.
3. Thereafter, while scrutinizing the order alongwith the record SEBI found that the AO had made a mistake and vide communication dated August 18, 2022 directed the AO to initiate proceedings against Shiv Dayal Gupta since the trades in question related to the transactions made by the HUF. Based on this communication, the AO issued a fresh show cause notice dated September 9, 2022 in the name of Shiv Dayal Gupta HUF.
4. This show cause notice dated September 9, 2022 has been challenged by the appellant before this Tribunal contending that once the matter has been decided a second show cause notice on the same issue and on the same cause of action cannot be issued nor can any order be passed. It was also urged that under Section 15I(3) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act'). SEBI can revise the order within three months if the said order is not found to be in the interest of the securities market.
5. We are of the opinion that in the first instance, the appeal is not maintainable. There is no order of any authority. The show cause notice, in our opinion, cannot be treated to be an order for purpose of entertaining an appeal under Section 15T of the SEBI Act.

6. Even otherwise, we find that 15I(3) is not applicable as the AO had passed and initiated proceedings against a wrong entity and considering this fact SEBI had directed the AO to initiate proceedings against the correct entity. The correct entity was Shiv Dayal Gupta HUF.

7. Considering the aforesaid, we are of the opinion that the provisions of Section 15I(3) of the SEBI Act is not applicable in the instant case nor is it a case where the second show cause notice has been issued for the same cause of action. The impugned show cause notice has been issued to a different entity, namely, Shiv Dayal Gupta HUF which is a different entity from the earlier show cause notice that was issued in the name of Shiv Dayal Gupta.

8. In the light of the aforesaid, we do not find any reasons to interfere in the show cause notice. The appeal fails and is dismissed.