

**IN THE INCOME TAX APPELLATE TRIBUNAL,
BANGALORE BENCH 'A'**

**BEFORE SHRI JASON P BOAZ, ACCOUNTANT MEMBER
AND SHRI LALIET KUMAR, JUDICIAL MEMBER**

ITA No.956/Bang/2017 and
S.P No.93/Bang/2017
(Asst. Year 2008-09)

Ashok Kumar (HUF),
C/o M/s Kesarimal Madanlal,
No.72, Police Road, Ranasinghpeth,
Bengaluru. . Appellant

Vs.

The Income-tax Officer,
Ward – 1(3),
Bengaluru. . Respondent

Appellant by : Shri H.C Khincha, C.A
Respondent by : Shri M.K Biju, JCIT

Date of Hearing : 26-5-2017
Date of Pronouncement : 31-5-2017

ORDER

PER SHRI JASON P BOAZ, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of the CIT(A)-2, Bangalore dated 24/3/2017, upholding the order of the assessment for asst. year 2008-09, perused u/s 147 r.w.s 143(3) of the

Income-tax Act, 1961 (in short 'the Act') vide order dated 31/12/2013.

2. Briefly stated, the facts of the case are as under:-

2.1 The assessee, an individual, filed his return of income for asst. year 2008-09 on 22/12/2008 declaring income of Rs.15,15,210/- from house property, income from other sources and capital gains. The return was processed u/s 143(1) of the Act. Subsequently, on receipt of information from DIT(I&CI), New Delhi that a search, u/s 132 of the Act was conducted in the Mahasagar group cases on 25/11/2009, proceedings u/s 147 of the Act were initiated in the case on hand, on the ground that during the aforesaid search, Shri Mukesh Chokshi in a statement on oath u/s 131 of the Act had admitted that, he and his group concerns were engaged in fraudulent billing activities and involved in giving accommodation entries in order to enable its clients to declare speculative profits/losses as they required and that one of those was this assessee. The assessment was completed u/s 147 r.w.s 143(3) of the Act wherein income of the assessee was

determined at Rs.25,73,558/-. Aggrieved by the order of assessment dated 31/12/2013 for asst. year 2008-09, the assessee preferred an appeal before the CIT(A)-2, Bangalore who dismissed the assessee's appeal vide the impugned order dated 24/3/2017.

3.1 Aggrieved by the order of the CIT(A)-2, Bangalore dated 24/3/2017, the assessee has preferred this appeal raising the following grounds:-

“1. The learned Assessing Officer had erred in passing the order in the manner passed by him and the learned Commissioner of Income tax (Appeals) has erred in confirming the same. The impugned orders being bad in law, void ab-initio are required to be quashed.

2.1 In any case, the conditions precedent for the issue of notice u/s. 148 of the Act being absent, the re-opening of assessment becomes bad in law and consequently the order as passed/confirmed being also bad in law is required to be quashed.

2.2 In any case and without prejudice, the learned Assessing officer had erred in not passing the separate speaking order disposing of the objections raised by the appellant and the learned CIT(A) instead of quashing the order has erred in confirming the same. The impugned order which was passed not following the binding dictum of honourable Supreme Court becomes bad in law and is liable to be quashed.

3.1 In any case the order passed in gross violation of the principles of natural justice and fair play, especially in the absence of the cross examinations of the persons whose averments are sought to be relied upon by the Assessing Officer while passing the order, makes the order totally bad in law and liable to be cancelled.

3.2 The learned Commissioner of Income tax (Appeals) has instead of quashing the impugned order, has just confirmed the order of Assessing Officer without properly considering the fact and circumstances of the case, arguments of the appellant and the law applicable.

3.3. In any case and without prejudice, the orders

passed by the authorities below being contrary to binding dictum of the jurisdictional High Court are bad in law and are liable to be quashed.

4. The assessing officer had in any case, erred in treating a sum of Rs. 23,17,660/- being sale consideration received on sale of shares as 'Income from other sources' and the learned Commissioner of Income tax (Appeals) has erred in confirming the same. The action of authorities below has no support in law; is contrary to facts and evidence available and therefore deserves to be rejected.

5.1 In any case and without further prejudice, the authorities below have erred in:

- a) Taxing confirming the entire sale consideration received on sale of shares as income under the head other sources.*
- b) Not considering the fact that the appellant had earned Short term capital gain on sale of shares and such gain was offered to taxation.*
- c) Holding without basis that the transactions in shares are fraudulent.*
- d) Alleging without any basis that the appellant has obtained accommodation entries and appellant's own money come back in the guise of capital gains.*

The conclusions / observations of authorities below being totally erroneous and basis both on facts and law is to be disregarded.

5.2 The several observations made and various conclusions drawn by the lower authorities in the course of order are without basis and evidence and are made/drawn on surmises,' probabilities and conjectures. Such observations and conclusions by quasi-judicial authorities have no support in law and deserve to be rejected in toto.

6. The appellant had actually sold shares through demat account and had earned Capital Gain thereon and same needs to be accepted as such.

- 7. The appellant denies the liability to pay interest. The interest having been levied erroneously is to be deleted.*

In view of the above and other grounds to be adduced at the time of hearing it is requested that the impugned order be quashed or atleast the income from Short Term Capital Gain earned on sale of shares as returned by the appellant be accepted, the assessment of sale consideration received on sale of shares as Income from Other

Sources be deleted and the interest levied be also deleted.

3.2 It is submitted by the Id AR for the assessee that on similar issues and similar facts in appeals of the assessee's in the cases of Mukesh Kumar Solanki in ITA No.2168/Bang/2016 dated 17/3/2017 and Anitha Nahar in ITA No.2170/Bang/2016 dated 4/4/2017, co-ordinate benches have held that the matter be restored to the file of the Assessing Officer ('AO') for fresh examination and adjudication with the same directions as were rendered by the Hon'ble Karnataka High Court in the case of Chandra Devi Kothari in Writ Petition No.39370/2014 dated 2/2/2015. It was further submitted that on similar issues and similar facts, another SMC bench of the tribunal in the case of Smt. Narangi Devi in ITA No.487/Bang/2017 dated 19/5/2017 has set aside the order of the CIT(A) and restored the matter to the file of the AO with a direction to first confront the assessee with the statement of Shri Mukesh Choksi and afford him opportunity to examine Shri Mukesh Choksi in order to find out the truth in the matter. It was prayed, that in the case on hand also, the issue in dispute may be decided on similar lines as the cited cases.

3.3 Per contra, the Id DR for the Revenue supported the orders of the authorities below.

3.4.1 We have heard the rival contentions and perused and carefully considered the material on record, including the judicial pronouncements cited (Supra). From an appreciation of the facts on record, we find that in the case on hand also, the addition was made on the basis of the sworn statement recorded from Shri Mukesh Choksi, Director of Mahasagar Group and other group companies. In the case of Smt. Anitha Nahar in ITA No.2170/Bang/2016 dated 4/4/2017, to which one of us is party, it was noted that as per the judgment of the Hon'ble Karnataka High Court in the case of Chandra Devi Kothari (Supra) the matter should be restored back to the file of the AO for fresh examination and adjudication thereon, after providing the assessee a copy of the sworn statement of Shri Mahesh Chokasi relied on by the AO and providing the assessee adequate opportunity of cross examination of Shri Mukesh Choksi and of being heard in the matter. The co-ordinate bench in the case of Anitha Nahar (Supra) in its order at para 4 to 7 has held as under:-

“4. We have considered the rival submissions. We find that in the present case also, the addition was made on the basis of sworn statement recorded from one Mr. Mukesh M Choksi, Director of Mahasagar Securities and other companies. In the case of Shri Mukesh Kumar Solanki (Supra) also, it was noted by SMC Bench of this Tribunal that as per the judgment of the Hon’ble Karnataka High Court rendered in the case of Chandra Devi Kothari (Supra), the matter should be restored back to the file of the AO for fresh decision after providing a copy of the statement of Shri Mukesh M Choksi. For the sake of ready reference, we re-produce para-5 & 6 of this Tribunal order rendered in the case of Shri Mukesh Kumar Solanki.

“5. I have considered the rival submissions and first of all, I reproduce Para No.8 of the judgment of Hon’ble Karnataka High Court rendered in the case of M/s Chandra Devi Kothari (Supra) and this is as under:-

8. In the light of the facts and circumstances as adverted to above, and as the petitioner has been denied an opportunity of fair hearing by providing copy of the statement and related details regarding the alleged share amount, I am of the view that the matter requires to be re-considered by the respondent by providing fair and reasonable opportunity of hearing to the petitioner and by furnishing the details/copy of the statement based on which the impugned assessment order has been passed.”

6. From the above Para from the judgment of Hon'ble Karnataka High Court, it is seen that matter was restored back to the file of the AO for fresh decision after providing copy of the statement of Shri Mukesh Choksi. As per the facts noted by the High Court in the earlier paras of judgment and as per the facts of the present case, I find that the facts are similar and ld DR of the Revenue also could not point out any difference in facts and hence, by respectfully following this judgment of Karnataka High Court, I set aside the order of ld CIT(A) and restore the matter to the file of the AO for fresh decision with the same directions as were given by the Hon'ble Karnataka High Court in the case as per Para

No.8 of the judgment reproduced above. In view of this decision, no adjudication is called for at this stage regarding the merit of the addition.

5. *In the present case also, the dispute in question is that whether the reassessment order is valid or not and this aspect of the matter was decided by the lower authorities without supplying the copy of the statement of Shri Mukesh M Choksi to the assessee.*

6. *The ld. DR of the revenue could not point out any difference in facts in the present case and in the case of Shri Mukesh Kumar Solanki (Supra) and also in the case of Chandra Devi Kothari (Supra). Hence, we decide the issue regarding validity of the reassessment in the same line by respectfully following the judgment of the Hon'ble Karnataka High Court because ld. DR of the revenue could not point out any difference in facts. Accordingly, we set aside the order of the ld.CIT(A) and restore the matter back to the file of the AO for fresh decision with same directions as were given by the Hon'ble Karnataka High Court in that case as per para-8 of the judgment re-produced above. In view of this decision, no adjudication is called for at this stage regarding the merit of the addition.*

7. In the result, the appeal of the assessee is allowed for statistical purposes.”

3.4.2 Following the aforesaid decision of the co-ordinate bench in the case of Anitha Nahar (Supra), we find that a case on hand also the dispute in question is whether the re-assessment order is valid or not and that this aspect of the matter was decided by the authorities below without supplying the assessee with a copy of the sworn statement of Shri Mukesh Choksi relied on by the authorities below for making the order of assessment for asst. year 2008-09. The Id. DR for Revenue could not point out any differences in facts of the case on hand and in the other cited cases of Shri Mukesh Kumar Solanki (Supra), Anitha Nahar (Supra) and Chandra Devi Kothari (Supra). In this factual and legal matrix of the case, we set aside the order of the Id CIT(A) and restore the matter back to the file of the AO for fresh examination and adjudication with the same directions as were given by the Hon'ble Karnataka High Court in the case of Chandra Devi Kothari (Supra) at para 8 thereof (reproduced Supra).

4. In view of our setting aside the impugned order of the ld CIT(A) and restoring the matter to the file of the AO for fresh examination and adjudication (Supra), the assessee's stay petition in S.P No.93/Bang/2017 is rendered infructuous and accordingly dismissed.

5. In the result, the assessee's appeal for asst. year 2008-09 is treated as allowed for statistical purposes and the stay petition in S.P No.93/Bang/2017 is dismissed as infructuous.

Order pronounced in the open court on **31st May, 2017.**

Sd/-
(LALIET KUMAR)
JUDICIAL MEMBER
Bangalore
Dated : 31/5/2017
Vms

Copy to :1. The Assessee
2. The Revenue
3.The CIT concerned.
4.The CIT(A) concerned.
5.DR
6.GF

Sd/-
(JASON P BOAZ)
ACCOUNTANT MEMBER

By order

Asst. Registrar, ITAT, Bangalore.