

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B'(SMC) BENCH : CHENNAI

श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष।
[BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. No.86/Mds/2017
निर्धारण वर्ष /Assessment year : 2009-2010

Shri. Bherulal and Sons (HUF)
No.4, Thambu Naicken Street,
Sowcarpet,
Chennai 600 079.

Vs. The Income Tax Officer,
Non Corporate Ward 4(5)
Chennai 600 006.

[PAN AAFHB 0911E]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Shri. S. Sridhar, Advocate
: Shri. B. Sagadevan, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing
घोषणा की तारीख /Date of
Pronouncement

: 12-12-2017
: 19-12-2017

आदेश / ORDER

Assessee in this appeal filed against an order dated 15.12.2016 of Id. Commissioner of Income Tax (Appeals)-5, Chennai, it is aggrieved that Id.CIT(A) sustained reopening done for the impugned assessment year and also sustained the disallowance of claim of exemption made by the assessee u/s.10(38) of the Income

Tax Act, 1961 (in short "the Act") on the long term capital gains arising to it on transfer of shares.

2. Ld. Counsel for the assessee submitted that the re-assessment done on the assessee for the impugned assessment year was based on a statement recorded by the Revenue from one Shri. Mukesh Choksi of M/s. Mahasagar group. As per the Id. Authorised Representative based on the said statement, Id. Assessing Officer had believed that accommodation entries were given to the assessee through which assessee had claimed purchase of shares for Rs.5,05,490/- and sale thereafter for Rs.76,240/-. As per the Id. Authorised Representative, lower authorities had disbelieved long term capital gains of Rs.9,51,624/- claimed as exempt by the assessee based on the statement of Shri. Mukesh Choksi. As per the Id. Authorised Representative, statement of Shri. Mukesh Choksi on which reliance was placed by the lower authorities was never put to the assessee. Thus, according to him, there was violation of rules of natural justice.

3. Per contra, Id. Departmental Representative submitted that it was not clear from the records whether statement of Shri. Mukesh Choksi was put to the assessee or not.

4. I have perused the orders and heard the rival contentions. Assessee had claimed long term capital gains of Rs.9,51,624/- as exempt u/s.10(38) of the Act. This was disbelieved by the Id. Assessing Officer and added as unexplained income based on information received from DIT(I & CI), New Delhi. As per the assessment order, such information indicated that one Shri. Mukesh Choksi of M/s. Mahasagar group had facilitated issue of bills/ entries to the assessee as if assessee had purchased shares worth Rs.5,05,490/- and sold it for Rs.76,240/-. Thus, claim of the assessee was disbelieved based on the information received from DIT (I &CI), New Delhi. It is not clear from the assessment order or the order of the Id. Commissioner of Income Tax (Appeals) whether such information was put to the assessee. However, Id. Commissioner of Income Tax (Appeals) has noted that there was a statement recorded from Shri. Mukesh Choksi. In my opinion, rules of natural justice require that the statements relied on by the Revenue for fastening a tax liability on the assessee has to be put to the assessee and explanation sought thereof. In the facts and circumstances of the case, I am of the opinion that the matter requires a fresh look by the Id. Assessing Officer. Id. Assessing Officer has to give copies of the statement relied on by him, to the assessee, for getting his

explanation and thereafter he shall proceed in accordance with law.

5. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced on Thursday, the 19th day of December, 2017, at Chennai

Sd/-
(अब्राहम पी. जॉर्ज)
(ABRAHAM P. GEORGE)
लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated: 19th December, 2017

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |