

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'SMC' BENCH, KOLKATA**

**[Before Sri J. Sudhakar Reddy, Accountant Member]**

**I.T.A. No. 1860/Kol/2017**

Assessment Year: 2014-15

**Income Tax Officer Ward-32(4), Kolkata..... Appellant**

**10-B, Middleton Row**

**2<sup>nd</sup> Floor**

**Kolkata - 700 071**

**Sri Viraj Kejriwal..... Respondent**

**2A, Bansil Heights**

**3C, Loudon Street**

**Kolkata - 700 017**

**[PAN : CJGPK 7739 Q]**

**Appearances by:**

*Shri Manish Tiwari, Advocate appeared on behalf of the assessee.*

*Shri Pijush Mukherjee, Addl. CIT, DR appearing on behalf of the Revenue.*

Date of concluding the hearing : January 17<sup>th</sup>, 2018

Date of pronouncing the order : January 19<sup>th</sup>, 2018

**O R D E R**

**Per J. Sudhakar Reddy :-**

This appeal filed by the revenue is directed against the order of the Id. Commissioner of Income Tax (Appeals)-9, Kolkata, (hereinafter the 'Id. CIT (A)'), passed u/s 250 of the Income Tax Act, 1961 (the 'Act'), dt. 31/05/2017, for the Assessment Year 2014-15, on the following grounds:-

*"Ground No1 . For that the Ld. CIT (A), erred in deleting the addition made by the AO without appreciating the fact unearthed by the AO during the course assessment proceedings.*

*Ground No.2. "For that the Ld. CIT( A), was not justified by deleting the addition made by the AO of Rs. 37,78,819/- u/s. 68 of the LT. Act, only relying upon some judgements which were not relevant to the fact and surrounding circumstances of the case unearthed by the Investigation Wing and SEBI.*

*Ground No.3. "For that the Ld. CIT (A) had failed to observe the modus operandi of the transaction of assessee to generate exempted LTCCG, which was mentioned by the AO in his order.*

*Ground No.4. That the appellant craves leave to submit additional grounds of appeal, if any, at or before the time of hearing and/ or alter, modify, reframe any grounds of appeal at or before the time of hearing."*

2. The Id. Counsel for the assessee submitted that a similar order of the Id. CIT(A) in the case of the brother of the assessee on the very same issue was challenged by the Revenue before the ITAT SMC Bench in ITA No. 1849/Kol/2017, Assessment Year 2014-15, order dt. 20/12/2017, wherein the order of the Id. CIT(A) was upheld and the appeal of the revenue was dismissed. Hence he submitted that the issue is covered in favour of the assessee and the order of the Id. CIT(A) has to be upheld.

2.1. The Id. D/R, submitted that the issue has been considered by a number of decisions of the Hon'ble High Courts and the Tribunals and hence the Bench should consider these decisions and not follow its order under identical circumstances in the case of the brother of the assessee. He cited the following case-law:-

- *The Nagpur Bench of the Hon'ble Bombay High Court in the case of Sanjay Bimalchand Jain L/H Shantidevi Bimalchand Jain vs. The Pr. CIT, in Income Tax Appeal No. 18/2017, judgement dt. 10/04/2017, confirming the order of the Nagpur 'SMC' Bench of the ITAT, in ITA No. 61/Nag/2013, order dt. 18/07/2016.*
- *Judgement of the Hon'ble Punjab & Haryana High Court in the case of Som Nath Maini vs. Commissioner of Income Tax, (2008) 306 ITR 414 (P&H), wherein the order of the ITAT Chandigarh Bench, in respect of the same assessee, reported in (2006) 100 TTJ Chd 917, was confirmed.*

On a query from the Bench, the Id. D/R submitted that the facts of both the cases are identical.

2.1. The Id. Counsel for the assessee submitted that the facts in the case of *Sanjay Bimalchand Jain (Supra)* and in the case of *Som Nath Maini (supra)*, and the facts in the case of the assessee are entirely different and cannot be applied. He

prayed that the order of the Tribunal under identical circumstances on the very same facts for the very same Assessment Year should be followed.

3. After hearing rival contentions, keeping in mind the judicial propriety, I follow the order of the Co-ordinate Bench of the Tribunal in the case of Kumari Tanvi Kejriwal, in ITA No. 1849/Kol/2017, for the very same Assessment Year 2014-15 as admittedly the facts of both the cases are identical and uphold the order of the Id. First Appellate Authority and dismiss the appeal of the revenue.

4. In the result, appeal of the revenue is dismissed.

***Kolkata, the 19<sup>th</sup> day of January, 2018.***

***Sd/-***

**[J. Sudhakar Reddy]**  
Accountant Member

Dated : 19.01.2018  
{SC SPS}

*Copy of the order forwarded to:*

**1. Income Tax Officer Ward-32(4), Kolkata  
10-B, Middleton Row  
2<sup>nd</sup> Floor  
Kolkata - 700 071**

**2. Sri Viraj Kejriwal  
2A, Bansil Heights  
3C, Loudon Street  
Kolkata - 700 017**

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Senior Private Secretary  
Head of Office/ D.D.O. ITAT, Kolkata Benches