

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'C' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2606/Chny/2017

निर्धारण वर्ष / Assessment Year : 2010-11

Smt. Anjana Jain,
No.46A, Perumal Mudali Street,
Sowcarpet, Chennai - 600 079.

v. The Income Tax Officer,
Non Corporate Ward 4(1),
Chennai - 600 006.

PAN : AGVPA 2982 Q

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Ms. Sushma Harini, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri B. Sahadevan, JCIT

सुनवाई की तारीख/Date of Hearing : 12.12.2018

घोषणा की तारीख/Date of Pronouncement : 28.02.2018

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals) -5, Chennai, dated 15.09.2017 and pertains to assessment year 2010-11.

2. Ms. Sushma Harini, the Ld.counsel for the assessee, submitted that the Assessing Officer completed the assessment hurriedly without

giving any opportunity to the assessee. According to the Ld. counsel, the assessment was made on the basis of the statement said to be recorded from one Shri Ashok Kumar Kayan, who is a share broker. However, the said statement was not furnished to the assessee. According to the Ld. counsel, a copy of the statement has to be furnished to the assessee. In the absence of the statement, the assessee was not able to defend the case properly. According to the Ld. counsel, the assessee has produced the entire details of purchase and sale of shares.

3. On the contrary, Shri B. Sahadevan, the Ld. Departmental Representative, submitted that the share broker Shri Ashok Kumar Kayan was providing accommodation entry in the form of bogus long term capital gains in connivance with entry operators and promoters of scripts at CSE. Shri Ashok Kumar Kayan is a penny stock broker of the BSE and CSE. According to the Ld. D.R., the assessee is also one of the persons invested in penny stock. The assessee claimed long term capital gains to the extent of ₹16,62,500/- and claimed exemption under Section 10(38) of the Income-tax Act, 1961 (in short 'the Act'). The Ld. D.R. further submitted that the assessee has invested in the shares of Bakra Pratishtan Limited, which is a penny stock. The shares of Bakra Pratishtan Limited were transferred in the name of the assessee. The purchase price of shares was ₹ 10/- each. In fact, according to the Ld. D.R., the shares were dematerialized and sold at the rate of ₹352.50 per

share. Therefore, according to the Ld. D.R., the CIT(Appeals) has rightly confirmed the order of the Assessing Officer.

4. We have considered the rival submissions on either side and perused the relevant material available on record. The entire assessment appears to be made only on the basis of the statement of Shri Ashok Kumar Kayan, who is considered to be a penny stock broker. Admittedly, the statement said to be recorded from Shri Ashok Kumar Kayan was not furnished to the assessee. It is also not known whether the purchase price of the shares was paid by cheque or by cash. The Assessing Officer observed that the assessee did not disclose the mode of payment of purchase price. In those circumstances, this Tribunal is of the considered opinion that the matter needs to be reconsidered by the Assessing Officer. Accordingly, the orders of both the authorities below are set aside and the entire issue raised by the assessee is remitted back to the file of the Assessing Officer. The Assessing Officer shall furnish a copy of the statement said to be recorded from Shri Ashok Kumar Kayan to the assessee. The assessee shall also disclose the mode of payment of purchase price for purchasing the shares of Bakra Pratisthan Limited. Thereafter, the Assessing Officer shall examine the matter and decide the issue afresh in accordance with law, after giving a reasonable opportunity to the assessee.

5. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on 28th February, 2018 at Chennai.

sd/-

(ए. मोहन अलंकामणी)
(A. Mohan Alankamony)
लेखा सदस्य/Accountant Member
चेन्नई/Chennai,

दिनांक/Dated, the 28th February, 2018.

Kri.

sd/-

(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)
न्यायिक सदस्य/Judicial Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-5, Chennai-34
4. Principal CIT-9, Chennai.
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.