

IN THE INCOME TAX APPELLATE TRIBUNAL

“SMC-A” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA Nos. 581 & 582/Bang/2018
Assessment Years : 2009-10 & 2010-11

Smt. Sapna Nahata, Prop.: National Container, No. 8/2, Yelachanahalli, Kanakapura Road, Bangalore – 560 078. PAN: ADUPK3438M	Vs.	The Income Tax Officer, Ward – 4 (3) (5), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Smt. Suman Lunkar, CA
Respondent by	:	Shri L.V. Bhaskar Reddy, Addl. CIT (DR)

Date of hearing	:	20.03.2018
Date of Pronouncement	:	20.03.2018

ORDER

Per Shri A.K. Garodia, Accountant Member

Both these appeals are filed by the assessee and these are directed against two separate orders of Id. CIT(A)-4, Bangalore both dated 21.11.2017 for Assessment Years 2009-10 and 2010-11. Both these appeals were heard together and are disposed of by way of this common order for the sake of convenience.

2. The grounds raised by the assessee for Assessment Year 2009-10 in ITA No. 581/Bang/2018 are as under.

“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 the assessing officer having not complied with legal provisions / procedure for reopening / reassessment, the consequential order becomes' bad in law and 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. 4,70,479/- being Purchase consideration of shares as unexplained investment and taxing the same under the head '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 purchase consideration of shares as income under the head other sources.

b) Not considering the fact that the shares were dematerialized.

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 would come back in the guise of capital gains.

The conclusions / observations of authorities below being totally erroneous and without 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 purchased the shares with the explainable source which were subsequently dematerialized. The transaction being genuine in nature should have been accepted as such.

7. The appellant denies the liability to pay interest u/s 234B and 234C of the Act. The interest having been levied erroneously is to be deleted.

8. 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 at least the assessment of purchase cost of shares as unexplained investment be deleted and the interest levied be also deleted.”

3. The grounds raised by the assessee for Assessment Year 2010-11 in ITA No. 582/Bang/2018 are as under.

“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 the assessing officer having not complied with legal provisions / procedure for reopening / reassessment, the consequential order becomes bad in law and 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. 5,45,007/- being Short term capital gain earned 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 Short term capital gain earned 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(STT suffered) and offered the same for 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 without 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.

8. 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 Short term capital gain earned on sale of shares as Income from Other Sources be deleted and the interest levied be also deleted.”

4. At the very outset, it was submitted by Id. AR of assessee that in the present case, the addition was made by the AO on the basis of statement of Shri Mukesh Choksi, Director of M/s. Mahasagar Securities Pvt. Ltd. She submitted that under similar facts in the case of Shri Mukesh Kumar Solanki vs. ITO in ITA NO. 2168/Bang/2016 dated 17.03.2017, the Tribunal has restored the matter back to the file of AO for fresh decision with the same directions as were given by Hon'ble Karnataka High Court in a judgment rendered in the case of Chandra Devi Kothari in Writ Petition No. 39370/2014 dated 02.02.2015. She submitted a copy of this Tribunal order and requested that in the present case also, this issue should be restored back to the file of AO for fresh decision with the same directions. The Id. DR of revenue supported the orders of authorities below.
5. I have considered the rival submissions. I find force in the submissions of Id. AR of assessee because no difference in facts could be pointed out by Id. DR of revenue. I reproduce paras 5 and 6 of this Tribunal order rendered in the case of Shri Mukesh Kumar Solanki vs. ITO(supra). The same reads under:-

“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 Id 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 Id 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.”

6. Respectfully following this Tribunal order, I decide the issue in the present case also on similar line and restore the matter back to the file of AO for fresh decision with the same directions as were given by Hon'ble Karnataka High Court in the case of Chandra Devi Kothari(supra) as per para 8 of this judgment which is reproduced above. In view of this decision, no adjudication is called for regarding merit of the addition.
7. Regarding the second issue raised in these appeals in respect of validity of reassessment proceedings, it was submitted by Id. AR of assessee that this issue is not pressed and accordingly this issue is rejected as not pressed.
8. In the result, both the appeals filed by the assessee are partly allowed for statistical purposes.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 20th March, 2018.
/MS/

Copy to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Senior Private Secretary,
Income Tax Appellate Tribunal,
Bangalore.