

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

(Before Sri J. Sudhakar Reddy, Accountant Member)

ITA No. 1268/Kol/2018
Assessment Year: 2014-15

Sunita Devi.....Appellant

C/o. Subash Agarwal & Associates

Siddha Gibson

1, Gibson Lane

2nd Floor

Suite-213

Kolkata - 700 069

[PAN : ADAPG 0346 E]

Vs.

Income Tax Officer, Ward-2(2), Siliguri.....Respondent

Appearances by:

Shri Subash Agarwal, Advocate, appeared on behalf of the assessee.

Shri Saurav Kumar, Addl. CIT, D/R. appearing on behalf of the Revenue.

Date of concluding the hearing : September 25th, 2018

Date of pronouncing the order : October 5th, 2018

ORDER

Per J. Sudhakar Reddy, AM :-

This appeal filed by the assessee is directed against the order of the Learned Commissioner of Income Tax (Appeals) – Siliguri, (hereinafter the 'Ld. CIT(A)'), dt.9th April, 2018, passed u/s 250 of the Income Tax Act, 1961 (hereinafter the 'Act'), relating to Assessment Year 2014-15.

2. The sole issue that arises for my adjudication is whether the Assessing Officer was right in rejecting the claim of the assessee that he had earned Long Term Capital Gains on purchase and sale of the shares of M/s. UNNO Industries Limited. The AO based on a general report and modus operandi adopted generally in these cases and on general observations has concluded that the assessee has claimed bogus long term capital gain. He made an addition of the entire sale proceeds of the shares as income and rejected the claim of exemption made u/s 10(38) of the Act. The evidence produced by the assessee in support of the genuineness of the transaction was rejected.

3. The assessee carried the matter in appeal and the ld. CIT(A), had upheld the addition. The ld. CIT(A) has in his order relied upon “circumstantial evidence” and “human probabilities” to uphold the findings of the AO. He also relied on the so called “rules of suspicious transaction”. No direct material was found to controvert the evidence filed by the assessee, in support of the genuineness of the transactions. In other words, the overwhelming evidence filed by the assessee remains unchallenged and uncontroverted. The entire conclusions drawn by the revenue authorities, are based on a common report of the Director of Investigation, Kolkata, which was general in nature and not specific to any assessee. The assessee was not confronted with any statement or material alleged to be the basis of the report of the Investigation Wing of the department and which were the basis on which conclusion were drawn against the assessee. Copy of the report was also not given.

4. Under the circumstances, in a number of cases this bench of the Tribunal has consistently held that decision in all such cases should be based on evidence and not on generalisation, human probabilities, suspicion, conjectures and surmises. We have in all cases deleted such additions. Some of the cases were detailed finding which are listed below :-

| Sl.No | ITA Nos. | Name of the Assessee | Date of order /Judgment |
|-------|--|---|-------------------------|
| 1. | 1236-1237/K/17 ITAT - Kolkata | Manish Kumar Baid & Others vs ACIT | 18.08.2017 |
| 2 | 443/Kol/2017 | Kiran Kothari (HUF) vs ITO | 15.11.2017 |
| 3. | 22 of 2009 Calcutta High Court | CIT, Kolkata-III vs Bhagwati Prasad Agarwal | 29.04.2009 |
| 4. | 456 if 2007 Bombay High Court | CIT vs Shri Mukhesh Ratilal Marolia | 07.09.2011 |
| 5. | 18 of 2017 Punjab and Haryana High Court | Pr. C.I.T. (Central)Ludhiana vs Sh.Hitesh Gandhi, | 16.02.2017 |
| 6. | 95 of 2017 Punjab and Haryana High Court | Pr. C.I.T. vs Prem Pal Gandhi | 18.01.2018. |
| 7. | 2281/Kol/2017 ITAT - Kolkata | Navneet Agarwal, Legal Heir of Late Kiran Agarwal vs ITO,Ward-35(3),Calcutta | 20.07.2018 |

5. I am bound by the proposition of law laid down in these case law. They are squarely applicable to the facts of the case. The Id. Departmental Representative, though not leaving his ground, could not controvert the claim of the Id. Counsel for the assessee that the issue in question is covered by the above cited decisions of the Hon'ble High Courts and the ITAT.

6. The Id. Departmental Representative filed detailed written submissions and relied on the judgment of the Hon'ble Supreme Court in the case of *Securities and Exchange Board of India vs Rakhi Trading Private Ltd in Civil Appeal No. 1969 of 2011 with Civil Appeal Nos.3174-3177 of 2001 and Civil Appeal No.3180 of 2011*. The Id. Counsel for the assessee submits that there is no surviving order of SEBI against the assessee or the company, the script of which was purchased and sold by the assessee. When there is no surviving adverse order of SEBI, against the claim of the assessee, the judgment of the Hon'ble Supreme Court cannot be applied to the facts of this case.

7. In view of the above discussion the addition in question is deleted and the appeal of the assessee is allowed.

8. In the result the appeal of the assessee is allowed.

Kolkata, the 5th day of October, 2018.

Sd/-

[J. Sudhakar Reddy]

Accountant Member

Dated : 05.10.2018

{SC SPS}

Copy of the order forwarded to:

1. **Sunita Devi**
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1, Gibson Lane
2nd Floor
Suite-213
Kolkata – 700 069
2. **Income Tax Officer, Ward-2(2), Siliguri**
3. CIT(A)-
4. CIT- 15 ,
5. CIT(DR), Kolkata Benches, Kolkata.

True copy
By order

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