

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

(Before Sri J. Sudhakar Reddy, Accountant Member)

ITA No. 521/Kol/2018
Assessment Year: 2014-15

Santosh Choraria.....Appellant
408, Marshall House
Flat-413
25, Strand Road
Kolkata - 700 001
[PAN : ACDPC 1830 F]

Vs.

Income Tax Officer, Ward-36(3), Kolkata.....Respondent

Appearances by:

Shri S.M. Surana, Advocate, appeared on behalf of the assessee.

Shri P.K. Mondal, Addl. CIT, D/R. appearing on behalf of the Revenue.

Date of concluding the hearing : September 24th, 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) – 10, Kolkata, (hereinafter the 'Ld. CIT(A)'), dt. 12th February, 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. Essar India Ltd. 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 where detailed finding were given 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 ld. Departmental Representative, though not leaving his ground, could not controvert the claim of the ld. 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 ld. 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 ld. 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. Santosh Choraria
408, Marshall House
Flat-413
25, Strand Road
Kolkata – 700 001**

2. Income Tax Officer, Ward-36(3), Kolkata

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