

**IN THE INCOME TAX APPELLATE TRIBUNAL
' C ' BENCH (SMC): BENGALURU**

SHRI JASON P BOAZ, ACCOUNTANT MEMBER

ITA No.2564/Bang/2018
(Assessment year: 2015-16)

Sharad Bhutra (HUF),
555, New Hope 2nd A Cross, 13thMain,
Banashankari 2nd Stage,
Bangalore-560 070
PAN: AAQHS9116M ... Appellant

Vs.

Income-tax Officer,
Ward 7(2)(4),
Bengaluru. ... Respondent

Appellant by : Smt. Suman Lunkar, CA.
Respondent by : Shri Guruprasad B L, Addl.CIT(DR)

Date of hearing : 08/10/2018
Date of pronouncement : 12/10/2018

O R D E R

This appeal by the assessee is directed against the order of the CIT(A)-7, Bengaluru, dated 30/07/2018 for assessment year 2015-16.

2. Briefly stated, the facts of the case are as under:-

2.1 The assessee, HUF, filed its return of income for assessment year 2015-16 on 03/08/2015 declaring income of Rs.2,49,990/- from other sources and capital gains (LTCG) of Rs.40,67,562/- claimed as exempt u/s 10(38) of the Income-tax Act,1961 (in short 'the Act'). The case was taken up for scrutiny and the assessment was concluded u/s 143(3) of the Act vide order dated 28/11/2017, wherein the assessee's income was determined at Rs.38,72,621/- in view of the capital gains of Rs.36,22,721/- declared by the assessee, arising on account of sale of shares of M/s. Life Line Drugs & Pharma and M/s. Yamini Investments, being held to be unexplained cash credits u/s 68. On appeal, the CIT(A)-7,

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Bengaluru, dismissed the assessee's appeal vide the impugned order dated 30/07/2018.

3.1 Aggrieved by the order of the CIT(A)-5, Bengaluru, dated 30/07/2018 for assessment year 2015-16, the assessee has preferred this appeal wherein it has raised the following grounds:-

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. 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 verification/examination of the documents/reports which 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. In any case and without prejudice, the learned Assessing Officer had erred in making addition u/s 68 of the Act amounting to Rs. 36,22,721/- to the income of the appellant and the learned CIT (A) -7 has erred in confirming the same. The addition to the income is bad in both law and on facts and is liable to be deleted in entirety.

4. The learned Assessing Officer has not properly appreciated the facts of the case. On proper appreciation of the facts and law applicable, it will be clear that the addition as made has no basis to stand and is liable to be deleted in entirety.

5. The learned Assessing Officer had erred in holding that the provisions of Section 68 of I.T. Act, 1961 are applicable and the learned Commissioner of Income tax (Appeals) has erred in confirming the same. There being no unexplained credit and in fact the credit having been duly explained, makes the addition U/s. 68 wholly erroneous and liable to be deleted.

6. The appellant denies liability to pay interest under the Act. The interest having been erroneously levied is to be deleted.

7. 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 assessment of Long Term Capital Gain as Income from Other Sources be deleted, the income from Long Term Capital Gain earned on sale of shares as returned by the appellant be accepted, and the interest levied be also deleted

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3.2 During the course of hearing, the Id.AR for the assessee submitted that on similar facts and circumstances, the matter for consideration is squarely covered by the decision of the ITAT, Kolkata Bench in its order in ITA No.2394/Kol/2017 in the case of *Prakash Chand Butoria*. It is submitted that in the cited case (supra) also, the assessee, an individual, filed his return of income claiming income on sale of shares as exempt u/s 10(38) of the Act. The Assessing Officer (AO) treated the receipt of sale consideration as unaccounted income and made an addition u/s 68 of the Act. On appeal the CIT(A) upheld the AO's order. However, on further appeal, the ITAT, Kolkata Bench allowed the assessee's appeal observing that the addition was unsustainable since the AO made the addition in a routine and mechanized manner: merely on suspicions based on Report of enquiries made by the Investigation Directorate of DIT, Kolkata, without bringing the same on record or confronting the assessee with OR supplying the assessee copies of the documents relied upon for making the addition and providing her opportunities for her rebuttal. It is prayed that in view of the above, the orders of the authorities below be set aside and the assessee's appeal be allowed.

3.3 Per contra, the Id. DR for Revenue submitted that on similar facts and circumstances as in the case on hand, issue for consideration is covered by the decisions of the Bengaluru ITAT in the cases of *Arvind Kumar Moolchand* in ITA No.509/Bang/2017 and *Pukhraj Hasmukhlal* in ITA No.1927/Bang/2017 wherein the Tribunal has restored the issue to the file of the AO having observed that the additions were made based on reports of the Investigation Directorate at Kolkata and statements of various persons without confronting OR making them available to the assessee for rebuttal. In those cases, the Tribunal restored the matter to the file of the AO with the direction to confront the assessee with the reports/documents/ statements proposed to be used against the assessee, allow rebuttal thereof and cross examination of parties on whose testimony is proposed to be relied upon and the matter be

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adjudicated afresh after affording the assessee adequate opportunity of being heard and to also file details/submissions in this regard.

3.4 In Rejoinder, the Id.AR for the assessee did not dispute the proposition put forth by the Id. DR for restoring this issue to the file of the AO for *de novo* adjudication.

3.5 I have heard both parties and perused and carefully considered the material on record including the judicial decisions cited and the orders of the authorities below. Taking into consideration the facts and circumstances of the case and the judicial decisions cited, I find that the issue for consideration is squarely covered by the orders of the Bengaluru ITAT in the cases of *Arvind Kumar Moolchand* (supra) and *Pukhraj Hasmukhlal* (supra). Following the aforesaid orders (supra), I set aside the orders of the AO and restore the matter of treatment of profit declared on sale of shares, claimed exempt u/s 10(38) of the Act, to the file of the AO to re-adjudicate the issue afresh; after making available to the assessee for rebuttal all documents; including Statements, Investigation Reports, etc. relied upon by Revenue for making the additions/disallowances and providing adequate opportunity to the assessee for cross-examination of persons whose statements are being relied upon. It is accordingly ordered.

4. In the result, the assessee's appeal for assessment year 2015-16 is allowed for statistical purposes.

Order pronounced in the open court on 12th October, 2018.

Sd/-
(JASON P BOAZ)
ACCOUNTANT MEMBER

Place : Bengaluru.
D a t e d : 12/10/2018

*Reddy gp, sps

Copy to :

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

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore