

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

[Before Sri J. Sudhakar Reddy, Accountant Member & Sri S.S. Viswanethra Ravi, Judicial Member]

I.T.A. No. 2328/Kol/2017
Assessment Year: 2014-15

Naveen Poddar.....**Appellant**
C/o. Subash Agarwal & Associates
Siddha Gibson
1, Gibson Lane
2nd Floor
Suite-213
Kolkata - 700 069
[PAN : AFZPP 9026 K]

ACIT, Circle-35, Kolkata.....**Respondent**

I.T.A. No. 2329/Kol/2017
Assessment Year: 2014-15

Priyanka Poddar.....**Appellant**
C/o. Subash Agarwal & Associates
Siddha Gibson
1, Gibson Lane
2nd Floor
Suite-213
Kolkata - 700 069
[PAN : ABGPG 5186 JJ]

ACIT, Circle-35, Kolkata.....**Respondent**

I.T.A. No. 2330/Kol/2017
Assessment Year: 2014-15

Bina Poddar.....**Appellant**
C/o. Subash Agarwal & Associates
Siddha Gibson
1, Gibson Lane
2nd Floor
Suite-213
Kolkata - 700 069
[PAN : AJSPP 0148 H]

Income Tax Officer, Ward-34(1), Kolkata.....**Respondent**

Appearances by:

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

Shri C.J. Singh, Addl. CIT, Sr. DR, appearing on behalf of the Revenue.

Date of concluding the hearing : October 9th, 2018

Date of pronouncing the order : October 30th, 2018

O R D E R

Per J. Sudhakar Reddy :-

All these appeals filed by the assessee are directed against the separate but identical orders of the Id. Commissioner of Income Tax (Appeals)-10, Kolkata (hereinafter the 'Id. CIT (A)'), passed u/s 250 of the Income Tax Act, 1961 (the 'Act'), dt. 22/09/2017, for the Assessment Year 2014-15.

2. As the issues arising in all these appeals are common, for the sake of convenience they are heard together and disposed off by way of this common order. 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 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 Id. CIT(A), Kolkata, had upheld the addition. The Id. 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

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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 ld. Departmental Representative, though not leaving his ground, could not controvert the claim of the ld. Counsel for

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the assessee that the issue in question is covered by the above cited decisions of the Hon'ble High Courts and the ITAT.

6. In view of the above discussion the additions in question are deleted. The consequential additions u/s 69C are also deleted. All these appeals of the assessee are allowed.

7. In the result all these appeals of the assessee are allowed.

Kolkata, the 30th day of October, 2018.

Sd/-

[S.S. Viswanethra Ravi]

Judicial Member

Dated :30.10.2018

{SC SPS}

Sd/-

[J. Sudhakar Reddy]

Accountant Member

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Copy of the order forwarded to:

1. Naveen Poddar

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2. Priyanka Poddar

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3. Bina Poddar

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4. ACIT, Circle-35, Kolkata

5. ACIT, Circle-35, Kolkata

6. Income Tax Officer, Ward-34(1), Kolkata

7. CIT(A)-

8. CIT- ,

9. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Assistant Registrar
Head of Office/ D.D.O. ITAT, Kolkata Benches