

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'SMC' BENCH,  
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 3387/DEL/2018  
[Assessment Year: 2014-15]

Smt. Simi Verma  
B - 228, Yojana Vihar  
New Delhi.

Vs.

The I.T.O,  
Ward - 57(3)  
New Delhi

PAN: AEDPV 2575A

[Appellant]

[Respondent]

Date of Hearing : 05.11.2018  
Date of Pronouncement : 06.11.2018

Assessee by : Shri K.P. Ganguli, Adv.

Revenue by : Ms. Aashna Paul, Sr. DR

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER:**

This appeal by the assessee is preferred against the order of the Commissioner of Income Tax [Appeals] - XXV, New Delhi dated 19.03.2018 pertaining to assessment year 2014-15.

2. The sum and substance of the grievance of the assessee is that the ld. CIT(A) erred in confirming the assessment order wherein the Assessing Officer denied claim of long term capital gain exemption u/s 10(38) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short] and made addition u/s 68 of the Act. The ld. CIT(A) further erred in confirming the addition made u/s 69C of the Act.

3. Briefly stated, the facts of the case are that return for the year under consideration was selected for scrutiny assessment through CASS in order to examine the suspicious transaction relating to long term capital gain on shares.

4. During the course of assessment proceedings, the A.O observed that the assessee has sold 10,000 shares of Turbotech Engineering Pvt Ltd for total consideration of Rs. 24,13,604/- and after reducing the purchase value of Rs. 20,000/-, the assessee has shown long term capital gain of Rs. 23,93,604/-.

5. The Assessing Officer came to notice that the Directorate of Investigation, Kolkata carried out country-wide investigation to unearth the organized racket of generating bogus entries of long term capital gain, which is exempt from tax. The Assessing Officer learnt that Turbotech Engineering Pvt Ltd is also one such company which has been identified as a listed penny stock on BSE, which has been used for generating bogus long term capital gain.

6. Drawing support from the order of the SEBI and further finding that the scrip Turbotech Engineering Pvt Ltd, in which trading done by the assessee has been suspended by the Bombay Stock Exchange vide notice dated 01.01.2015. After analysing the investigation report from Kolkata, SEBI orders and BSE orders and drawing support from various decisions, the Assessing Officer finally came to the conclusion that the amount of Rs. 23,93,604/- claimed as long term capital gain by the assessee is bogus and accordingly disallowed the same and added further 5% being commission paid for arranging capital gain and computing assessment by making addition of Rs. 23,93,604/- u/s 68 of

the Act, Rs. 1,19,680/- u/s 69C of the Act. The assessee agitated the matter before the Id. CIT(A) but without any success.

7. I have carefully perused the orders of the authorities below and relevant documentary evidences brought on record. Purchase and sale of shares are documented and exhibited at pages 1 to 8 of the paper book. Sale of shares are carried out in BSE at the prices prevailing in the market which are duly supported by contract notes issued by the broker. The entire transactions have been discarded by the Revenue authorities because the BSE has suspended trading in shares of Turbotech Engineering Pvt Ltd in January 2015. The undisputed fact is that the assessee had sold the shares in the month of July and September 2013, therefore, any action taken in 2015 would not affect the transactions done in 2013. Moreover, neither the SEBI nor the BSE has nullified the transactions done in 2013 in the scrip of Turbotech Engineering Pvt Ltd. Merely because some market players were doing clandestine activities in some scrips in the stock market would not make genuine transactions bogus. Merely

because in the report of investigation wing, Kolkata name of Turbotech Engineering Pvt Ltd is mentioned would not make genuine transaction bogus. There is no direct evidence to demonstrate that the assessee was one of the direct beneficiaries of the accommodation entries provided by the company. Considering the facts of the case in totality in the light of supporting documentary evidences, I do not find any merit in the impugned additions. I, accordingly, direct the Assessing Officer to allow claim of long term capital gain exemption u/s 10(38) of the Act and delete the additions made u/s 69C of the Act.

8. In the result, the appeal filed by the assessee in ITA No. 3387/DEL/2018 is allowed.

**The order is pronounced in the open court on 06.11.2018.**

Sd/-

**[N.K. BILLAIYA]  
ACCOUNTANT MEMBER**

Dated: 06<sup>th</sup> November, 2018

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
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