

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

(Before Sri J. Sudhakar Reddy, Accountant Member & Sri S.S. Viswanethra Ravi, Judicial Member)

ITA No. 1478/Kol/2018
Assessment Year: 2014-15

Smt. Uma Parasramka.....Appellant

Ground Floor

Room No. GX

Hastings Chambers

7C, Kiran Shankar Roy Road

Kolkata- 700 001

[PAN : AGAPP 8466 B]

Vs.

Income Tax Officer, Ward-36(4), Kolkata.....Respondent

Appearances by:

Shri Miraj D. Shah, FCA, appeared on behalf of the assessee.

Shri Sankar Halder, Sr. D/R. appearing on behalf of the Revenue.

Date of concluding the hearing : November 6th, 2018

Date of pronouncing the order : November 16th, 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. 19/04/2018, 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 our adjudication is whether the Assessing Officer was right in rejecting the claim of the assessee that she 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 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 findings have been given on this issue 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. We are bound by the proposition of law laid down in these case law by the Jurisdictional High Court as well as by the ITAT Kolkata. 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 relied on the order of the 'SMC' Bench of the Bangalore ITAT in the case of *Smt. M.K. Rajeshwari vs. ITO; ITA No.1723/Bng/2018; Assessment Year 2015-16, order dt. 12/10/2018*. This judgments is in favour of the revenue. But we are bound by the judgment of the Jurisdictional High Court and the Division Bench of the ITAT on this issue.

7. In view of the above discussion the addition made u/s 68 of the Act, is deleted..

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

Kolkata, the 16th day of November, 2018.

Sd/-

[S.S. Viswanethra Ravi]

Judicial Member

Dated : 16.11.2018

{SC SPS}

Sd/-

[J. Sudhakar Reddy]

Accountant Member

Copy of the order forwarded to:

1. ***Smt. Uma Parasramka***

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Room No. GX

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Kolkata- 700 001

2. ***Income Tax Officer, Ward-36(4), Kolkata***

3. CIT(A)-

4. CIT- ,

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

True copy

By order

Assistant Registrar

ITAT, Kolkata Benches