

**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. 696/Kol/2017**  
Assessment Year: 2013-14

**Samir Baid**.....**Appellant**  
**3-B, Lal Bazar Street**  
**5<sup>th</sup> Floor**  
**Kolkata- 700 001**  
**[PAN : AEIPB 5692 K]**

**Vs.**

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

**Appearances by:**

*Shri P.K. Kehari, FCA, appeared on behalf of the assessee.*

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

Date of concluding the hearing : November 6<sup>th</sup>, 2018

Date of pronouncing the order : November 16<sup>th</sup>, 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. 22/02/2016, passed u/s 250 of the Income Tax Act, 1961 (hereinafter the 'Act'), relating to Assessment Year 2013-14.

2. Ground No.1, is on the issue 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. NCL Research & Financial Services 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<br>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<br>Calcutta High Court              | CIT, Kolkata-III vs Bhagwati Prasad Agarwal                                     | 29.04.2009              |
| 4.    | 456 if 2007<br>Bombay High Court               | CIT vs Shri Mukhesh Ratilal Marolia   | 07.09.2011              |
| 5.    | 18 of 2017 Punjab<br>and Haryana High<br>Court | Pr. C.I.T. (Central)Ludhiana vs Sh.Hitesh<br>Gandhi,                            | 16.02.2017              |
| 6.    | 95 of 2017<br>Punjab and Haryana<br>High Court | Pr. C.I.T. vs Prem Pal Gandhi   | 18.01.2018.             |
| 7.    | 2281/Kol/2017<br>ITAT - Kolkata                | Navneet Agarwal, Legal Heir of Late Kiran<br>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. In view of the above discussion the addition made u/s 68 of the Act, and the consequential addition made u/s 69C of the Act, are deleted. Accordingly, Ground No.1 & 2 of the assessee are allowed.

7. Ground No.3, is on the disallowance u/s 14A r.w.r. 8D.

We find that the dividend earned by the assessee is Rs.9,525/-. The disallowance is restricted to that extent by applying the judgment of the Hon'ble Calcutta High Court in the case of *CIT vs. Ashika Global Securities Ltd. ITAT 100 of 2014, GA 2122 of 2014, judgment dt. 11/06/2018*. Accordingly, this Ground of the Assessee is allowed in part.

8. Ground No. 4, is dismissed as not pressed.

9. Ground No. 5 is general in nature.

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

***Kolkata, the 16<sup>th</sup> 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. **Samir Baid**  
**3-B, Lal Bazar Street**  
**5<sup>th</sup> Floor**  
**Kolkata- 700 001**

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

3. CIT(A)-

4. CIT- ,

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

True copy

By order

Assistant Registrar  
ITAT, Kolkata Benches