

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

(Before Sri J. Sudhakar Reddy, Accountant Member)

ITA No. 1693/Kol/2018
Assessment Year: 2014-15

Sri Pawan Kumar Kabra.....Appellant
C/o Sri S.L. Kochar, Advocate
5, Ashutosh Chowdhury Avenue
Kolkata - 700 019
[PAN : AFNPK 5040 G]

Vs.

Income Tax Officer, Ward-47(3), Kolkata.....Respondent

Appearances by:

Shri Anil Kochar, Advocate, appeared on behalf of the assessee.

Shri Nicholas Murmu, JCIT D/R. appearing on behalf of the Revenue.

Date of concluding the hearing : November 28th, 2018

Date of pronouncing the order : December 12th, 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)-14, Kolkata, (hereinafter the 'Ld. CIT(A)'), dt. 25/06/2018, 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 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 Ld. CIT(A), Kolkata, had upheld the addition. The Ld. 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. I am 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.

7. In the result, appeal of the assessee is allowed.

Kolkata, the 12th day of December, 2018.

Sd/-

[J. Sudhakar Reddy]

Accountant Member

Dated : 12.12.2018

{SC SPS}

Copy of the order forwarded to:

1. **Sri Pawan Kumar Kabra**

**C/o Sri S.L. Kochar, Advocate
5, Ashutosh Chowdhury Avenue
Kolkata - 700 019**

2. **Income Tax Officer, Ward-47(3), Kolkata**

3. CIT(A)-

4. CIT- ,

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

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches