

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, BENGALURU**

**BEFORE SHRI JASON P BOAZ, ACCOUNTANT MEMBER
and
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.2683/Bang/2018
(Assessment year: 2015-16)

Ms.Shyama Devi Bhutra,
No.3, 3rd Cross, Mysore Road,
Bengaluru-560 026. ... Appellant
PAN:AAPPB 6293 H

Vs.

Income-tax Officer,
Ward 5(2)(4),
Bengaluru. ... Respondent

Appellant by : Shri Suman Lunkar, CA.
Respondent by : Dr. P.V.Pradeep Kumar, Addl.CIT(DR)

Date of hearing : 20/12/2018
Date of pronouncement: 21/12/2018

ORDER

Per PAVAN KUMAR GADALE, JM :

The assessee has filed the appeal against the order of the Commissioner of Income-tax(Appeals)-5, Bengaluru, in ITA No.10419/CIT(A)-5/2017-18 passed u/s 143(3) and 250 of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short] dated 25/07/2018 for the assessment year 2015-16.

2. The assessee has raised the following grounds of appeal:

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1. The learned Assessing Officer had erred in passing the order in the manner passed by him and the learned Commissioner of Income tax (Appeals) has erred in confirming the same. The impugned orders being bad in law, void ab-initio are required to be quashed.
2. In any case the order passed in gross violation of the principles of natural justice and fair play, especially in the absence of the cross examinations of the persons whose averments are sought to be relied upon by the Assessing Officer while passing the order, makes the order totally bad in law and liable to be cancelled.
3. In any case and without prejudice, the learned Assessing Officer had erred in making addition u/s 68 of the Act amounting to Rs. 61,57,890/- to the income of the appellant and the learned CIT (A) -5 has erred in confirming the same. The addition to the income is bad in both law and on facts and is liable to be deleted in entirety.
4. The learned Assessing Officer has not properly appreciated the facts of the case. On proper appreciation of the facts and law applicable, it will be clear that the addition as made has no basis to stand and is liable to be deleted in entirety.
5. The learned Assessing Officer had erred in holding that the provisions of Section 68 of I.T. Act, 1961 are applicable and the learned Commissioner of Income tax (Appeals) has erred in confirming the same. There being no unexplained credit and in fact the credit having been duly explained, makes the addition U/s. 68 wholly erroneous and liable to be deleted.
6. The appellant denies liability to pay interest u/s 234A, 234B and 234C of the Act. The interest having been erroneously levied is to be deleted.
7. In view of the above and other grounds to be adduced at the time of hearing, it is requested that the impugned order be quashed or atleast the addition made u/s 68 of the Act be deleted, the income from Long Term Capital Gain earned on sale of shares as returned by the appellant be accepted, and the interest levied be also deleted.

3. The brief facts of the case are that the assessee filed the Return of income for the assessment year 2015-16 disclosing total income of Rs.14,08,590/- and having sources of income of 'income from house property' and 'income from other sources'. Subsequently, the case was selected for scrutiny under CASS due to suspicious sale of transactions in shares and the assessee claimed exemption u/s 10(38) in respect of long term capital gains and paid security transaction tax (STT). Accordingly, notices u/s 143(2) and 142(1) of IT Act were issued. The Id. AR of the assessee appeared and

furnished requisite details and case was discussed. The AO found that assessee has sold 12000 equity shares of GCM Securities Ltd., for a sale consideration of Rs.63,97,890/- and the shares were acquired by the assessee on 12/02/2013 for Rs.2,40,000/- and the assessee has claimed exemption of long-term capital gains on sale of shares u/s 10(38) of the Act.

4. The AO observed that genuineness of the transaction has to be verified and further the shares of M/s.GCM Securities Ltd., were stock split during the year 2014 from face value of Rs.10 to Rs.1. Hence, the number of shares held by the assessee has increased to 120000 shares of Rs.1 paid up. The the Id. AR submitted the copy of bank account reflecting purchase of shares and Demat account, contract Notes issued by the brokers. Whereas the AO, after making inquiry made specific observations on increase in number of shares and sale value at para.4 of pages 3 to 7 of the assessment order and also relied on the judicial decisions and finally treated the sale consideration as unexplained credit u/s 68 of the Act and withdrawn exemption claimed u/s 10(38) of the Act by the assessee. Assessed the taxable income at Rs.75,66,480/- and passed the order u/s 143(3) of the Act dated 29/12/2017.

5. Aggrieved by the order, the assessee has filed an appeal with the CIT(A). In appellate order, the CIT(A), after considering the submissions and the grounds of appeal and findings by the assessing authority and relied on the judicial decisions and confirmed the action of AO and dismissed the appeal of the assessee. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Tribunal.

6. Before us, the Id. AR submitted that the AO made fishing enquiries and letter u/s 133(6) of was made and collected

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information from buyers of shares and used against the Assessee for making addition and no opportunity was provided to the assessee to examine the persons. The Id. AR substantiated with paper book and written submissions before the appellate authorities and copy of share application, contract notes, ledger account from stock broker, Bank account and Demat account and letters filed before the lower authorities. Further the Id. AR emphasized that the assessee was prevented from verifying the facts and benefit of the cross examination of persons whose averments are dealt by the AO without providing an opportunity. The AO has solely relied on the investigation report of Director of Investigation, Kolkata and made addition u/sec.68 of the Act and prayed for an opportunity of hearing and allow the appeal of assessee.

Contra, learned DR supported the order of the CIT(A) and highly opposed the submissions and mentioned that adequate opportunity was provided to the assessee and prayed for dismissal of the appeal.

7. We have heard rival submissions and perused material on record. The Id. AR submitted that there is gross violation of principles of natural justice in the absence of cross examination of the persons where averments are unilaterally considered by the AO for addition. The Id. AR also substantiated the case by filing paper book being vital for deciding the case on genuineness of the transaction and also certified that documents/papers are available with the lower authorities. Whereas the learned DR submitted that the assessee has not co-operated in submitting the information and relied on Hon'ble Supreme Court decision in *K.C.Tripathi vs. State Bank of India and others* (1984 AIR 273) and emphasized that no opportunity be granted. The Id. AR

supported the case with the decision of the co-ordinate bench of Tribunal on similar issue in the case of *Sawan Kumar Mehta (HUF)* in ITA No.1627/Bang/2018 dated 05/10/2018 for assessment year 2014-15 where the matter was restored to the file of the AO to re-adjudicate the issue afresh and provide proper opportunity of cross examination. The Id.DR could not controvert the Id. AR submission on cross examination and co-ordinate bench decision. We found strength in the submissions of the Id. AR supported by documentary evidence of purchase and sale of shares and demat account and bank account details and the judicial decision. Accordingly we, following judicial precedence are of the substantive opinion that on principles of natural justice, the assessee should be provided one more opportunity to substantiate with documents and the cross examination of the persons as prayed. Accordingly, we set aside the order of CIT(A) and restore the entire disputed issue to the file of AO and allow the grounds of appeal of the assessee for statistical purposes.

8. In the result, the assessee's appeal is allowed for statistical purposes.

Order pronounced in the open court on 21st December, 2018.

Sd/-
(JASON P BOAZ)
ACCOUNTANT MEMBER

Place : Bengaluru
Date : 21/12/2018
srinivasulu, sps

Copy to :

- 1 Appellant
- 2 Respondent
- 3 CIT(A)-
- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore