

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE
BEFORE SHRI JASON P BOAZ, ACCOUNTANT MEMBER AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 2326/Bang/2018
Assessment Year : 2014-15

Shri Umed Singh, No. 1103, Andrahalli Main Road, Vishwaneedham Post, Bangalore – 560 091. PAN: AADPU9140Q	vs.	The Assistant Commissioner of Income Tax, Circle – 6 (2) (1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri S.V. Ravishankar, Advocate
Respondent by	:	Shri S.T. Seshadri, JCIT (DR)

Date of hearing	:	17.12.2018
Date of Pronouncement	:	21.12.2018

ORDER

Per Shri Pavan Kumar Gadale, Judicial Member

The assessee has filed an appeal against the order of CIT(A)-6, Bengaluru in ITA No.-e-file/C-6(2)(1)/CIT(A)-6/2017-18 passed u/sec 143(3) and sec. 250 of IT Act dated 23.03.2018.

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

“1. The order of the learned Commissioner of Income Tax (Appeals) in so far as it is against the appellant are opposed to law, equity and weight of evidence, natural justice, facts and circumstances of the case.

2. The appellant denies himself liable to be assessed to total

income of Rs. 54,74,630/- as against the returned income of Rs. 38,03,380/- on the facts and circumstances of the case.

3. The authorities below erred in law in holding that section 68 of the Act is applicable to the impugned case on the facts and circumstances of the case.

4. The learned Commissioner of Income Tax (Appeals) was not justified in law in confirming the addition u/s 68 of the Act being sale consideration received on sale of equity shares on the facts and circumstances of the case.

5. The authorities below were not justified in law in denying the benefit of exemption u/s 10(38) of the Act on the facts and circumstances of the case.

6. The authorities below failed to appreciate that the sale proceeds pertain to sale of long term equity shares hence exempt u/s 10(38) of the Act on the facts and circumstances of the case.

7. The authorities below were not justified in law in denying the exemption granted by the statute on mere suspicion on the facts and circumstances of the case.

8. The authorities below erred in holding that the transaction of sale of equity shares is a bogus transaction only on surmises and conjectures without any evidence on the facts and circumstances of the case.

9. The authorities below failed to appreciate that the appellant has sold the shares through recognized stock exchange and the transaction was supported by contract notes, bank statement, demat statements and therefore the exemption ought to have been granted on the facts and circumstances of the case.

10. The learned Commissioner of Income Tax (Appeals) was not justified in law in confirming the action of the learned Assessing Officer of mechanically relying on some investigation reports of the Department without applying mind if they apply to the impugned case. Accordingly, the order passed is bad in law and not sustainable on the facts

and circumstances of the case.

11. The authorities below failed to consider the unimpeachable material on record substantiating the claims made by the appellant and consequently passed perverse order on the facts and circumstances of the case.

12. The appellant denies the liability to pay interest under section 234A 234B and 234C of the Act in view of the fact that there is no liability to additional tax as determined by the assessing officer. Without prejudice, the rate, period and on what quantum the interest has been levied are not in accordance with the law and are not discernable from the order and hence deserves to be cancelled on the facts and circumstances of the case.

13. The appellant craves leave of this Hon'ble Tribunal, to add, alter, delete, amend or substitute any or all of the above grounds of appeal as may be necessary at the time of hearing.

14. For these and other grounds that may be urged at the time of hearing of appeal, the appellant prays that the appeal may be allowed for the advancement of substantial cause of justice and equity.”

3. Brief of the facts are that the assessee is an individual and filed the Income Tax Return for Assessment Year 2014-15 on 29.11.2014 disclosing total income of Rs. 38,03,380/- with sources of income being income from Salary, House property, Business, Capital gains and other sources. Subsequently the case was selected for scrutiny under CASS and notice u/s. 143(2) of IT Act was issued and further notice u/s. 142(1) r.w.s. 129 of the IT Act along with the questionnaire was also issued. In response to the notices, the Id. AR of assessee appeared and filed the details as called for by the Id. AO and the case was discussed.

4. The AO in the course of assessment proceedings found the assessee has sold 5,500 shares of Tuni Textile Mills (P) Ltd. for a sale consideration of Rs. 16,71,256/- and the Id. AR of assessee was required to submit information of sale contract, purchase contract and Demat A/c Details in respect of transaction of sale of shares. But the assessee could not furnish any documentary evidence to support the sale transactions and further AO found that the assessee has claimed exemption u/s. 10(38) which cannot be allowed without supporting documents. The AO considering the facts that the assessee could not substantiate the transactions with any supporting documents in respect of sale of the shares, hence made an addition of Rs. 16,71,256/- u/s. 68 of IT Act and Assessed the total income of Rs. 54,74,630/- and passed the assessment order u/sec 143(3) of IT Act dated 05.12.2016.
5. Aggrieved by the assessment order the assessee has filed an appeal before CIT(A). In the appellate proceeding CIT(A) found that no information was filed by the assessee in respect of the claim of exemption before the AO and further found that there is difference in the rates of shares sold as per BSE and the transaction of sale by the assessee and even before the CIT(A) the assessee could not substantiate with any evidence and Id. CIT(A) confirmed the action of Assessing Officer and dismissed the appeal of the assessee.
6. Aggrieved by the order of CIT(A), the assessee has assailed on appeal before the Tribunal. Before us the Id. AR of assessee submitted that the assessee has held shares for more than one year and therefore the assessee is eligible for exemption u/s.

10(38) and further the assessee was prevented from submitting information on shares as there was no proper opportunity provided in the course of assessment proceedings and emphasized that only two hearings were provided by AO and the assessee could not collect and submit the details of sale contract, purchase contract and Demat A/c and other details. Further Id. AR of assessee prayed for an opportunity to substantiate with evidence before the lower authorities and submitted paper book with copy of contract note, ledger account, bank pass book and shareholding statement to substantiate that the shares were purchased through banking channel. Per Contra, the Id. DR of revenue supported the orders of CIT(A).

7. We have heard the rival submissions and perused the material on record. Prima facie the assessee has sold the shares held by him for more than one year and the proceeds are credited to assessee's bank account which is not disputed. The facts remains that the assessee could not support with evidence before the assessing authorities. We on perusal of the paper book filed by the assessee found that the assessee has purchased the shares in the Financial Year 2011-12 and subsequently were sold in Assessment Year 2014-15 and the transaction has been through banking channel and the Id. AR also filed the supporting details on share price.
8. We find from the assessment order, the Id. AO has held the hearing of case on 08.11.2016 and 05.12.2016 and the assessment order u/sec 143(3) was passed on 05.12.2016. we considering the submissions of the Id. AR are of the opinion that

the assessee was having necessary details but for various reasons could not be substantiated. Therefore the assessee should be provided with one more opportunity and accordingly in the interest of substantial justice, we set aside the order of CIT(A) and restore the entire dispute to the file of AO to verify and examine the documentary evidence and assessee shall co-operate in furnishing the clarifications and details at the earliest before the Assessing authority and we allow the grounds of appeal for statistical purposes.

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

Pronounced in the open court on this 21st day of December, 2018.

Sd/-
(JASON P BOAZ)
Accountant Member

Sd/-
(PAVAN KUMAR GADALE)
Judicial Member

Bangalore,
Dated, the 21st December, 2018.
/MS/

Copy to:

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

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.