

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'SMC' : NEW DELHI)
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 4928/Del/2018
Assessment Year: 2014-15

SH. NARESH KUMAR SINGAL,
H.NO. 114, SECTOR-21 C,
FARIDABAD

(PAN: AEZPS6193R)
(APPELLANT)

VS. ITO, WARD 2(1)
FARIDABAD

(RESPONDENT)

Assessee by : Sh. Harvinder S. Bindra, CA

Revenue by : Sh. S.L. Anuragi, Sr. DR.

ORDER

The Assessee has filed the Appeal against the Order dated 25.4.2018 of the Ld. CIT(A), Faridabad pertaining to assessment year 2014-15 on the following grounds:-

- i) That the order passed by the Ld. CIT(A) u/s. 250 of the I.T. Act, 1961 is bad in law and not justified because Ld. CIT(A) has dismissed the appeal simply on account of non-prosecution of the appeal by the appellant without appreciating the judgment of Hon'ble Bombay High Court in case of CIT (Central) Nagpur vs. Premkumar Arjundas Luthra (HUF), (2016) 69 taxmann.com 407 (Bombay), where it has been held that law does not empower Ld. CIT(A) to dismiss the appeal for non-prosecution.
- ii) The Ld. CIT(A) has erred both in law and in facts in circumstances of the case in upholding addition of Rs.37,94,312/- made u/s 57 of the IT Act as income from

undisclosed sources by disallowing the claim of exemption u/s 10(38) of the LTCG earned on the shares of public limited company complying with all the requirements laid down in the above section to claim the exemption and action of the AO is based on conjectures and surmises.

- iii) The Ld. CIT(A) has erred both in law and in facts in circumstances of the case in upholding addition of Rs.37,94,312/- by relying on the perception based on the generalised material without applying the same on the appellant with the corroborative facts and in the absence of which the order under appeal is not in conformity with principle of natural justice.
- iv) The Ld. CIT(A) has erred in upholding addition of Rs.37,94,312/- which is bad in law as the same has been made without the appellant being provided with the incriminating material and cross examination of the material and statements on the basis of which the Investment of the appellant is characterized as penny stock and Ld. AO has simply relied on the reports/information which are contrary to the evidence submitted by the appellant in support of the transaction of the purchase/sale of shares.
- v) The Ld. CIT(A) has erred in law and in facts of the case in giving a finding that the Ld. AO has established that assessee has introduced her accounted money in garb of Long Term Capital Gains and resorted to sham devices based on deep analysis done by the AO.
- vi) The order of Ld. AO confirmed by Ld. CIT(A) is not sustainable in law as the same has been passed without issuing notice/serving a notice u/s 143(2) of IT Act within the time limit laid down under above section.

vii) The appellant craves leave to add, delete, modify / amend the above grounds of appeal with the permission of the Hon'ble appellate authority.

2. The facts narrated by the revenue authorities are not disputed by both the parties, hence, the same are not repeated here for the sake of convenience.

3. At the time of hearing, Ld. Counsel for the assessee stated that the Ld. First Appellate Authority has not given sufficient opportunity to substantiate its claim in producing the necessary evidences and passed the exparte order. Hence, he requested that this matter may be set aside to the file of the Ld. CIT(A) for fresh adjudication and decide on merit, after giving adequate opportunity of being heard to the assessee.

4. On the other hand, Ld. DR has not raised objection to the request of the Assessee.

5. I have heard both the parties and perused the records. After perusing the relevant records available with me alongwith the orders of the revenue authorities, I am of the considered view that Ld. CIT(A) has not given sufficient opportunity to the assessee in substantiating its claim. Therefore, in the interest of justice, I am setting aside the issues in dispute to the file of the Ld. CIT(A) to decide the same afresh, after giving adequate opportunity of being heard to the assessee.

6. In the result, Assessee's appeal is allowed for statistical purposes.

Order pronounced on 01-01-2019.

Sd/-

(H.S. SIDHU)
JUDICIAL MEMBER

Dt. 01.01.2019

SR BHATNAGAR

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

- TRUE COPY -

By Order,

ASSISTANT REGISTRAR
ITAT Delhi Benches

