

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC A” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT

ITA No.1978/Bang/2018
Assessment year : 2008-09

Shri S. Dasarathraj Dhariwall, S/o. Late P. Surajmull Dhariwall, No.98/1, Main Road, Nazarabad, Mysore – 570 010. PAN: ABTPD 0578L	Vs.	The Income Tax Officer, New Ward 7(2)(1), Old Ward 9(1), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri S. Vimalchand, CA
Respondent by	:	Shri Karuppuswamy, S.R., Addl.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	18.12.2018
Date of Pronouncement	:	02.01.2019

ORDER

This appeal by the assessee is against the order dated 06.04.2018 of CIT(Appeals)-7, Bengaluru relating to assessment year 2008-09.

2. The assessee is an individual. The assessee in the return of income for the AY 2008-09 declared long term capital gain (LTCG) of Rs.10,36,573 on sale of shares of M/s. Zen Shaving Ltd. The claim for exemption of LTCG was examined u/s. 10(38) of the Income-Tax Act, 1961 [“the Act”]. The AO treated the income declared by the assessee under the head ‘LTCG’ as income from other sources and brought it to tax for the reason that the transaction of purchase & sale of shares was through Mr. Mukesh

Choksi and his group concerns, which on investigation by the department was found to be fictitious and was a *modus operandi* adopted for the purpose of creating fictitious profits and providing accommodation entries.

3. On appeal by the assessee, the CIT(Appeals) confirmed the action of the AO, hence this appeal by the assessee before the Tribunal.

4. At the time of hearing, it was brought to our notice that the Id. counsel for the assessee that he had made a specific request before the AO as well as before the CIT(Appeals) in the form of grounds of appeal before the CIT(Appeals) that the orders of revenue authorities are in violation of principles of natural justice and bad in law and are liable to be quashed. The grievance of the assessee was that statement of Mr. Mukesh Choksi and other incriminating material on which reliance was placed by the revenue authorities in making the impugned additions were not confronted to the assessee. The Id. counsel for the assessee filed before us a copy of the decisions of the Hon'ble High Court of Karnataka in the case of *Smt. Jayashree Devi Kothari v. ITO in W.P. No.39379/2014(T-IT) judgment dated 25.02.2015* wherein on identical facts, the Hon'ble jurisdictional High Court set aside the orders of assessment and remanded for fresh consideration by the AO, the addition that was made to the assessment after providing the assessee opportunity of hearing by providing copies of statement and related details.. Similar orders were passed by the Bangalore Bench of ITAT in the case of *Shri Dharmichand Chajjed v. ITO in ITA No.875/Bang/2016, order dated 30.06.2016* filed before us.

5. The Id. DR, however, relied on the order of the CIT(Appeals) and submitted that when the demand for furnishing the statement was not made before the AO, there is no violation of principles of natural justice and in this regard relied on the decision of the Hon'ble Supreme Court in the case of

K.L. Tripathi v. SBI & Ors., AIR 273 1984 SCR (1) 184 1984 SCC. I am of the view that in the present case, the assessee has made a demand for the statement and other documents before the AO/CIT(Appeals) and therefore the aforesaid decision will not be of any assistance to the plea of the revenue.

6. I am of the view that in the given facts and circumstances, the ends of justice will be served by setting aside the order of CIT(Appeals) and remanding the issue for fresh consideration by the AO of the proposed addition, after confronting the statement of Mr. Mukesh Choksi to the assessee and also providing other materials placed on which the revenue authorities came to the conclusion that the long term capital gain declared by the assessee is fictitious. Accordingly, the appeal is allowed for statistical purposes.

Pronounced in the open court on this 02nd day of January, 2019.

Sd/-

(N.V. VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated, the 02nd January, 2019.

/ Desai Smurthy /

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.