

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

(Before Sri S.S. Godara, Judicial Member)

ITA No. 1634/Kol/2018
Assessment Year: 2014-15

Shri Hulash Chand Lalwani.....Appellant
135, N.S. Road
Kolkata - 700 001
[PAN : ABRPL 6390 C]

Vs.

Income Tax Officer, Ward-34(3), Kolkata.....Respondent

ITA No. 1634/Kol/2018
Assessment Year: 2014-15

Shri Hulash Chand Rajesh Kumar HUF.....Appellant
121, N.S. Road
Kolkata - 700 001
[PAN : AACHH 2911 M]

Vs.

Income Tax Officer, Ward-34(3), Kolkata.....Respondent

Appearances by:

None, appeared on behalf of the assessee.

Shri Baijnath Singh, CIT D/R. appearing on behalf of the Revenue.

Date of concluding the hearing : January 2nd , 2019

Date of pronouncing the order : January 16th , 2019

ORDER

Per S.S. Godara, JM :-

These 2 assessee(s) have filed their instant respective appeals against the commissioner of income-tax (appeals) separate orders; both confirming the assessing officer's identical action treating their long term capital gains (LTCG) claims amounting to Rs.5,42,500/- & Rs.7,94,000/-, arising from sale/transfer of shares held in M/s. NCL Research & Financial Services Ltd.; Relevant proceedings in cases are u/s 143(3) of the Income Tax Act, 1961 (in short the 'Act').

2. I find at the outset that both the lower authorities in these cases hold the assessee(s) claims of their LTCG to have been derived from sale of shares held in the said scrip i.e. M/s. NCL Research & Financial Services Ltd. to be unexplained cash

credits. I find that this tribunal's co-ordinate bench at Kolkata holds that there is no reason for the revenue to doubt the genuineness of the impugned identical capital gains in case of M/s. NCL Research & Financial Services Ltd. in *Smt. Manju Pincha vs. ITO; ITA No. 1465/Kol/2018, Assessment Year: 2014-15; order dt. December 12th, 2018:-*

“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. NCL Research and Financial Services 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 Id. CIT(A), Kolkata, had upheld the addition. The Id. 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 finding 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 of 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. The consequential addition u/s 69C, is also hereby deleted."

3.1. In this backdrop of legal developments, I find both these assessee(s) have filed on record their respective relevant details pertaining to the impugned LTCCG along with purchase invoices/bills, sale contract notes, broker's ledgers and bank statements and d-mat accounts.

4. Learned CIT D/R at this stage vehemently contends first of all both these assessee's income allegedly derived from sale of investments ought to have been treated as an adventure in the nature of trade in business. I find that both the lower authorities have simply brushed aside the assessee(s) claim of having derived the relevant capital gains. Id. CIT D/R at this stage contends that these assessee (s) have availed LTCCG entries from various entry operators which saw the light of day sufficiently suggestive of the fact that all these LTCCG is a collusive effort of rigging off the impugned scrips price. I posed a specific question to the revenue as to whether any of the entry operators searched or surveyed had quoted these assessee(s) names or not. The reply received is in negative. I therefore adopt the above detailed reasoning to accept the assessee(s) sole substantive argument in support of their respective capital gains.

5. Next comes the CIT D/R's arguments that both the assessee (s) have sold their investments within a very short span of the relevant entries in their respective d-mat accounts. His case therefore is that the impugned proceeds deserve to be treated as income from adventure in the nature of trade. I find no substance in the revenue's instant arguments as well as the CBDT Circular No. 704, dt. 28/04/1995, has made it clear way back in the year 1995 that in case the transactions take place directly between the parties and not through stock exchanges, the date of contract of sale as declared by the parties shall be treated as the date of transfer provided it is followed up by actual delivery of shares and the transfer deeds. I make it clear that the assessee(s) have already placed on record the relevant sale notes followed by actual delivery of the actual investments. All this takes sufficient case of Revenue's argument in issue.

Learned CIT D/R at last has filed a detailed compilation of the relevant case-law indicating his hard work that this tribunal's various decisions have already held similar profits derived from sale of shares to unexplained cash credits. It is lastly submitted at the revenue's behest that the tribunal's decision of other benches holding similar decisions stand confirmed in the corresponding hon'ble jurisdictional high courts as well. I do not find this fact in itself to be an exception to the basic concept of section 68 addition requiring an assessee to prove the identity, genuineness and creditworthiness of the amount credited in issue. The said assessees before the other co-ordinate benches appear to have filed in filing all the necessary details as against the cases before me. This is what forms the precise reason for the tribunal's coordinate bench's decisions to be confirmed before the various hon'ble high courts. The said decisions are therefore distinguishable on facts in view of overwhelming evidence before me. All of revenue's arguments hereinabove are rejected accordingly. In view of my above details discussion, I hereby direct the Assessing Officer(s) to delete all the impugned additions.

6. Both these assessee(s) appeals are allowed.

Kolkata, the 16th day of January, 2019.

Sd/-

[S.S. Godara]

Judicial Member

Dated : 16.01.2019

{SC SPS}

Copy of the order forwarded to:

1. *Shri Hulash Chand Lalwani*

135, N.S. Road
Kolkata - 700 001

2. *Shri Hulash Chand Rajesh Kumar HUF*

121, N.S. Road
Kolkata - 700 001

3. *Income Tax Officer, Ward-34(3), Kolkata*

4. CIT(A)-

5. CIT- ,

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

True Copy
By Order

Assistant Registrar
ITAT, Kolkata Benches