

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

ITA No. 6822/Del/2018
Assessment Year: 2015-16

VIKAS BHASIN,
D-196, SECTOR-47,
NOIDA
UTTAR PRADESH
(PAN: AEMPB7747K)

(APPELLANT)

VS. ACIT, CIRCLE-2,
GHAZIABAD
ROOM NO. 102,
1ST FLOOR, CGO
COMPLEX-2, HAPUR
CHUNGI, GHAZIABAD

(RESPONDENT)

Assessee by : SH. KRISHAN KANT, ADV.
Department by : SH. SUNRENDER PAL, SR. DR.

ORDER

PER H.S. SIDHU, JM

This appeal has been filed by the Assessee against the order dated 31.8.2018 of the Ld. CIT(A), Ghaziabad relating to assessment year 2015-16. The assessee has raised the following grounds.

- i) The Ld. CIT(A) erred in facts, circumstances of the case and in law in holding that the AO has rightly made the addition of Rs. 9,38,38,889/- us. 68 r.w.s. 115BBE of Income Tax Act, 1961.

- ii) That the Ld. CIT(A) erred in law, by holding that assessee failed to prove the genuineness of share transaction resulting in LTCG u/s. 10(38) of Income Tax Act, 1961.
- iii) That the Ld. CIT(A) erred in facts and in law in upholding, the addition of Rs. 28,15,167/- u/s. 69C of Income Tax Act as expenses incurred as arranging the accommodation entry @3%.
- iv) That the appellant craves, leave to add or amend, any ground of appeal during the course of appellate proceedings.

2. 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 draw our attention towards the order passed by the Revenue Authority and stated that the issue in dispute is squarely covered in favour of the assessee by the ITAT, SMC Bench, Delhi decision dated 05.11.2018, a copy thereof is attached in the Paper Book filed by the assessee at page no. 233-271 i.e. ITA No. 457/Del/2018 AY 2014-15 Arun Kumar vs. ACIT,

Circle-I, Noida. He further stated that assessee has substantiated his claim before the revenue authorities availing sufficient opportunity which has not been properly considered by them. In support of his contention, he filed the Paper Book containing pages 1-314 in which he has attached the copy of written submission/ arguments; Minutes of AGM of share holder of Parag Shilpa Investments Ltd. held on 14.7.2012; Statement of Bank of United Bank of India; Statement of HDFC Bank; Bank of Baroda Statement; Resolution of Parag Shilpa of allotting shares by the Board of Directions in the meeting held on 23.7.2012; share certificate of allotment of 1250000 shares; annual return of 2012-13 of Parag Shilpa; list of the share of company Parag Shilpa as on 30.9.2013 (date of AGM of 2012-13) relevant page showing the name of the assessee; annual return of 2013-14 of Parag Shhilpa; List of share of company Parag Shilpa as on 29.9.2014 (Date of AGM of 13-14) relevant page only; Demat Account with HDFC Bank Ltd.; statement of the assessee in books of registered broker Ashika Broking Ltd; Contract note issued by Broker Ashika Broking Ltd; HDFC Bank statement in support of receipt of sale proceeds for the period 1.4.2014 to 31.3.2015; show cause

notice dated 19.12.2017; reply of show cause notice filed on 22.7.2017; Order of ITAT, Delhi in ITA No. 457/del/2018 AY 2014-15 in the matter of Arun Kumar vs. ACIT Cir.1 Noida dated 5.11.2018; Order of ITAT, Kolkata C Bench ITA No. 2281/Kol/2017 AY 2014-15 in the matter of Navneet Agarwal, Legal Heir of L. Kiran Agarwal vs. ITO, Ward 35(3) dated 20.7.2018; order of ITAT, Delhi Bench SMC Bench in ITA No. 4565/Del/2018 AY 2014-15 in the matter of Anubhav Jain vs. ITO Ward 35(5), Delhi dated 26.11.2018; Companies (Issue of Share Certificate) Rules, 1960 and ROC Certificate for change of name. Secondly, he argued that the assessee has raised 05 grounds of appeal before the Ld. CIT(A), but the Ld. CIT(A) has not adjudicated the ground no. 3 in which the assessee has raised legal ground regarding non-furnishing the evidence collected at the back of the assessee which has been used by the Revenue Authorities against the assessee as well as for not allowing the assessee an opportunity to examine and cross examine the witnesses, who have stated that the transactions in dispute are bogus. He also draw our attention towards grounds of appeal raised before Ld. CIT(A) which is attached with Form No. 35 as well as the non-adjudicating the ground

no. 3 regarding non-furnishing the documentary evidence used against the assessee as well as non providing of opportunity of examination and cross examination of the witnesses namely Sh. Raj Kumar Kedia and Soma Choudhary. He also draw our attention at page no. 220-232 i.e. Application dated 22.12.2017 filed before the AO wherein the assessee has specifically requested for supply of statement of witnesses as well as for cross examination of them. In view of above, he submitted that the issue in dispute is squarely covered in favour of the assessee by the ITAT, SMC, Delhi Bench decision dated 5.11.2018 passed in ITA No. 457/del/2018 AY 2014-15 in the matter of Arun Kumar vs. ACIT Cir.1 Noida as mentioned above as well as on merits. It was further submitted that these evidences were also filed before the lower authorities as well as the ITAT in the shape of Paper Book, as aforesaid, which were not properly considered by them. Hence, he requested to allow the appeal of the assessee.

4. On the contrary, Ld. DR strongly opposed the request of the assessee regarding no opportunity given to examine and cross examine the witnesses as well as non-furnishing of the documents as requested by the assessee. He further stated

that sufficient opportunity has been given to the assessee, which has not been availed by the assessee and he further stated that AO as well as Ld. CIT(A) has passed a well reasoned order on the basis of detailed enquiry. On asking by the Bench from the Ld. DR that the ground no. 3 raised by the assessee before the Ld. CIT(A) regarding the non providing opportunity for examination and cross examination of the witnesses i.e. Sh. Raj Kumar Kedia and Soma Choudhary whether has been decided or not by the Ld. CIT(A)? On this query, Ld. DR stated that well reasoned order has been passed by the lower authorities, but has not given any satisfactory answer to the query raised by Bench.

5. We have heard both the parties and perused the records, especially the orders of the revenue authorities as well as arguments advanced by both the parties and the Paper Book filed by the Assessee containing pages 1-315, as discussed above, in which various documentary evidences for substantiating the claim of the assessee were filed. But we find that Ld. counsel of the assessee has advanced the argument on the limited issue i.e. non-adjudication of legal ground no. 3 raised before the Ld. CIT(A). For the sake of

convenience, the grounds raised before the Ld. CIT(A) by the assessee are reproduced as under:-

- "1. That on the facts of the case and in law, the assessing officer erred in denying benefit of exemption under section 10(38) of the Act in respect of long term capital gain derived on the sale of shares PSIT Infrastructure Pvt. Ltd. The assessment framed is based on surmises, conjectures and on hypothetical observations.*
- 2. That on the facts of the case and in law, the assessing officer erred in ignoring the fact that the shares were transacted on the stock exchange and security transaction tax was paid and thus cannot be termed as SHAM transaction so to arrange cheque amount in lieu of cash. No evidence or live nexus is proved and thus the addition made and benefit denied is unjustified, unwarranted and bad in law.*
- 3. That on the facts of the case and in law, assessing officer erred in not confronting the appellant with the alleged evidence collected at*

the back of the appellant in an effort to allow the appellant to examine and cross examine the witnesses thereby holding the transaction as bogus without appreciating the fact that shares script is listed on the stock exchange and is being traded regularly as incorporated in the body of the order. The assessment framed and the income assessed is illegal and bad in law.

- 4. That on the facts of the case and in law the AO erred in further estimating a sum of Rs. 28,15,167/- being commission @3% treating the same as unexplained expenditure in view of section 59C of the Act and that the addition made is based on mere surmises, conjectures and hypothetical calculations.*
- 5. That the appellant craves, leave to modify/ amend or add any one or more grounds of appeal.*

5.1 After perusing the aforesaid grounds raised before the Ld. CIT(A), especially the ground no. 3, as well as grounds raised

before the Tribunal as reproduced under para 1 of this order, we find that that the Assessee has not raised any legal ground before us in the present appeal i.e. *“alleged evidence collected at the back of the assessee and not providing opportunity to examine and cross examine the witnesses”* and the same was only raised before the Ld. CIT(A), who did not adjudicate the same, which is against the settled law. Therefore, in the interest of justice, we are of the considered view that Ld. CIT(A) has not adjudicated the legal ground no. 3 raised before him, which is very essential to adjudicate upon. Hence, we are setting aside the issues in dispute before us, to the file of the Ld. CIT(A) with the directions to decide the same afresh alongwith ground no. 3 raised before the Ld. CIT(A), which is reproduced above under para no. 5 of this order and accordingly pass a speaking order thereon, after considering all the aforesaid documentary evidences and give adequate opportunity of being heard to the assessee. The assessee is also directed to fully cooperate with the Ld. CIT(A) in the proceedings and did not take any unnecessary adjournment and file all the necessary documents to substantiate his case before him.

6. In the result, the Appeal filed by the Assessee stands allowed for statistical purpose.

Order pronounced on 31/01/2019.

Sd/-
[L.P. SAHU]
ACCOUNTANT MEMBER

Sd/-
[H.S. SIDHU]
JUDICIAL MEMBER

Dated:31/01/2019

SR BHATNAGAR

Copy forwarded to: -

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

By Order,

ASSISTANT REGISTRAR