

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "SMC", LUCKNOW**

BEFORE SHRI A.D JAIN, VICE PRESIDENT

ITA No.653/LKW/2017

A.Ys. 2014-15

Shyam Kapoor, C/o Kansal Kapoor & Co., Kothiwal Nagar, Station Road, Moradabad U.P. PAN ABIPK3039J	Vs.	DCIT- Circle-II, Bareilly
(Appellant)		(Respondent)

Appellant by	Shri Devshish Mehrotra, Advocate
Respondent by	Shri C.K. Singh, DR
Date of hearing	30/01/2019
Date of pronouncement	31/01/2019

ORDER

This is assessee's appeal for Assessment Year 2014-15, taking the following grounds:

- "1. That the Commissioner of Income Tax (Appeals) [‘CIT(A)'] erred on facts and in law in passing ex-parte order confirming addition/ disallowance made by the assessing officer in the assessment order passed under section 143(3) of the Income Tax Act, 1961 ("the Act") without providing adequate opportunity of being heard to the appellant.*
- 2. That the CIT(A) erred on facts and in upholding the action of the assessing officer in denying exemption of long term capital gain ('LTCG') of Rs.9,49,739 on sale of shares claimed by the appellant under section 10(38) and making addition of such LTCG under section 68 of the Act alleging the same to be bogus in nature.*
- 3. That the CIT(A) erred on facts and in law in passing ex-parte order in undue haste and without discussing the merits of the case, which is against the principle of natural justice.*
- 4. That the CIT(A) erred on facts and in law upholding the action of the assessing officer in making aforesaid addition alleging that*

the appellant had obtained "accommodation entry" in form of bogus LTCG through "penny stock companies" solely on the basis of information received from the Investigation Wing without any independent application of mind by the assessing officer,

5. *That the CIT(A) erred on facts and in law for not appreciating that aforesaid addition was made merely on the basis of presumptions, conjectures & surmises and no documentary evidence was brought on record by the assessing officer before making such addition.*
6. *That the CIT(A) further erred on facts and in law in not appreciating that the assessee was legally entitled to claim exemption under section 10(38) of the qua aforesaid LTCG inasmuch as period of holding of shares was long term in nature and the same were sold by the appellant through recognized stock exchanges which securities transaction tax (STT) was also paid.*
7. *That the CIT(A) erred on facts and in not appreciating that all details and documentary evidences qua sale of shares were furnished before the assessing officer and no document was produced by the assessing officer to controvert with information/evidences.*
8. *Without prejudice to above, the CIT(A) erred on facts and in law upholding the action of the assessing officer in making addition under section 68 of the Act without appreciating that addition under that section was not sustainable in law."*

2. Earlier this appeal was fixed for hearing on 24.05.2018, on which date, none appeared on behalf of the assessee and therefore, the appeal was dismissed for non prosecution. However, the appeal was recalled vide order dated 31.08.2018. Now, this appeal has been fixed for hearing today.

3. I have heard the rival parties and have gone through the material placed on record. I noted that the Id. CIT(A) has passed the ex-parte

order as according to him, nobody has appeared on the date when the appeal was fixed for hearing before him. From the order of Id. CIT(A), it is apparent that the Id. CIT(A) had issued notice dated 03/07/2017 to the assessee for compliance on 18/07/2017 and on his request, the case was adjourned for 17/08/2017. On which date, none appeared nor filed written submissions and ultimately the Id. CIT(A) passed the ex-parte order. I also noticed from the order of the CIT(A) that he has summarily decided the appeal of the assessee without giving any cogent reason and his order is non speaking order. Under these circumstances, I feel that one more opportunity should be given to the assessee as Id. CIT(A) has not decided the appeal on merits. The provision of section 250 which deals with the procedure in appeal before the Id. CIT(A), allows a right to an assessee to be heard at the time of hearing of appeal. Even the natural justice demands that no appeal should be disposed of without being heard the party or without giving him the proper and sufficient opportunity. I, therefore, in the interest of justice and fair play to both the parties, set aside the order of CIT(A) and restore the appeal to the file of the CIT(A) with the direction that the CIT(A) shall refile the said appeal and decide the appeal afresh after giving proper and sufficient opportunity of being heard to the assessee. The assessee is also directed to be present on the date of hearing fixed by Id. CIT(A) and not

to seek undue adjournment and co-operate with Id. CIT(A) in disposing of the appeal.

4. In the result, the appeal of the assessee stands allowed for statistical purposes.

(Order pronounced in the open court on 31/01/2019)

**Sd/-
(A.D. Jain)
Vice President**

Aks -
Dtd. 31 /01/2019

Copy of order forwarded to:

<i>(1) The appellant</i>	<i>(2) The respondent</i>
<i>(3) Commissioner</i>	<i>(4) CIT(A)</i>
<i>(5) Departmental Representative</i>	<i>(6) Guard File</i>

By order

Assistant Registrar