

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC" NEW DELHI**

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER

I.T.A. No.2927/DEL/2018
Assessment Year: 2014-15

1.Smt. Madhu Goel, Ghaziabad.	vs.	DCIT, Circle-1, Ghaziabad.
TAN/PAN: AATPG 1691E		
(Appellant)		(Respondent)

I.T.A. No.2928/DEL/2018
Assessment Year: 2014-15

1.Smt. Anchal Goel, Ghaziabad.	vs.	DCIT, Circle-1, Ghaziabad.
TAN/PAN: ANNPG 9069M		
(Appellant)		(Respondent)

I.T.A. No.2929/DEL/2018
Assessment Year: 2014-15

1.Smt. Rita Goel, Ghaziabad.	vs.	DCIT, Circle-1, Ghaziabad.
TAN/PAN: AATPG 1691E		
(Appellant)		(Respondent)

Appellant by:	Shri Akhilesh Kumar and Shri Vipin Garg, Adv.		
Respondent by:	Shri S.L. Anuragi, Sr.D.R.		
Date of hearing:	20	12	2018
Date of pronouncement:	27	02	2019

ORDER

The aforesaid appeals have been filed by the above named assesseees, against separate impugned order dated 30.01.2018, in the case of Smt. Anchal Goel and Smt. Madhu

Goel for the quantum of assessment passed u/s. 143(3) for the Assessment Year 2014-15: and order dated 29.01.2018 in the case of Smt. Rita Goel, passed by Ld. Commissioner of Income Tax (Appeals), Ghaziabad for the Assessment Year 2014-15. Since issues involved in all the three appeals are common arising out of identical set of facts and similar set of findings by Assessing Officer Id. CIT (A), therefore, same were heard together and are being disposed of by way of this consolidated order.

2. In all the appeals, the assessee has challenged the disallowance of exemption u/s. 10(38) on account of Long Term Capital Gain on sale of listed equity shares which has been taxed u/s. 68 read with section 115BBE. The quantum of disallowance in all the three apples is as under:

Smt. Anchal Goel	Rs.20,49,574/-
Smt. Madhu Goel	Rs.18,62,400/-
Smt. Rita Goel	Rs.18,99,960/-

3. For the sake of ready reference, we are taking up the appeal in the case of Smt. Anchal Goel. Our finding given therein will apply mutatis mutandis in other appeals also.

4. The facts in brief are that the assessee is an individual and salaried employee, who had filed her return of income showing an income of Rs.2,32,000/- on 29.7.2014. During the year the assessee has earned Long Term Capital Gain of Rs.20,49,574/- on sale of shares of 'Jolly Plastic Industries Limited' which was claimed as exempt u/s. 10(38). Since

being a salaried employee, assessee was not maintaining any books of account which fact has been admitted by the Assessing Officer in paragraph 2 of the assessment order. Assessee has had purchased 7800 shares of M/s. Jolly Plastic Industries Limited on 14-2-2018 at a face value of Rs.10 per share from M/s. Core Capital Services Ltd. Delhi. Shares so purchased were disclosed in a statement of affairs of the assessee as on 31st March, 2012. The shares were credited in the Demat account on 18-12-13; and thereafter the said shares were sold on 20-12-2013 for Rs.21,27,574/-; and accordingly Long Term Capital Gain of Rs.20,49,574/- was declared.

5. The Assessing Officer in the impugned order, first of all, noted background and the modus operandi in general as to how some of the people routed their unaccounted money in the garb of bogus Long Term Capital Gain. Thereafter, at page 3, he makes following observations which is quite relevant:-

*“ In this respect, **assessee Smt. Archana Agarwal**, vide summon u/s.131 of the Act, dated 11.11.2016 was asked to attend personally this office, along with her counsel (CA/Advocate) on 18.11.2016 at 11.30 a.m. to give evidence and to produce the information and the documents asked in the questionnaire dated 06.09.2016. However, the assessee did not attend this office in person on the fixed date to comply with the Summon. However, a reply dated 22.11.2016 was received in this office on 25.11.2016 in dak in which assessee has submitted the following:*

“We are in receipt of your above notice dt. 11.11.2016, which has been received by us only on 22-11-16, in which you have

asked us to comply with the questionnaire dt. 06.09.2016. In this regard, it is stated that the assessee has already filed reply dt.10.10.2016 (copy enclosed) of the above mentioned questionnaire. Please consider the same.

In addition to above, assessee is also in receipt of your notice u/s.131 of Income Tax Act, 1961 dated. 11.11.2016, which has been received by us only on 22.11.2016, in which you have asked assessee to attend the proceedings personally. In this regard, it is stated that the assessee is out of station and therefore will not be able to attend the proceedings.

You are requested to please re-fix the date after 15 days to enable the assessee to attend the same. ”

As the case of the assessee is going to be time-barred on 31.12.2016, no further adjournment could be given to the assessee due to shortage of time. Therefore, the case deserves to be assessed on the basis of material available on record. The reply of the assessee has been gone through. It is quite clear that alleged investment transaction made by her was made beyond any human probabilities. It was no coincidence that she earned such huge capital gains from a penny fundamental devoid scrip. It was part of an elaborate scheme in which she consciously took part to convert her black money into white.”

5.1. Thereafter, AO again incorporates the modus operandi adopted by the various entry operators to generate bogus Long Term Capital Gain which is continuing from pages 4 to 9 of his order. At page 8, he also noted the fact that SEBI had suspended the trading activities of many companies which included Jolly Plastic Industries Ltd. Thus, he observed that the sale transaction in the shares of Jolly Plastic Industries Ltd is a sham transaction which is to be added u/s. 68, He

also discusses the various judgements in his orders and finally he held that such a bogus Long Term Capital Gain has to be treated as unexplained cash credit to be added u/s. 68 which is taxable @ 30% given u/s. 115BBE. Accordingly, he made the addition of Rs.20,49,574/-.

6. Ld. CIT (A) after incorporating the entire assessment order including the fact that trading in the share of Jolly Plastic Industries Ltd. was suspended by SEBI, further notes that other family members of the assessee have also invested in the same scrip. He further observes that Assessing Officer has discussed as to how the prices of the shares have increased and such increase in share price were manipulated without any financial fundamentals. He further noted that the assessee has purchased the shares in cash on various dates starting from 20.02.2012 to 23-2-2012 and has also incorporated the purchase transaction account and the contract note issued by M/s. South Asian Stock Ltd. in support of the sale of shares in his order. He held that details submitted by the assessee fail to substantiate when the purchase was made, as assessee has only produced confirmation report of settlement issued by M/s. Core Capital Services Ltd. and no evidence has been given in support of genuineness of purchase of shares. After reiterating the Assessing Officer's observation, he also made one more observation that details of actual Demat account have not been furnished and the finding of the Assessing Officer is

corroborated by the information given by the Investigation Wing. In this manner he has confirmed the said addition.

8. Before us, the learned counsel for the assessee submitted that the assessee in support of purchases, first of all, has filed the confirmation report of the broker, M/s. Core Capital Services Limited along with bill/ account statement. Not only that, assessee has also filed Demat account not only before the Assessing Officer but also before the Id. CIT(A), the copy of which is appearing at pages 7 to 8 of the paper book. Thus, the observation of the Id. CIT (A) that shares have not been dematerialised is incorrect, because the said shares were dematerialised on 18-12-13 which clearly shows purchase of 7800 shares credited in the Demat account. All these shares were duly disclosed in the earlier year, i.e., in the assessment year 2012-13 which is evident from copy of balance sheet, statement of affairs as on 31-3-2012. Thus, purchase of the shares cannot be doubted at all. Thereafter, the assessee has filed following documents in support of the sales, namely; contract note; copy of bank account; clearing of the cheque of broker, copy of assessee's account in the ledger account of broker. Once all these details have been given, then credit appearing in the bank account has to be on account of sales of the shares available with the assessee bought two years back. Therefore, such addition could not have been made u/s. 68. Moreover, once assessee is not maintaining books of account, then no addition u/s.68 can be made because the amount was credited in the bank account

of the assessee. This proposition has been upheld by the Hon'ble Jurisdictional High court in the case of Smt. Sarika Jain vs. CIT reported in 407 ITR 254 (All) and other decisions of the Tribunal and High Court which are as under:-

- *Smt. Sarika Jain vs. CIT - 407 ITR 254 (ALL)*
- *Vijay Kumar V ITO -ITA 2483/2015-Order dt. 27.11.18 (DEL-F)*
- *Inder Singh V ITO -ITA 1931/2016 -order dt. 5.12.18 (DEL-B)*
- *SMT. SHANTA DEVI V CIT (1987) 171 ITR 532 (P&H)*
- *Rameshbhai Somebhai Patel V ITO 1864/Ahd/2014 - order dt 19.04.18*
Smt. Ramilaben B. Patel v ITO [2018] 100 taxmann.com 325 (Ahmedabad - Trib.C).

8.1 Further, on merits, he submitted that here in this case Assessing Officer at page 3 has mentioned that assessee's name is 'Smt. Archana Agarwal' to whom he has issued summons u/s. 131. First of all, assessee has no connection whatsoever with Smt. Archana Agarwal and it appears that Assessing Officer has incorporated these facts from some other case which goes to show that there is no application of mind at all. At page 1 of the order AO has noted that assessee's name is Anchal Goel and then again at page 3, he incorporates the facts of different assessee, Smt. Archana Agarwal. Apart from that, all throughout the assessment order there is only discussion of general *modus operandi* without referring to any material whatsoever found during any investigation or inquiry relating to assessee or that assessee's name has either been found to be as beneficiary in

the investigation of any entry operator or elsewhere; nor Assessing Officer has made any kind of enquiry or investigation to find any incriminating document against the assessee or to show that documents and evidences filed by the assessee are not genuine. He also referred to one instruction issued by Pr.CIT-13, New Delhi issued in his charge with reads as under:

*“To,
All the Assessing Officer posted in
The charge of Pr. CIT-13, New Delhi.*

Subject: Assessment of LTCG shown on sale of shares- regarding

Please refer to the letter No. Pr.CIT-13/DLI/clarification/2016-17 dated 29.08.2016 on the subject above.

The attention is drawn to para (vii) of the said letter. Various counsels, Authorised Representative of the assessees and the AOs have approached me and expressed that there are favourable judgments by various Benches of the ITAT, High Court and clarifications wherein it has been clarified that the claim of the assessee should not be rejected merely if the name of the company whose shares have been transacted, over which LTCG has been earned by the assessee, figures in some internal/official circulation of the list of such companies.

The Assessing Officer's need to go beyond and as mentioned in para (viii) of the same letter if there is enough and conclusive evidence, then only the claim of the assessee should be questioned. If no such corroborative evidence is brought on record or is available, then merely mentioning that the name of the company (being in the list circulated internally by the department of various

companies labelled as ‘Penny Stocks’) should not be the ground for rejecting the claim.”

8.2 Thus, merely because if name of a company whose shares have been transacted, figures in some internal/official circulation of list of such companies, the assessing officer has to go beyond the said internal letter to find some conclusive evidence, then only claim of the assessee should be questioned and if no such corroborative evidence is brought on record then merely mentioning the name of company should not be the ground for rejecting the claim. Here, in this case, list of shell companies was published by SEBI in which nowhere the name of Jolly Plastic Industries Limited is appearing. Apart from that, the SEBI subsequently has withdrawn the suspension of most of the companies including that of Jolly Plastic Industries Ltd. Thus, one of the main reasons given by the Assessing Officer to treat the transaction as sham/ bogus on the ground that the trading of shares of Jolly Plastic Industries Limited was suspended gets negated. That is, once this suspension has been revoked then the premise of the Assessing Officer and Id. CIT (A) goes away. Moreover, here in this case, the sale under consideration is supported by following evidences:-

- a) Contract note giving details of settlement No./sale rate/BSE No. etc.
- b) STT is paid on transaction.
- c) Transaction is through South Asian Stocks Limited, a broker of repute, j) Sale is made on online market of Bombay Stock Exchange.
- d) Consideration is received electronically in bank through RTGS which is duly credited Union Bank of India a/c I) Shares are transferred from D - mat A/c.

8.3 Thus, when sale of shares stands proved by these evidences, then without any contrary material against the assessee or against the company, M/s. Jolly Plastic Industries Ltd. the gain arrived on sale of shares cannot be taxed u/s 68. He further pointed out that the said sale was made through registered stock broker in Bombay Stock Exchange on a quoted price and here in this case the highest price list of this scrip in BSE was Rs.300, whereas assessee has sold it at Rs.272. Once, sale of shares is through stock exchange with proper trading time and amount has been credited in the assessee's bank account then such credit cannot be treated as unexplained. He further relied upon various judgement rendered by Tribunal and the High Courts and the list of such judgements relied upon by him are as under:-

- Pr. CIT vs. Prempal Gandhi -ITA No. 95 of2017 dated 18.01.18 (P&H) (HC).
- CIT vs. Sudeep Goenka (2013) 29 taxmann.com 402 (ALL).
- Smt. Simi Verma v. ITO- ITA No.3387/2018 order dated 6.11.2018 SMC DEL.
- Amit Rastogi HUF vs. ITO, ITA No.2128/D/2018 dated 24.10.2018 (ITAT Del).
- Shikha Dhawan vs. ITO Ward - 4(2) - ITA No. 3035/D/2018 dated 27.06.18.
- Pr. CIT vs. Shri Hitesh Gandhi - ITA No. 18 of 2017 dated 16.02.17 (P&H) (HC).
- Pramod Kumar Lodha v ITO (2018) 100 Taxmann.com8 (Jaipur D.B).
- Navneet Agarwal Vs ITO - ITA No. 2281/Kol/2017 dt 20.07.2018 (ITAT - KOL).
- CIT vs. Sadhna Jain (2014) 45 taxmann.com 432 (ALL).

9. On the other hand, ld. D.R. strongly relied upon the order of the Assessing Officer and ld. CIT (A), had relied upon the following judgements and the ratios laid down therein:-

1. Sanjay Bimalchand Jain L/H Shantidevi Bimalchand Jain Vs CIT (120171 ITA No. 18/2017 [Bombay High Court (Nagpur Bench)] (Copy Enclosed)

The assessee had purchased shares of two penny stocks of Kolkata based companies i.e., 8000 shares at the rate of Rs. 5.50 per share on 08.08.2003 and 4000 shares at the rate of Rs. 4/- per share on 05.08.2003. The assessee sold 2200 shares at an exorbitant rate of Rs.486.55 per share on 07.06.2005 and 800 shares on 20.06.2005 at the rate of Rs.486.55, the authorities held that the assessee had not tendered cogent evidence to explain as to how the shares in an unknown company worth Rs.5/- had jumped to Rs.485/- in no time. Addition confirmed.

2. Chandan Gupta Vs CIT (f2015l 54 taxmann.com 10 (P&H) I f2015l 229 Taxman 173 (Copy Enclosed) where assessee could not explain receipt of alleged share transactions profits credited in his Bank accounts, then sale proceeds had to be added as income under section 68.

3. Balbir Chand Maini vs CIT r20111 12 taxmann.com 276 (P&H)/ r20111 201 Taxman 94 (P&HXMAG.) I T20121 340 ITR 161 (P&H U20121 247 CTR 468 (Copy Enclosed)

Assessee had purchased certain shares of a company at rate of Rs. 2.50 and Rs. 3.40 per share in month of April, 1997 and part of those shares were sold through a broker at Rs. 55 per share. AO recorded statement of broker who admitted to have purchased shares in question but failed to produce books of accounts and other relevant documents. The alleged sale of shares had not taken place through any stock exchange. Broker could not give details of

purchaser of shares. Addition held to be justified.

4. *Usha Chandresh Shah Vs ITO NTAT Mumbai! T20141 2014-TIQL-1459-ITAT- MUM (Copy enclosed)*

In this case, the assessee could not produce the copies of share certificates and copies of share transfer forms. The transaction of purchase of shares could not be cross verified. The shares of the company was declared as "Penny Stock" by SEBI and the broker Sanju Kabra, through whom the shares were sold by the assessee was indicated for manipulating the prices of penny stock shares. The tax authorities have rightly applied the test of human probabilities to examine the claim of purchase and sale of shares made by the assessee. The CIT(A) was justified in confirming the order of the AO by applying the test of human probabilities.

5. *Ratnakar M Puiari Vs ITO MTAT Mumbai! r20161 2016-TIQL-1746-ITAT-MUM (Copy enclosed)*

a transaction of 'off market purchase of share' for which payments were made in cash and the share brokers had issued predated contract notes, is liable to be treated as bogus transactions, and hence such cash receipts are liable to be treated as 'unexplained cash receipts'.

6. *Abhimanvu Soin Vs ACIT \ 2018-TIQL-733-ITAT-CHD 1 (Copy enclosed)*

Where Hon'ble ITAT Chandigarh held that unnatural LTCG @ 3072% over a period of 1.5 years from scrip of the unlisted company whose even net worth is not known to the assessee, without expert advice is beyond the business logics and is valid reason to make addition for undisclosed income. When assessee fails to prove through evidences that purchase and sale transactions of shares are genuine, claim of exempted LTCG can be disallowed and addition for undisclosed income can be made. When facts indicate that whole process of trading in shares is

depicted just to avoid tax liability, the addition for undisclosed income should be upheld.

7. *Arvind M Kariya Vs ACIT \ ITA No. 7024/Mum/2010 1*

Where Hon'ble ITAT Mumbai held as under:

“having regard to the circumstances and the conduct of the assess as disclosed in his statement u/s. 132(4) of the Act as well as other material on record, inference could be reasonably drawn that the shares purchased by the assessee have been backdated to give it a colour of Long Term Capital Gain by showing the period of holding for more than 12 months. Needless to say that income tax proceedings are civil proceedings and the degree of proof required is by preponderance of probabilities, therefore applying the test of preponderance of probabilities and considering the entire sequences of events, the Revenue authorities have rightly concluded that the assessee's claim about the long term capital gains from the sale of shares' is not genuine”.

8. *Hon'ble ITAT Mumbai in the case of ITO Vs Shamim M Bharwani (2016) (69 Taxmann.com 65)*

Where Hon'ble ITAT Mumbai held that where assessee claimed income earned from sale of shares as exempt under section 10(38), in view of fact that purchase transaction of said shares was not recorded in stock exchange and, moreover, selling rates were artificially hiked later on with no real buyers, Assessing Officer rightly rejected assessee's claim and added amount in question to his taxable income under section 68.”

10. I have heard the rival submissions and also perused the relevant findings given in the impugned order as well as material referred to before me. From the perusal of the impugned order as well as material placed on record, it appears to be undisputed fact that assessee has purchased

7800 shares of M/s. Jolly Plastic Industries Limited on 14-2-2018, for which payment has been made from 20-2-2018 to 23-2-2018 to M/s. Core Capital Services Limited. The purchase price of M/s. Jolly Plastic Industries Limited was @ 10 per share. The purchase of shares was duly supported with invoice/confirmation report and account statement which are appearing from pages 4 to 8 of the paper book. Apart from that, it is seen in the Assessment Year 2012-13, the assessee in its statement of affairs as on 31st March, 2012 had shown the investment in the shares of M/s. Jolly Plastic Industries Limited. Thus, purchase of shares in the earlier years cannot be in doubt. Apart from that, the purchases of such shares have been dematerialized in the Demat account of the assessee as on 18-12-2013. Thereafter, the shares have been sold through registered stock broker M/s. South Asian Stock Ltd. in Bombay Stock Exchange; and the contract note issued clearly depicts scrip details, trade number, trade time, quantity sold, gross total amount and other charges paid and payment of security transaction tax. After the sale, the amount has been credited in the assessee's bank account on 26th December, 2013. Thus, credit in the bank account ostensibly is flowing from sale of scrip of M/s. Jolly Plastic Industries Ltd.

11. The Assessing Officer without referring to or discussing any information or material found against the assessee, like whether, assessee's name is appearing as a beneficiary in some investigation or enquiry carried out in the

case of any entry operator or broker or elsewhere. In his entire order, he has merely discussed the general *modus operandi* of laundering of unaccounted money through bogus Long Term Capital Gain and has also cited various judgements on human probabilities. One important fact noted by him is that SEBI has suspended the trading of securities of many companies including that of M/s. Jolly Plastic Industries Limited. However, as pointed out by Id. Counsel, such ban/ suspension has been revoked by the SEBI later on. Once this premise for adverse inference goes, then the entire substratum of AO's case also whittles down. Apart from that, it is seen that the Assessing Officer appears to have issued summons u/s. 131 to some different assessee which is evident from the relevant observation of the AO as quoted in the earlier part of the order. This shows that Assessing Officer has applied his mind mechanically.

12. Another fact which has been noted by the Assessing Officer in the assessment order of Smt. Madhu Goel that, notice u/s. 133(6) was issued to M/s. Jolly Plastic Industries Limited and M/s. Core Services Limited and no compliance was made. Thereafter, he notices that the share price of M/s. Jolly Plastic Industries Limited suddenly started rising from July 2013. However, again there is no reference of any other material or information. Similarly, there is no such finding or material in the case of Smt. Rita Goel also, except for, there is some general discussion about some information received from Investigation Wing as to how the trading of this company

was suspended. First of all, if any such information is received to the AO, regarding any particular scrip, either through internal formation or through Investigation Wing, then it is incumbent upon the Assessing Officer to carry out some prima facie enquiry to examine the transaction of the assessee, both with regard to purchase and sale, whether they are affected by any bogus entries controlled by some entry operator. Further, he has to see the background check in the case of entities involved in the price movement and the statement of entities involved in price movement or there is any such information or material that any of such script or entry operator or promoters of listed company or broker have either accepted their role in giving bogus entries, or there is any statement of the assessee accepting the entry. The backward trail of bank account of the assessee can be investigated and to see whether the assessee's purchase and sale reveal either cash deposit or cash withdrawal so as to come to a conclusion that the transaction is actually bogus or not. Here no such enquiry or material has been brought on record by the Assessing Officer. Even the Id. CIT (A) has not discussed any such evidence. He has in fact gone to even deny the existence of Demat account which facts itself is not correct, because Demat account was not only furnished before the authorities below but has also been filed before me in the form of paper book. Further, as pointed out above, SEBI who has suspended the trading of this scrip of M/s. Jolly Plastic Industries Limited has later on revoked its

suspension. Hence, this also cannot be ground for treating the transaction to be bogus Long Term Capital Gain. Thus, without any material or information to controvert the documents and evidences filed by the assessee, I find it difficult as to how addition u/s. 68 can be made when the credits in the bank account are apparently from sale of shares which is evidenced from trading in BSE and payment of STT on such sale. Thus, under these circumstances, I do not find any reason to treat the Long Term Capital Gain shown by the assessee as bogus and consequently, the order of the Assessing Officer and ld. CIT(A) is set aside and Assessee's claim for exemption u/s. 10(38) for Long Term Capital Gain is allowed.

13. As stated earlier the facts and issues involved in other two cases of, Smt. Madhu Goel and Smt. Rita Goel are identically based on same scrip with exactly similar set of evidences and documents filed with regard to purchase and sale. Accordingly, my finding given above will apply mutatis mutandis in these two appeals also.

14. In the result, all the appeals of the assesseees are allowed.

Order pronounced in the open Court on 27th February, 2019.

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER

DATED: 27th February, 2019

PKK