

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC-C” BENCH : BANGALORE**

BEFORE SHRI JASON P BOAZ, ACCOUNTANT MEMBER

ITA Nos.329 and 330/Bang/2019
Assessment years : 2007-08 and 2008-09

Smt. Rekha V. Shah, No.D-52, Lakshman Building, Chickpet, Bangalore-560 053. PAN : AFKPS 0727 B	Vs.	The Income Tax Officer, Ward – 2(3)(3), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Smt. Suman Lunkar, CA
Revenue by	:	Shri. S. T. Seshadri, JCIT

Date of hearing	:	15.04.2019
Date of Pronouncement	:	24.05.2019

ORDER

Per Shri Jason P Boaz, A.M. :

These appeals filed by the assessee are directed against the orders of the Commissioner of Income-tax (Appeals)-2, Bangalore, dated 31.12.2018 for Assessment Year 2007-08 and 21.12.2018 for Assessment Year 2008-09.

2. Briefly stated, the facts of the case are as under:

2.1 The assessee filed her returns of income for Assessment Year 2007-08 on 30.03.2008 declaring income of Rs.1,95,750/- and for Assessment Year 2008-09 on

31.03.2009 declaring income of Rs.6,36,160-. Both these returns were processed under section 143(1) of the Income Tax Act, 1961 (in short 'the Act'). Subsequently, based on information received consequent to search in the Mahasagar Group and its Director, Shri Mukesh Choksi on 25.11.2009, wherein the assessee was said to have been a beneficiary of their fraudulent / bogus share dealings, the assessments in assessee's case for these two assessment years were re-opened by proceedings initiated by the Assessing Officer (AO) under section 147 of the Act. The re-assessments were concluded vide orders passed under section 143(3) r.w.s. 147 of the Act dated 18.03.2015 for Assessment Year 2007-08 and 26.03.2016 for Assessment Year 2008-09; wherein consideration for the purchase of shares amounting to Rs.11,70,321/- and consideration for sale of shares amounting to Rs.16,92,752/- respectively was brought to tax as unexplained income under the head "income from other sources". The assessee's appeals were dismissed by CIT(A)-2, Bangalore.

3. Aggrieved by the orders of CIT(A)-2, Bangalore, dated 31.12.2018 for Assessment Year 2007-08 and dated 21.12.2018 for Assessment Year 2008-09, the assessee has preferred these appeals before the Tribunal wherein she has raised the following grounds:

Assessment Year 2007-08

1. The learned Assessing Officer had erred in passing the order in the manner passed by him and the learned Commissioner of Income tax (Appeals) has erred in confirming the same. The orders passed are bad in law and are liable to be quashed.

2.1 In any case, the conditions precedent for the issue of notice u/s. 148 of the Act being absent, the re-opening of assessment becomes bad in law and consequently the order as passed/confirmed being also bad in law is required to be quashed.

2.2 In any case the assessing officer having not complied with legal provisions / procedure for reopening / reassessment, the consequential order becomes bad in law and liable to be quashed.

3.1 In any case the order passed is in gross violation of the principles of natural justice and fair play, especially in the absence of the cross examinations of the persons whose averments are sought to be relied upon by the Assessing Officer while passing the order, makes the order totally bad in law and liable to be cancelled.

3.2 The learned Commissioner of Income tax (Appeals) has instead of quashing the impugned order, has just confirmed the order of Assessing Officer without properly considering the facts and circumstances of the case, arguments of the appellant and the law applicable.

4.1 The assessing officer had in any case, erred in treating a sum of Rs. 11,70,321/- being purchase cost payable on shares as 'Income from other sources' holding that the sources have not been properly explained.

4.2 The learned CIT(A) has erred in holding that the assessing officer had added the sale consideration under the head Income from Other Sources therefore the Short term capital gain offered by the Appellant is to be deleted. This Observation is wholly erroneous both on facts and law is to be rejected.

4.3 In any case, the authorities below have erred in not appreciating the fact that the appellant had made payment of Rs. 1,00,000/- towards purchase consideration and not Rs. 11,70,231/- In the absence of payment, the question of explaining the source thereof does not arise at all. The addition as made being wholly erroneous both on facts and law is to be deleted.

5. In any case and without further prejudice, the authorities below have erred in holding Without basis that the transactions in shares are fraudulent. The conclusions / observations of authorities below being totally erroneous and without basis both on facts and law is to be disregarded.

6. The appellant denies the liability to pay interest U/s. 234A, 234B and 234D. The interest having been levied erroneously is to be deleted.

7. In view of the above and other grounds to be adduced at the time of hearing, it is requested that the impugned order be quashed or atleast the addition as made by the assessing officer be deleted and the interest levied be also deleted.

Assessment Year 2008-09

1. The learned Assessing Officer had erred in passing the order in the manner passed by him and the learned Commissioner of Income tax (Appeals) has erred in partially confirming the same. The orders passed are bad in law and are liable to be quashed.

2.1 In any case, the conditions precedent for the issue of notice u/s. 148 of the Act being absent, the re-opening of assessment becomes bad in law and consequently the order as passed/confirmed being also bad in law is required to be quashed.

2.2 In any case the assessing officer having not complied with legal provisions / procedure for reopening / reassessment, the consequential order becomes bad in law and liable to be quashed.

3.1 In any case the order passed is in gross violation of the principles of natural justice and fair play, especially in the absence of the cross examinations of the persons whose averments are sought to be relied upon by the Assessing Officer while passing the order, makes the order totally bad in law and liable to be cancelled.

3.2 The learned Commissioner of Income tax (Appeals) has instead of quashing the impugned order, has just confirmed the order of Assessing Officer without properly considering the facts and circumstances of the case, arguments of the appellant and the law applicable.

4. The assessing officer had in any case, erred in treating a sum of Rs. 16,92,752/- being sale consideration on sale of shares as 'Income from other sources' as unexplained income and the learned Commissioner of Income tax (Appeals) has erred in confirming the same. The action of authorities below has no support in law; is contrary to facts and evidence available and therefore deserves to be rejected.

5. In any case and without further prejudice, the authorities below have erred in:

- a) Taxing/ confirming the entire consideration received on sale of shares as unexplained income under the head other sources.
- b) Not appreciating the fact that only gain earned on sale of shares credited to bank account of the appellant.
- c) Holding without basis that the transactions in shares are fraudulent.
- d) Alleging without any basis that the appellant has obtained accommodation entries and appellant's own money come back in the guise of capital gains.

The conclusions / observations of authorities below being totally erroneous and without basis both on facts and law is to be disregarded.

6. The appellant had actually sold shares through Demat account and had earned Capital Gain thereon and same needs to be accepted as such.

7. In any case, the addition made is erroneous and excessive.

8. The appellant denies the liability to pay interest U/s. 234B and 234C. The interest having been levied erroneously is to be deleted.

9. In view of the above and other grounds to be adduced at the time of hearing, it is requested that the impugned order be quashed or atleast the Short Term Capital Gain earned on sale of shares as returned by the appellant be accepted, the assessment of sale consideration of sale of shares as unexplained income under the head Income from Other Sources be deleted and the interest levied be also deleted.

4. Ground No.3.1

4.1 It was submitted by the learned AR of the assessee that in ground No.3.1 (supra), the assessee has disputed the validity of reassessment order passed by the AO which was upheld by the learned CIT(A). In this regard, it was pointed out that the main basis for re-opening the assessments for Assessment Years 2007-08 and 2008-09 on account of the search in the case of Mahasagar Group on 25.11.2009, wherein, as per the statement of Mr. Mukesh Chokshi, Director of M/s. Mahasagar Securities Ltd., in which it is alleged that he has stated that his business activities is to provide accommodative entries for long term and short term capital gains, purchase and sales of shares etc., and he has also provided list of beneficiaries which include the name of the assessee also. It was submitted that neither the copy of the statement of Mr. Mukesh Chokshi nor the list of beneficiaries have been made available to the assessee nor has she been allowed cross-examination of the persons on the basis of whose statements, the AO has drawn adverse inference in the assessee's case. The learned AR submitted that under these facts, judgments of Hon'ble Karnataka High Court rendered in the case of Chandra Devi Kothari in writ

petition No.39370/2014 dated 2nd of Feb, 2015 (copy of which has been placed on record), is squarely applicable. She has particularly drawn my attention to Para No.8 of this judgment of Hon'ble Karnataka High Court, as per which, it was held that since the petitioner has been denied an opportunity of fair hearing by providing copy of the statement and related details, the matter is required to be reconsidered by the AO by providing fair and reasonable opportunity of hearing to the assessee after furnishing details / copy of the statement based on which the impugned assessment order has been passed. The learned AR submitted that in the light of the facts of the present case and as per this judgment of Hon'ble Karnataka High Court, in the case on hand also, the entire matter should be restored back to the file of the AO for fresh decision with same directions.

4.2 Per contra, the learned DR supported the orders of the authorities below.

4.3.1 I have considered the rival submissions and first of all, I reproduce Para No.8 of the judgment of Hon'ble Karnataka High Court rendered in the case of M/s. Chandra Devi Kothari (Supra) and this is as under:

“8. In the light of the facts and circumstance sa s adverted to above and as the petitioner has been denied an opportunity of fair hearing by providing copy of the statement and related details regarding the alleged share amount, I am of the view that the matter requires to be re-considered by the respondent by providing fair and reasonable opportunity of hearing to the petitioner and by furnishing the details / copy of the statement based on which the impugned assessment order has been passed.”

4.3.2 From the above Para from the judgment of Hon'ble Karnataka High Court, it is seen that matter was restored back to the file of the AO for fresh decision after providing copy of the statement of Shri Mukesh Choksi and other related details. As per the facts noted by the High Court in the earlier paras of judgment

(supra) and as per the facts of the case on hand, there appears to be no difference in facts and therefore by respectfully following this judgment in the case of Chandra Devi Kothari (Supra), I set aside the impugned orders of learned CIT(A) for Assessment Years 2007-08 and 2008-09 and restore the matters to the file of the AO for fresh decision with the same directions as were issued by the Hon'ble Karnataka High Court in the case as per Para No.8 of the judgment reproduced above. In view of this decision, no adjudication is called for at this stage regarding the merits of the addition.

5. In the result, the assessee's appeal for Assessment Years 2007-08 and 2008-09 are allowed for statistical purposes.

Order pronounced in the open court on this 24th day of May, 2019.

Sd/-
(JASON P BOAZ)
Accountant Member

Bangalore.

Dated: 24th May, 2019.

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Copy to:

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| 1. Appellants | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.