

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

BEFORE SHRI JASON P BOAZ, ACCOUNTANT MEMBER

ITA No.105/Bang/2019
Assessment year : 2008-09

Shri. Kirti K. Bhansali, No.5, 4 th Floor, Pooja Complex, Santhusapet, Bangalore-560 021. PAN : AERP B 7874 G	Vs.	The Income Tax Officer, Ward – 2(3)(1), 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

This appeal by the assessee is directed against the orders of the CIT(A)-2, Bangalore, dated 28.11.2018 for Assessment Year 2008-09.

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

2.1 The assessee, an advocate by profession, filed his return of income for Assessment Year 2008-09 on 25.06.2014 declaring income of Rs.4,04,160/- from business and profession, short term capital gain on sale of shares and income from other sources. The return was processed under section 143(1) of the Income Tax Act, 1961 (in short ‘the Act’). Based on information that the assessee was a beneficiary of bogus share dealings through the Mahasagar Group and statement of its key person Shri. Mukesh Choksi who was searched under section 132 of the Act

on 25.11.2009, the assessment in the assessee's case was re-opened by proceedings initiated under section 147 of the Act by the Assessing Officer (AO) and the case was taken up for scrutiny. The re-assessment was concluded under section 143(3) r.w.s. 147 of the Act vide order dated 31.03.2016, wherein the assessee's income was determined at Rs.8,84,240/- in view of the profit arising on account of sale / purchase of the shares of M/s. Talent Intermediaries, was brought to tax under the head "income from other sources". On appeal, the CIT(A)-2, Bangalore, dismissed the assessee's appeal vide the impugned order dated 28.11.2018.

3. Aggrieved by the order of the CIT(A)-2, Bangalore, dated 22.11.2018 for Assessment Year 2008-09, the assessee has preferred this appeal before the Tribunal wherein it has raised the following grounds:

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 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. 7,75,465/- being Short Term Capital Gain earned on sale of shares as*

gain arising out of unexplained purchases and sale of shares and taxing a sum of Rs. 4,80,080/- (7,75,465 — 2,95,385) under the head 'Income from other sources' 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 Short Term Capital Gain under the head other sources.*

b) *Holding without basis that the transactions in shares are fraudulent*

c) *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 denies the liability to pay interest U/s. 234A, 234B and 234C. 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 income from Short Term Capital kiln earned on sale of shares as returned by the appellant be accepted, the addition made as unexplained cash credit under the head Income from Other Sources be deleted and the interest be also deleted.*

4. Ground No.3.1

4.1 It was submitted that the learned AR for the assessee that in ground No.3.1 (supra), the assessee has disputed the validity of reassessment order passed by the AO which has upheld by the learned CIT(A). In this regard, it was pointed out that the main basis for re-opening the assessment for Assessment Year 2008-09 was on account of the search on the Mahasagar Group on 25.11.2009 wherein as per the statement of Mr. Mukesh Choksi, Director of M/s. Mahasagar Securities Ltd., in which he is alleged to have 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 is 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 he been allowed cross-examination of the persons on 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 particularly drew 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 circumstances as 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 Year 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 Year 2008-09 is 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.
/NS/*

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.