

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

BEFORE SHRI JASON P BOAZ, ACCOUNTANT MEMBER

ITA No. 63/Bang/2019
Assessment year : 2014-15

Shri Karamjeet Singla (HUF), No. 64/2, B.O.K. Road, Bangalore – 560 002. PAN : AACHH 0190 N	Vs.	The Income Tax Officer, Ward - 5(2)(1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri. H. Guruswamy, ITP
Revenue by	:	Shri. Sumer Singh Meena, Addl. CIT

Date of hearing	:	25.04.2019
Date of Pronouncement	:	24.05.2019

ORDER

Per Jason P Boaz, Accountant Member

This appeal by the assessee is directed against the order of the CIT(A)-10, Bangalore dated 30.10.2018 for Assessment Year 2014-15.

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

2.1 The assessee, an HUF, filed its return of income for assessment year 2014-15 on 07.01.2015 declaring income of Rs.6,36,520/- from Other Sources and Long Term Capital Gains (LTCG) of Rs.31,26,953/- on sale of shares of NCL Research and Financial Services Ltd., claimed as exempt u/s 10(38) of the Income-tax Act, 1961 (in short ‘the Act’). The case was taken up for scrutiny and the assessment was concluded u/s 143(3) of the Act vide order dated 29.12.2016, wherein the assessee’s

income was determined at Rs.41,05,120/- in view of the sale consideration of Rs.34,68,598/- arising on account of sale of shares of M/s. NCL Research and Financials Services Ltd., being held to be unexplained cash credits u/s 68 of the Act. On appeal, the CIT(A)-10, Bangalore, dismissed the assessee's appeal vide the impugned order dated 30.10.2018.

3.1 Aggrieved by the order of the CIT(A)-10, Bangalore, dated 30.10.2018 for assessment year 2014-15, the assessee has preferred this appeal wherein it has raised the following grounds:

1. *The impugned Appellate order dated: 30-10-2018 passed by the Ld. CIT(A), Bangalore-10 is opposed to law, facts and circumstances of the case.*
2. *The Ld. CIT(A) has erred in not adjudicating the specific ground adduced by the Appellant as regards the issue relating to the selection of the case for scrutiny Assessment against to the security norms*
3. *The Ld. CIT(A) has erred in not adjudicating the specific grounds adduced by the Appellant that the AO did not have the jurisdiction over the Search Related Assessments for which the relevant provisions applicable is 153C r.w.s 153A, even though the AO has relied upon the material found during the course of search in the case M/s. NCL Research which is alleged to be a Penny Stock Company.*
4. *The Ld. CIT(A) has erred in not adjudicating the ground relating to denial of opportunity of cross examination of the witnesses whose statements were recorded without the knowledge of the Appellant at his back.*
5. *The Ld. CIT(A) has erred in confirming the additions of Rs. 34,68,598/- being the LTCG solely on the ground that the income was said to have been derived from the alleged sale of shares of penny stock company.*
6. *The Ld. CIT(A) ought to have not confirmed the addition of Rs. 34,68,598/- without appreciating the fact that the Ld. AO has not provided to the*

Appellant any material evidence alleged to have been gathered in the course of the search

7. *The Ld. CIT(A) ought to have not considered the statements of Sri. Vijay Jaydev Podar and Sri. Devesh Upadaya since the Appellant was not provided with copies of such statements to meet the principles of natural justice*
8. *The Appellant craves leave to add, alter, amend and delete any of the grounds at the time of hearing.*

3.2 During the course of hearing, the Id. AR for the assessee submitted that on similar facts and circumstances, the matter for consideration is squarely covered by the decision of the ITAT, Kolkata Bench in its order in ITA No. 2394/Kol/2017 in the case of *Prakash Chand Butoria*. It is submitted that in the cited case (supra) also, the assessee, an individual, filed his return of income claiming income on sale of shares as exempt u/s 10(38) of the Act. The Assessing Officer (AO) treated the receipt of sale consideration as unaccounted income and made an addition u/s 68 of the Act. On appeal, the CIT(A) upheld the AO's order. However, on further appeal, the ITAT, Kolkata Bench allowed the assessee's appeal observing that the addition was unsustainable since the AO made the addition in a routine and mechanized manner, merely on suspicions based on Report of enquiries made by the Investigation Directorate of DIT, Kolkata, without bringing the same on record or confronting the assessee with OR supplying the assessee copies of the documents relied upon for making the addition and providing her opportunities for rebuttal. It is prayed that in view of the above, the orders of the authorities below be set aside and the assessee's appeal be allowed.

3.3 Per contra, the learned DR for Revenue submitted that on similar facts and circumstances as in the case on hand, issue for consideration is covered by the decisions of the Bengaluru ITAT in the cases of *Arvind Kumar Moolchand* in ITA No.509/Bang/2017 and *Pukhraj Hasmukhlal* in ITA No.1927/Bang/2017 wherein the

Tribunal has restored the issue to the file of the AO having observed that the additions were made based on reports of the Investigation Directorate at Kolkata and statements of various persons without confronting OR making them available to the assessee for rebuttal. In those cases, the Tribunal restored the matter to the file of the AO with the direction to confront the matter to the file of the AO with the direction to confront the assessee with the reports / documents / statements proposed to be used against the assessee, allow rebuttal thereof and cross examination of parties on whose testimony is proposed to be relied upon and the matter be adjudicated afresh after affording the assessee adequate opportunity of being heard and to also file details / submissions in this regard. It is contended that similar view was taken by the Hon'ble Karnataka High Court in the case of Chandra Devi Kothari in Writ Petition No.39370/2014 dated 02.02.2015.

3.4 In Rejoinder, the Id.AR for the assessee did not dispute the proposition put forth by the Id. DR for restoring this issue to the file of the AO for *de novo* adjudication.

3.5 I have heard both parties and perused and carefully considered the material on record; including the judicial decisions cited and the orders of the authorities below. Taking into consideration the facts and circumstances of the case and the circumstances that the assessee specifically requested for cross-examination of the deponents whose statements were the basis of addition by the AO and also the report of the Investigation Directorate, Kolkata for rebuttal; from the judicial decisions cited, we find that the issue for consideration is squarely covered by the decision of the Hon'ble Karnataka High Court in the case of Chandra Devi Kothari (*supra*) and the orders of the Bengaluru ITAT in the cases of *Arvind Kumar Moolchand* (*supra*) and *Pukhraj Hasmukhlal* (*supra*). Following the aforesaid decision of the Hon'ble Karnataka High Court in the case of Chandra Devi Kothari (*supra*), I set aside the orders of the AO and restore the matter of treatment of profit declared on sale of

shares, claimed as exempt u/s 10(38) of the Act, to the file of the AO to re-adjudicate the issue afresh; after making available to the assessee for rebuttal all documents; including Statements, Investigation Reports, etc., relied upon by Revenue for making the additions/disallowances and providing adequate opportunity to the assessee for cross-examination of persons whose statements are being relied upon. It is accordingly ordered. Consequently, ground Nos. 4 to 7 (supra) are disposed off as above.

4. In view of the above, the other grounds raised on merits are rendered academic and therefore not required to be adjudicated at this juncture.

5. In the result, the assessee's appeal for assessment year 2014-15 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.

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

By order

Assistant Registrar,
ITAT, Bangalore.