IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE

BEFORE SHRI N.V VASUDEVAN, VICE PRESIDNET AND
SHRI B.R BASKARAN, ACCOUNTANT MEMBER

ITA No.2539/Bang/2018
Assessment year : 2015-16

Smt. Maya Devi Khemka, No.1126, 19th Main, 2nd Phase, J.P Nagar, Bangalore-560 078. PAN – ACZPK 8433 A.	Vs.	The Income-tax Officer, Ward-4(3)(3), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Harish V, Advocate
Respondent by	:	Dr. P.V Pradeep Kumar, Addl. CIT (DR)

Date of hearing	:	04.06.2019
Date of Pronouncement	:	.06.2019

O R D E R

Per B.R Baskaran, Accountant Member

The assessee has filed this appeal challenging the order dated 24/7/2018 passed by ld CIT(A)-4, Bengaluru and it relates to asst. year 2015-16.

2. The assessee is aggrieved by the decision of ld CIT(A) in confirming the assessment of income from sale of share as income of the assessee, rejecting the claim of long term capital gain and

consequently denying exemption claimed u/s 10(38) of the Income-tax Act 1961 ('the Act').

3. We heard the parties and perused the record. The assessee had declared long term capital gains on sale of shares of M/s PS IT infrastructure Ltd. The assessing officer, on noticing that the above said share is categorized as Penny stock, disbelieved the long term capital gains declared by the assessee. Accordingly he assessed the sale proceeds of shares as income of the assessee. The Ld CIT(A) also confirmed the same.

4. At the outset the ld AR submitted that the AO has passed the impugned order on the basis of report received from investigation wing with regard to alleged penny stocks and also by placing reliance on the statements given by certain share brokers. He further submitted that the AO also placed reliance on the report of SEBI. He submitted that none of these documents were confronted with the assessee and accordingly contended that the impugned asst. order has been passed in violation of principles of natural justice. The ld AR submitted that the assessee had raised this issue before the ld CIT(A), but did not got justice from him. Accordingly the ld AR submitted that matter may be restored to the file of the AO for examining the same afresh after providing to the assessee all the documents that were relied upon by the AO. In this regard, he placed reliance on various decisions rendered by Hon'ble jurisdictional Karnataka High Court some of which are given below:-

a) Kothari Metals Vs. ITO in W.A No.218/2015 dated 14/8/2015

b) Mr. Sunil H Ashar Vs. ITO in W.P No.7001/2015 dated 24/6/2015.

5. The ld DR, on the contrary, submitted that the AO did not rely on sworn statements given by brokers. Accordingly he submitted that there was no necessity to provide opportunity of cross examination to the assessee. He further submitted that the assessee did not ask for various documents that were relied upon by the AO and hence there was no occasion for the AO to provide the same. The ld DR, by placing reliance on the decision rendered by Hon'ble Supreme Court in the case of K.L Tripathi Vs. State Bank of India (1984) AIR 273 submitted that there is no necessity to provide documents when it was not asked for by the assessee.

6. We heard the rival contentions and perused the record. We noticed from the asst. order that the assessee has submitted before the AO that the long term capital gains earned by her on sale of shares of PSIT infrastructure was genuine. We further notice that it is the AO who has identified the above said stock as penny stock on the basis of report given by Investigation Wing and also the report of SEBI. The AO has also recorded that the Director of Investigation, Kolkatta has investigated transactions in 84 penny Stock shares quoted on BSC and also examined the promoters of said companies, entry operators who managed the price rigging of the shares. Thus we noticed that the AO has placed reliance on certain documents and the same has not been confronted to the

assessee in order to reject the claim of long term capital gain. Under the set of facts, we are of the view that there is merit in the plea of the assessee. Accordingly we set aside the order passed by ld CIT(A) and restore all the issues to the file of the AO with the directions to confront with the assessee all the documents that were relied upon by him in accordance with law. After affording adequate opportunity of being heard to the assessee, the AO may take appropriate decision in accordance with the law.

7. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the Open Court on **June, 2019.**

Sd/-	**Sd/-**
(N.V Vasudevan)	**(B.R Baskaran)**
Vice President	**Accountant Member**

Bangalore,
Dated, June, 2019.

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3 . The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.

1. Date of Dictation ……

2. Date on which the typed draft is placed before the dictating Member …….
3. Date on which the approved draft comes to Sr.P.S …….
4. Date on which the fair order is placed before the dictating Member ……..
5. Date on which the fair order comes back to the Sr. P.S. ……..
6. Date of uploading the order on website……..
7. If not uploaded, furnish the reason for doing so ……..
8. Date on which the file goes to the Bench Clerk ……..
9. Date on which order goes for Xerox & endorsement……
10. Date on which the file goes to the Head Clerk …….
11. The date on which the file goes to the Assistant Registrar for signature on the order …….
12. The date on which the file goes to dispatch section for dispatch of the Tribunal Order …….
13. Date of Despatch of Order. ……..