

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ “एकल सदस्यीय”, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH
‘SMC’ CHANDIGARH**

**श्रीमती दिवा सिंह, न्यायिक सदस्य
BEFORE: SMT. DIVA SINGH, JM**

आयकर अपील सं./ ITA No. 305/CHD/2018

निर्धारण वर्ष / Assessment Year : 2014-15

Smt. Neha Gupta, House No. 308, Sector 20-C, Subhash Nagar, Mandi Gobindgarh.	बनाम VS	The ITO, Ward 1, Mandi Gobindgarh.
स्थायी लेखा सं./PAN No: ABLPG9441M		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

&

आयकर अपील सं./ ITA No. 306/CHD/2018

निर्धारण वर्ष / Assessment Year : 2014-15

Shri Rajesh Kumar, C/o Fortune Alloys, Shop No. 249, Motia Khan, Mandi Gobindgarh.	बनाम VS	The ITO, Ward 1, Mandi Gobindgarh.
स्थायी लेखा सं./PAN No: ACSPK4699K		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Rajeev Dutta

राजस्व की ओर से/ Revenue by : Shri V.K.Kataria, Sr.DR

सुनवाई की तारीख/Date of Hearing : 29.05.2019

उद्घोषणा की तारीख/Date of Pronouncement : 26.06.2019

आदेश/ORDER

Both these appeals have been filed by the respective assesseees in 2014-15 assessment years assailing the correctness of the separate orders dated 26.12.2017 passed by the CIT(A)-3 Ludhiana.

2. Since the issues raised in ITA 305/CHD/2018 are identical to the issues raised in ITA 306/CHD/2018 wherein certain other grounds have been raised by the assessee, accordingly, in terms of the joint prayers of the parties, the grounds raised in ITA 306/CHD/2018 taken up are reproduced hereunder :

1. *That the order of the Ld. CIT(A) is against the facts of the case and is bad in law.*

2. *That on the facts & circumstances of the case, the Ld. CIT(A) has erred in confirming the addition of Rs. 1,84,656/- on account of Long Term Capital Gains claimed exempt U/S 10(38) of the Income Tax Act, 1961.*
3. *That on the facts & circumstances of the case, on the one hand, the Ld. CIT(A) has erred in confirming the addition of Rs 36,000/- on account of Household Expenses and on the other hand has also allowed relief as per asstt. order.*
4. *That on the facts & circumstances of the case, the Ld. CIT(A) has erred in upholding the disallowance out of Telephone, Scooter/Car Expenses & Depreciation and Insurance @ 1/6th of the expenses.*
5. *That the appellant craves leave to add, amend or delete any of the grounds of appeal before the same is finally heard & disposed off.*

3. Addressing ground No. 2 which is stated to be identical to the sole issue in ITA 305/CHD/2018, the ld. AR invited attention to the assessment order and submitted that the assessee had sought an opportunity to cross examine the persons whose statements are supposed to have been relied upon by the department. Inviting attention to un-numbered page 4 and 5 of the assessment order, it was his submission that these 25 persons whose statements have been recorded are shown to be Share Brokers, Operators and Exist Providers etc. are not the persons from whom the assessee has purchased the shares of M/s Turbotech Engineering Ltd. Inviting attention to un-numbered page 6 of the assessment order, it was his submission that the said company is listed on the Bombay Stock Exchange. The assessee had paid for the shares through Broker LSE Securities Ltd., Ludhiana who had SEBI registration. The contract note and confirmation of the said broker have been filed. Further copy of account from said broker was also enclosed and STT was paid. Demat account from which shares were transferred, it was submitted, were also enclosed. Contract note for sale of shares also stood filed. Payments were through bank transactions only. It was submitted that before the AO the assessee has also argued that in the show cause notice the AO had mentioned some searches etc. to which the assessee had responded that in the show cause notice, your goodself have mentioned that *there was searches and surveys on Brokers/ Operators/Exit providers mentioned. We are not concerned with these people. Neither we have purchased shares or sold share through them. The searches at their premises have no relevance with transaction. In case any documents have been found on which your goodself want to rely the same may be provided to us.* Accordingly, it was his submission that the opportunity to cross examine the

concerned person whose statement is relied upon was never made available to the assessee. The order passed accordingly, it was submitted, was contrary to law and facts. Addressing the impugned order it was also his submission that the CIT(A) has confused himself with the cases where the Long Term Capital Gain has been clubbed with the receipt of share application money where as per law the assessee has to prove that the share applicants were genuine subscribers. For the said purposes, attention was invited to page 7 of the impugned order which would bring out the confusion of the CIT(A) evident on record brought out in the following extract of the order :

The AO has also observed that it was fairly clear that inspite of giving opportunity provided the assessee merely filed certain documents which did not prove the identity but did not produce any of the share applicants/subscribers.

(emphasis supplied)

3.1 Referring to the decisions cited by the CIT(A) in his order, it was his submission it would again show that he has relied upon the propositions of law that the shareholders lacked credit worthiness as would be evident from the following conclusions of the CIT(A) :

“The decision of the Hon'ble ITAT has been upheld by the Hon'ble Punjab & Haryana High Court in the case of Som Nath Maini. 306 ITR 414.

3.5 From the facts discussed above it is apparent that although the appellant has submitted the relevant documents to prove the paper identity of the shareholders, he has not been able to establish the genuineness of transactions and the creditworthiness of the shareholders.”

(emphasis supplied)

4. The ld. Sr.DR relying upon the orders of the authorities submitted that the assessee has been the beneficiary of accommodation entries by way of Long Term Capital Gain of M/s Turbotech Engineering Ltd. which has been found to be a paper company as has been held by the AO in his order and referred to by the CIT(A) at page 2.

4.1 The ld. Sr.DR was required to address/bring on record as to by which order of which authority, the said claim has been made as there is no reference in the orders to any order of SEBI or any other Regulatory Authority to show that M/s Turbotech Engineering Ltd. has been held to be a paper company.

4.2 The Id. Sr.DR was also required to address the relationship of the 25 persons whose submissions have been recorded referred to at page 6-7 of the impugned order with the assessee's transactions. The said query was raised in the context of the fact on record that the assessee as per his written submissions extracted in the impugned order as well as in the assessment order has stated that shares have been purchased through LSE Securities Ltd. For ready reference relevant extract from the impugned order at page 3 is hereby reproduced :

“3.2.2 As stated in foregoing paragraphs, the assessee had acquired 3000 equity shares of M/s. Turbotech Engineering Limited (a Stock Exchange Listed Company) from Ms. Haresh Infrastructure Pvt. Ltd. of Mumbai in November, 2011, which were thereafter got transferred vide endorsement of the Turbotech Engineering Limited on 28.11.2011 on the 'backside of the original share certificates. The assessee had then got these equity shares (purchased in physical form) converted into demat form by depositing it in the Demat Account held with NSDL.

3.2.3 In the month of April, 2013, these shares were sold through M/s. L S E Securities Ltd., Ludhiana, Stock Brokers and members of Ludhiana Stock Exchange, with the assistance of Sub-Brokers-M/s. Mukesh Gupta and Co. again of Ludhiana, as the daily sale rates of these shares were found to have substantially arisen in comparison to the purchase —value thereof. The sale proceeds were received from the brokers through the banking channels. All requisite documents evidencing the sale of these shares, were issued by M/s. L S E Securities Ltd., Ludhiana, in favour of the assessee, for future reference and records.

(emphasis supplied)

4.3 The Id. Sr.DR was unable to state as to how the statements of the 25 persons was relevant as with none of them the assessee appears to have interacted with. Thus, their relevance for concluding that the transactions entered into by the assessee were bogus could not be addressed. However, it was his submission that some of them may have been the promoters and may have made a claim that the entire business was bogus.

4.4 Addressing the frequent reference to the legal position as applicable to receipt of share application money, it was his submission that there does appear to be a mix up on facts.

5. I have heard the rival submissions and perused the material available on record. I find that no order of any authority has been referred to by the tax authorities to conclude that M/s Turbotech Engineering Ltd. is a bogus company. Conscious of the fact that the documents relied upon by the tax authorities and the queries raised and statements recorded of certain persons may raise a suspicion about the genuineness of the said company, which may

be sufficient justification for re-opening; examining however on facts I find the tax authorities have not referred to any order of any Regulatory authority which has held that a specific company is/was a bogus company for a specific period or for all times to come. To my understanding such an order needs to be available on record. In the facts of the present case, admittedly the assessee before the AO sought an opportunity to cross examine the specific persons on the basis of which conclusions adverse to the assessee have been drawn. Admittedly the said grievance has not been addressed by the tax authorities. Even otherwise, it is seen that the Id. CIT(A) appears to have mixed up the issue arising with cases where genuineness of receipt of share application money was an issue. Accordingly, for the reasons given hereinabove the impugned order is set aside back to the file of the CIT(A) with the direction to pass a speaking order in accordance with law addressing the specific facts of the instant case which includes the opportunity to cross examine the persons whose statements have been relied. For the said purposes, it is necessary to identify the specific person whose statement has been relied upon. The said observation is in the context of the arguments of the assessee that with none of these 25 persons, the assessee has ever interacted with as the shares in the specific company are claimed to have been purchased from M/s Haresh Infrastructure Pvt. Ltd., Mumbai through LSE Securities Ltd., Ludhiana Stock Brokers. Accordingly, after identifying the relevant person, the statement relied upon to take an adverse view is required to be confronted to the assessee and an opportunity to cross examine the said person/persons as has been pleaded all along is required to be addressed. Accordingly, the issue raised in ground No. 2 by the assessee is set aside back to the file of the CIT(A).

6. Addressing next grievance raised by the assessee wherein addition on the basis of house hold expenses on estimate basis has been confirmed. Relevant facts as considered by the CIT(A) are extracted hereunder from the order :

“4. Ground of appeal No. 4:- This ground of appeal is regarding the disallowance of Rs. 36,000/- on account of house hold expenses.

Brief facts of the case are that the applicant during the assessment proceedings, the appellant was asked to file justification of household expenses, giving details of household withdrawals, details of family members, expenses incurred for house hold purpose held during

the year. In response, the appellant, vide his written reply, submitted that he has withdrawn a sum of Rs. 1,44,000/-towards household expenses. The appellant asked by the AO to produce detail information of Rs. 1,44,000/- towards household expenses. No detailed information as required above furnished by the appellant. Keeping in view of the status & volume of business of the appellant, prevailing inflation and the mandatory expenses to be incurred on grocery, clothing medical, social ceremonies & other day to day expenses, it is quite difficult for a person to run the home establishment with the withdrawals as declared which was observed by the AO. Hence, the AO made the additions on account of household expenses of Rs. 1,80,000/-.

4.1 During the course of appellate proceedings the Ld. Counsel of the appellant has submitted his written argument vide letter dated. 19.12.2017 the relevant part of the same is reproduced as under:-

The Assessing Officer has erred in estimating the household expenses of the appellant at Rs. 15,000/- p.m.. The household expenditure has been worked out merely on presumptions and without bringing any material on record to prove that the appellant had incurred such expenditure. The status of the appellant is of middle class and the Ld. A.O. has neither denied nor controverted this fact. The appellant had made sufficient withdrawals totaling Rs. 1,44,000/- for meeting with the household expenses. The Assessing Officer has, however, based his estimate for household expenditure on the mere presumption rather imagination that there was monthly spending on at Rs. 15,000/-. The Ld. A.O. has not brought any evidence on record to prove the above and that such expenditure had been actually incurred over and above that declared by the appellant and it was incurred by none but the appellant and it was his onus to be discharged which he has failed to do and as such the addition made apart from being against the facts available on record is illegal also.

4.2 I have carefully considered rival submissions. I am inclined to agree with the contention of appellant. In my considered view the Id. AO has made addition on account of low withdrawal after considering basic facts and status of assessee. Further, the assessee has failed to explain such low withdrawal. This facts also establishes that the details provided to the AO at the time of the assessment proceedings have been considered by the AO and the total gross withdrawals made by the family is at Rs. 1,44,000/- which are not sufficient for a middle class family these days. Accordingly, the addition of Rs. 36,000/- on account of Low house hold withdrawal is upheld. With the result this ground of appeal is allowed.”

7. Both the parties have been heard. Whereas the ld. AR assails the addition made on estimated de-horse any fact, the ld. Sr.DR relies on the order.

8. I have heard the rival submissions and perused the material available on record. On perusal of the same, I find that there is no reference to any fact whatsoever so as to lead to the conclusion that the assessee's lifestyle was not a middle class life style as claimed. There is no reference to any discussion by the tax authorities even as to the total number of family members in the assessee's family. Accordingly, in the absence of any justification on record for resorting to estimates, the addition made by way of estimates without

reference to any relevant fact cannot be sustained. The addition is directed to be deleted.

9. Addressing the facts in ground No. 4, ld. AR submitted that the telephone, scooter and car expenses incurred were entirely for the business purposes of the assessee. Accordingly, it was his prayer that the addition may be deleted.

10. The ld. Sr.DR referring to the orders submitted that the assessee has not been maintaining any logbook. Accordingly, the bland plea in these peculiar facts it was his submission, may not be accepted.

11. I have heard the submissions and perused the material on record. Considering the fact that no log-book has been maintained by the assessee, accordingly, after hearing both the parties on a possible reasonable estimate, the estimate made by the CIT(A) for 1/6th is reduced to 1/10th which was considered to be just and fair by both the parties. Accordingly, ground No. 4 is partly allowed.

12. In the result, appeal of the assessee is partly allowed for statistical purposes.

13. In **ITA 305/CHD/2018** the sole issue raised is vide ground No. 2 regarding addition confirmed on account of Long Term Capital Gain claimed to be exempt u/s 10(38) of the Act pertaining to the very same company i.e. M/s Turbotech Engineering Ltd. In the facts of the said case also, the assessee sought an opportunity to cross examine the persons whose statements were relied upon. In the order passed, the CIT(A) has followed identical reasoning where the dubious practices of non-genuine receipts of share application money which came up for a consideration in various cases before different Courts appears to have been mixed up. Similarly, herein also, the consistent claim of relevant material is in the context of facts where the stock broker from whom shares of the listed company were stated to be purchased was claimed to be in Ludhiana and he, similarly is stated to be not one of the persons whose statements have been recorded. Accordingly the impugned order herein also for similar reasons is set aside back to the file of the CIT(A) with identical

directions to pass speaking order in accordance with law addressing the specific grievances of the assessee in terms of the directions given in ITA 306/CHD/2018. Said order was pronounced in the Open Court at the time of hearing itself.

14. In the result, ITA 305/CHD/2018 is allowed for statistical purposes and ITA 306/CHD/2018 is partly allowed for statistical purposes.

Order pronounced in the Open Court on 26th June,2019.

Sd/-

(दिवा सिंह)

(DIVA SINGH)

न्यायिक सदस्य/Judicial Member

FIT FOR PUBLICATION

(दिवा सिंह)

(DIVA SINGH)

न्यायिक सदस्य/Judicial Member