

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

**BEFORE SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

ITA No.698/Bang/2019
Assessment year : 2014-15

Shri. Vinod Kothari (HUF), No.92, 2 <sup>nd</sup> Main Road, Seshadripuram, Bangalore. <b>PAN : AAHHV 3014 N</b>	Vs.	The Income Tax Officer, Ward – 2(2)(1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Prashanth G. S, CA
Revenue by	:	Shri. Priyadarshi Misra, JCIT

Date of hearing	:	04.06.2019
Date of Pronouncement	:	03.07.2019

**ORDER**

This appeal filed by the assessee is directed against the orders of the Commissioner of Income-tax (Appeals)-6, Bangalore, dated 31.01.2019 for Assessment Year 2015-16.

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

2.1 The assessee filed its return of income for Assessment Year 2014-15 on 23.03.2015 declaring income of Rs.8,84,780/-. The case was taken up for scrutiny and the assesment was concluded under section 143(3) of the Income Tax Act, 1961 (in short ‘the Act’) vide order dated 26.12.2016, wherein the assessee’s

income was determined at Rs.42,94,952/-. This was, in view of the Assessing Officer (AO) disallowing the exemption of Rs.34,50,172/- claimed under section 10(38) of the Act towards LTCG on sale of 7340 shares of M/s. Sunrise Asian Ltd., and treating the same as unexplained cash credit under section 68 of the Act, in the year under consideration. The assessee's appeal was dismissed by the CIT(A)-2, Bangalore vide order dated 31.01.2019.

3. Aggrieved by the orders of CIT(A)-2, Bangalore, dated 31.01.2019 for Assessment Year 2014-15, the assessee has preferred this appeal before the Tribunal wherein he has raised the following grounds:

**Assessment Year 2007-08**

Sl. No.	GROUNDS OF APPEAL	Tax Effect in Rupees
1	<p>a) The orders of the authorities below in so far as these are against the Appellant is opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the Appellant's case.</p> <p>b) The appellant denies itself liable to be assessed on a total income of Rs.42,94,952/- as against Rs.8,44,780/- returned by the appellant under the facts and circumstances of the case.</p>	-
2	<p><b><u>Disallowance of Long Term Capital Gain of Rs.34,50,172/- :</u></b></p> <p>a) The authorities below erred in disallowing the exemption claimed by the assessee of Rs.34,50,172/- arising out of sale of shares of M/s. Sunrise Asian Limited under the facts and circumstances of the case.</p> <p>b) The authorities below erred in treating the share purchase transactions as sham without proper examination under the facts and circumstances of the case.</p>	10,50,115/-

	<p>c) The authorities below merely on suspicion and surmises treated the transactions made by the appellant as accommodative and bogus in nature and thus the addition made of Rs.34,50,172/- needs to be deleted for the substantial cause of advancement of justice.</p>	
3	<p>a) The order of CIT(A) needs to be set aside for non-application of mind as the findings of the CIT(A) has no nexus with the order passed by the assessing officer on the facts of the case.</p> <p>b) The action of the learned CIT(A) in confirming additions based on the investigation report of Kolkata Investigation Directorate which was not relied upon by the assessing officer is bad in law and therefore the order passed needs to be quashed on the facts of the case.</p> <p>c) Without prejudice, the action of the learned CIT(A) in confirming additions based on the investigation report of Kolkata Investigation Directorate, which was not put forth to the appellant for rebuttal is against the principles of natural justice and therefore the order passed needs to be set aside on the facts of the case.</p> <p>d) Without prejudice, the learned CIT(A) erred in not providing an opportunity to cross examine the third party whose statements were used against the appellant on the facts of the case. Thus, the order passed is opposed to principles of natural justice and requires to be deleted on the facts of the case.</p>	-
4	<p>a) The action of the assessing officer in making additions based on the Circular issued by SEBI, which was not put forth to the appellant for rebuttal is unacceptable under the facts and circumstances of the case.</p> <p>b) The assessing officer erred in treating the transactions entered into by the appellant as accommodative in nature without any corroborative evidence and further the CIT(A) erred in confirming the additions based on such statement and thus the orders passed by the authorities below needs to be set aside on the facts of the case.</p>	-

5	<p>a) The authorities below erred in making addition purely on suspicion and surmises and not based on any factual foundation.</p> <p>b) The authorities below erred in not taking cognizance of the various documents/ details/ information furnished by the appellant under the facts and circumstances of the case.</p>	-
6	<p>a) The appellant denies itself liable to be levied interest under sections 234A and 234B of the Act and further the computation of interest was not provided to the appellant as regard to the rate, period and method of calculation of interest under the facts and circumstances of the case.</p>	4,30,541/-
	<p>b) Without prejudice, the interest levied under sections 234A and 234B of the Act requires to be waived off under the facts and circumstances of the case.</p>	
	<p>The appellant craves leave to add, alter, delete or substitute any of the grounds urged above.</p>	-
	<p>In view of the above and other grounds that may be urged at the time of the hearing of the appeal, the appellant prays that the appeal may be allowed in the interest of justice and equity.</p>	-

#### 4. Ground Nos.3 (a) to (d)

4.1 It was submitted by the learned AR of the assessee that in ground Nos.3(a) to (d) (supra), the assessee has disputed the validity of the assessment order passed by the AO which was upheld by the learned CIT(A) by relying on the findings and details of the report of the Kolkata Investigation Directorate in which it is alleged that the assessee's share transactions (supra) were not genuine. It was submitted that neither the copy of the Report of the Kolkata Investigation Directorate relied on by the AO was made available to the assessee for rebuttal nor has the assessee been allowed cross-examination of the persons on the basis of whose statements and details based on which the authorities below have 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 details 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 8 of the judgment of Hon'ble Karnataka High Court in the case of Chandra Devi Kothari (supra) it is seen that matter was restored back to the file of the AO for fresh decision after providing copy of the statement and other related details relied upon by the AO; in this case copy of the Report of Kolkata Investigation Directorate and other attendant 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 order of learned CIT(A) for Assessment Year 2014-15 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 2014-15 is allowed for statistical purposes.

*Order pronounced in the open court on this 3<sup>rd</sup> day of July, 2019.*

Sd/-  
**(JASON P BOAZ)**  
**Accountant Member**

Bangalore.

Dated: 3<sup>rd</sup> July, 2019.

/NS/\*

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

By order

Assistant Registrar,  
ITAT, Bangalore.