

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

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

|                           |
|---------------------------|
| ITA No.908/Bang/2019      |
| Assessment year : 2015-16 |

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|---|-----|--|
| Shri. Rohit Jain,<br>No.536, RMV 2 <sup>nd</sup> Stage,<br>5 <sup>th</sup> Main Road, Chikkmaranhalli,<br>Bangalore.<br><b>PAN : AQKPJ 7827 N</b> | Vs. | The Income Tax Officer,<br>Ward – 6(3)(2),<br>Bangalore. |
| APPELLANT   |     | RESPONDENT   |

|             |   |                               |
|-------------|---|-------------------------------|
| Assessee by | : | Smt. Suman Lunkar, CA         |
| Revenue by  | : | Shri. Priyadarshi Misra, JCIT |

|                       |   |            |
|-----------------------|---|------------|
| Date of hearing       | : | 03.06.2019 |
| 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 29.03.2019 for Assessment Year 2015-16.

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

2.1 The assessee filed his return of income for Assessment Year 2015-16 on 02.05.2016 declaring income of Rs.5,87,750/-. 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 28.12.2017, wherein the assessee’s

income was determined at Rs.32,39,150/-. This was, in view of the Assessing Officer (AO) disallowing the exemption of Rs.26,51,400/- claimed under section 10(38) of the Act towards LTCG on sale of shares of M/s. Kailash Auto Finance 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)-6, Bangalore vide order dated 29.03.2019.

3. Aggrieved by the orders of CIT(A)-6, Bangalore, dated 29.03.2019 for Assessment Year 2015-16, the assessee has preferred this appeal before the Tribunal wherein he has raised the following grounds:

**Assessment Year 2007-08**

*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. In any case the order passed is in gross violation of the principles of natural justice and fair play, especially in the absence of the material relied upon while framing the makes the order totally bad in law and liable to be cancelled.*

*3. 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.26,51,400/- being Long Term Capital Gain earned on sale of shares as unexplained cash credit u/s 68 of the Act. On proper appreciation of facts and the law applicable, there is no unexplained cash credit at all. The addition as made is erroneous and same is to be deleted in entirety.*

*5. In any case and without further prejudice, the authorities below have erred in:*

- a) Taxing/ confirming the Long term capital gain earned on sale of shares as unexplained cash credit 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. *In any case, the addition as made/confirmed is erroneous and excessive.*

7. *The appellant had actually sold shares through demat account and had earned Long term Capital Gain thereon and claimed the same as exempt u/s 10(38) of the Act. Same needs to be accepted as such.*

8. *In any case, the learned Assessing officer had erred in taxing the Lone tens capital gain @ 30% by invoking the provisions of section 115BBE of the Act and the learned CIT(A) has erred in confirming the same. The action of authorities below being not in accordance with law and contrary to facts are negated.*

9. *The appellant denies the liability to pay interest U/s. 234A, 234B and 234D of the Act. The interest having been levied erroneously is to be deleted.*

10. *In view of the above and other grounds to be adduced at the time of bowing, it is requested that the impugned order be quashed or at least the assessment of Long term capital gain earned on sale of shares as unexplained cash credit under the head Income from Other Sources deleted, the exemption on Long term Capital Gain as claimed by the appellant be accepted, taxing the addition made @ 30% by invoking the provisions of section 115BBE be deleted and the interest levied be also deleted.*

#### 4. Ground No.2

4.1 It was submitted by the learned AR of the assessee that in ground No.2 (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 contained in 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 were made available to the assessee nor has the assessee been allowed cross-examination of the persons on the basis of whose statements or the details on the basis of which the authorities below have drawn adverse inference in the assessee's case. The learned AR submitted that under similar facts, judgment 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 statements 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 2015-16 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 2015-16 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/\*

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.