

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

BEFORE SHRI JASON P BOAZ, ACCOUNTANT MEMBER

ITA No.200/Bang/2019
Assessment year : 2014-15

Shri. Shalin Babulal Jain, Mahendra Agencies, Main Bazar, Main Road, Hospet – 583 201. PAN : AQOPJ 1135 D	Vs.	The Income Tax Officer, Ward – 1, Hospet.
APPELLANT		RESPONDENT

Assessee by	:	Smt. Suman Lunkar, CA
Revenue by	:	Shri. Karuppusamy S. R, Addl. CIT

Date of hearing	:	11.06.2019
Date of Pronouncement	:	05.07.2019

ORDER

This appeal filed by the assessee is directed against the orders of the Commissioner of Income-tax (Appeals), Kalaburagi, dated 30.11.2018 for Assessment Year 2014-15.

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

2.1 The assessee filed his return of income for Assessment Year 2014-15 on 27.07.2014 declaring income of Rs.4,93,240/-. The case was taken up for scrutiny and the assessment 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.13,93,241/-. This was, in view of the Assessing

Officer (AO) disallowing the exemption of Rs.9,00,001/- claimed under section 10(38) of the Act towards LTCG on sale of 2000 shares of M/s. Turbotech Engineering Ltd., in the year under consideration. The assessee's appeal was dismissed by the CIT(A), Kalaburagi, vide order dated 30.11.2018.

3.1 Aggrieved by the orders of CIT(A), Kalaburagi, dated 30.11.2018 for Assessment Year 2014-15, the assessee has preferred this appeal before the Tribunal wherein he has raised the following grounds:

1. *The learned Assessing Officer had erred in passing the assessment order in the manner done by him and the learned Commissioner of Income tax (Appeals) has erred in confirming the same. The orders passed by the both the authorities are bad in law and are liable to be quashed.*
2. *The learned Assessing Officer had erred in holding that the provisions of Section 68 of the I.T. Act, 1961 are attracted and in making an addition of Rs. 9,00,001/- to the income of the appellant and the learned Commissioner of Income tax (Appeals) has erred in confirming the same. There being no unexplained cash credit, the addition as made and sustained is to be deleted.*
3. *The lower authorities have erred in holding that the transactions in shares were not genuine and the learned Commissioner of Income tax (Appeals) has erred in confirming the same. On proper appreciation of the facts of the case it will be clear that the transactions are to be genuine and therefore the transaction is to be accepted as genuine.*
4. *The lower authorities have erred in holding that the provision of taxability of the transaction under the head Capital Gains is not correct and in denying exemption U/s. 10(38) to the appellant. On the facts of the case and the law applicable, the appellant is entitled to exemption U/s. 10(38) of the I.T. Act, 1961 and the same is the allowed to the appellant.*
5. *The various comments and conclusions made by the Assessing Officer in the course of the assessment order being not germane to the case of the appellant are to be disregarded and deleted.*

6. *The appellant denies the liability to pay interest U/s. 234B of the Act. The interest having been levied erroneously is to be deleted.*
7. *In view of the above and on other grounds to be adduced at the time of hearing, it is requested that the impugned assessment order and appellate order be quashed or atleast the addition made to the income be deleted the appellant be held to be entitled to exemption U/s. 10(38) of Income tax Act, 1961 and interest levied be also deleted.*

3.2.1 The assessee also raised the following additional ground of appeal:-

1. *In any case the order passed in gross violation of the principles of natural justice and fair play, especially in the absence of documents/reports sought to be relied upon by the Assessing Officer while passing the order, make the order totally bad in law and such order is liable to be cancelled.*

3.2.2 Having heard both parties in the matter, I am of the view that the additional ground, being a legal ground going to the very root of the matter in this appeal, is to be admitted for consideration on the basis of material already on record. In this view of the matter, the additional ground raised by the assessee (supra) is admitted for consideration / adjudication in this appeal.

4. Additional Ground No.1

4.1 It was submitted by the learned AR of the assessee that in additional ground No.1 (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 report of the Kolkata Investigation Directorate and statement of various operators, entry providers and stock brokers in which it is alleged that they have provided accommodation entries for long term and short term capital gains, purchase and sales of shares etc., and the list of beneficiaries include the name of the assessee also. It is submitted that the above details are available and recorded in the impugned order of assessment at para 5 at pages 3 to 5 thereof. It was submitted that neither the copy of the statements of the operators, stock brokers, entry

providers and the Report of Kolkata Investigation Directorate have been made available to the assessee nor has he been allowed cross-examination of the persons on the basis of whose statements, 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 statement 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 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 statements and other related details relied on by the AO. 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 5th day of July, 2019.

Sd/-
(JASON P BOAZ)
Accountant Member

Bangalore.
Dated: 5th 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.