

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

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

ITA No.75/Bang/2019
Assessment year : 2014-15

Km. Ritika Khetan, No.1845/49, 19 <sup>th</sup> Cross, MRCR Lane, 20 <sup>th</sup> Main, Vijayanagar, Bangalore – 560 040. <b>PAN : CRKPK 9651 C</b>	Vs.	Income Tax Officer, Ward – 5(3)(1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Ravishankar S. V., Advocate
Revenue by	:	Shri. Karuppusamy S. R., Addl. CIT

Date of hearing	:	12.06.2019
Date of Pronouncement	:	12.07.2019

**ORDER**

This appeal by the assessee is directed against the order of CIT(A) - 5, Bangalore, dated 29.01.2019 for Assessment Year 2014-15.

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

2.1 The assessee, an individual, filed his return of income for assessment year 2014-15 on 19.10.2014 declaring income of Rs.2,82,710/- from salary and other sources and capital gains of Rs.38,12,023/- claimed as exempt under section 10(38) of the Income Tax Act, 1961 (in short ‘the Act’). The case was taken up for scrutiny and the assessment was concluded under section 143(3) of

the Act vide order dated 29.12.2016, wherein the assessee's income was determined at Rs.41,94,733/- in view of the addition of sale proceeds of Rs.39,12,023/- received on account of sale of shares of Turbotech Engineering Ltd., being treated as cash credits under section 68 of the Act. On appeal, the CIT(A)-5, Bangalore, dismissed the assessee's appeal vide the impugned order dated 29.01.2018.

3.1 Aggrieved by the order of the CIT(A)-5, Bangalore, dated 29.01.2018 for Assessment Year 2014-15, the assessee has preferred this appeal wherein it has raised the following grounds:-

1. *The order of the learned Commissioner of Income Tax (Appeals) in so far as it is against the appellant are opposed to law, equity and weight of evidence, natural justice, facts and circumstances of the case.*
2. *The appellant denies herself liable to be assessed to total income of Rs. 41,94,733/- as against the returned income of Rs. 2,82,710/- on the facts and circumstances of the case.*
3. *The authorities below were not justified in law in denying the benefit of exemption u/s 10(38) of the Act on the facts and circumstances of the case.*
4. *The authorities below failed to appreciate that the sale proceeds pertain to sale of long term equity shares hence exempt u/s 10(38) of the Act on the facts and circumstances of the case.*
5. *The authorities below erred in law in holding that section 68 of the Act is applicable to the impugned case on the facts and circumstances of the case.*
6. *The learned Commissioner of Income Tax (Appeals) was not justified in law in confirming the addition u/s 68 of the Act on the presumption that the sale consideration received on sale of equity shares, as being bogus in nature, on the facts and circumstances of the case.*

7. *The authorities below were not justified in law in denying the exemption granted by the statute on mere suspicion on the facts and circumstances of the case.*
8. *The Lower authorities failed to appreciate the fact that the shares have been sold on the floor of the exchange and earned capital gain and that all the transfer and receipt of funds has happened through proper banking channels.*
9. *The learned CIT(A) failed to appreciate that the Assessing Officer has miserably failed to prove that the entire transaction was a bogus transaction and the addition under section 68 of the Act was merely on assumptions and surmises which cannot be held good in the eyes of law, on the facts and circumstances of the case.*
10. *The Appellant has discharges her onus as to proving that the genuineness of the transaction and that the Appellant has submitted all the requisite and relevant documents required to discharge the onus placed upon her to prove the genuineness of the transaction.*
11. *The authorities below erred in holding that the transaction of sale of equity shares is a bogus transaction only on surmises and conjectures without any evidence on the facts and circumstances of the case.*
12. *The authorities below failed to appreciate that the appellant has sold the shares through recognized stock exchange and the transaction was supported by contract notes, bank statement, demat statements and therefore the exemption ought to have been granted on the facts and circumstances of the case.*
13. *The learned Commissioner of Income Tax (Appeals) was not justified in law in confirming the action of the learned Assessing Officer of mechanically relying on some investigation reports of the Department without applying mind if they apply to the impugned case. Accordingly, the order passed is bad in law and not sustainable on the facts and circumstances of the case.*
14. *The Commissioner of Income Tax (Appeals) has made a remark in his appellate order stating that the Assessing Officer had observed that the appellant has been in the share transaction business for the past 25 years whereas to the contrary to fact, which demonstrates that the Appellate Commissioner has*

*mechanically passed the order and has not applied his mind in passing the same.*

15. *The authorities below failed to consider the unimpeachable material on record substantiating the claims made by the appellant and consequently passed perverse order on the facts and circumstances of the case.*
16. *The appellant denies the liability to pay interest under section 234A, 234B of the Act in view of the fact that there is no liability to additional tax as determined by the assessing officer. Without prejudice, the rate, period and on what quantum the interest has been levied are not in accordance with the law and are not discernable from the order and hence deserves to be cancelled on the facts and circumstances of the case.*
17. *The appellant craves leave of this Hon'ble Tribunal, to add, alter, delete, amend or substitute any or all of the above grounds of appeal as may be necessary at the time of hearing.*
18. *For these and other grounds that may be urged at the time of hearing of appeal, the appellant prays that the appeal may be allowed for the advancement of substantial cause of justice and equity.*

3.1.1 The assessee has also filed following additional grounds:-

1. *The assessment order passed under section 143(3) of the Act is not in accordance with law on the facts of the case. The learned Assessing Officer ought to have initiated proceedings by issue of notice under section 153C of the Act when certain incriminating material found in search conducted under section 132 of the Act, and the assessment is based on the material found during the search and consequently the assessment proceeding concluded under section 143(3) of the Act is bad in law on the facts and circumstances of the case.*
2. *The appellant craves leave of this Hon'ble Tribunal, to add, alter, delete, amend or substitute any or all of the above grounds of appeal as may be necessary at the time of hearing.*

3. *For these and other grounds that may be urged at the time of hearing of appeal, the appellant prays that the appeal may be allowed for the advancement of substantial cause of justice and equity.*

3.1.2 After hearing both parties in the matter, we are of the opinion that the additional grounds raised (supra) are to be admitted for consideration as they do not involve the investigation of any facts otherwise than on the records of the department and are on questions of law. Therefore, respectfully following the ratio of the decision laid down by the Hon'ble Apex Court in the case of NTPC Ltd., Vs. CIT (229 ITR 383) (SC), we admit the additional grounds raised for consideration in this appeal.

3.2 During the course of hearing, the Id.AR for the assessee submitted that on similar facts and circumstances, the matter for consideration is squarely covered by the decision of the ITAT, Kolkata Bench in its order in ITA No.2394/Kol/2017 in the case of Prakash Chand Butoria. It is submitted that in the cited case (supra) also, the assessee, an individual, filed his return of income claiming income on sale of shares as exempt u/s 10(38) of the Act. The Assessing Officer (AO) treated the receipt of sale consideration as unaccounted income and made an addition u/s 68 of the Act. On appeal the CIT(A) upheld the AO's order. However, on further appeal, the ITAT, Kolkata Bench allowed the assessee's appeal observing that the addition was unsustainable since the AO made the addition in a routine and mechanized manner: merely on suspicions based on Report of enquiries made by The Investigation Directorate of DIT, Kolkata, without bringing the same on record or confronting the assessee with OR supplying the assessee copies of the documents relied upon for making the addition and providing him opportunities for his rebuttal. It is prayed that in view of the above, the orders of the authorities below be set aside and the assessee's appeal be allowed.

3.3 Per contra, the Id. DR for Revenue submitted that on similar facts and circumstances as in the case on hand, issue for consideration is covered by the decisions of the Bengaluru ITAT in the cases of Arvind Kumar Moolchand in ITA No.509/Bang/2017 Pukhraj Hasmukhlal in ITA No.1927/Bang/2014 and Tarun Kumar Rungta in ITA No.1612/Bang/2018 wherein the Tribunal has restored the issue to the file of the AO having observed that the additions were made based on reports of the Kolkata Investigation Directorate of the Department and statements of various persons without confronting OR making them available to the assessee for rebuttal. In those cases, the Tribunal restored the matter to the file of the AO with the direction to confront the assessee with the reports/documents/ statements proposed to be used against the assessee, allow rebuttal thereof and cross examination of parties on whose testimony is proposed to be relied upon and the matter be adjudicated afresh after affording the assessee adequate opportunity of being heard and to also file details/submissions in this regard.

3.4 In Rejoinder, the Id.AR for the assessee did not dispute the proposition put forth by the Id. DR for restoring this issue to the file of the AO for *de novo* adjudication in keeping with the decision of the Hon'ble Karnataka High Court in the case of Chandra Devi Kothari in W. P. No.39370/2014 dated 02.05.2015.

3.5 I have heard both parties and perused and carefully considered the material on record including the judicial decisions cited and the orders of the authorities below. Taking into consideration the facts and circumstances of the case and the judicial decisions cited, I find that ,the impugned issue is squarely covered by the orders of Hon'ble Karnataka High Court in the case of Chandra Devi Kothari (supra) and of the Bangalore ITAT in the cases of Arvind Kumar Moolchand (supra), Tarun Kumar Rungta (supra) and Pukhraj

Hasmukhlal (supra). Following the aforesaid orders (supra), I set aside the orders of the AO and restore the matter of treatment of sale proceeds declared on sale of shares as unexplained credits u/s 68 of the Act to the file of the AO to re-adjudicate the issue afresh; after making available to the assessee for his rebuttal all documents relied upon by Revenue for making the additions/disallowances and providing adequate opportunity to the assessee for cross-examination of persons whose statements are being relied upon. It is accordingly ordered.

4. 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 12<sup>th</sup> day of July, 2019.*

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

Bangalore.

Dated: 12<sup>th</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.