

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH : BANGALORE**

**BEFORE SHRI JASON P BOAZ, ACCOUNTANT MEMBER AND  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.3394/Bang/2018
Assessment year : 2014-15

Smt. Kanchan Ashok Shroff, No.18 & 19, “Emerald Residency”, 1 <sup>st</sup> Cross, Malleswaram, Bengaluru – 560 003. <b>PAN : AJXPS 7772 D</b>	Vs.	Assistant Commissioner of Income Tax, Circle– 5(2)(1), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. V. Chandra Shekhar, Advocate
Revenue by	:	Shri. R. N. Siddappaji, Addl. CIT

Date of hearing	:	27.06.2019
Date of Pronouncement	:	19.07.2019

**ORDER**

*Per Jason P. Boaz, Accountant Member*

This appeal by the assessee is directed against the ex-parte order of the CIT (A)-10, Bengaluru, dated 08.10.2018 for Assessment Year 2014-15.

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

2.1 The assessee, an individual, filed her return for Assessment Year 2014-15 on 27.09.2014 declaring income of Rs.34,16,940/- under the head “Income from House Property”, “Income from Business”, “Income from Other Sources”, after claiming exemption under section 10(38) of the Income Tax Act, 1961 (in short ‘the Act’) on

account of capital gains of Rs.82,98,511/- arising on sale of 5200 shares of M/s. NCL Research and Financial Services Ltd. The case was taken up for scrutiny for this Assessment Year and the Assessment was concluded under section 143(3) of the Act vide order dated 30.12.2016, wherein the assessee's income was determined at Rs.1,30,41,450/-, in view of the sale proceeds of Rs.96,24,508/- arising on the sale of shares of M/s. NCL Research and Financial Services Ltd., being treated as unexplained cash credit under section 68 of the Act and being brought to tax in the assessee's hands. On appeal, the CIT(A)-10, Bengaluru, dismissed the assessee's appeal ex-parte vide order dated 08.10.2018 due to non-attendance of the assessee on the dates of hearing and passed the orders without hearing the assessee on the merits of the matter.

3. Aggrieved by the ex-parte order of the CIT(A)-10, Bengaluru, dated 08.10.2018 for Assessment Year 2014-15, the assessee has filed this appeal before the Tribunal wherein she 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 tax on a total income of Rs.1,30,41,450/- as determined by the learned Assessing Officer as against the total income of Rs.34,16,940/- as declared by the Appellant on the facts and circumstances of the case.*
3. *The learned CIT(A) was not justified in deciding the appeal of the appellant, without intimating the AR of the appellant, though the details were on the record of the authority, and has thereby passed an order without providing adequate opportunity of representing the case, on the facts and circumstances of the case.*
4. *The order passed by the learned Commissioner of Income Tax (Appeals) is in violation of the principles of natural justice and consequently the order requires to be set aside on the facts and circumstance of the case.*

5. *The Learned Commissioner of Income Tax (Appeals) erred in law in not holding that the appellant was eligible to claim the benefit of exemption in respect of the long term capital gain on sale of shares a sum of Rs.82,98,511/- under section (8) of the Act on the facts and circumstances of the case.*
6. *The authorities below erred in law in holding that section 68 of the Act was applicable to the impugned case on the facts and circumstances of the case.*
7. *The Learned CIT(A) erred in law in upholding the addition under section 68 of the Act a sum of Rs.96,24,511/- being sale consideration received by the appellant on sale of shares on the facts and circumstances of the case.*
8. *The authorities below failed to appreciate that section 68 cannot be invoked as the assessee does not maintain books of accounts and accordingly no credit could have been found in the books on the facts and circumstances of the case.*
9. *The Learned Commissioner of Income Tax (Appeals) erred in law in upholding the view, that the AO was justified in questioning the genuineness of the share transaction, without any corroborating evidence on the facts and circumstances of the case.*
10. *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.*
11. *The authorities below erred in holding that the transaction of sale of equity shares is a bogus transaction, based only on surmises and conjectures without any evidence, on the facts and circumstances of the case.*
12. *The Learned CIT(A) 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 CIT(A) was not justified in law in confirming the action of the learned Assessing Officer, who relied solely on the findings of*

*the Investigation Department, hence the orders passed are bad in law and not sustainable on the facts and circumstances of the case.*

14. *The authorities below also failed to consider the unimpeachable material on record substantiating the claims made by the appellant and consequently passed a perverse order on the facts and circumstances of the case.*
15. *The Learned CIT(A) erred in law in not setting aside the order of the AO, since no opportunity to cross examine was provided to the appellant and hence the order passed was in violation of principles of natural justice and consequently the assessment order passed was bad in law and on the facts and circumstances of the case.*
16. *The Learned CIT(A) erred in law in not holding that the Assessing officer is not justified in law in taxing the sale consideration amount of Rs.96,24,511/- under section 115BBE of the Act on the facts and circumstances of the case.*
17. *The Learned Commissioner of Income Tax (Appeals) erred in holding that there is no probability of increase in price of a company like NCI. Research whose financials are not very strong, who failed to appreciate that the Share prices fluctuate due to market sentiments, future outlook and various other reasons not merely on financials, on the facts and circumstances of the case.*
18. *The Learned CIT(A) was not justified in observing that the companies from which the appellant bought and sold the shares of NCL Research were paper companies, do not have their own existence is erroneous, which can be verified and the details are available in public domain, on the facts and circumstances of the case.*
19. *The appellant denies the liability to pay interest under section 234A, 234B and 234C 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.*
20. *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.*

21. *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.*

#### **4. Ground Nos.3 and 4**

4.1.1 At the outset, the learned AR for the assessee urged ground Nos.3 and 4. In these grounds (supra), the assessee contends that the CIT(A) was not justified in deciding the assessee's appeal without intimating the assessee / AR of the assessee and thereby has dismissed the assessee's appeal without providing adequate opportunity of representing the case on the facts and circumstances thereof. Since the impugned order is passed in violation of the principles of natural justice, the order requires to be set aside.

4.1.2 According to the learned AR, for the hearing fixed for on 12.09.2017 and 04.10.2017, the CIT(A) at para 4 of the impugned order has himself recorded that the learned AR of the assessee appeared / filed adjournment letters seeking adjournments of the hearings. In respect of the subsequent hearings fixed by the CIT(A) for 21.05.2018 and the last hearing for 18.09.2018, the learned AR points out that the CIT(A) himself has recorded that these two notices of hearing have been returned back unserved. It is contended that it is in the circumstance as laid out above that the CIT(A) passed the impugned order ex-parte without hearing the assessee on the merits of issues raised in the appeal before him which has resulted in gross violation of the principles of natural justice. It is further submitted that there was no malafide intention on the part of the assessee in seeking adjournments of hearings as the assessee is fastened with a huge tax demand of Rs.44,65,340/- which it contests. It is prayed that in the interest of substantial justice, the ex-parte order of the CIT(A) be set aside and the matter be heard and decided on merits.

4.2 Per contra, the learned DR for Revenue supported the orders of the CIT(A).

4.3.1 We have considered the rival contentions and perused the material on record on the issue before us. As contended by the learned AR, on perusal of the impugned order of the CIT(A) at para 4 thereof, it is seen that the CIT(A) has recorded that on the first two dates on which hearings were fixed i.e., on 12.09.2017 and 04.10.2017, the AR of assessee appeared on the first occasion and sought adjournment which was granted and on 04.10.2017, the AR filed a petition seeking adjournment for four weeks and on the hearing on 08.01.2018, there was non-compliance by the assessee. We find that the CIT(A) records that subsequent hearing notices fixing the hearing for 21.05.2018 and the final notice fixing hearing for 18.09.2018, the notices were returned unserved. Thereafter, the CIT(A) passed the impugned order.

4.3.2 In our view, from the facts laid out above, it appears to us that admittedly the assessee / learned AR did attend before the CIT(A) in the first two hearings and that the notices of hearing on 21.05.2018 and for the last hearing on 18.09.2018 were returned unserved resulting in impossibility of compliance by the assessee. In these circumstances, it certainly cannot be inferred that the assessee's actions were either malafide or deliberate and we are therefore of the view that the CIT(A)'s action in passing the impugned order ex-parte, without hearing / considering and adjudicating on the assessee's contentions on merits is a clear case of violation of the principles of natural justice. More so, when the assessee has been fastened with a huge liability of Rs.44,65,340/-; which she entirely disputes. In this view of the matter, we are of the considered opinion that the interests of substantial justice would be well served if the impugned ex-parte order of the CIT(A) be set aside and do so.

## **5. Ground No.15**

5.1 Next, the learned AR urged this ground (supra). In this ground, the assessee contends that the CIT(A) erred in not setting aside the order of the Assessing Officer (AO), since no opportunity to cross-examine the parties on whose statements / reports / details, etc., the AO drew an adverse inference which is in violation of the principles of natural justice.

5.2 In this regard, it was submitted by the learned AR of the assessee that in ground No.15 (supra), the assessee has disputed the validity of the assessment order passed by the AO 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 paras 2.4 to 6.4 thereof. It was submitted that though the copy of the statements of Shri. Devesh Upadhyay and Shri. Narendra Balasia were made available to the assessee, the assessee was not given the Report of Kolkata Investigation Directorate nor has she 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, judgement 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. The learned AR has particularly drawn our attention to Para No.8 of this judgement 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.

5.3 Per contra, the learned DR supported the orders of the authorities below.

5.4.1 We have considered the rival submissions and at the outset, extract hereunder 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.”*

5.4.2 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), we set aside the impugned order of learned CIT(A) for Assessment Year 2014-15 and restore the matters of treatment of consideration received on sale of shares of NCL Research and Financials Pvt. Ltd., 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 i.e., for making available the documents, reports, statements, etc., relied upon by Revenue for making additions / disallowances and affording adequate opportunity to the assessee for cross-examination of the persons whose statements were being relied upon by the AO. 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 19<sup>th</sup> day of July, 2019.*

Sd/-  
**(PAVAN KUMAR GADALE)**  
**Judicial Member**

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

Bangalore.

Dated: 19<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.