

आयकर अपीलीय अधिकरण, सी / एस एम सी न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' SMC BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER

आयकर अपील सं./ITA No.603/Chny/2019

निर्धारण वर्ष / Assessment Year : 2014-15

Shri Vinod Kumar Kundanmal,  
No.44/39, E K Agraharam Street,  
Park Town, Chennai - 600 003.

v.

The Income Tax Officer,  
Non Corporate Ward - 6(4),  
Chennai - 600 006.

PAN : AADHV 1841 H

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri R. Padmanabhan, CA

प्रत्यर्थी की ओर से/Respondent by

: Shri Sanath Kumar Raha, JCIT

सुनवाई की तारीख/Date of Hearing

: 02.07.2019

घोषणा की तारीख/Date of Pronouncement

: 22.07.2019

### **आदेश /ORDER**

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-5, Chennai, dated 28.12.2018 and pertains to assessment year 2014-15.

2. Shri R. Padmanabhan, the Ld. representative for the assessee, submitted that the assessee claimed exemption under Section 10(38) of the Income-tax Act, 1961 (in short 'the Act') in

respect of long term capital gains arising out of sale of shares to the extent of ₹39,80,018/-. In fact, according to the Ld. representative, the assessee invested in shares of M/s Esaar (India) Ltd. The Ld. representative further submitted that the Assessing Officer mainly placed his reliance on the investigation report of Directorate of Investigation, Kolkata. According to the Ld. representative, a copy of the said investigation report was not furnished to the assessee. Therefore, the Ld. representative submitted that an opportunity may be given to the assessee by remitting back the matter to the file of the Assessing Officer.

3. On the contrary, Shri Sanath Kumar Raha, the Ld. Departmental Representative, submitted that he is placing reliance on the orders of the Assessing Officer as well as the CIT(Appeals).

4. I heard the Ld. representative for the assessee and the Ld. D.R. and perused the relevant material available on record. The assessee made investments in the shares of M/s Esaar (India) Ltd. From the order of the Assessing Officer it appears that the assessee purchased 10,000 shares of M/s Esaar (India) Ltd. at the rate of ₹1/- per share and on sale of these shares, the assessee disclosed long term capital gains on the sale of these shares to the

extent of ₹39,80,018/-. This was disallowed by the Assessing Officer on the ground that the company in which the assessee invested is a penny stock company. However, it is not brought on record how the assessee is involved in promoting the penny stock company and how the assessee involved in inflating the shares of the company. Moreover, the copy of the investigation report said to be received from the Investigation Wing of the Department at Kolkata was not furnished to the assessee. On identical circumstances, this Tribunal in the case of Kanhaiyalal & Sons (HUF) v. ITO in I.T.A. No.1849/Chny/2018, has remitted back the matter to the file of the Assessing Officer for reconsideration. In fact, this Tribunal has observed at para 4 of its order dated 06.02.2019 as follows:-

“4. We heard Shri AR.V. Sreenivasan, the Ld. Departmental Representative also. Admittedly, the Assessing Officer disallowed the claim of the assessee on the basis of the information said to be received from the Investigation Wing of the Department at Kolkata with regard to investment made by the assessee in the penny stock company. It is not in dispute that a copy of the investigation report said to be received from Kolkata was not furnished to the assessee. Moreover, details of the enquiries said to be made by the Assessing Officer were also not furnished to the assessee. In those circumstances, this Tribunal is of the considered opinion that the Assessing Officer

has to reconsider the issue afresh after furnishing the material relied upon by the Assessing Officer. Accordingly, the orders of both the authorities below are set aside and the entire issue is remitted back to the file of the Assessing Officer. The Assessing Officer shall bring on record the role of the assesseees in promoting the company and the relationship of the assesseees, if any with the promoters, role of the assesseees in inflating the price of shares, etc. The Assessing Officer shall also furnish a copy of the investigation report said to be received from the Investigation Wing of the Department at Kolkata and other materials if anything in his possession and thereafter decide the issue afresh in accordance with law, after giving a reasonable opportunity to the assesseees.”

5. In view of the above, this Tribunal is of the considered opinion that the matter needs to be re-examined by the Assessing Officer. Accordingly, orders of both the authorities below are set aside and the issue raised by the assessee with regard to deduction under Section 10(38) of the Act is remitted back to the file of the Assessing Officer. The Assessing Officer shall examine the matter as directed by this Tribunal in the case of Kanhaiyalal & Sons (HUF) (supra) and thereafter decide the issue afresh in accordance with law, after giving a reasonable opportunity to the assessee.

6. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the court on 22<sup>nd</sup> July, 2019 at Chennai.

sd/-  
(एन.आर.एस. गणेशन)  
(N.R.S. Ganesan)  
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,  
दिनांक/Dated, the 22<sup>nd</sup> July, 2019

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-12, Chennai
4. Principal CIT-3, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.