

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D', NEW DELHI**

**BEFORE SH. R. K. PANDA, ACCOUNTANT MEMBER
AND
SH. KULDIP SINGH, JUDICIAL MEMBER**

ITA No.6752/Del/2018
Assessment Year: 2015-16

Lalla Ram Maurya C-4/118, 4 th Floor Safdarjung Enclave Development Area, New Delhi PAN No.AFYPM2934G	Vs	Income Tax Officer Ward – 32 (4) New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Saubhagya Agarwal, Advocate
Respondent by	Shri Naina Soin Kapil, Sr. DR

Date of hearing:	25/07/2019
Date of Pronouncement:	29/07/2019

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 09.10.2018 of the CIT(A)-11, New Delhi relating to A. Y. 2015-16.

2. The assessee in its various grounds of appeal has challenged the ex-parte order of the CIT(A) in confirming the addition made by the Assessing Officer amounting to

Rs.1,52,50,975/- u/s. 68 r.w.s. 115 BBE of the Act, 1961.

3. Facts of the case, in brief, are that the assessee is an individual and filed his return of income on 16.03.2016 declaring total income of Rs.13,41,860/-. The Assessing Officer during the course of assessment proceedings noted that assessee has earned long term capital gain of Rs.1,52,50,975/- on account of sale of shares of M/s. Surbhi Chemicals and Investments Private Limited and claimed the same as exempt u/s. 10 (38) of the IT Act. On being questioned by the Assessing Officer the assessee filed the following documents to substantiate the genuineness of the long terms capital gain :-

- a. Copy of money receipt dated 05.01.2013 for purchase of 30000 equity shares by Expression Dealers Pvt. Ltd.
- b. Delivery note of physical share certificates dated 05.10.2013
- c. Photocopy of share Certificate bearing No.893 in the name of Expression Dealers Pvt. Ltd. Kolkata
- d. Copy of share certificate- duly endorsed in the name of assessee dated 21.01.2013.
- e. Photocopy of request for dematerialization of shares dated 11.10.2014.
- f. Copy of Demat Statements of the assessee maintained with M/s. Integrated Master Securities Ltd. bearing client ID 10153638 of the assessee showing the shares were held in demat form delivered to the broker in demant form.
- g. Copy of contact notes issued by M/s. South Asian Stocks Ltd. having SEBI registration of INB010907336 /NSDL: IN-DP-NSDL-3742014 for sale of shares.

- h. Copy of statement of Affairs of the assessee as on 31.03.2013 & 31.03.2014
- i. Copy of Bank Account of the assessee with State Bank of India, Varanasi reflecting the payment received for sale of shares.

4. However, the Assessing Officer was not satisfied with the arguments advanced by the assessee and rejected the claim of exemption u/s. 10 (38) of the Act on account of profit from sale of shares of the penny stock company. Relying on various decisions including the decision of Hon'ble Supreme Court in the case of CIT Vs. Sumati Dayal reported in 214 ITR 801 and various other decisions the Assessing Officer treated such income as income from undisclosed sources and brought to tax the same u/s. 68 r.w.s. 115 BBE. He accordingly determined the total income of the assessee at Rs.1,65,92,840/-.

6. Since non appeared on behalf of the assessee despite number of opportunities granted, the Ld. CIT(A) in the exparte order passed by him upheld the action of the Assessing Officer.

7. Aggrieved with such order of the CIT(A) the assessee is in appeal before the Tribunal by raising the following grounds of appeal :-

“1. That the commissioner of Income Tax (A) is erred under law while dismissing the appeal of the appellant exparte inspite of the fact that the appellant was prevented by reasonable cause in not appearing on the date fixed for hearing by the Ld. CIT(A).

2. The Commissioner of Income Tax (A) is erred under the law while confirming addition of Rs.1,52,50,975/-

made by A.O. on account of unexplained cash credit u/s. 68 r.w.s. 115 BBE of the Act without appreciating the material facts of the case.

3. That the rejection of the claim of the appellant u/s. 10 (38) of the Act by the A.O. and uphold by CIT(A) is arbitrary, illegal and unsustainable under the law.

4. That any other grounds of appeal may be added/ deleted or amended at the time of hearing”.

8. The Ld. Counsel for the assessee submitted that the Assessing Officer has made the addition on wrong appreciation of facts. Despite specific request made by the assessee during the assessment proceedings, the copy of the investigation report was never supplied to the assessee. Further opportunity of cross-examination was also not granted. He submitted that the Ld. CIT(A) has also decided the issue against the assessee in the exparte order. Referring to the decision of the coordinate bench of the Tribunal in the case Arun Kumar Bhaiya Vs. ITO vide ITA No.2701/Del./2018 order dated 30.08.2018 for A. Y. 2014-15 he submitted that under identical circumstances the matter has been restored to the file of the Assessing Officer for fresh adjudication. He accordingly submitted that in the interest of justice the matter should be restored to the file of the Assessing Officer with a direction to grant one more opportunity to the assessee to substantiate his case.

9. The Ld. DR on the other hand submitted that the investigation report is a public document and can be downloaded from the website and therefore, assessee cannot

blame the Assessing officer for non submission of the same. So far as the issue of cross-examination is concerned she submitted that the report was given by the investigation wing after thorough enquiry and is not a random enquiry. Referring to the decision of Hon'ble Delhi High Court in the case of Udit Kalra she submitted that the Hon'ble High Court has decided the issue against the assessee. She however submitted that since the Ld. CIT(A) has passed the exparte order, therefore, she has no objection if the matter is restored to his file for granting an opportunity to the assessee to substantiate his case.

10. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions relied by both the sides before us. We find the Assessing officer on the basis of the report of the investigation wing and after recording the statement of the assessee u/s. 131, rejected the claim of exemption u/s. 10 (38) of the Act. We find the Ld. CIT(A) in the exparte order upheld the addition made by the Assessing Officer. It is the submission of the Ld. Counsel for the assessee that the Assessing Officer has made the addition on wrong appreciation of facts and has not given a copy of the report of the investigation wing nor allowed the cross-examination to the assessee. It is also his submission that since the Ld. CIT(A) has decided the issue exparte, therefore, the assessee should be given one more opportunity to substantiate his case. Considering the totality of the facts of the case and in the interest of justice we deem it proper to restore this issue to the

file of the Assessing Officer with a direction to grant one more opportunity to the assessee to substantiate his case and decide the issue as per fact and law. While doing so he shall also keep in mind the latest decision of Hon'ble Delhi High court in the case of Udit Kalra. The grounds raised by the assessee are accordingly allowed for statistical purpose.

11. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 29.07.2019.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(R.K PANDA)
ACCOUNTANT MEMBER

Neha

Date:- 29.07.2019

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

<i>Date of dictation</i>	
<i>Date on which the typed draft is placed before the dictating Member</i>	
<i>Date on which the approved draft comes to the Sr.PS/PS</i>	
<i>Date on which the fair order is placed before the Dictating Member for Pronouncement</i>	
<i>Date on which the fair order comes back to the Sr. PS/ PS</i>	
<i>Date on which the final order is uploaded on the website of ITAT</i>	29.07.2019
<i>Date on which the file goes to the Bench Clerk</i>	
<i>Date on which file goes to the Head Clerk.</i>	
<i>The date on which file goes to the Assistant Registrar for signature on the order</i>	
<i>Date of dispatch of the Order</i>	