

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : SMC : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.1236/Del/2019  
Assessment Year: 2015-16

Sushil Kumar Jindal,  
Flat No.12, 2<sup>nd</sup> Floor,  
Sheel Tara House,  
4866/24, Ansari Road,  
Darya Ganj,  
New Delhi.

Vs. ITO,  
Ward-35(5),  
New Delhi.

PAN: AAAHS0041K

(Appellant)

(Respondent)

Assessee by	:	None
Revenue by	:	Shri S.L. Anuragi, Sr.DR
Date of Hearing	:	29.07.2019
Date of Pronouncement	:	01.08.2019

ORDER

This appeal by the assessee is directed against the *ex parte* order dated 22.11.2018 of the CIT(A)-12, New Delhi, relating to Assessment Year 2015-16.

2. An adjournment application has been filed by the Id. counsel for the assessee seeking adjournment of the case. However, considering the fact that the Id.CIT(A) has passed the *ex parte* order, therefore, the same is rejected and the matter is being disposed of on the basis of the material available on record and after hearing the Id. DR.

3. Facts of the case, in brief, are that the assessee is an HUF and filed its return of income on 28<sup>th</sup> March, 2016 declaring the total income of Rs.9,75,640/-, after claiming deduction of Rs.1,50,505/- under Chapter VIA of the IT Act. The Assessing Officer, during the course of assessment proceedings noted that the assessee has claimed exemption of long-term capital gain of Rs.21,82,980/- u/s 10(38) of the IT Act. He noted that the assessee has earned the long-term capital gain of Rs.21,82,980/- from sale of shares of M/s HPC Biosciences Limited, which is a penny stock company. He referred to the modus operandi unearthed during the investigation by the Director of Investigation, Kolkata, according to which they have identified 84 penny stock companies, the shares of which were used for generating bogus long term capital gain by various entry operators. He observed that the assessee is one of the beneficiaries who has obtained long-term capital gain by way of trading in the shares of M/s HPC Biosciences Limited which was suspended by SEBI during the period. He further noted that the notices issued u/s 133(6) to M/s HPC Biosciences Limited was returned back unserved. He, therefore, confronted the same to the assessee and asked him to explain the earning of long-term capital gain from trading in the shares of a penny stock company. Rejecting the various explanations given by the assessee, the Assessing Officer made addition of Rs.21,82,980/- u/s 68 of the IT Act. He further added an amount of Rs.64,489/- being commission @ 3% on estimate basis for earning the above bogus long-term capital gain. Thus, in effect, the Assessing Officer made an addition of Rs.23,88,469/- to the total income of the assessee and determined the income of the assessee at Rs.33,64,109/-.

4. In appeal, the Id.CIT(A), in the *ex parte* order passed by him, upheld the addition made by the Assessing Officer.

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

“1. The Ld. Commissioner of Income Tax (Appeals) -XII, New Delhi has erred in arbitrarily confirming the addition by the Ld. Income Tax Officer, without considering the facts of the case explained and submitted to him.

2. That the Ld. Commissioner of Income Tax (Appeals) - XII, New Delhi has confirm the addition made by Ld. ITO on account of long term capital gain of Rs. 21,82,980/- on sale of shares sold on recognized stock exchange and eligible for exemption u/s 10(38) of the Act and bringing to tax as unexplained cash credit u/s 68.

3. That the Ld. Commissioner of Income Tax (Appeals) -XII, New Delhi has confirm the addition despite the transaction having been done through proper banking channels and as per the rules and regulations of the stock Exchange. That the assessee had made investment in various share including M/s HPC Biosciences Limited.

4. That the Ld. Commissioner of Income Tax (Appeals) - XII, New Delhi has erred both on facts and in law in confirming the above addition despite the assessee place latest pronouncements of the jurisdictional ITAT decision as of the assessee and the same scrip M/s HPC Bio Science Ltd which appended below:

- a. Sunita Khemka, New Delhi vs ACIT, Central Circle-15 ITA No. 389/Del./ 2008 dated 02.08.2018
- b. Nidhi Goel Vs ITO, ward 49(1), New Delhi. ITA No.6882/Del/2017 Delhi dated 12.03.2018.
- c. Chander Prakash, New Delhi vs Ito, Ward- 49(4), New Delhi. ITA No.6880/2017 Delhi dated 12.03.2018

5. That the Ld. Commissioner of Income Tax (Appeals) - XII, New Delhi has erred both on facts and in law in confirming the above addition despite the assessee declaring the total consideration on sale of shares as his income exempt under section 10(38) of the Act, the addition amounts to double taxation on the same income.

6. That the Ld. Commissioner of Income Tax (Appeals) - XII, New Delhi has erred both on the facts and in law confirming the addition made Ld. ITO which is not verified all the aspects and details filed by the assessee during the assessment

proceeding. As vide letter dated 30.11.2017 submitted by the assessee genuineness of Long term Capital gain along with Copy of purchase bills of M/s HPC Biosciences Limited, Copy of Dmat Statement, copy of Financial Ledger with Share Broker & copies of all contract note of brokers sold in Asst. Year 2015-16. That the appellant has filed the complete details of which shows genuineness of Long term capital gain u/s 10(38) as declared by the assessee in his return of income.

7. That the Ld. Commissioner of Income Tax (Appeals) - XII, New Delhi has also erred in relying on the report of Investigation Wing without applying his mind.

8. That the addition was made grossly indulging in surmises without bringing on any direct evidence against the assessee, only on the basis of presumption and assumption.

9. That the Ld. Commissioner of Income Tax (Appeals) - XII, New Delhi has erred in not proving the evidence which were used against the assessee nor any opportunity for cross verification has been provided resulted into gross violation of natural justice to the assessee.

10. The Ld. Commissioner of Income Tax (Appeals) - XII, New Delhi has erred both on facts and in law in confirming the addition of Rs. 65,489/- made by Ld. ITO by presuming that the assessee had paid Commission of Rs.65,489/- without any basis and without any sources of such cash generation during the year.

11. The appellant craves leave to add, alter, modify, any other matter.”

5. I have heard the ld. DR and perused the material available on record. I find the Assessing Officer in the instant case, made addition of Rs.21,82,980/- u/s 68 of the IT Act being the bogus long-term capital gain earned from the sale of shares of M/s HPC Biosciences Limited which is a penny stock company. He also made addition of Rs.65,489/- on estimate basis being the commission paid by the assessee for earning such bogus long-term capital gain @ 3% of such capital gain. I find the ld.CIT(A), in the *ex parte* order, has upheld the addition so made by the Assessing Officer. Although the ld.CIT(A) has also decided the issue on merit, however, considering the totality of the facts of the case and in the interest of justice, I deem it proper to restore

the issue back to the file of the CIT(A) with a direction to grant one more opportunity to the assessee to substantiate its case and decide the issue as per fact and law. The ld.CIT(A) while deciding the appeal shall keep in mind the latest decision of the Hon'ble Delhi High Court in the case of Udit Kalra. The grounds raised by the assessee are accordingly allowed for statistical purposes.

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

The decision was pronounced in the open court on 01.08.2019.

Sd/-  
(R.K. PANDA)  
ACCOUNTANT MEMFBER

Dated: 01<sup>st</sup> August, 2019

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Copy forwarded to

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi