

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

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

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

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

आयकर अपील सं./ITA Nos.2499 & 2500/Chny/2018

निर्धारण वर्ष / Assessment Years : 2010-11 & 2011-12

Smt. Vanita Jain,
82, Audiappan Naicken Street,
Sowcarpet, Chennai - 600 079.

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

PAN : AADPV 0013 B

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : None

प्रत्यर्थी की ओर से/Respondent by : Shri Sanath Kumar Raha, JCIT

सुनवाई की तारीख/Date of Hearing : 01.07.2019

घोषणा की तारीख/Date of Pronouncement : 01.08.2019

आदेश /O R D E R

Both the appeals of assessee are directed against the respective orders of the Commissioner of Income Tax (Appeals)-5, Chennai, dated 29.06.2018 and pertain to assessment years 2010-11 and 2011-12. Since common issue arises for consideration in both these appeals, I heard these appeals together and disposing the same by this common order.

2. The only issue arises for consideration is rejection of claim of the assessee under Section 10(38) of the Income-tax Act, 1961 (in short 'the Act').

3. No one appeared for the assessee inspite of service of notice of hearing. The Registry has placed on record the postal acknowledgement received from the assessee as proof of service of notice on the assessee. Therefore, I heard the Ld. Departmental Representative and proceeded to dispose the appeal on merit.

4. Shri Sanath Kumar Raha, the Ld. Departmental Representative, 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 ₹3,31,032/- for assessment year 2010-11 and ₹4,96,826/- for assessment year 2011-12. In fact, according to the Ld. D.R., the assessee invested in shares of M/s Bakra Prathisthan Ltd. According to the Ld. D.R., it is a penny stock transaction. According to the Ld. D.R., the equity shares of shell companies were transacted and the price of each share was artificially increased. According to the Ld. D.R., the Investigation Wing of the Department at Kolkata found that there was cartel among the brokers who are all involved in penny stocks of shell companies. Therefore, according to the Ld. D.R., the Assessing Officer has rightly disallowed the

claim of the assessee under Section 10(38) of the Act for both the assessment years.

5. I heard the Ld. D.R. and perused the relevant material available on record. The assessee made investments in the shares of M/s Bakra Prathisthan Ltd. From the order of the Assessing Officer it appears that the assessee purchased 2500 shares of M/s Bakra Prathisthan Ltd. at ₹20/- per share for each assessment year. The assessee disclosed long term capital gains on the sale of these shares to the extent of ₹3,31,032/- and ₹4,96,826/- for assessment year 2010-11 and 2011-12 respectively. 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 assesseees 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 assesseees 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 assesseees. 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.”

6. 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.

7. In the result, both the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the court on 1st August, 2019 at Chennai.

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

चेन्नई/Chennai,

दिनांक/Dated, the 1st August, 2019

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-5, Chennai-34
4. Principal CIT-9, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.