

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

श्री एन.के.सैनी, उपाध्यक्ष एवं श्री संजय गर्ग, न्यायिक सदस्य
BEFORE: SHRI. N.K.SAINI, VP & SHRI , SANJAY GARG, JM

आयकर अपील सं./ ITA Nos. 159/Chd/2019
निर्धारण वर्ष / Assessment Year : 2015-16

Smt. Shashi Maheshwari # 295, Sector-7, Panchkula Haryana	बनाम	The ACIT Circle, Sector-2 Panchkula, Haryana
स्थायी लेखा सं./PAN NO: ABBPM1411H		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ ITA Nos. 160/Chd/2019
निर्धारण वर्ष / Assessment Year : 2015-16

Smt. Sharmila Maheshwari # 295, Sector-7, Panchkula Haryana	बनाम	The ACIT Circle, Sector-2 Panchkula, Haryana
स्थायी लेखा सं./PAN NO: ABBPM1411H		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Tej Mohan Singh, Advocate
राजस्व की ओर से/ Revenue by : Shri Manjit Singh, CIT DR

सुनवाई की तारीख/Date of Hearing : 26/08/2019
उद्घोषणा की तारीख/Date of Pronouncement : 26/08/2019

आदेश/Order

PER N.K. SAINI, VICE PRESIDENT

These two appeals by the Assesseees are directed against the common order dt. 03/01/2019 of the Ld. CIT(A), Panchkula.

2. Since the issues involved are common and the appeals were heard together, so these are being disposed off by this common order for the sake of convenience and brevity.

3. At the first instance we will deal with the appeal in ITA No. 159/Chd/2019. Following grounds have been raised in this appeal:

1. *That the Ld. CIT(A) has erred in law as well as on facts in upholding the addition of Rs. 3,10,800/- disallowing the purchase cost of shares as declared which is arbitrary and unjustified.*
2. *That it is the settled Principle that cost is always deductible while arriving at the actual income and as such upholding of the addition is arbitrary and unjustified.*
3. *That the order of the Ld. CIT(A) is erroneous, arbitrary, opposed to the facts of the case and thus untenable.*

From the above grounds it would be clear that only grievance of the assessee relates to the sustenance of addition of Rs. 3,10,800/- made by the A.O. by disallowing the purchase cost of shares declared by the assessee.

4. Facts of the case in brief are that the assessee e-filed return of income on 22/09/2015 declaring an income of Rs. 67,31,190/-. Later on the case was selected for 'Complete Scrutiny' under CASS. The A.O. during the course of assessment proceedings observed that as per the information received from the Asst. Director of Income Tax (Inv)-2, Chandigarh vide letter No. 852 dated 26/09/2016, the assessee obtained bogus Long Term Capital Gains (LTCG) and that she had voluntarily surrendered the income from scrips as income from other sources amounting to Rs. 44,65,200/-. The A.O. asked the assessee to show cause as to why LTCG on penny stock "Channel Nine Entertainment Ltd." be not added back to her taxable income. In response the assessee furnished the written submission which is incorporated in para 2.3 of the assessment order dt. 30/11/2017, for the cost of repetition the same is not reproduced herein. The A.O. observed that the reply filed by the assessee revealed that the total sale proceeds were of Rs. 47,76,000/- while the assessee surrendered Rs. 44,65,200/- after claiming the purchase cost of shares. However, the A.O. did not allow the purchase cost claimed by the assessee and made the addition of Rs. 3,10,800/-.

5. Being aggrieved the assessee carried the matter to the Ld. CIT(A) who sustained the addition by observing in para 4.2 of the impugned order as under:

4.2 I have gone through the facts of the case and written submissions filed by the appellant. It is noted from the assessment order that the appellant has declared the income from trading of Bogus scrip of M/s HPC Bio Sciences Ltd. during F.Y. 2014-15 as 'Income from other sources' and not as long term capital gain or business income subsequent to survey being conducted on its premises by the Investigation Wing, Chandigarh. The SEBI vide its order WMT/RKA/ISD/54/2015 dated 29.06.2015 in respect of M/s HPC Bio Sciences Ltd., M/s Alps Motor Finance Ltd. and M/s Channel Nine Entertainment Ltd., has held these three companies to be penny stock companies used for manipulative trading activities, providing accommodation entries and for generating fictitious LTCG. From the above, it is clear that the appellant had traded in penny stocks which were used for manipulative trading activities and hence the sale proceeds from the same are held to be bogus.

Therefore, the entire trade value is the undisclosed income of the appellant in the relevant year and the AO has rightly added back the purchase cost as claimed by appellant to the total income. I do not find any infirmity in the order of the AO and the same is confirmed. This ground of appeal is dismissed.

6. Now the Assessee is in appeal.

7. Ld. Counsel for the Assessee submitted that the Ld.CIT(A) without confronting the order dt. 29/06/2015 of the SEBI mentioned in the impugned order, to the assessee, treated the trading of the shares as bogus. He requested that the matter may be set aside to the A.O. because the opportunity was not given to rebut the order, if any, of the SEBI and moreover the reasons for not allowing the purchase cost was not given by the A.O, and that the assessee purchased the shares through banking channels and IPO.

8. In his rival submissions the Ld. CIT DR strongly supported the orders of the authorities below.

9. We have considered the submissions of both the parties and perused the material available on the record. In the present case, these facts are not clear as to whether the assessee purchased the shares through IPO and as to whether the order dt. 29/06/2015 of the SEBI was confronted to the assessee. We

therefore, deem it appropriate to set aside this issue back to the file of the A.O. to be adjudicated afresh, in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

10. In ITA No. 160/Chd/2019 pertaining to Smt. Sharmila Maheshwari, Panchkula, the facts are identical as were involved in the case of Smt. Shashi Maheswari in ITA No. 159/Chd/2019 which we have adjudicated in the former part of this order, therefore, our findings given in the said case shall apply mutatis mutandis to the case of Smt. Sharmila Maheswari.

11. In the result, both the appeals of the assesseees are allowed for statistical purposes.

(Order pronounced in the open Court on 26/08/2019)

Sd/-
संजय गर्ग
(SANJAY GARG)
न्यायिक सदस्य/ Judicial Member
AG
Date: 26/08/2019

Sd/-
एन.के.सैनी,
(N.K. SAINI)
उपाध्यक्ष / VICE PRESIDENT

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar