

IN THE INCOME TAX APPELLATE TRIBUNAL “H” BENCH, MUMBAI
BEFORE SHRI AMARJIT SINGH, JM AND SHRI G. MANJUNATHA, AM

आयकर अपील सं/ I.T.A. No.48/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2014-15)

Smt. Heenaben Hirenbbhai Shah 31, Nanak Marg, D.D. Sathe Marg, Mumbai-400004.	बनाम/ Vs.	ITO-19(1)(5) Room No. 215, 2 nd Floor, Matru Mandir, Tardeo Road, Mumbai-400007.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AHKPS9512J		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Bhupendra Shah (AR)
Revenue by:	Shri Manoj Kumar Singh (DR)

सुनवाई की तारीख / Date of Hearing: 21/08/2019
घोषणा की तारीख /Date of Pronouncement: 28/08/2019

आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 14.12.2018 passed by the Commissioner of Income Tax (Appeals) -30, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2014-15.

2. The assessee has raised the following grounds: -

“1) In the facts and the circumstances of the case and in mw, the learned AO. erred ill passing the order u/s 143(3) only on the basis of information received from Directorate of Investigation, Kolkata amounting to borrowed satisfaction.

2) In the facts and circumstances of the case and in law, the learned A.O. erred in adding sale proceeds of shares of MIs Blazon Marble Ltd (Earlier Shubham Granites Ltd.) amounting to Rs.19,70,072/- u/s 68 of the Act as against LTCG claimed as exempt us 10(38) by the Appellant which is



contrary to decision rendered by Mumbai ITAT in the similar case of Ramprasad Agarwal ITA. Nos: 1248 & 4843/M/2018.

3) In the facts and circumstances of the case and in law, the learned A.O. erred in adding commission amounting to Rs,39,401/- as unexplained expenditure u/s 69C of the Act.

4) In the facts and circumstances of the case and in law, the Assessing Officer erred in initiating penalty u/s 271(1)(c) and u/s 272(A)(1)(c) and charging interest u/s 234A. 13 & C.

5) In the facts and circumstances of the case and in law, the learned Commissioner Income Tax(A) erred in confirming the above additions ex pane even though only two adjournments were taken by the Appellant on reasonable grounds.

Relief Prayed:

The appellant therefore prays Your Honor;

1) To delete the addition amounting to Rs.19,70,072/- u/s 68 of the Act as against LTCG claimed as exempt LI/s 10(38) by the Appellant.

2) To delete the disallowance of commission of Rs.39.401/- as unexplained expenditure u/s 69C of the Act.

3) To quash the order passed by Commissioner of Income tax (A) exparte even though only two adjournments were taken by the Appellant on reasonable grounds

4) To delete penalty initiated LI/s 271(1)(c) and u/s 272(A)(1)(c) and charging interest u/s 234A. B & C.

General: -

- The appellant reserve rights to add alter or delete any portion of this appeal before its conclusion.*
- This appeal is tiled in time and may please be allowed in full.*
- A Detailed paper book along with case laws will be submitted at the time of hearing. ”*

3. The brief facts of the case are that the assessee filed her return of income on 02.08.2014 declaring total income to the tune of Rs.7,32,440/- for the A.Y. 2014-15. The return was processed u/s 143(1) of the Act. The case was selected for scrutiny under CASS. Notices u/s 143(2) & 142(1) of



the Act were issued and served upon the assessee. The assessee was having her income from salary, house property, business, capital gain income and income from other sources. The assessee has shown the long term capital gain of Rs.19,52,572/- on sale of shares in the year under consideration and also claimed as exempt u/s 10(38) of the Act. The assessee received the sale proceed from sale of one scrip i.e. M/s. Blazon Marble Ltd. (Earlier named as M/s. Shubham Granites Ltd.). The assessee purchased 10,000 shares from one Jitendra Chauhan in off market transaction of Rs.17,500 on 19.03.2011, these shares were subsequently dematerialized and the shares were split in the ratio 1:5 and the assessee received 50000 shares of the company with face value of Rs.2 each. The assessee sold these 50000 shares for a sale consideration of Rs.19,52,572/- in F.Y.2013-14. The AO conducted the enquiry and found the same as ingenuine, hence, added to the income of the assessee u/s 68 of the Act. The AO was also raised the addition @ 2% i.e. in sum of Rs.39,401/- as commission paid to entry provider u/s69C of the Act. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who dismissed the appeal of the assessee, therefore, the assessee has filed the present appeal before us.

4. We have heard the argument advanced by the Ld. Representative of the parties and perused the record. In fact, the Ld. Representative of the assessee did not argue the case on merits but argued on this point that the CIT(A) has decided the matter of controversy in absence of the assessee and without giving an opportunity of being heard to the assessee in accordance with law, therefore, the finding of the CIT(A) is not justifiable, hence, is liable to be set aside in the interest of justice. However, on the other hand, the Ld. Representative of the Department has refuted the said contention. On appraisal of the order passed by the CIT(A) dated



01.07.2016, we find that the CIT(A) has decided the matter of controversy in absence of the assessee/Representative of the Assessee without giving an opportunity of being heard to the assessee in the accordance with law. A proper and reasonable opportunity is required to be given to the assessee before deciding the matter of controversy in accordance with law.

5. For this proposition we place reliance upon the following case laws.

(1) CIT Vs. Premkumar Arjundas Luthra (HUF) (2017) 154 DTR (Bom) 302

(2) CIT Vs. S Chenniappa Mudaliar (1969) 74 ITR 1 (SC)

6. Accordingly in the interest of justice, we set aside the finding of the CIT(A) on all the issues and remit the issue raised in the appeal to the file of the Ld. CIT(A). Ld. CIT(A) is directed to consider the issue afresh and pass an order on the merits of the case after giving a proper opportunity of being heard to the assessee in accordance with law.

7. In the result, the appeal filed by the assessee is hereby ordered to be allowed for statistical purposes.

Order pronounced in the open court on 28/08/2019

Sd/-

(G. MANJUNATHA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 28 /08/2019.

Vijay/ Sr. PS

Sd

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER



ITA No. 48/M/2019
A.Y.2014-15

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**