

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C+SMC": NEW DELHI
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND
SHRI K.N.CHARY, JUDICIAL MEMBER

ITA No. 1665/Del/2019
(Assessment Year: 2010-11)

Preeti Bansal, Y-402, Sidhartha Apartments, Maharana Pratap Enclave, Pitampura, New Delhi PAN: AGJPG2525K (Appellant)	Vs.	ITO, Ward-40(5), New Delhi (Respondent)
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ITA No. 1666/Del/2019
(Assessment Year: 2010-11)

Shruti Garg, 2820/209, Tri Nagar, New Delhi PAN: ASRPG9207C (Appellant)	Vs.	ITO, Ward-42(4), New Delhi (Respondent)
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ITA No. 1667/Del/2019
(Assessment Year: 2010-11)

Chand Kumar Goyal (HUF), H No. 119, Anand Vihar, Pitampura, New Delhi PAN: AABHC7853C (Appellant)	Vs.	ITO, Ward-40(3), New Delhi (Respondent)
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Assessee by :	Ms. Rano Jain, Adv Shri Pranshu Singhal, CA
Revenue by:	Ms. Mansi Jain, CA
Date of Hearing	14/10/2019
Date of pronouncement	14/10/2019

O R D E R

PER BENCH

1. These are the 3 appeals of 3 different assessee involving identical facts and therefore they are disposed of by this common order.

2. For the sake of simplicity we cull out the facts in ITA number 1665/Del/2019 for assessment year 2010 – 11 in case of Mrs. Preeti Bansal.
3. Assessee is an individual deriving income from rent and interest. Assessee has filed her return of income on 0322011 declaring total income of INR 1 85593/-.
4. In this case information with regard to the systematic evasion of taxes by client/members of the National Multi commodity exchange by misuse of the platform has been received from the Deputy Director of income tax (investigation), Kolkata vide letter dated 17/3/2017. Based on the forward markets commission report that clients and members of the National Multi commodity exchange were found to be involved in creating artificial volume and suspected evasion of the income tax by misuse of the platform of the stock exchange. Thus a survey action u/s 133A of the income tax act was conducted by the Principal Director of Income Tax (Investigation), Ahmadabad at premises of the National Multi commodity exchange and back up of the trade at exchange was taken. After analysis of the data, it was found that 85 entities were identified had booked contrived losses/profit in excess of INR 10 Crores and out of 85 such entities the list of 50 clients were received to verify whether the contrived losses booked on National Multi commodity exchange were used to set off any income/profit available in the books. On perusal of the investigation report of the investigation wing , Calcutta, it was observed that summons returned unserved as the entities were not found at the addresses, the entities did not file income tax return in the concerned assessment year, the entities who filed the income tax return but not claimed any losses in the concerned financial year, the trading was done through suspended / penalized broker/members, most of the clients are found to be shell/dummy entities and the statement of entry operators/individual in which they have accepted that the loss was booked was bogus loss to facilitate accommodation bogus law/profit to the beneficiaries. Therefore it was concluded that the National Multi

commodity exchange has been used as a tool for tax evasion and only settle trades have been considered to arrive at the beneficiaries.

5. According to the report it was found that assessee is one of the beneficiaries. The assessee has booked profit/loss amounting to INR 1 98000/- by misuse of the platform of the stock exchange through sub broker Shivputra Vinimay private limited during the financial year 2009 – 10. It was also noticed that assessee has filed income tax return on 3/2/2011 declaring total income of INR 1 85593/- .On the basis of the above information, it was found that the assessee has not accounted for the above said financial transaction in her income tax return of the assessment year in question. Therefore notice u/s 147 of the income tax act was issued as income of INR 1 98000/- has escaped assessment for failure on part of the assessee. Reasons were recorded in writing and the approval was obtained. The learned AO issued notices u/s 133 (6) of the act to the National Multi commodity exchange for culling information in respect of transaction made by the assessee. The exchange sent to the information that total sale of INR 5 104000/- and total buying of rupees for 906000/- was made thus a profit of INR 1 98000 was earned by the assessee. When the assessee was confronted, assessee submitted that it is not at all earned any profit on the NMC platform through the above broker for assessment year 2009 – 10 and all the bank statements of the assessee in this regard were submitted. The assessee also submitted the copy of the statement of the taxable income also. Thus the claim of the assessee is that it has not earned any such profit and has also not entered into any transaction with the said broker and therefore no addition can be made in the hands of the assessee. The assessee also asked the learned assessing officer to give the details of the bank, branch and account number in which the said money of INR 1 98000/- has been received by the assessee from the said broker. The learned assessing officer rejected the submission of the assessee because assessee could not submit any evidence that the amount of INR 1 98000/- does not pertain to her. Consequently addition of INR 1 98000/- was made to the total income of the assessee returned of INR 1 85593/- determining total

income of the assessee at INR 3 83590/- by passing an order u/s 143 (3) read with section 147 of the income tax act on 21/12/2017.

6. Aggrieved, assessee preferred an appeal before the learned CIT – AO could the above addition as per Para number 6.4 – 6.10 of the order. Therefore assessee aggrieved has preferred this appeal before us.
7. The learned authorized representative submitted a detailed paper book containing 38 pages challenging the reopening of assessment as well as submitting the complete details stating that she has not received any such sum as claimed by the learned assessing officer and has also not entered into any transaction with the broker stated by the AO. She also made a reference to the competition of the total income wherein there is no such income as stated by the learned assessing officer in the assessment order. She referred to the reasons recorded by the learned assessing officer and stated that there is a complete non-application of mind by the learned assessing officer while recording reasons for reopening as it is purely based on the report of the deputy director of investigation, Kolkata. She also challenged that there is no live link between the material in the form of an investigation report as well as the income of the assessee. She also referred to plethora of judicial precedents to support the above contention. She also referred that in the reasons of the reopening the name of some broker was mentioned whereas in the assessment order the name of altogether different broker was mentioned.
8. On the merits of the addition she submitted that assessee has not earned any profit through National Multi commodity exchange platform and she was not registered with any of the brokers of that exchange. She also submitted that she has not received any such income which is supported by the copies of the bank account wherein no such income is credited. She further stated that the learned assessing officer has held that the income has been credited in some other bank account but assessee does not have any such bank account neither the AO could point out existence of any such bank account. She also submitted that addition u/s 68 cannot be made as no income is credited in the books of the assessee.

Accordingly she submitted that the reopening is bad in law and even otherwise the addition is not required to be made on the facts of the case.

9. The learned departmental representative vehemently supported the orders of the lower authorities.
10. We have carefully considered the rival contention and perused the orders of the lower authorities. The reasons recorded referred to the misuse of the platform of the National Multi commodity exchange by the assessee by earning INR 1 98000/- as profit. The reasons showed the name of the broker whereas while making an assessment the AO used nonavailability of altogether different broker for making the addition. No such income was found credited in any of the bank accounts of the assessee. The learned AO could not show in which bank account INR 1 98000/- has been credited. Further assessee derives income which is disclosed in the computation of total income submitted along with the return of income. No such income was found credited in the computation of the total income or the return of income. Thus apparently assessee has not shown any such income which is earned by her by using the platform of National Multi commodity exchange. If the assessee has earned any such profit, it would have been definitely disclosed in the return of income by the assessee because the allegation of the learned assessing officer is that she has earned a bogus profit. Thus the allegation made by the learned assessing officer is totally unfounded. In view of this neither the reasons recorded by the AO are sustainable nor can the addition on the merit be upheld. The lower authorities have confirmed the addition without any material available with them that assessee has shown any bogus profit of INR 198,000/- by misuse of the NMC platform as no such income was found credited in any of the bank accounts of the assessee. Further merely because National Multi commodity exchange has given certain information u/s 133 (6) of the act of the trade executive on its platform but in that annexure no where the name of the assessee appears. Accordingly we allow ground number 1 – 6 of the appeal against the

reopening of the assessment and ground number 7 – 10 on the merits of the addition.

11. In the result ITA number 1665/del/2019 filed in the case of Mrs. Preeti Bansal (Goyal) is allowed.
12. Identical facts exist in case of ITA number 1666/del/2019 for assessment year 2010 – 11 in case of Shruti Garg wherein the addition of INR 200,000 has been made. Both the parties confirmed that the facts and in the case of this assessee were identical to the facts and in the case of the appeal of Preeti Bansal in ITA number 1665/del/2019. For the reasons given by us while deciding the appeal of Preeti Bansal, we also allow the appeal of this assessee in ITA number 1666/del/2019 giving the similar findings.
13. Identical facts existed in the appeal number 1667/del/2019 in case of Chand Kumar Goyal HUF as confirmed by both the parties wherein the addition of INR 1 82811/- is made by the learned assessing officer on account of misuse of NMC platform. For the reasons given by us while deciding the appeal of Preeti Bansal, we also allow the appeal of this assessee in ITA number 1667/del/2019.
14. Accordingly appeals of all these 3 assessees which are on the similar facts are allowed.

Order pronounced in the open court on 14/10/2019.

-Sd/-
(K.N.CHARY)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated:14/10/2019
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi