

**IN THE INCOME TAX APPELLATE TRIBUNAL
SMC, "A" BENCH : BANGALORE**

BEFORE SHRI B.R BASKARAN, ACCOUNTANT MEMBER

ITA No.1950/Bang/2019
Assessment year : 2011-12

Shri Kiran Chand Kundalia, 10/1, Kundalia Tower, 3 rd Cross, H Siddiah Road, Bengaluru-560 027. PAN – ABYPK 8879 Q	Vs.	The Income-tax Officer, Ward-7(2)(2), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri Sarwan Kumar, C.A
Respondent by	:	Shri Ganesh R Ghale, Advocate Standing Counsel to Dept.

Date of hearing	:	27.11.2019
Date of Pronouncement	:	29.11.2019

ORDER

Per B.R Baskaran, Accountant Member

The assessee has filed this appeal challenging the order dated 5/8/2019 passed by Id CIT(A)-7, Bengaluru and it relates to the asst. year 2011-12. The assessee is aggrieved by the decision of Id CIT(A) in confirming the addition of Rs.4,59,000/-, being long term capital gain declared by the assessee.

2. I heard the parties and perused the record. At the time of hearing the Id AR did not press ground No.1 to 6 by duly making endorsement in the grounds of appeal. Accordingly these grounds are dismissed as not pressed.

3. The ld AR submitted that the assessee had purchased shares of M/s Devika Protines Ltd., and sold the same during the financial year relevant to the asst. year 2011-12 for a sum of Rs.4,59,000/-. The assessee had declared long term capital gain on sale of above shares and claimed the same as exempt u/s 10(38) of the Act. The AO received information that shares of M/s Devika Products Ltd., falls under the category of penny stocks and its prices have been rigged in order to generate capital gains in the hands of investors. Accordingly the AO reopened the assessment of the assessee. The investigation wing of the assessee had analyzed the modalities adopted in penny stock cases. After reproducing the observations of the investigation wing, the AO took the view that the sale consideration received by the assessee on alleged share of shares is liable to be taxed as unexplained cash credit u/s 68 of the Act. Accordingly he assessed a sum of Rs.4,58,996/- as income of the assessee u/s 68 of the Act. The ld CIT(A) also confirmed the same and hence the assessee has filed this appeal before the Tribunal.

4. The ld AR further submitted that the assessee has produced evidences in support of purchase and sale of shares and further the shares have entered the DEMAT account of the assessee. Accordingly he submitted that tax authorities are not justified ignoring the claim of capital gain.

5. The ld AR further submitted that the assessee, in order to purchase peace, forgo the claim of capital gain. He submitted that the AO has assessed the sale consideration of Rs.4.59 lakhs as income of the assessee. However, the assessee has purchased the

shares during the relevant to the asst. year 2010-11 and the purchase cost has also been duly declared in the return of income filed by the assessee. Accordingly he submitted that the AO should have assessed the profit element arising in this transaction. Accordingly he prayed that the AO may be directed to allow deduction of purchase cost and assess only profit element.

6. The Id DR also submitted that the expenditure incurred by the assessee on alleged purchase of shares may be allowed as deduction.

7. In view of the rival submissions, I set aside the order passed by Id CIT(A) and restore the issue to the file of the AO with the direction to examine the claim of expenditure incurred by the assessee for purchasing the shares and allow deduction of the same against the sale proceeds and assess income arising from those transactions. I order accordingly.

8. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on **29th November, 2019.**

Sd/-
(B.R Baskaran)
Accountant Member

Bangalore,
Dated, the 29th November, 2019.
/Vms/

Copy to:

1. Appellant (s) / Cross Objector(s)
2. Respondent(s)
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore