

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES : "B", BANGALORE**

**BEFORE SHRI A.K.GARODIA, ACCOUNTANT MEMBER  
AND  
SMT.BEENA PILLAI, JUDICIAL MEMBER**

**ITA No.1163(Bang)/2019  
(Assessment Years : 2015-16)**

Ms Sunitha Darla,  
No.40/1 , C/o M/s Prakash Jewellers,  
Shivrampet,  
Mysore-570 001  
Pan No.AGQPM6043F

Appellant

**Vs**

The Income Tax Officer,  
Ward-1(1),  
Bangalore

Respondent

**Appellant by : Smt. Suman Lunkar, CA  
Revenue by : Shri Kumar Ajeet, Addl. CIT**

**Date of hearing : 06-11-2019  
Date of pronouncement : 15-11-2019**

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER:**

Present appeal has been filed by assessee against order dated 25/03/19 passed by Ld. CIT (A), Mysore for assessment year 2015-16.

**2. Brief facts of the case are as under:**

Assessee is an individual and filed his return of income for year under consideration declaring total income of Rs.13,56,130/-. Ld.AO observed that assessee has claimed exemption under section 10(38) amounting to Rs.,112,34,591/- towards sale of equity shares. The case was selected for scrutiny to verify the suspicions long term capital gains on shares in pursuance to the inputs from investigation wing.

2.1 Ld.AO observed that, during the year assessee sold 47,500 shares of M/s Lifeline Drugs and Pharma Ltd. for consideration of Rs.1,13,40,000/-. Assessee upon being varied by Ld.AO submitted that originally assessee bought 950 shares offline through private placement with broker M/s. Vishal Vijay Shah, Mumbai, at face value of R.10/-, and market value of Rs.45/- on 17-08-2011. Assessee received 3800 bonus shares against existing 950 shares and on 15-11-2013, the 4750 shares having face value of R.10/- was split into 1:10 ratio making it as 47500 shares of face value of Rs.1/-. The company was thereafter known as Arihant Multi Commercial Ltd. Assessee then sold all 47500 shares at BSE at average rate of Rs.238.64 approx. to various entities between 09-04-2014 and 12-05-2014 for sale consideration of Rs.1,13,40,000/-.

2.2 It has been submitted that Assessing Officer concluded assessment by holding that transaction in share price of M/s Lifeline Drugs and Pharma Ltd. is not owing to commercial principles and market factors and that assessee resorted to a pre-conceived scheme to procure long term capital gains by way of price difference in share transactions. Ld.AO also held that

assessee did not discharge her onus of proving the rise in share price to be natural and based on market forces and, therefore, claim of exemption of long term capital gains earned by assessee was denied.

3. On appeal before Ld.CIT (A), observations and findings by Ld.AO were upheld.

4. Aggrieved by order of Ld. CIT(A) assessee is in appeal before us.

4.1 At the outset assessee, raised claim to cross examine persons whose statements were used against assessee to which Ld.AO has referred to in assessment order. In support, Ld.AR placed reliance upon decision of *Hon'ble Karnataka High Court* in case of *Chandra Devi Kothari Vs ITO* in *Writ Petition No. 39370/2014 dated 02/02/2015*, wherein matter was restored back to file of AO for fresh decision after providing copy of statement and other related details relied upon by Ld.AO.

4.2 We are conscious of the principle that, without opportunity of cross- examination, such statements cannot be relied upon against any person. However, such right, as held in various decisions by *Hon'ble Supreme Court*, is not an absolute right and depends on circumstances of the case and the statute concerned, as held in *State of J&K Vs. Bakshi Gulam Mohd. AIR 1967 (SC) 122*, and *Nath International Sales Vs. UOI* reported in *AIR 1992 Del 295*. In case of *T. Devasahaya Nadar V. CIT* reported in *(1964) 51 ITR 20 (Mad)* it has been held that;

*"it is not an universal rule that any evidence upon which the department may rely should have been subjected to cross-examination, if the assessing officer refuses to produce an informant for cross-*

*examination by the assessee there cannot be any violation of natural justice.”*

5. Further, in case of *GTC Industries Ltd. Vs. Asstt. CIT*, reported in (1998) 60 TTJ (Bom-Trib) 308, it has been held that, where statement and report of third parties are only secondary and subordinate material which were used to buttress the main matter connected with the quantum of addition, denial of opportunity to cross examine third parties did not amount to violation of natural justice. Each case has got to be decided on facts and circumstances of that case. Thus in our considered opinion, relevant factors to be considered are surrounding circumstances, objective facts, evidence adduced, presumption of facts based on common human experience in life and reasonable conclusions.

6. Be that as it may, it is further observed that Ld. AO has not examined/called for any evidences in respect of purchase/sale of alleged scripts. Assessee is therefore directed to provide all relevant documents to establish sound financial of alledged companies and that fluctuation in price was market driven. Ld.AO shall take all evidences into consideration and then decide the issue as per law. In the event *de hors* statement, there are overwhelming evidences and assessee is unable to establish genuineness of sale and purchase of alledged scripts, adverse view would be taken by holding the transaction to be sham.

7. Ld.AO is directed to provide all statements recorded by Ld.AO to assessee, referred to in assessment order. In the event, statements recorded are not of secondary and subordinate category, cross examination has to be granted to assessee. Ld.AO is directed to re-examine the case of assessee in the light of aforestated direction, in accordance with law. Needless to say

that proper opportunity shall be granted to assessee to represent its case as per law.

**8. Accordingly, we allow ground raised by assessee on preliminary legal issue.**

**In the result assessee's appeal stands allowed for statistical purposes.**

Order pronounced in the open court on 15-11-2019

Sd/-

**(A.K.GARODIA)  
ACCOUNTANT MEMBER**

Dated: 15-11-2019

\*am

Copy of the Order forwarded to:

- 1.Appellant;
- 2.Respondent;
- 3.CIT;
- 4.CIT(A);
- 5.DR
- 6.ITO (TDS)
- 7.Guard File

Sd/-

**(BEENA PILLAI)  
JUDICIAL MEMBER**

By Order  
Asst. Registrar