

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC-B” BENCH : BANGALORE**

BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER

ITA No.1960/Bang/2019
Assessment year : 2015-16

Shri. Manoj Somani, No.16, Shreenivasa Residency, 28 th Main Road, BTM 2 nd Stage, Bengaluru – 560 076. PAN : ADZPS 4956 M	Vs.	The Income Tax Officer, Ward – 4(3)(1), Bengaluru.
APPELLANT		RESPONDENT
Assessee by	:	Smt. Suman Lunkar, CA
Revenue by	:	Shri. Ganesh R. Ghale, Advocate Standing Counsel to Department
Date of hearing	:	18.11.2019
Date of Pronouncement	:	20.12.2019

ORDER

This appeal is filed by the assessee and the same is directed against the order of the learned CIT(A)-4, Bangalore dated 25.06.2019 for Assessment Year 2015-16.

2. The grounds raised by the assessee are as under:-

1. *The learned Assessing Officer had erred in passing the order in the manner passed by him and the learned Commissioner of Income tax (Appeals) has erred in confirming the same. The orders passed are bad in law and are liable to be quashed.*
2. *In any case the order passed is in gross violation of the principles of natural justice and fair play, especially in the absence of the material relied upon while framing the assessment makes the order totally bad in law and liable to be cancelled.*
3. *The learned Commissioner of Income tax (Appeals) has instead of quashing the impugned order, has just confirmed the order of Assessing Officer without properly considering the facts and circumstances of the case, arguments of the appellant and the law applicable.*

4. *The assessing officer had in any case, erred in adding a sum of Rs.6,79,623/- holding that the sale proceeds received back are to be treated as unexplained money u/s 69A of the Act. On proper appreciation of facts and the law applicable, there is no unexplained money at all. The addition as made is erroneous both on facts and law is to be deleted in entirety.*
5. *In any case and without further prejudice, the authorities below have erred in:*
 - a) *Holding that the entire consideration received on sale of shares is to be assessed u/s 69A of the Act.*
 - b) *Holding without basis that the transactions in shares are fraudulent.*
 - c) *Alleging without any basis that the appellant has obtained accommodation entries and appellant's own money came back in the guise of capital gains*

The conclusions / observations of authorities below being totally erroneous and without basis both on facts and law is to be disregarded.

6. *The appellant had actually sold shares through demat account, had earned Long term Capital Gain thereon and claimed the same as exempt u/s 10(38) of the Act and same is to be accepted without any variation.*
 7. *The appellant denies the liability to pay interest U/s. 234A, 234B and 234C. The interest having been levied erroneously is to be deleted.*
 8. *In view of the above and other grounds to be adduced at the time of hearing, it is requested that the impugned order be quashed or at least the addition made u/s 69A of the Act be deleted , the exemption on Long term Capital Gain as claimed by the appellant be accepted, and the interest levied be also deleted.*
3. In the course of hearing, it was submitted by the learned AR of the assessee that the impugned order of the CIT(A) is not sustainable because this was the argument of the assessee before the learned CIT(A), as noted by him in para 20.1 of his order that information received from DIT (Investigation), Kolkata was not provided to the assessee and right of cross examination of the person who has confirmed that the transaction is an accommodation was also not given to the assessee

but in spite of this specific contention raised before CIT(A), there is no finding of the learned CIT(A) on these two aspects. She placed reliance on the Tribunal order rendered in the case of Ramesh Kumar Shah Vs. ACIT in ITA No.595/Bang/2018 dated 05.12.2018. She submitted a copy of this Tribunal order and pointed out that in para No.3.5 of this Tribunal order, the Tribunal has followed other two Tribunal orders rendered in the case of *Arvind Kumar Moochand* in ITA No.509/Bang/2017 and *Pukhraj Hasmukhlal* in ITA No.1927/Bang/2017 and the matter was remanded to the file of the AO to readjudicate after providing copy of all documents, including statements, investigation reports, etc., relied upon by Revenue for making additions / disallowances and providing adequate opportunity to the assessee for cross-examination of persons whose statements are relied upon. She submitted that in the present case also, the matter should be restored back to the file of the AO with similar directions as were given by the Tribunal in that case.

4. As against this, it was submitted by learned DR for Revenue that before the AO, no request was made for documents or for cross-examination and therefore, the order of the CIT(A) should be confirmed.

5. I have considered the rival submissions. First of all, I reproduce para 20.1 from the order of the learned CIT(A). This para reads as under:-

20.1 Notwithstanding the above, the impugned order is bad in law for not following the principles of natural justice. This is so for the following reason:

a. Information received from DIT (Inv), Kolkata is not furnished.

b. The basis to state that M/s Kailash Auto Finance Ltd is penny stock scrip and is providing Accommodating entries is not known. Right of cross-examination of the person who has confirmed that the transaction is

c. Accommodative is not given to the appellant.

6. I also reproduce para No.3.5 of the Tribunal order rendered in the case of Shri. Ramesh Kumar Shah (supra) on which reliance has been placed by learned AR of the assessee. This para reads as under:-

“3.5 We have heard both parties and perused and carefully considered the material on record; including the judicial decisions cited and the orders of the authorities below. Taking into consideration the facts and circumstances of the case that the assessee specifically requested for cross-examination of the deponents whose statements were the basis of addition by the AO and also the report of the Investigation Directorate, Kolkata for rebuttal; from the judicial decisions cited, we find that the issue for consideration is squarely covered by the orders of the Bengaluru ITAT in the cases of Arvind Kumar Moolchand (supra) and Pukhraj Hasmukhlal (supra). Following the aforesaid orders (supra), we set aside the orders of the AO and restore the matter of treatment of profit declared on sale of shares, claimed as exempt u/s 10(38) of the Act, to the file of the AO to re-adjudicate the issue afresh; after making available to the assessee for rebuttal all documents; including Statements, Investigation Reports, etc., relied upon by Revenue for making the additions/disallowances and providing adequate opportunity to the assessee for cross-examination of persons whose statements are being relied upon. It is accordingly ordered. Consequently, ground No. 2 is disposed of as above.”

7. From the relevant order of the CIT(A) as reproduced above, it is seen that the assessee made a specific request before IT(A) that the assessment order is bad in law for not following the principles of natural justice and in this regard, a specific submission was made before CIT(A) that information received from DIT (Investigation), Kolkata was not furnished and right of cross-examination of the persons who have confirmed that the transaction is accommodation is not given to the assessee. In spite of these specific requests, there is no finding given by learned CIT(A) on these aspects. As per para No.3.5 of the Tribunal order rendered in the case of Shri. Ramesh Kumar Shah (supra), under similar facts, the matter was restored

back to the file of the AO for fresh decision with a direction that all documents including statements, investigation reports, etc., relied upon by the Revenue for making additions / disallowances should be provided to the assessee for rebuttal and adequate opportunity to the assessee for cross-examination of persons whose statements are being relied upon should also be provided. Respectfully following this Tribunal order, in the present case also, I restore the entire matter back to the file of the AO with similar direction.

8. In view of the above decision, no adjudication on merit is called for at the present stage.

9. In the result, the assessee's appeal is allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(A. K. GARODIA)
Accountant Member

Bangalore.

Dated: 20th December, 2019.

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| 1. Appellants | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.