

**आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई**  
IN THE INCOME TAX APPELLATE TRIBUNAL, **D (SMC)** BENCH : CHENNAI

श्री इंटूरी रामा राव, लेखा सदस्य एवं  
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष

[BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER  
AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER]

आयकर अपील सं./I.T.A. No.1827/CHNY/2019.  
निर्धारण वर्ष /Assessment year : 2009-2010.

Pramila Patel,  
No.27, GNT Road,  
Puzhal,  
Chennai 600 066.

**Vs.** The Income Tax Officer,  
Non Corporate Ward 10(3)  
Chennai.

**[PAN AEIPP 1044H]**  
**(अपीलार्थी/Appellant)**

**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by : None  
प्रत्यर्थी की ओर से /Respondent by : Ms. R. Anitha, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing : 30-09-2019  
घोषणा की तारीख /Date of Pronouncement : 05-12-2019

**आदेश / O R D E R**

**PER INTURI RAMA RAO, ACCOUNTANT MEMBER**

This is an appeal filed by the Assessee directed against the order of the Commissioner of Income Tax (Appeals)-12, Chennai ('CIT(A)' for short) dated 28.02.2019 for the Assessment Year (AY) 2009-2010.

2. The brief facts of the case are as under:

The appellant is an individual. The return of income for the AY 2009-10 was filed on 25.03.2010 disclosing total income of Rs. 1,76,750/-. Subsequently based on the information received from DDIT (Inv) unit III(2), Chennai that assessee made payment of ₹17,91,000/- to one Ms. Leena Surana, a stock broker who admitted during the survey operations carried in her premises that she was indulging in providing bogus contract notes in order to enable certain assesseees to colour their unaccounted cash as accounted money in the form of long term capital gains. Accordingly, the Assessing Officer issued notice u/s.148 of the Act on 21.03.2016 and during the course of assessment proceedings, the Assessing Officer found that the following long term capital gains claimed by the assessee is bogus.

Name of the company	Date of sale	Sale price	Date of purchase	Purchase cost	Capital Gains
Sepctacle Ltd (formerly Khaitan Weaving Mills)	13.03.2009	653430	18.06.2007	97774	5,55,655
TCS LTD and Kotak Bank	20.03.2009. 25.03.2009	438375 694840	18.06.2007 18.06.2007	66487 102965	3,71,888 5,91,875

The Assessing Officer taking note the following information issued show cause notice dated 28.11.2016.

“6. The de-mat statement of the assessee was obtained as per which the shares were credited to the account of the assessee only on 06.3.2009, 12.03.2009 and 19.03.2009 and was debited the same day itself. This is contrary to the date of purchase mentioned by the assessee as on 18.06.2007 in the computation of long term capital gains shown in para above.

7. The fact that the assessee had purchased the shares and sold them the same day itself is confirmed from the information received from DDIT (Inv). In the sworn statement recorded by DDIT (Inv), Unit III(2), Chennai on 26.11.2009 from Smt. Leela Surana, she has given the modus operandi used for colouring unaccounted money as ‘accounted’, which is reproduced below:

*Any client , who wishes to convert his unaccounted cash into an accounted one, will approach and hand over the unaccounted cash to me, For the above sum, I select an appropriate share and will prepare a bogus contract note at an earlier date This unaccounted cash will be deposited in my bank account. From this bank account , I will purchase the shares as mentioned in the bogus contract note for the amount given by the client in my name Once the entire cash is received ,I will transfer these shares to the clients name .The client subsequently will sell these shares and will show the difference between the purchase price mentioned in the contract note and the current market price as Long Term Capital Gain . The client for the purchase price mentioned in the contract note will make accommodating entries like the cash balance in his books of accounts for the back date mentioned in the contract note”*

8. The above statement confirms that the assessee has indeed paid cash of Rs.6,55,000/- on 05.03.2009, Rs.4,44,000/- on 09.03.2009 and Rs. 6,96,000/- on 17/03/2009 totalling Rs.17,91,000/- to Ms. Leela Surana. She has used this cash to purchase shares of Spectacle Ltd.(formerly Khaitan Weaving Mills) and sold them the very same day. The assessee has then brought into her books of accounts the sale consideration as on sale of shares bought more than 12 months ago for which Ms. Leela Surana had issued bogus contract notes. Thus the Assessee sought to bring her unaccounted money Rs.17,91,000/- into her books as accounted money.

9. The modus operandi used by the stock Broker, Ms. Leela Surana, to help various persons ,one of which was the assessee ,to colour their unaccounted money as accounted is given in her sworn statement ,extract of which is as follows:

*5. Please explain as to why you have received the above money in cash?*

*Ans: Since the money which are deposited in cash are actually the unaccounted money of the persons, they have given it in cash.*

*6. I am showing you few loose sheets impounded at this premise (ANN/ES/LS/IMPJ. please explain the contents?*

*Ans: The loose sheets which are shown to me contains the lists of the names and addresses of the persons and also the details of the unaccounted cash given by them to me at various dates.*

*7. please explain about the usage of the above cash after receipt.*

*Ans : once the cash is received by me .I generally deposit the above money in the above mentioned bank accounts. This money ,I use it for purchasing various shares from the above mentioned share brokers.*

*8. please explain the motive/purpose for which various individuals give their unaccounted money to you?*

*Ans: The individuals have done this to convert their unaccounted money into accounted one.*

*9. Please explain in detail how the unaccounted cash given by them are converted into accounted money?*

*Ans: These individuals by claiming long term capital gains which is actually exempt and by showing income through intraday share transactions, convert their unaccounted money as accounted one. The whole process is explained below.*

*a) I prepare bogus contract notes in the names of various individuals for purchasing shares on behalf of those individuals. The bogus contract notes will contain the details such as the name ,address and PAN of the individuals , name of the security (share),order no. , quantity of shares, brokerage and the net amount .The net amount indicates the purchase price of the shares purchased by me on behalf of the individual mentioned in the contact note. The contract note is actually a bogus one since the purchase of shares was never done by me.*

*b) The bogus contact notes are prepared at back date mostly for the year 2007. The shares are selected in such a way that their market price at present, are many times the market value as on 2007.*

c) Any client ,who wishes to convert his unaccounted cash into an accounted one, will approach and hand over the unaccounted cash to me. For the above sum, I select an appropriate share as mentioned in the previous point and will prepare a bogus contract note at an earlier date. This unaccounted cash will be deposited in my bank account. From this bank account ,I will purchase the shares as mentioned in the bogus contract note for the amount given by the client in my name. Once the entire cash is received, will transfer these shares to the clients name. The client subsequently will sell these shares and will show the difference between the purchase price mentioned in the contract note and the current market price as Long Term Capital Gain which is actually exempt.

d) The client for the purchase price mentioned in the contract notes will make accommodating entries like the cash balance in his books of accounts for the bank mentioned in the contract note.

e) For some other clients, we prepare bogus contract notes to show as if intraday shares transaction was done and the incomes through such transaction was shown as the source of purchase of shares.”

10. From the transaction statement obtained from Madras Stock exchange Limited in which Central Depository Services India Ltd , a depository participant, it is seen that date of transfer of shares of Spectacle industries Ltd, both credit and debit, was 06.03.2009,12.03.2009 and 19.3.2009, it was also gathered that the said shares were brought in from a pool account, which is maintained with MSE Securities Ltd., a subsidiary of Madras Stock Exchange Ltd. On the Transaction statement obtained from the said depository participant. It is seen that the said shares were transferred from the pool account of one Ms. Leela Surara on 06.03.2009,12.03.2009 and 19.3.2009, and the same were transferred back to the pool account on the same date. It is evident that you pool account on the same date. It is evident that you have not purchased the shares and it is only a sham transaction through which unaccounted cash has been brought into as accounted one”.

Calling upon the assessee as to why the bogus long term capital gains should not be disallowed. In response of which assessee vide letter

dated 05.12.2016 sought to cross examine the said Ms. Leela Surana, the broker. However, the Assessing Officer denied the assessee the opportunity of cross examination and completed the assessment by making the above additions.

**3.** Being aggrieved, an appeal was preferred before Id. CIT(A), who vide impugned order confirmed the action of the Assessing Officer, wherein it was held as follows.

*'5.9 I have examined the facts of the case in the light of the cross examination proceedings, remand report and the submissions of the appellant. The re-assessments proceedings were conducted on the basis of the report of the Deputy Director of Income Tax (Investigation) that the appellant received cash payments to the stock broker Smt. Leela Surana to facilitate entering into bogus contracts notes to enable the appellant claim Long Term Capital Gains (LTCCG) through sham transactions. A survey under section 133A was conducted in the premises of Smt. Leela Surana on 26/11/2009 and she admitted that she received cash payments from the appellant. She also clearly mentioned the date and amount for which bogus contract notes were issued. These details are mentioned in the assessment order. Appellant claimed income from Long Term Capital Gains which are exempt under section 10(38) of the IT Act. The appellant has claimed that the purchases were done on 18/6/2007 and the sale was done on 13/3/2009, 20/3/2009 and 25/3/2009.*

*5.10. As per the de-mat statements, the shares were credited to the appellant's account only on 6/3/2009, 12/3/2009 and 19/3/2009 and was debited on the same day. Smt. Leela Surana, in her sworn statement has clearly stated that bogus contract notes were prepared back dated after receiving the cash. The modus operandi is described in the sworn statement.*

*5.11. AO obtained the details from the Stock Exchange and cross verified the accounts of the depository participant of the appellant and found that the purchases were made only in March 2009. It was also found that the shares were transferred from the pool*

*account of Smt. Leela Surana on three days in March 2009 and the same were transferred back to the pool account on the same date. It was clear from the details gathered from the stock exchange that there no purchase made by appellant or stock broker or anyone on behalf of appellant in June 2007 related to the shares shown by the appellant as purchased during June 2007.*

*5.12. Cross examination proceedings were conducted by the AO correctly in the presence of appellant's AR, Smt.Leela Surana and her Authorized Representative. Smt.Leela Surana has confirmed that she has facilitated the bogus contract notes. She has not retracted from the statement given earlier to the DDIT. As her computers and other documents are with the IT department, she was unable to recall the exact details. However, in her communications to the ADIT Unit III, she has clearly admitted details of bogus contract notes done by her for various assesseees including the appellant.*

*5.13. ARs argument that along with Smt.Leela Surana, Mr Dinesh Kumar Surana was also allowed to be present and thus the cross examination proceedings were a 'mockery' is not correct and cannot be accepted. It is clearly mentioned in the proceedings that Shri Dinesh Kumar Surana was also allowed to be present along with Smt.Leela Surana. Similarly, AO allowed the AR of the appellant to conduct the proceedings on behalf of the appellant. Smt.Leela Surana was personally present throughout the proceedings and she has signed the statement related to the proceedings. There is no infirmity in the proceedings and the case laws relied on by the AR of the appellant are irrelevant to the facts of the case.*

*5.14. As held by the ITAT in (2017) 83 Taxmann.com.107(Madras)2017, in a case( Nitesh Chajjed Vs ITO, Chennai) where facts are same, reopening proceedings in this case are valid.*

*In the case of back dated contract note and purchase of shares by cash, on similar facts of that of appellant, ITAT Mumbai in the case of ITO vs Shamim M.Bharwoni 69 Taxmann.com 65(2016) held that AO rightly rejected assessee's claim and added amount in question to his taxable income under section 68.*

*Cases of such accommodation entries have been examined by High Court of Allahabad while confirming penalty u/s 271(1)(c) in the case of Rajnish Jam vs CIT, 88 Taxmann.com 220(2017).*

*5.15. As it is clear from the facts of the case that appellant has entered into sham transactions to claim bogus LTCG by making investments in cash that are from unexplained sources, addition made in the Assessment Order is confirmed”.*

**4.** Being aggrieved by the order of the CIT(A), the appellant is in appeal before us in the present appeal. At the outset, there was delay of twenty six days in filing the present appeal by the assessee and assessee filed petition praying for condonation of delay stating that the order of the Id. CIT(A) was misplaced by the Accounted and consequently delay had occurred in filing the appeal and therefore prayed for condoning the delay. The Id. Departmental Representative did not raise any serious objection for condoning the delay. In the circumstances, we condone the delay of twenty six days in filing the appeal and admit the appeal for adjudication. At the time of hearing of appeal, none appeared on behalf of the assessee despite due service of notice.

**5.** On the other hand, the Id. Sr. Departmental Representative placed reliance on the orders of lower authorities.

**6.** We heard the Id. Sr. Departmental Representative and perused the material on record. The only issue involved in the present appeal relates to disallowance of long term capital gains on the alleged bogus transaction. The Assessing Officer had brought on

record, certain incriminating information clearly stipulates that transactions entered by the assessee with Ms. Leena Surana are bogus. It is for the assessee to explain the true nature of the transaction, as she was within exclusive knowledge of the facts which the assessee had failed to do so even before the Id. CIT(A). The findings of the Id. CIT(A) remains unconverted. Thus, we do not find any reason to interfere with the orders of the lower authorities.

7. In the result, the appeal filed by the assessee stands dismissed.

Order pronounced on 5th day of December, 2019, at Chennai.

**Sd/-**  
(धुव्वुरु आर.एल रेड्डी)  
(DUVVURU RL REDDY)  
न्यायिक सदस्य/JUDICIAL MEMBER

**Sd/-**  
(इंटूरी रामा राव)  
(INTURI RAMA RAO)  
लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated: 5th December, 2019.

**KV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant   | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT           | 6. गार्ड फाईल/GF        |