

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

**BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER**

ITA No.2180/Bang/2017
Assessment year : 2007-08

Shri. Sanjh Rakesh Chawla, No.6, 1 <sup>st</sup> Floor, 1 <sup>st</sup> Main Road, V Block, Kumara Park West, Bengaluru – 560 020. <b>PAN : AFGPC 7712 L</b>	Vs.	The Income Tax Officer, Ward – 6(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	:	21.11.2019
Date of Pronouncement	:	10.01.2020

**ORDER**

This appeal is filed by the assessee and the same is directed against the order of the learned CIT(A)-2, Bengaluru, dated 18.08.2017 for Assessment Year 2007-08.

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 partially confirming the same. The impugned order to the extent confirmed by CIT(Appeals) being bad in law, are required to be quashed.*

2.1 *In any case, the Assessing Officer has erred in reopening the assessment for the year by issuing notice U/s. 148 of the Act. The conditions precedent for the issue of notice u/s. 148 of the Act being absent, the re-opening of assessment becomes bad in law and consequently the order as passed/confirmed being also bad in law is required to be quashed.*

2.2 *In any case, the impugned order passed without complying the legal formalities required u/s 147 of the Act, become bad in law and is required to be quashed.*

3.1 *In any case, the order passed in gross violation of the principles of natural justice and fair play, especially in the absence of the cross examinations of the persons whose averments are sought to be relied upon by the Assessing Officer while passing the order, makes the order totally bad in law and liable to be cancelled.*

3.2 *The learned Commissioner of Income tax (Appeals) has instead of quashing the impugned order, has partially confirmed the order of Assessing Officer without properly considering the facts and circumstances of the case, arguments of the appellant and the law applicable.*

4.1 *The assessing officer had in any case, erred in treating a sum of Rs. 30,15,310/- being sale consideration received by the appellant in the next financial year on sale of shares as Income from other sources' for the year. The shares having not been sold in the year and no consideration having been received for the year, the addition of Rs. 30,15,310/- was totally erroneous and the addition was to be entirety deleted.*

4.2 *The learned CIT(A) has in the order, deleted the above addition of Rs. 30,15,310/- but has sustained an addition of Rs. 4,86,565/- being cost of shares claimed by the appellant by holding that the appellant has not been able to prove the transaction of purchases of shares. Such an action on the part of the CIT(A) being wholly against facts and being not in accordance with law is to be ignored and addition as sustained is to be deleted.*

4.3 *The conclusions / observations of CIT(Appeals) being totally erroneous and without basis both on facts and law is to be disregarded.*

5. *The several observations made and various conclusions drawn by the lower authorities in the course of order are without basis and evidence and are made/drawn on surmises, probabilities and conjectures. Such observations and conclusions by quasi-judicial authorities have no support in law and deserve to be rejected in toto.*

6. *The appellant denies the liability to pay interest u/s 234A and 234B of the Act. The interest having been levied erroneously is to be deleted.*

7. *In view of the above and other grounds to be adduced at the time of hearing, it is requested that the impugned assessment order be quashed or at least the addition made by the Commissioner of Income tax (Appeals) treating the purchase of shares as unproved be deleted and the interest levied be also deleted.*

3. The assessee has also raised some additional grounds which are as under:

1. *The Appellant in the memorandum of appeal filed, has raised several grounds of appeal wherein ground no. 3.1 deals with not providing the opportunity of cross examination of Sri. Mukesh Choksi whose statements were relied upon for concluding the assessment. This ground of appeal reads as under:  
"In any case the order passed in gross violation of the principles of natural justice and fair play, especially in the absence of the cross examinations of the persons whose averments are sought to be relied upon by the Assessing Officer while passing the order, makes the order totally bad in law and liable to be cancelled"*
2. *As the opportunity seeking cross examination of Sri. Mukesh Choksi was not raised before the authorities below, it would constitute an additional ground before the honourable Income Tax Appellate Tribunal.*
3. *The additional ground of appeal pertains to the legal issue of violation of principles of natural justice and all the facts relating to this additional ground of appeal are available on record*
4. *In the facts and circumstances of the case and in the interest of justice, the appellant requests that the additional ground of appeal raised for the first time in ground 3.1 of the appeal memorandum filed before the honourable Tribunal which goes to the very root of the matter, may please be admitted and adjudicated at the time of hearing.*

3. Regarding admission of additional grounds, although some objections were raised by the learned DR of the Revenue but since, the issue involved in the additional grounds is a legal issue, these grounds are admitted. Regarding additional grounds in respect of providing of opportunity of cross-examination of Shri. Mukesh Choksi, learned AR of the assessee placed reliance on the Tribunal order rendered in the case of Vinod Kumar Nahar (HUF) Vs. ITO in ITA No.188/Bang/2018 dated 23.02.2018. She submitted a copy of this Tribunal order and pointed out that in this case, the Tribunal has followed the judgment of Hon'ble Karnataka High Court rendered in the case of Chandra Devi Kothari in Writ Petition No.39370/2014 dated 02.02.2015 and restored the matter back to the file of the AO for fresh decision with the same directions as were given by Hon'ble Karnataka High Court in the above case as per para No.8 of the judgment of Hon'ble Karnataka High Court which is reproduced by the Tribunal in order in the case of Vinod Kumar Nahar (HUF) (supra). She

submitted that in the present case also, the matter may be restored back to the file of the AO with similar direction.

4. The learned DR of the Revenue supported the order of the authorities below. I have considered the rival submissions and I reproduce paras 4 and 5 of this Tribunal cited by learned AR of the assessee. These paras read as under:

*"4. I have considered the rival submissions. I find that there is no difference in facts in the present case and in the case of Shri Mukesh Kumar Solanki vs. ITO (Supra). In that case, the issue was decided as per Para 5 & 6 of that tribunal order and these paras of that tribunal order are reproduced here in below for ready reference. These are as under:-*

*"5. I have . considered the rival submissions and first of all, I reproduce Para No.8 of the judgment of Hon'ble Karnataka High Court rendered in the case of M/s Chandra Devi Kothari (Supra) and this is as under:-*

*8. In the light of the facts and circumstances as adverted to above, and as the petitioner has been denied an opportunity of fair hearing by providing copy of the statement and related details regarding the alleged share amount, I am of the view that the matter requires to be re-considered by the respondent by providing fair and reasonable opportunity of hearing to the petitioner and by furnishing the details/copy of the statement based on which 'the impugned assessment order has been passed."*

*6. From the above Para from the judgment of Hon'ble Karnataka High Court, it is seen that 'matter was restored back to the file of the AO for fresh decision after providing copy of the statement of Shri Mukesh Choksi. As per the facts noted by the High Court in the Tier paras of judgment and as per the facts of the present case, I find that the facts are similar. and Id DR of the Revenue also could not point out any difference in facts and hence, by respectfully following judgment of Karnataka High Court, I set aside the order of Id CIT(A) and restore the matter to the file of the AO for fresh decision same directions as were given by the Hon'ble Karnataka High in the case as per Para No.8 of the judgment reproduced*

*above. In view of this decision, no adjudication is called for at this stage regarding the merit of the addition."*

*5. Respectfully following this tribunal order and in turn following the judgment of Hon'ble Karnataka High Court rendered in the case of Chandra Devi Kothari (Supra), I set aside the orders of CIT (A) in the present case and restore The matter back to AO for a fresh decision with same directions as were given by Hon'ble Karnataka High Court in that case as per Para No. 8 of that judgment reproduced above. In view of this decision, no adjudication is called for at this stage regarding the merit of the addition raised before me as per remaining grounds."*

5. No difference in facts could be pointed out by the learned DR for the Revenue in the present case and in the case of Vinod Kumar Nahar (HUF) (supra) and hence, I respectfully follow this Tribunal order and in turn follow the judgment of Hon'ble Karnataka High Court rendered in the case of Chandra Devi Kothari and I I set aside the order of the CIT(A) in the present case and restore the matter back to the AO for fresh decision with same directions as were given by Hon'ble Karnataka High Court as per para 8 of this judgment reproduced above. In view of this, no adjudication is called for at this stage regarding merit of the addition raised before the Tribunal as per the remaining grounds.

6. 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: 10<sup>th</sup> January, 2020.

/NS/\*

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

By order

Assistant Registrar,  
ITAT, Bangalore.