

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.397/Ind/2018
Assessment Year: 2014-15**

Smt. Ushadevi Mansinghka Mansinghka House, Gangapur Chouraha Bhilwada (Rajasthan) (Appellant)	<u>बनाम/</u> Vs.	ITO-1 Khandwa (Revenue)
PAN: AEEPM1258G		
Appellant by	Shri C.P. Rawka, CA	
Revenue by	Shri Puneet Kumar, Sr. DR	
Date of Hearing:	12.12.2019	
Date of Pronouncement:	26.12.2019	

आदेश / O R D E R

PER MANISH BORAD, A.M:

This appeal at the instance of Assessee pertaining to A.Y. 2014-15 is directed against the order of Commissioner of Income Tax(Appeals)-II, Indore, (in short 'CIT'), dated 20.03.2018 which is arising out of the order u/s 143(3) of the Income Tax Act 1961(hereinafter called as the 'Act') framed on 23.12.2016 by ITO-Khandwa.

2. The assessee has raised following grounds of appeal:

“1.That the Ld. CIT(A) erred in law and facts of the case and confirmed the addition made by the Ld. AO of income of LTCG Rs.94,93,723/- to the total income of the assessee without considering the fact that the assessee has offered the same income for tax under IDS 2016. Thus, making the same income under double taxation. The action of Ld. CIT(A) is totally wrong on the facts of the case.”

3. Brief facts as culled out from the records are that the assessee is an individual. She filed her return of income on 31.07.2014 showing total income of Rs. 2,56,610/-, after claiming exemption u/s 10(38) of the Act for Long Term Capital Gain from sale of share of M/s Kailash Auto Finance Ltd. at Rs.94,93,723/-. Case selected for scrutiny under CASS followed by serving of notices u/s 143(3) & 142(1) of the Act. During the course of assessment proceedings Ld. AO examined the transaction of Long Term Capital Gain and ongoing through various documents relating to Capital Gain observed that no Secured Transaction Tax (STT) was paid in the bill of the broker M/s Overflow Merchandise Pvt. Ltd. Kolkata. Further the letter served to the broker was returned unserved. After making further inquiries when the Ld. AO came to conclusion that the assessee has shown bogus claim of Long Term Capital Gain to evade tax, in the meant time during the course of assessment proceedings itself assessee filed a copy of declaration made under the Income declaration Scheme 2016. As per the declaration cash income of Rs.95,00,000/- was offered to tax for A.Y. 2013-14 and due taxes were paid as per the scheme. Assessee contended that as per the scheme assessee is eligible to claim the benefit of cash

income disclosed for A.Y. 2013-14 as a source for the bogus Long Term Capital Gain claim made for A.Y. 2014-15. Ld. AO was not satisfied and did not allow the assessee's claim and made addition of bogus Long Term Capital u/s 10(38) of the Act of Rs. 94,93,723/- and assessed income at Rs.97,50,330/-.

4. Aggrieved assessee preferred an appeal before the Ld. CIT(A) and filed details of the scheme and frequently asked to question in support of its claim of setting of the bogus income shown for A.Y. 2014-15 against the income disclosed in IDS(Income Declaration Scheme) 2016 for A.Y. 2013-14 but could not succeed, as Ld. CIT(A) confirmed the addition made by the Ld. AO observing as follow:

“3. As per the provision of section 196 of IDS 2016 scheme did not apply in relation to any undisclosed income chargeable to tax under the IT Act for any previous year relevant to the assessment year beginning on the first day of April 2017, where a notice u/s 142 or 143(2) or 148 153A or 153C of the Act were issued in respect of such assessment year and the assessment was pending. Hence in this case the assessment was pending and it was categorically concluded that the assessee had claimed bogus long term capital gain. The assessee wants the benefit of IDS 2016 in respect of assessment year under consideration as a consequential effect to the disclosure of income made in earlier year which cannot be allowed in view of the provisions of the IDS 2016. Thus, in light of the above facts, the addition so made by the AO is hereby confirmed and this ground of appeal is dismissed.

5. Aggrieved assessee is now in appeal before the Tribunal.

6. Ld. counsel for the assessee vehemently argued referring to the following synopsis placed on record:

The assessee has earned income amounting to Rs. 95,00,000/- from various sources in ash during the Assessment Year 2013-14 which was not disclosed in the Income Tax Return of the year. However, the said amount was declared by the Assessee under Income Declaration Scheme, 2016 in Form no. 1 as on 30109/2016.

The said amount was used in the Assessment Year 2014-15 to earn Income from Capital Gain which was exempt under section 10(38) of Income Tax Act.

Further it is submitted that the Commissioner of Income Tax (Appeals)-II, Indore contended on this fact stating that Section 196 of IDS 2016 is applicable in this case as mentioned on Page no.2 of the Appellate Order, however as per the F AQs in Circular no.17 of 2016 issued on 20105/2016 it was clarified that the person shall only be ineligible from declaration for those Assessment years for which a notice U/S 142(1) or 143(2) or 148 or 153A or 153C is issued and proceeding is pending before the Assessing Officer and he shall be free to declare undisclosed income for other years for which no notice under above referred sections has been issued. Similarly in the case of Assessee, the undisclosed income declared under IDS 2016 was related to Assessment Year 2013- 14 however the notice issued pertains to Assessment Year 2014-15, therefore section 196 of IDS 2016 is not applicable on the Assessee.

In addition to above, we further submit that the Assessee disclosed in Form 1 of description column that the undisclosed money was applied for earning income from long term capital gain and the said declaration by the Assessee was accepted by Principal Commissioner/ Commissioner in Form 4 under IDS 2016 as on 15/02/2018.

Please find enclosed Form 1 and Form 4.

That the relevant abstract of FAQs of Circular 25 and 29 of 2016 are enclosed;

It is submitted that the assessee has applied his undisclosed income amounting to Rs.95 lacs to earn income from capital gains and since the assessee has already paid taxes @ 45% on such undisclosed income under IDS 2016.

In view of the above, it is clear that the assessee was eligible to apply the cash in hand being undisclosed income to income which was long term capital gain of penny stocks.

The addition therefore made by the Assessing Officer and confirmed by the Ld. Commissioner of Income Tax (Appeals) liable to deleted in full.

7. Per contra Ld. Departmental Representative (DR) vehemently argued supporting the order of both lower authorities.

8. We have heard rival contentions and perused the record placed before us. The sole grievance of the assessee is with regard to the finding of Ld. CIT(A) denying the benefit of income offered in IDS 2016 for A.Y. 2013-14 against the bogus Long Term Capital Gain shown by the assessee in A.Y. 2014-15. There is no dispute to the fact that assessee has shown bogus Long Term Capital Gain of Rs.94,93,723/- in A.Y. 2014-15.

9. The assessee in order to take the benefit of the Income Declaration Scheme 2016 filed a declaration u/s 183 of the Finance Act 2016 on Form No.1 and offered undisclosed income of Rs.95,00,000/- for A.Y. 2013-14 and accordingly paid the tax surcharge and penalty as provided in the IDS, 2016 totaling to

Rs.42,75,000/-. Assessee was issued an acknowledgement of declaration by the Income Tax Department on Form No.2 for the said declaration and taxes paid thereon relevant to A.Y. 2013-14. Further the assessee on form No.3 provided intimation of payment of taxes to the Income Tax Department with the bank details and serial of Challan along with amount placed at page No.12 of the paper book. Thereafter the Income Tax Department issued a certificate on Form No.4 to the assessee on 14.02.2018 at So. No.5 of this certificate four column are made. First column is serial number, second column is assessment year i.e. A.Y. 2013-14, 3rd Column of the amount of undisclosed income declared and accepted at Rs.95,00,000/- and the 4th Column is for the *“description of assets where undisclosed income declared in the Form of investment in asset”*. Under this 4th column Income Tax Department has mentioned *“I earned income received in cash which was shown as Long Term Capital Gain in next year”*.

10. Form No.4 is placed on page 14 of the paper book which make it clear that the assessee offered the income under IDS 2016 at Rs.95,00,000/- in order to get the benefit for the source of income used to obtain bogus entry of Long Term Capital Gain in A.Y. 2014-15. So in Form No.4 issued by the Department in the certificate of declaration itself the assessee's claim has been mentioned and has been accepted.

11. Now this claim of the assessee is to be tested with the contents

of income declaration scheme. We find that along with Chapter 9 of the Finance Act 2016 under which the Income Declaration Scheme 2016 is provided and section 181 to section 199 of the Finance Act 2016 takes care of IDS Scheme 2016, Central Board Direct Taxes issued various circulars and clarification relating to the Income Declaration Scheme, 2016.

12. In one of such Circular No.25 of 2016 dated 30th June 2016 following question No.6 & its answer given by the DBDT reads as follows:

Question No.6: What is the purpose of obtaining the information about the nature of undisclosed income in the last column of table at point (I) relating to nature of undisclosed income in Annexure to Form-1?

Answer: *The purpose of obtaining information about the nature of undisclosed income is to know whether the undisclosed income is in the form of moveable asset, immovable asset, gold, jewellery or cash. Here, the nature of income need not be confused with the source of income. There is no need to indicate the source of income at all. In the column meant for nature of undisclosed income one has to write the nomenclature such as 'immovable property', 'moveable property', 'gold', 'jewellery' or 'cash' etc. This will enable the taxpayer to establish the link between the income declared under the scheme and the claim, if any, made in respect of such undisclosed income in the return of income filed subsequently or during any assessment proceedings.*

13. In circular No.29 of 2016 dated 18 day of August 2016 following question No.2 and its answer reads as follows:

Question No.2: Whether the amount declared under the Scheme for an earlier assessment year can be taken into account to explain the transaction(s) in the assessment proceedings for subsequent assessment year(s)?

Answer: *As per section 189 of the Finance Act, 2016, any declaration made under the Scheme shall not affect finality of completed assessments. However, in an assessment proceeding before the Assessing Officer for an assessment year subsequent to the year for which the income is declared under the Scheme, the income declared for an earlier assessment year can be taken into account to explain the transactions provided there is a nexus between the income declared and the transactions of the subsequent assessment year.*

14. From perusal of the above question and the answer given by the CBDT there remains no confusion to the extent that the income declared in earlier assessment year can be taken into account to explain the transactions of subsequent year provided there is a nexus between the income declared and the transaction of the subsequent assessment year.

15. In the case of assessee for A.Y. 2013-14 cash income of Rs.95,00,000/- is offered as undisclosed income. The revenue authorities were unable to find any other source of undisclosed income for A.Y. 2013-14. Therefore, the assessee had undisclosed cash income at the end of A.Y. 2013-14 i.e. at the opening of A.Y. 2014-15. For A.Y. 2014-15 there is no other undisclosed income found except the bogus claim of Long Term Capital Gain.

16. We, therefore, in the given facts and circumstances of the case, are of the considered view that the income offered by the assessee

under IDS 2016 for A.Y. 2013-14 at Rs.95,00,000/- has been rightly claimed as the source of the bogus Long Term Capital Gain managed by the assessee in A.Y. 2014-15 and thus, the bogus claim of Long Term Capital Gain for A.Y. 2014-15 has been rightly explained by the assessee byway of offering undisclosed income in A.Y. 2013-14 under the Income Declaration Scheme 2016. We, thus, set aside the orders of the both lower authorities delete the addition for Rs.94,93,723/- and allow the sole ground raised by the assessee.

17. In the result, the appeal of the assessee is allowed.

Order was pronounced in the open court on 26.12.2019.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Indore; दिनांक Dated : 26/12/2019

Patel, P.S./नि.स.

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order
Assistant Registrar