

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, BANGALORE**

Before Shri Chandra Poojari, Accountant Member

ITA No.2552/Bang/2019 : Asst.Year 2009-2010

Shri Ashish Ashok Nichani 3A,58, Marthas Palace Lavelle Road Bangalore – 560 001. PAN : ADSPN9214E.	Vs.	The Income Tax Officer Ward 5(3)(6) Bangalore.
(Appellant)		(Respondent)

Appellant by : Sri.M.Gandhi

Respondent by : Sri.Ganesh R.Ghale, Standing Council for DR

Date of Hearing : 20.01.2020	Date of Pronouncement : 20.01.2020
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ORDER

This appeal filed by the assessee is directed against the order of the CIT(A), dated 17.10.2019. The relevant assessment year is 2009-2010.

2. The facts of the case are that the assessee is an individual and salaried employee working with two employers, M/s.Axis Bank Ltd., and M/s.Systems Cables and Wires Pvt. Ltd. during the financial year 2008-2009 relevant to the assessment year 2009-2010. The assessee had filed his return of income for Asst.Year 2009-2010 on 30.07.2009 declaring a total income of Rs.11,03,130. The case was reopened u/s 147 for the following reason that a search was conducted in the Mahasagar group of cases on 25.11.2009 and a sworn statement of Sri Mukesh Chooski, a key person of the group was recorded at the time of search. Sri Mukeh Chokski, the key person had admitted that he and his group were engaged in fraudulent

billing activities and in giving accommodation entries in order to enable the clients to declare speculation profit / loss, short term capital gain / long term capital gain, profits / loss on account of commodity trading, introduced share application money or introduced money in the form of gifts for the purpose of claiming fictitious profit / loss etc. On verification of the transaction details received from the investigation wing, it was seen that the assessee, Sri Ashish Ashok Nichani had transferred certain shares in the financial year 2008-2009 through M/s.Alliance Intermediaries and Network Pvt. Ltd. belonging to Mahasagar group of cases and had declared Rs.9,62,509 as income from long term capital gains showing certain shares were sold and earned profit. Following the instructions and the information received about the accommodation entries, this case was reopened to bring to tax net all the amounts transacted in shares which had escaped assessment within the meaning of section 147 of the Income tax Act, 1961. As the amounts shown as invested in shares were out of undisclosed source of income and the profit shown as earned is also an income from undisclosed sources, notice u/s 148 was issued to the assessee on 21.03.2013 after recording the reasons and after obtaining the approval of the Jt.Commissioner of Income-tax, Range-14, Bangalore. In compliance to the said notice, Sri.Paresh S.Shah, CA and the assessee's AR appeared and submitted the copy of the return of income filed on 30.07.2009 for Asst.Year 2009-2010 to be treated as the return of income filed in pursuance of notice u/s 148 of the Act issued on 21.03.2013. As against this the

Assessing Officer passed order u/s 143(3) r.w.s. 147 of the I.T.Act on 12.03.2014, determining the total income at Rs.20,65,640.

3. Aggrieved by the order of assessment, the assessee went in appeal before the CIT(A). The CIT(A) confirmed the order of the A.O. Against the same, the assessee is in appeal before us, raising following grounds:-

1. ASSESSMENT U/S.147 OF THE INCOME TAX ACT, 1961(THE ACT)

1.1 The learned lower authorities failed to dispose of the objections filed by the appellant in response to the reasons recorded for issue of notice u/s.148 of the Act and therefore, in such case the procedure laid down by the Hon'ble Supreme Court in GKN Driveshafts 259 ITR 195 is violated and the assessment should be quashed.

1.2 The assessment made u/s.147 is bad in law.

2. ADDITION U/S. 69 OF THE ACT

2.1 The learned Assessing Officer erred in making addition of Rs. 9,62,509/- as income u/s.69 of the Act which was declared as long term capital gain but the learned Commissioner of Income Tax (Appeals) declared as short term capital gain even though the appellant purchased the shares 01.28.04.2006 and sold on 21.07.2008.

2.2 The learned lower authorities failed to provide a copy of the information they relied upon for issuing notice u/s.148 of the Act and sworn statement of Mr.Mukesh Choksi.

2.3 The learned lower authorities failed to provide an opportunity to cross examine Mr.Mukesh Choksi when they elide upon the sworn statement of said person for making the assessment of said person for making the assessment u/s. 147 of the Act.

2.4 The learned lower authorities failed to appreciate the fact that the shares of M/s.Zen Shaving Ltd has been traded by the appellant and there is no finding that the said company is providing accommodation entries.

2.5 The learned lower authorities failed to appreciate the fact that the shares were traded through DEMAT account and the amounts were transferred through banking channel and the contract notes for the transactions are also available on record to prove the genuineness of the transaction.

2.6 The learned lower authorities failed to bring single evidence on record to prove that the transactions carried out by the appellant are sham or bogus.

2.7 The learned lower authorities failed to appreciate the fact that additions u/s.69 of the Act can be made only if appellant maintains the books of accounts. As he is having only income from salary and some shares, the appellant need not maintain the books of accounts. The source for purchases and sales made through contract notes were submitted. In the return of income it is shown clearly purchase and sale of shares, long term capital gains exempted u/s.10(38) of the Act.

2.8 The learned commissioner of Appeals appreciated the DEMAT account and the calculation of making capital gains and the concealment of income u/s.69 is confusing.

3.The appellant seeks the leave of the Hon'ble Income Tax Appellate Tribunal to make amendment to any of the above ground either before or at the time of hearing the appeal.”

4. After hearing both the sides and perusing the material on record, I find that similar issue was considered by this Tribunal in the case of Shri. Kirti K.Bhansali v. ITO for assessment year 2008-2009 in ITA No.105/Bang/2019. Vide order dated 24.05.2019, the Tribunal held as under:-

“4.3.1 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.”

4.3.2 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 and other related details. As per the facts noted by the High Court in the earlier paras of judgment (supra) and as per the facts of the case on hand, there appears to be no difference in facts and therefore by respectfully following this judgment in the case of Chandra Devi Kothari (Supra), I set aside the impugned orders of learned CIT(A) for Assessment Year 2008-09 and restore the matters to the file of the AO for fresh decision with the same directions as were issued by the Hon’ble Karnataka High Court 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 merits of the addition.”

5. In view of the above order of the Tribunal, I inclined to remit the issue to the file of the Assessing Officer to decide the issue afresh with similar directions as held by the Tribunal in the case of Shri.Kirti K.Bhansali (supra).

5.1 In view of the above, I am not inclined to comment upon any other grounds of appeal on merits of the issue at this stage.

6. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on this 20th day of January, 2020.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Bangalore ; Dated : 20th January, 2020.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-12, Bengaluru.
4. The Pr.CIT-5, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore