

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES "B" , BANGALORE**

**Before Shri Chandra Poojari, AM & Smt.Beena Pillai, JM**

ITA No.3278/Bang/2018 : Asst.Year 2015-2016

Sri.Surendra Kedia No.143, C-5, Hosur Road Hebbagodi, Bommasandra Industrial Area Bengaluru – 560 099 <b>PAN : AEGPK2874N.</b>	Vs.	The Dy.Commissioner of Income-tax, Circle 5(3)(1), Bengaluru.
(Appellant)		(Respondent)

Appellant by : Sri.Ajay Ratti, CA  
Respondent by : Smt.Swapna Das, JCIT-DR

<b>Date of Hearing : 29.01.2020</b>	<b>Date of Pronouncement : 31.01.2020</b>
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**ORDER**

**Per Chandra Poojari, AM :**

This appeal filed by the assessee is directed against the order of the CIT(A), dated 17.09.2018. The relevant assessment year is 2015-2016.

2. The assessee has raised the following grounds:-

*“The grounds stated hereunder are independent of and without prejudice to one another. The Appellant submits as under:*

1. *Assessment order bad in law and on facts and in violation of principles of natural justice*

1.1. *At the outset, Mr. Surendra Kedia (hereinafter referred to as 'the Appellant') prays that the order dated 17 September 2018 passed by the learned Commissioner of Income-tax (Appeals) - 5, Bangalore [CIT(A)], upholding the order passed under section 143(3) of the Income-tax Act, 1961 (,the Act'), be struck down as invalid, as the order is bad in law and on facts.*

1.2. *The Ld. CIT(A) has drawn reference to the stock of NCL Research and Financial Services Ltd which was never held by the Appellant. Further, the Ld. CIT(A) has also mentioned that*

*the Appellant had given an oath that he had purchased shares of NCL Research and Financial Services Ltd from Anand Rathi share and stock brokers Ltd.*

*The Appellant has not held such stock nor has given any statement to this effect and thus the order passed by the CIT(A) is erroneous, suffers from non-application of mind and is liable to be quashed.*

*1.3. The Ld. CIT(A) has drawn reference to MIs Katyani Commodities Private Limited, M/s Dhanraksha Vincom Private Limited, MIs Linus Holdings Limited and MIs Ridhi Vincom Private Limited as companies who have acted as alleged 'accommodation entry providers'*

*The Appellant has not engaged with any of the aforesaid companies and hence the order passed by the CIT(A) is erroneous, suffers from non-application of mind and is liable to be quashed.*

*1.4. The Ld. CIT(A)/Ld. AD erred in not providing any opportunity to the Appellant to cross examine the evidence relied upon to make additions and thus the order violates the principles of natural justice.*

*2. Addition made under 68 of the Act as unexplained income*

*2.1 The Ld. CIT(A)/Ld. AO has proceeded merely on the basis of his own notions, suspicion, surmises and conjectures and disregarded the documents, evidences and submissions without applying independent mind and therefore the addition of INR 1,99,96,398 is arbitrary and deserves to be set aside.*

*2.2. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in confirming the addition' made by the AO under section 68 of the Act at INR 1,99,96,398 without adjudicating the legal pleas raised by the Appellant.*

*2.3 The Ld. CIT(A)/Ld. AO has failed to appreciate that there is some amount of risk associated with trading in shares and unexpected gains or unexpected losses are possible.*

*2.4 The Ld. CIT(A)/Ld. AO has erred in not taking into consideration the fact that the Appellant is in no way connected with such 'entry operators' or 'brokers' and has merely made an investment based on market information received from friends and associates.*

2.5 The Ld. CIT(A)/Ld. AO has grossly erred in concluding that the Appellant has converted some unaccounted money through accommodation entries.

2.6 The Ld. CIT(A) has erred in concluding that the transactions were not genuine. The Ld. CIT(A) has also erred in upholding the addition made by the Ld. AO under section 68 of the Act on the basis that the transaction is not genuine, even though no cogent evidence has been brought on record which demonstrates that the transaction is not genuine.

2.7 The Ld. CIT(A)/Ld. AO has grossly erred in concluding that trading transactions of purchase and sale of shares are not being carried out for commercial purpose but to create artificial gains with a view to evade taxes.

2.8 The Ld. CIT(A) has grossly erred in concluding that the intent or Mens Rea on part of the Appellant is very evident.

### 3. Other grounds

3.1 The Ld. AO has erred in not granting a credit of self-assessment tax paid by the Appellant on January 31, 2016, to the extent of INR 56,761.

3.2 The Ld. AO has erred in levying and computing interest of INR 27,03,429 under section 234B of the Act.

3.3. The Ld. AO has erred in levying and computing interest of INR 231,718 under section 234C of the Act.

3.4. The Ld. AO has arithmetically erred in computing the total tax liability for Mr. Surendra Kedia as INR 98,44,060.

### 4. Initiation of penalty proceedings under section 271 (1 )(c) of the Act

On the facts and in the circumstances of the case and in law, the Ld. AO has erred in initiating penalty proceedings under section 271 (1 )(c) of the Act.

### 5. Relief

The Appellant prays that directions be given to grant all such relief arising from the proceeding grounds as also all reliefs consequential thereto.

The appellant craves leave to add to or later, by deletion, substitution or otherwise, any or all of the above grounds of appeal, at any time before or during the hearing of the appeal.”

2. Briefly stated the facts of the case are that the assessee is an individual. For the assessment year under consideration, the assessee filed his return of income declaring total income at Rs.2,75,11,840. The Assessing Officer completed the assessment u/s 143(3) by assessing the total income at Rs.4,75,08,210, thereby raising demand of Rs.98,44,060.

3. Aggrieved by the orders of the Income Tax Authorities, the assessee is in appeal before the Tribunal.

3.1 At the outset, the learned AR pleaded that there is gross violation of the principles of natural justice and fair play, especially in the absence of report / information and cross examination of persons whose statements were relied upon by the Assessing Officer while passing the order, makes the order totally bad in law and liable to be cancelled.

4. We have heard the rival submissions and perused the material on record on legal issue raised hereinabove. We 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 (supra), we inclined to remit the issue to the file of the Assessing Officer to decide the issue afresh with similar directions to furnish the copy of the documents relied by the A.O. and to provide an opportunity of cross-examination of concerned parties therein, as held by the Tribunal in the case of Shri.Kirti K.Bhansali (supra).

5.1 In view of the above, we are 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 31<sup>st</sup> day of January, 2020.

Sd/-  
**(Smt.Beena Pillai)**  
**JUDICIAL MEMBER**

Sd/-  
**(Chandra Poojari)**  
**ACCOUNTANT MEMBER**

Bangalore ; Dated : 31<sup>st</sup> January, 2020.  
Devadas G\*

Copy to :

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

Asst.Registrar/ITAT, Bangalore