

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

Before Shri Chandra Poojari, Accountant Member

ITA No.1824/Bang/2018 : Asst.Year 2014-2015

| | | |
|---|-----|--|
| Sri.Dharamsi R.Patel (HUF) No.4/10, Hosur Road Next to ICICI Bank, Bommanahalli Bengaluru - 560 068. PAN : AAEHD5814M. | Vs. | The Income Tax Officer Ward 4(3)(4) Bengaluru. |
| (Appellant) | | (Respondent) |

ITA No.1825/Bang/2018 : Asst.Year 2014-2015

| | | |
|--|-----|--|
| Sri.Dinesh Kumr R.Patel (HUF) No.4/10, Hosur Road Next to ICICI Bank, Bommanahalli Bengaluru - 560 068. PAN : AAEHD5867J. | Vs. | The Income Tax Officer Ward 4(3)(4) Bengaluru. |
| (Appellant) | | (Respondent) |

ITA No.1826/Bang/2018 : Asst.Year 2014-2015

| | | |
|---|-----|--|
| Sri.Dinesh Kumar R.Patel No.4/10, Hosur Road Next to ICICI Bank, Bommanahalli Bengaluru - 560 068. PAN : ADZOO5648M. | Vs. | The Income Tax Officer Ward 4(3)(4) Bengaluru. |
| (Appellant) | | (Respondent) |

ITA No.1827/Bang/2018 : Asst.Year 2014-2015

| | | |
|---|-----|--|
| Sri.Shanthilal R.Patel No.4/10, Hosur Road Next to ICICI Bank, Bommanahalli Bengaluru - 560 068. PAN : ADAPP7046E. | Vs. | The Income Tax Officer Ward 4(3)(3) Bengaluru. |
| (Appellant) | | (Respondent) |

ITA No.1828/Bang/2018 : Asst.Year 2014-2015

| | | |
|---|-----|--|
| Sri.Shanthilal R.Patel (HUF) No.4/10, Hosur Road Next to ICICI Bank, Bommanahalli Bengaluru - 560 068. PAN : AAOHS7046C. | Vs. | The Income Tax Officer Ward 4(3)(4) Bengaluru. |
| (Appellant) | | (Respondent) |

Appellants by : Sri.Sreehari Kutsa, Advocate
Respondent by : Dr.Ganesh R.Ghale, Standing Council for DR

| | |
|-------------------------------------|---|
| Date of Hearing : 27.02.2020 | Date of Pronouncement : 28.02.2020 |
|-------------------------------------|---|

ORDER

These appeals filed by different assesseees are directed against different orders of the CIT(A). The relevant assessment year in all these appeals is 2014-2015.

2. Since common issues are involved in these appeals, they were heard together and are being disposed of by this consolidated order.

3. The assesseees have raised common grounds, except variance in figures, hence, we reproduce the grounds raised in the case of Sri.Dinesh Kumar R.Patel in ITA No.1826/Bang/2018, as follows:-

“1. The order of the learned Commissioner of Income-tax Appeals, passed under section 250 of the Act in so far as it is against the Appellant is opposed to law, equity, weight of evidence, probabilities and the facts and circumstances in the Appellant’s case.

2. The Appellant denies itself liable to be assessed to tax on a total income of Rs.22,98,850/ as determined by the learned AO and confirmed by the CIT(A), as against the total income of Rs.11,66,550/- as declared by the Appellant on the facts and circumstances of the case.

3. The learned CIT(A) is not justified in upholding the denial of the benefit of exemption of the long term capital gain on sale of equity shares of Rs.11,32,300/- on the facts and circumstances of the case.

4. *The learned CIT(A) failed to appreciate that the AO is not justified in questioning the genuineness of the share transaction without any corroborating evidence on the facts and circumstances of the case.*

5. *The learned CIT(A) failed to appreciate that the AO is not justified in denying the statute given exemption benefit on mere suspicions on the facts and circumstances of the case.*

6. *The learned CIT(A) ought to have held that the AO failed to appreciate that the Appellant had bought and sold the shares from the open market i.e., Stock Exchange and the transaction was supported by contract notes and therefore the allegation that the capital gains is bogus, is not justified in law and on the facts and circumstances of the case.*

7. *The CIT(A) ought to have held that the learned AO has failed to apply his mind on the facts of the case and has simply relied on the findings of the Investigation Department and therefore the order of assessment is not sustainable on the facts and circumstances of the case.*

8. *The learned CIT(A) erred in law in not appreciating the various documents placed by the Appellant and he merely repeated the views of the Assessing Officer and without even adverting to the contentions of the Appellant and consequently the order suffers from non-application of mind and also the violation of principles of natural justice on the facts and circumstances of the case.*

9. *The learned CIT(A) failed to appreciate that not granting the right to cross examine is fatal to the assessment proceedings and consequently he ought to have cancelled the entire assessment order on the facts and circumstances of the case.*

10. *The CIT(A) ought to have held that the learned AO erred in initiating penalty proceedings under section 271(1)(c) of the Act as there was no furnishing of inaccurate particulars at all and the conclusion of the learned AO that penalty is to be initiated is not in accordance with law on the facts and circumstances of the case.*

11. *Without prejudice to the right to seek waiver with the Hon'ble Chief Commissioner of Income Tax / Director General of Income Tax the Appellant Company denies itself liable to be charged to interest under section 234B and section 234C of the Act which under the facts and circumstances of the case*

deserves to be cancelled. The calculation of interest under section 234B and section 234C is not in accordance with law as the rate, amount and method for calculating interest is not discernible from the order of assessment.

12. The Appellant craves leave to add, alter, delete or substitute any of the grounds urged above.

13. In the view of the above and other grounds that may be urged at the time of the hearing of the appeal, the Appellant prays that the appeal may be allowed in the interest of justice and equity.”

4. At the very outset, the learned Counsel for the assessee pressed only ground No. 8 and 9, at this stage.

5. Briefly stated the facts of the case are that the assessee is an individual, filed return of income for the assessment year 2014-2015 declaring a total income of Rs.11,66,550 after claiming exemption u/s 10(38) of the Act at Rs.10,51,413 towards sale of equity shares. The assessee's case was selected for scrutiny under CASS during the financial year 2015-2016 and details were called for and the same were submitted before the Assessing Officer. During the year under consideration the assessee sold 650 shares of scrip – NCL Research for a consideration of Rs.1,742 per share. The said 600 shares were originally bought in the financial year 2011-12 for a consideration of Rs.110.77 per share. Consequently, there arose a long term capital gains of Rs.10,51,413. During the course of assessment proceedings, the A.O. informed the assessee that his case was selected to verify the suspicious long term capital gains on shares which is in pursuance to the inputs from the investigation wing. Thereafter statement of the assessee was recorded u/s 131 of the Act and issued show

cause notice on 16.12.2016 informing the assessee that NCL Research being a penny stock company and called upon the assessee to show cause why the amount of Rs.11,32,300 received back as sale of shares of NCL Research should not be added back to the assessee's income. Not convinced by the explanation given by the assessee, the Assessing Officer proceeded to pass the assessment order by determining the total income of the assessee at Rs.22,98,850 as against the declared total income of Rs.11,66,550, by invoking the provisions of section 69A of the Act.

6. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the CIT(A), who confirmed the view taken by the Assessing Officer. Hence, the assessee is in appeal before the Tribunal.

7. After hearing both the parties and perusing the material on record, I find that similar issue came up for consideration before the Bangalore Benches of the Tribunal in the case of Smt.Leelaben B.Patel v. ITO in ITA No.1342/Bang/2019. The Tribunal vide order dated 13.12.2019 remanded the issue back to the file of the Assessing Officer for fresh consideration, by observing as under:-

8. I have considered the rival submissions. I find that the Assessee specifically asked for copies of investigation report of the Directorate of Investigation, Kolkata and statement of Mr.Poddar, on the basis of which the AO drew adverse inference regarding the genuineness of the transaction of purchase of sale of shares of NCL Research & Financial Services Ltd. The Assessee also asked for a cross examination of Mr.Poddar. Both the investigation report and the statement of Mr.Poddar was not provided till the fag end of the assessment proceedings. I also find that the entire basis of the

conclusions of the revenue authorities is based on the investigation report of the Directorate of Investigation, Kolkata. It is also seen that the said investigation report does not name the Assessee as a person who has indulged in any fraudulent transaction of purchase or sale of shares. Elaborate submissions were made before CIT(A) on the above infirmities in the approach of the AO which results in violation of principles of natural justice, but the CIT(A) failed to address those issues and proceeded to confirm the order of the AO. I therefore find force in the submission of the learned counsel for the Assessee that the issue of violation of principles of nature justice goes to the root of the matter and the issue needs fresh examination by the AO, after due opportunity to the Assessee of being heard and affording opportunity of cross examination of persons on whose basis the report of the Directorate of Investigation, Kolkata.

9. *This Tribunal in its order dated 05.12.2018 in the case of Shri Ramesh Kumar Shah Vs. ACIT ITA No.595/Bang/2018 on an identical issue of treating sale of shares as bogus on identical facts of violation of principles of natural justice, remanded the matter for fresh consideration to the AO with the following observations:-*

“3.3 Per contra, the learned DR for Revenue submitted that on similar facts and circumstances as in the case on hand, issue for consideration is covered by the decisions of the Bengaluru ITAT in the cases of Arvind Kumar Moochand and Pukhraj Hasmukhlal in ITA No.1927/Bang/2017 wherein the Tribunal has restored the issue to the file of the AO having observed that the additions were made based on reports of the Investigation Directorate at Kolkata and statements of various persons without confronting OR making them available to the assessee for rebuttal. In those cases, the Tribunal restored the matter to the file of the AO with the direction to confront the matter to the file of the AO with the direction to confront the assessee with the reports / documents / statements proposed to be used against the assessee, allow rebuttal thereof and cross examination of parties on whose testimony is proposed to be relied upon and the matter be adjudicated afresh after affording the assessee adequate opportunity of being heard and to also file details / submissions in this regard.

3.4 In Rejoinder, the Id.AR for the assessee did not dispute the proposition put forth by the Id. DR for restoring this issue to the file of the AO for de novo adjudication.

3.5 We have heard both parties and perused and carefully considered the material on record; including the judicial decisions cited and the orders of the authorities below. Taking into consideration the facts and circumstances of the case that

the assessee specifically requested for cross-examination of the deponents whose statements were the basis of addition by the AO and also the report of the Investigation Directorate, Kolkata for rebuttal; from the judicial decisions cited, we find that the issue for consideration is squarely covered by the orders of the Bengaluru ITAT in the cases of Arvind Kumar Moolchand (supra) and Pukhraj Hasmukhlal (supra). Following the aforesaid orders (supra), we set aside the orders of the AO and restore the matter of treatment of profit declared on sale of shares, claimed as exempt u/s 10(38) of the Act, to the file of the AO to re-adjudicate the issue afresh; after making available to the assessee for rebuttal all documents; including Statements, Investigation Reports, etc., relied upon by Revenue for making the additions/disallowances and providing adequate opportunity to the assessee for cross-examination of persons whose statements are being relied upon. It is accordingly ordered. Consequently, ground No. 2 is disposed off as above. "

10. *The Hon'ble Karnataka High Court in the case of Mrs.Chandra Devi Kothari Vs. ITO W.P.39370/2014 (T-IT) on identical issue of accommodation/bogus entries based on statement of third parties, took the view that the matter requires to be re-considered by providing fair and reasonable opportunity of hearing to the Assessee, after providing copies of statement relied upon by the revenue.*

11. *I find that identical issue was considered by this Tribunal in the case of Shri Ramesh Kumar Shah (supra) and the Tribunal remanded the issue to the AO for fresh consideration with a direction that the assessee should be provided with all the relevant evidence relied upon by the AO for making the addition and also allow opportunity of cross-examination of statements of persons which has been relied upon by the Investigation Agency. I also find that the Hon'ble High Court of Karnataka has given similar directions in the case of Mrs. Chandra Devi Kothari (supra) wherein also the issue was with regard to long term capital gain on sale of shares being treated as unexplained cash credit u/s. 68 of the Act by the revenue. In the light of the aforesaid decisions, we set aside the order of the CIT(Appeals) and remand the question of treating the long term capital gain as unexplained cash credit to the AO for fresh consideration as directed by the Tribunal in the case of Shri Ramesh Kumar Shah (supra). I make it clear that all issues raised by the assessee in this appeal are also left open for consideration.*

12. *In the result, the appeal by the assessee is treated as allowed for statistical purposes."*

8. In view of the above order of the Tribunal in the case of Smt.Leelaben B.Patel (supra), which is similar to that of the appeals under consideration, respectfully following the same, we remit the matter to the file of the Assessing Officer for fresh adjudication, with the direction that the A.O. shall confront all the documents to the assessee, which are relied on by him and also give an opportunity of cross examination of the persons whose statements were relied on by the Assessing Officer for framing the assessments. Further, at this stage we refrain from going into any other grounds of appeal raised by the assessee in these appeals.

9. In the result, the all the appeals filed by the assesseees are allowed for statistical purposes.

Order pronounced on this 28th day of February, 2020.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Bangalore ; Dated : 28th February, 2020.
Devadas G*

Copy to :

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

Asst.Registrar/ITAT, Bangalore