

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'C' BENCH, KOLKATA**

(Before Sri J. Sudhakar Reddy, Accountant Member & Sri Aby T. Varkey, Judicial Member)

ITA No. 2476/Kol/2019
Assessment Year: 2015-16
&
S.A. No.114/Kol/2019
Assessment Year: 2015-16

Shri Sajjan Agarwal.....Appellant
49A, Tollygunge Circular Road
New Alipore
Kolkata - 700 053
[PAN : ADKPA 4768 JJ]

Vs.

Deputy Commissioner of Income Tax, CC-3(4), Kolkata.....Respondent

Appearances by:

Shri Sunil Surana, FCA, appeared on behalf of the assessee.

Shri Jayanta Khanra, JCIT D/R, appearing on behalf of the Revenue.

Date of concluding the hearing : March 5th, 2020

Date of pronouncing the order : March 13th, 2020

ORDER

Per J. Sudhakar Reddy, AM :-

This appeal filed by the assessee is directed against the order of the Learned Commissioner of Income Tax (Appeals) – 21, Kolkata, (hereinafter the “Id.CIT(A)”), passed u/s. 250 of the Income Tax Act, 1961 (the ‘Act’), dt. 21/10/2019, for the Assessment Year 2015-16.

2. The assessee is an individual and filed his return of income on 31/08/2015 declaring total income of Rs.11,58,890/-. He declared income from salary and other sources and claimed exemption under the head long term capital gain. The Assessing Officer completed assessment u/s 143(3) of the Act on 27/12/2017 determining the total income at Rs.92,98,480/-. Aggrieved the assessee carried the matter in appeal without success.

3. Further aggrieved, the assessee is before us.

4. The Id. Counsel for the assessee, Shri Sunil Surana, submitted that the assessee purchased 12000 shares of GCM Securities Ltd @ Rs.20/ - each on preferential allotment for a total consideration of Rs. 2,40,000/- on 27.3.2013 for which payment was made by account payee cheque. Subsequently, those shares were split into the ratio

of 10:1 and consequently holding of the assessee increased from 12,000 no of shares to 1,20,000 no of shares. Effectively, cost of each shares becomes Rs. 2 per shares. Finally, between November, 2014 to January, 2015 the assessee sold all its holding through Bombay Stock Exchange @ Rs. 69/- share. The assessee earned long term capital gain of Rs. 77,61,956/- as exempt under sec. 10(38) of the Act in the return of income filed under sec. 139(1) of the Act. He further submitted that the issue is squarely covered in his favour by a number of decisions of this Bench of the Tribunal and as the assessee has submitted :-

- a) invoices form purchase of shares.
- b) time stamped contract notes for the sale of shares on which STT, brokerage, turnover taxes, SEBI duty and service tax were charged.
- c) Copy of Demat Statements showing inflow and outflow of shares.
- d) Bank statement highlighting the payments made and the receipts of the said consideration.

4.1. He further pointed out that the assessee stated before the Assessing Officer that he did not know any person by the name of Shri Devesh Upadhyaya and that he has not entered into any transaction with the said person. He submitted that the Assessing Officer claims to have examined Shri Devesh Upadhyaya but has not provided the opportunity of cross-examining Shri Devesh Upadhyaya, despite specific requests made in this regard. He prayed for relief.

5. The ld. D/R, on the other hand, submitted that there were violations of principles of natural justice and that the standard operating procedure (SOP) recently issued by the CBDT on such issues have to be followed. He submitted that the issue may be restored to the file of the Assessing Officer for following the SOP laid down by the CBDT and thereafter completed the assessment, in accordance with law.

6. We have heard rival contentions. On careful consideration of the facts and circumstances of the case, perusal of the papers on record, orders of the authorities below as well as case law cited, we hold as follows:-

7. In the case on hand, the assessee has provided all the details and evidence in support of its claim before the Assessing Officer during the course of assessment proceedings. The Assessing Officer has merely relied on the information received from the investigation wing and on the basis of generalisation, rejected the claim of the assessee. The evidence field by the assessee have not been controverted by the revenue authorities. Reliance was placed on a statement of Shri Devesh Upadhyaya but opportunity of cross-examining him was not granted to the assessee. This Bench of the Tribunal in a number of cases has adjudicated the issue in favour of the assessee.

7.1. Be it as it may, both the parties have agreed that the issue may be restored to the file of the Assessing Officer for fresh adjudication, provided the Assessing Officer follows the Standard Operating Procedures (SOP) issued by the CBDT on this issue, in letter and spirit.

8. In view of the above discussion, in order to bring all material facts on record and by applying the propositions of law laid down by the Hon'ble Supreme Court in the case of *Tin Box Co. vs. CIT* reported in [2001] 249 ITR 216 (SC), we restore the matter to the file of the Assessing Officer for fresh adjudication, in accordance with law. The Assessing Officer is directed to follow the SOP, issued by the CBDT on this issue in letter and spirit and complete the assessment, in accordance with law.

9. In the result, appeal of the assessee is allowed for statistical purposes.

10. The Stay application is dismissed as infructuous.

Kolkata, the 13th day of March, 2020.

Sd/-
[Aby T. Varkey]
Judicial Member

Dated : 13.03.2020
{SC SPS}

Sd/-
[J. Sudhakar Reddy]
Accountant Member

Copy of the order forwarded to:

1. **Shri Sajjan Agarwal**
49A, Tollygunge Circular Road
New Alipore
Kolkata - 700 053
2. **Deputy Commissioner of Income Tax, CC-3(4), Kolkata**
3. **CIT(A)-**
4. CIT- ,
5. CIT(DR), Kolkata Benches, Kolkata.

True copy
By order

Assistant Registrar
ITAT, Kolkata Benches