

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE**

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND
SHRI A. K. GARODIA, ACCOUNTANT MEMBER**

ITA No. 1254/Bang/2017
Assessment year : 2012 – 13

Smt. Sabrina GEV Khergamwala. Prop. Colour International, X Floor, Mantri Altius, #17, Raj bhavan Road, Bengaluru – 560 001. PAN : AGIPK6627R	Vs.	ITO Ward 6 (3) (2), Bengaluru.
APPELLANT		RESPONDENT
Assessee by	:	Shri. V. Srinivasan, Advocate
Revenue by	:	Smt. R. Premi, JCIT DR
Date of hearing	:	11.03.2020
Date of Pronouncement	:	29.04.2020

ORDER

Per A. K. GARODIA, A. M. :

This appeal is filed by the assessee and the same is directed against the order of learned CIT(A) – 1, Bengaluru dated 22.03.2017 for the Assessment Year 2012 – 13.

2. In this appeal, there is the only effective issue in dispute. This is regarding this action of the AO as per which he disregarded the Share Premium paid by the assessee of Rs. 370,55,881/- while computing Long Term Capital Loss on sale of shares although he allowed the face value of such shares sold by the assessee as cost for computing Long Term Capital Loss on sale of shares.

3. Brief relevant facts are that it is noted by the AO in the assessment order that the assessee has declared LTCG of Rs. 628,48,549/- on sale of immovable property and against it, he claimed set off of Long Term capital loss of Rs. 740,24,974/- on sale of shares of M/s LVK Babywear Pvt. Ltd. The AO also noted in the assessment order that out of total shares, 990,000 shares were purchased by the assessee from Mr. K. R. Krishna. Managing Director of that Company on 12.04.2010 for Rs. 99 lacs at the face value of these shares being Rs. 10/- per share and another 20 lacs shares were purchased on 28.03.2011 from the company for Rs. 2 crores at the face value of these shares being Rs. 10/- per share. The AO also noted that a statement u/s 131 was recorded by him in course of assessment proceedings of Mr. K. R. Krishna. Managing Director of that Company. The AO stated on page 2 of the assessment order that the MD of the company stated in this statement that the shares were valued at Rs. 10/- per share and issued to the present assessee and no premium was collected. Thereafter it is noted by the AO on page 4 of the assessment order that on 25.03.2015, an affidavit was filed by Mr. K. R. Krishna. Managing Director of that Company in which it was stated by him that the shares were allotted by the company to the present assessee at a premium to give him majority shares but the AO observed that it lacks substance in the absence of any valuation report and in the light of this fact that in a span of 12 months, entire shares were sold only for Rs. 10,000/- without major change in company's financials. A show cause notice was issued by the AO to the assessee in view of the statement of the MD of that company in which he stated that the shares were issued at par as against the claim of the assessee that the shares were acquired

by him at a premium. Reply was submitted by the assessee to the AO but the AO rejected the claim of the assessee that premium was paid by the assessee. Various reasons are stated by the AO in the assessment order as to why he rejected this claim. The AO computed the LTCL on sale of shares at Rs. 299.90 lacs by deducting the sale proceeds of Rs. 10,000/- from face value of these shares Rs. 3 Crores. The Assessee carried the matter in appeal before CIT (A) but without success and now the assessee is in further appeal before us.

4. Both sides were heard. Learned AR of the assessee drawn our attention to pages 42 to 54 of the paper book containing reply dated 25.03.2015 along with affidavit of the MD of the company and copy of Annual Return of the company filed before ROC. Audited Statement of Accounts of the company for the year ended on 31.03.2012 with previous year figures was also filed and it was submitted that the receipt of share premium by the company is duly accounted for by the company in the balance Sheet and Annual Return filed with ROC and therefore, the AO was not justified in excluding the payment of share premium by the assessee for acquiring the shares, Learned DR of the revenue supported the orders of the lower authorities.

5. We have considered the rival submissions. We find that both the AO and CIT (A) have given several reasons for rejecting the claim of the assessee about payment of Share Premium. It is stated by the learned CIT (A) in the impugned order that the MD of the concerned Company in the statement recorded on oath on 05.03.2015 had stated that the shares were allotted @ Rs. 10/- per share and the net worth of the company was in negative when the assessee purchased the shares and

therefore, the claim of payment of share premium is not acceptable particularly in the absence of any valuation report supporting payment of premium and this fact that within a span of 12 months, the shares worth Rs. 3 Crores face value were sold for only Rs. 10,000/-. In our considered opinion, in the light of various facts and reasons noted by both the lower authorities which could not be controverted by the learned AR of the assessee, no interference is called for. In fact, we feel that even the loss of Rs. 299.90 Lacs allowed by the AO is also not proper because it is quite abnormal that any person will sale shares worth crores for a paltry sum of Rs. 10,000- except for stopping further loss. In the present case, further loss can be maximum Rs. 10,000/- being the sale proceeds said to have been realized and to stop this small and negligible loss, no normal person will sale shares having face value of Rs. 3 Crores and stated cost of Rs. 740,24,974/- for Rs. 10,000/- which is merely about 0.3% of the face value of the shares sold. Hence the sale itself is not beyond doubt. But the appellant cannot be worse of at the tribunal and hence, we cannot reduce the amount of loss allowed by the AO but in view of above discussion, we decline to interfere in the order of CIT (A).

6. In the result, the appeal of the assessee is dismissed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-
(N. V. VASUDEVAN)

Vice President

Bangalore,

Dated: 27th April, 2020.

/NS/*

Sd/-
(A.K. GARODIA)
Accountant Member

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| 1. Appellants | 2. Respondent | 3. CIT |
| 4. CIT(A) | 5. DR, ITAT, Bangalore. | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.