

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA
[Before Shri J. Sudhakar Reddy, Accountant Member]**

**I.T.A. No. 1040/Kol/2019
Assessment Year: 2011-12**

Sri Abhay Kr. Jain.....Appellant
[PAN: ACQPJ 4044 F]

Vs.

ITO, Ward-34(2), Kolkata.....Respondent

Appearances by:

Sh. S.M. Surana, Adv., appeared on behalf of the Assessee.

Sh. Jayanta Khanra, JCIT, Sr. DR, appeared on behalf of the Revenue.

Date of concluding the hearing : February 25th, 2020

Date of pronouncing the order : June 18th, 2020

ORDER

Per J. Sudhakar Reddy, AM:

This is an appeal filed by the assessee directed against the order of the Commissioner of Income Tax (Appeals)-10, Kolkata ['CIT(A)' for short] dated 28.03.2019 u/s 250 of the Income Tax Act, 1961 ('the Act' for short) for AY 2011-12.

2. The assessee is an individual and derives income from business, capital gains and other sources. He filed his return of income on 04.07.2011 declaring income of Rs. 5,54,860/-. This was processed u/s 143(1) of the CPC, Bangalore. The assessment was later re-opened u/s 147 of the Act by issue of notice on 02.08.2016 u/s 148 of the Act. The assessee filed a letter dated 10.08.2016 requesting the AO to treat the return of income, originally filed by him as a return filed in response to the notice u/s 148 of the Act. On request, the reasons for re-opening was supplied on 22.08.2016. Thereafter, scrutiny assessment was completed u/s 143(3) r.w.s. 147 of the Act on 27.12.2017 determining the total income of the assessee at Rs. 9,11,003/- inter-alia making an addition of Rs. 3,45,775/- u/s 68 the Act.

3. The assessee carried the matter in appeal challenging both the validity of re-opening of assessment as well as the addition of Rs. 3,45,775/- u/s 68 of the Act without success. Further aggrieved, the assessee is in appeal before me.

4. Rival contentions heard. On a careful consideration of the facts and circumstances of the case, perusal of the papers on record and case laws cited, I hold as follows.

5. The reasons recorded for re-opening run into two pages. Last paragraph of the reasons recorded is relevant and extracted for ready reference.

"During the relevant financial year, the assessee had purchased shares of Tuni Textile Mills Ltd. but didn't book any gain or loss as the shares remained unsold. However, I have reason to believe that the assessee had availed of bogus entry of short term capital gain of Rs.3,45,775/- during the financial year 2010-11 by way of transacting in shares of JMD Telefilms Ltd. and accordingly income to that extent should have been assessed under the head "Aggregation of Income" as stipulated in chapter VI of the Income Tax Act,61 but had escaped assessment. The case is covered under clause (b) of explanation 2 to section 147 of the Income Tax Act,61 and accordingly I am satisfied that it is a fit case for re-opening assessment."

6. All the other paragraphs are general in nature.

7. The crux of the reason to believe that, income liable to tax has escaped assessment, as per the AO, is bogus entry of short term capital gain of Rs. 3,45,775/- on purchase and sale of shares from JMD Telefilms Ltd. I find that the assessee has in its computation of income declared Rs. 3,85,938/- as short term capital gain and in this figure, the gain of Rs. 3,45,775/- on purchase and sale of JMD Telefilms Ltd. is included. This has been offered to tax by the assessee himself while filing his original return of income. The AO specifically states that the case is covered under Clause 'b' of explanation '2' to Section 147 of the Act. This Clause reads as follows:

"(b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return."

8. The facts of this case demonstrate that they do not fall within the Clause 'b' to explanation '2' of Section 147 of the Act as the assessee has not understated the income. In fact the income was disclosed. Thus, the re-opening of assessment in question is bad in law, for the reason that there is no escapement of income nor under statement of income.

9. Be it as it may, the assessee has, before the AO, produced document to prove the genuineness of these transactions. These are:

a) The transactions were made through recognised stock exchange through registered stock and share brokers.

b) The shares were duly registered in the name of the assessee.

c) The payments were made through normal banking channel.

d) STT was duly deducted on sales of these shares.

e) Delivery of shares were made through demat account.

10. The AO could not controvert with evidence the claim of the assessee. The entire assessment order as well as the reasons recorded are based on surmises and conjectures. Thus, this action of the AO is devoid of merit. Further, the addition of Rs. 10,373/- as explained u/s 69C of the Act is also uncalled for and is based on surmises and thus the same is deleted.

11. Before parting, it is noted that the order is being pronounced after ninety (90) days of hearing. However, taking note of the extraordinary situation in the light of the COVID-19 pandemic and lockdown, the period of lockdown days need to be excluded. For coming to such a conclusion, I rely upon the decision of the Co-ordinate Bench of the Mumbai Tribunal in the case of DCIT vs. JSW Limited in ITA No. 6264/Mum/2018 & 6103/Mum/2018, Assessment Year 2013-14, order dated 14th May, 2020.

12. In view of the above discussion, the re-opening of the assessment is quashed and the appeal of the assessee is allowed.

Kolkata, the 18th June, 2020.

Sd/-
[J. Sudhakar Reddy]
Accountant Member

Dated: 18.06.2020

Bidhan

Copy of the order forwarded to:

- 1. Sri Abhay Kr. Jain, 113, Biplabi Rash Behari Basu Road, Kolkata-700 001.**
- 2. ITO, Ward-34(2), Kolkata.**
3. CIT(A)-10, Kolkata. (sent through e-mail)
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata. (sent through e-mail)

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches