

आयकर अपीलिय अधिकरण, "डी [एसएमसी]" न्यायपीठ, चेन्नई  
**IN THE INCOME-TAX APPELLATE TRIBUNAL 'D [SMC]' BENCH, CHENNAI**  
श्री जॉर्ज माथन, न्यायिक सदस्य के समक्ष  
**Before Shri George Mathan, Judicial Member**

आयकर अपील सं./I.T.A.No.2798/Chny/2018  
निर्धारण वर्ष/**Assessment Year:2013-14**

Smt. Santosh Dadha,  
No. 1, Kalathi Pillai Street,  
Chennai 600 079.  
**[PAN: AADPD8051F]**

The Income Tax Officer,  
Vs. Non Corporate Ward 6(3),  
Chennai 600 006.

(अपीलार्थी /Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri D. Anand, Advocate  
प्रत्यर्थी की ओर से/Respondent by : Ms. R. Anita, JCIT  
सुनवाई की तारीख/ Date of hearing : 20.08.2020  
घोषणा की तारीख /Date of Pronouncement : 20.08.2020

**आदेश /ORDER**

**PER GEORGE MATHAN, JUDICIAL MEMBER:**

This is an appeal filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals) 5, Chennai in ITA No. 211/CIT(A)-5/2017-18 dated 29.06.2018 for the assessment year 2013-14. Shri D. Anand, Advocate, represented on behalf of the assessee and Ms. R. Anita, JCIT represented on behalf of the Revenue.

2. It was submitted by the Id. AR that the assessee is an individual, had purchased 1000 shares of M/s. Tuni Textile Mills Ltd. on 29.03.2011 through Integrated Enterprises (India) Limited. The purchase of shares was made through online platform of Bombay Stock Exchange Ltd. on which STT paid and cheques have also been issued. The ₹. 10/- shares of M/s. Tuni Textiles

Mills Ltd. was purchased for an amount of ₹.2,53,162.38. Subsequently, the company split ₹. 10/- shares to ₹.1/- each. The assessee had purchased the shares on 29.03.2011. The split had taken place on 07.04.2011 and the assessee sold the 10000 shares in July, 2012. The assessee had generated long term capital gains of ₹.14,74,740/-. The assessee had claimed exemption under section 10(38) of the Act.

3. It was the submission that the Assessing Officer on the ground that M/s. Tuni Textiles Mills Ltd. was a penny stock and disallowed the assessee's claim of exemption under section 10(38) of the Act. It was the submission that the transaction done by the assessee was purely on online transaction through recognized stock exchange and STT was also paid.

4. It was the submission that the Id. CIT(A) confirmed the denial of exemption under section 10(38) of the Act on the presumption that the shares were purchased through off market transaction. The Id. AR drew our attention to para 7.6 of the order of the Id. CIT(A). It was the submission that the transactions which have been done through online and STT have been paid, the Coordinate Benches of the Tribunal has held that the assessee be entitled to exemption under section 10(38) of the Act. The Id. AR drew our attention the decisions of the Coordinate Benches of the Tribunal in the case of Shri Ashwin Kumar Davey v. ITO in I.T.A. No. 2299/Chny/2017 & Ors.

dated 18.12.2018, in the case of Shri Narendra Harlalka v. ITO in I.T.A. No. 1134/Chny/2019 dated 05.08.2019, in the case of Smt. Nainimal Jainn Anitha v. ITO in ITA No. 384/Chny/2019 dated 18.06.2019 and the decision of "SMC" in the case of Vijay Kumar Baid (HUF) v. ITO in I.T.A. No. 2300/Chny/2018 dated 24.01.2019.

5. In reply, the Id. DR vehemently supported the order of the Id. CIT(A). It was the submission that the company M/s. Tuni Textiles Mills Ltd. was subjected to investigation, which unearthed the racket of generating bogus entries of Long Term Capital Gains which are claimed as exempt under section 10(38) of the Act. It was the submission that as per the financials of M/s. Tuni Textiles Mills Ltd., the shares were not of such high value. It was fairly agreed by the Id. DR that the transaction was done through online process and it was not an offline transaction. It was also fairly agreed that the Id. CIT(A) has wrongly presumed that the purchase of the shares in assessee's case was through off market and not through stock exchange. It was the submission that, however, the transaction is suspect in so far as M/s. Tuni Textiles Mills Ltd. was found to be involved any bogus Long Term Capital Gains claim.

6. I have considered the rival submissions. On perusal of the facts of the present case clearly shows that the transaction of purchase and sale of the

shares of M/s. Tuni Textiles Mills Ltd. done by the assessee was through online medium of Bombay Stock Exchange. However, the Revenue has not been able to show that the assessee has been involved in the fraudulent activity, if any, done by M/s. Tuni Textiles Mills Ltd. The assessee has not been shown to be involved in the management of M/s. Tuni Textiles Mills Ltd. In the circumstances, I am of the view that the facts of the assessee's case are squarely covered by the decision as quoted by the Id. AR, wherein it has been held as follows:

*“..... Transactions done through recognized stock exchanges where payments were made through bank cannot be doubted or disbelieved based on an investigation report of the Department, which at the best can be strong reason to suspect the veracity of the claim but not good enough to disbelieve it. I am therefore of the opinion that there is nothing concrete brought on record by the Department to show that transactions entered by the assessee in the shares of SMIL were bogus or sham. I therefore do not find any reason to uphold the orders of the lower authorities. Such orders are set aside and the addition is deleted.” – in the case of Vijay Kumar Baid v. ITO (supra).*

As also, in the case of Smt. Nainimal Jain Anitha v. ITO (supra), the Tribunal has held as under:

*“5. We have considered the rival submissions. A perusal of the assessment order clearly shows that this is not a case where the AO has been able to point out where the assessee has made a bogus claim of long term capital gains exempt u/s. 10(38) of the Act. Further, perusal of the assessment order clearly shows that from page 2, para 4 to para 34, the AO has only made allegation in respect of the company and the modus operandi of the bogus claim u/s. 10(38) of the Act. The evidences clearly show that the transactions of purchase and sale of the shares by the assessee herein are through BSE by paying STT. This is not a case for off-line purchase, nor is the case of direct purchase. Neither is the assessee's name coming out in the Investigation report, which has been received by the AO from Directorate of*

*Investigation, Kolkata. This being so, the claim of assessee cannot be disallowed merely on presumptions and the AO is directed to grant the assessee benefit of exemption u/s. 10(38) of the Act as claimed in respect of long term capital gains generated by purchase and sale of shares of M/s. Sulabh Engineers and Services Ltd., as claimed by the assessee.”*

It is noted that the facts of the present case are squarely covered in favour of the assessee (supra) as it is noticed that the transactions were done through recognized stock exchange and nothing has been produced to show the contumacious conduct on the part of the assessee. The claim of exemption under section 10(38) of the Act as made by the assessee cannot be denied. In the circumstances, the Assessing Officer is directed to grant the assessee the claim of exemption under section 10(38) of the Act as made.

7. In the result, the appeal filed by the assessee is allowed. .

Order pronounced in the open Court on 20<sup>th</sup> August, 2020 at Chennai.

Sd/-  
(GEORGE MATHAN)  
JUDICIAL MEMBER

Chennai, Dated, the 20.08.2020

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2.प्रत्यर्थी/Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.