

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI
BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA No. 7399/Del/2018
(Assessment Year: 2015-16)

Sanjay Jain (HUF), 137, Jagrity Enclave, New Delhi PAN: AAYHS8779N	Vs.	ITO, Ward-55(4), New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri Rajesh Jain, CA
Revenue by:	Ms. Amanpreet, Sr. DR
Date of Hearing	03/11/2020
Date of pronouncement	10/11/2020

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the Id CIT(A)-19, New Delhi dated 17.10.2018 for the Assessment Year 2015-1.
2. The assessee has raised the following grounds of appeal:-

“GROUNDS OF APPEAL

1. *That on facts and circumstances of the case & in law, the Assessment Order u/s 143(3) of the Act is illegal and liable to be quashed as the mandatory notice u/s 143(2) of the Act was not issued by jurisdictional Assessing Officer, Ward 55(4), New Delhi. The Assessing Officer, Ward 55(1), New Delhi, not having jurisdiction on the appellant, issued notice u/s 143(2) of the Act. This Ground has not been adjudicated by CIT(A) at all as the counsel of the appellant argued it verbally in appellate proceedings.*
2. ***Without prejudice to above Ground.***
 - 2.1 *That on facts and circumstances of the case & in law, the learned CIT(A) erred in upholding the Order of the Assessing Officer who made addition u/s 68 of the Act of Rs 2,04,13,525/- which were sale proceeds of listed Equity shares of Kappac Pharma Ltd. sold through recognized stock exchange i.e. Bombay Stock Exchange on terminal of the exchange via stock broker of the appellant and delivery of shares were made from demat account, ignoring evidences filed by the Appellant, merely on suspicion and surmises. The Learned CIT(A) neither referred Appellate submissions in the Appellate Order nor distinguished judgments of Hon'ble High Courts and various benches of ITAT referred and argued in the proceedings.*
 - 2.2 *The Learned CIT(A) erred in upholding the Order of the Assessing Officer who made addition of Rs 2,17,63,054/- merely on the basis of the evidence(s), statement etc.*

recorded by some Third Party & mechanically relying on it without independently examining the alleged evidence(s) and recording the statement(s) being quasi judicial officer. That the A.O. and CIT(A) erred in not giving the opportunity of cross examination of the witness of the revenue to the appellant and thus passed the assessment Order and Appellate Order in utter violation of natural justice & thus the Orders passed by both lower Authorities are illegal & same are liable to be quashed.

- 2.3 *The Leaned CIT(A) upheld the Assessment Order and sustained addition of Rs. 2,17,63,054/- u/s 68 & 69C on account of sale proceeds of listed Shares, just on the basis of suspicion & presumptions and did not adjudicate the submissions filed with respect to each ground of appeal judicially.*
 - 2.4 *That the Learned CIT(A) also mechanically relied on evidences allegedly collected by independent Agency of Govt, without showing any nexus to the assessment proceedings of the appellant & in relation to the appellant in the Order and hence the addition sustained in such manner are without looking into the evidences / documents filed by the appellant independently judicially, is illegal.*
 - 2.5 *The Leaned CIT(A) erred in upholding the Order of the Assessing Officer who made the disallowance of exemption claim made u/s. 10(38) at Rs 1,96,78,525/- in respect of long-term capital gain earned on sale of listed equity shares sold through recognized stock exchange which has duly been subjected to security transaction tax(S.T.T.).*
 - 2.6 *That the Order of the Assessing Officer and CIT(A) are arbitrary and not based on the facts of the case & as per law and hence additions made by the Assessing Officer are totally illegal.”*
3. At the time of hearing of the appeal counsel of the assessee filed a letter dated 3 November 2020 stating as Under:-
- “The captioned Appeal is pending before Hon’ble Bench, which was filed on 04.12.2018 against Order of C.I.T.(A)-19, New Delhi. The Appellant has filed requisite Form(s) under Vivad Se Vishwas Scheme 2020. The Appellant, accordingly wish to withdrawal the said Appeal. In view of the above, it is humbly requested that the Hon’ble Bench may kindly permit the Appellant to withdraw the Appeal. However, Appeal may kindly be restored if Hon’ble P.C.I.T. does not grant Certificate for accepting the dispute finally settled by issuance of Form 3 under the Scheme due to any reason.”
4. The learned DR did not raise any objection.
 5. In view of the above facts appeal filed by the assessee is treated as withdrawn and hence dismissed with liberty to the assessee to file miscellaneous application to recall the order in case form number 3 is not received/issued by the Principal Commissioner Of Income Tax.
 6. Accordingly appeal of the assessee is dismissed as withdrawn

Order pronounced in the open court on 10/11/2020.

Sd/-
(H.S.SIDHU)
JUDICIAL MEMBER

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated : 10/11/2020
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	10.11.2020
Date on which the typed draft is placed before the dictating member	10.11.2020
Date on which the typed draft is placed before the other member	10.11.2020
Date on which the approved draft comes to the Sr. PS/ PS	10.11.2020
Date on which the fair order is placed before the dictating member for pronouncement	10.11.2020
Date on which the fair order comes back to the Sr. PS/ PS	10.11.2020
Date on which the final order is uploaded on the website of ITAT	10.11.2020
date on which the file goes to the Bench Clerk	10.11.2020
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	