

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
(CONDUCTED THROUGH VIRTUAL COURT)**

**BEFORE SHRI MANISH BORAD, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

I.T.A. No.660/Ind/2017
(Assessment Year: 2014-15)

Smt. Indira Bohra, C/o M/s B.L. Gupta & Co., 13/1, Dhanwantari Marg, Freenganj, Ujjain(M.P.)	Vs.	ITO Ward-1(1), Ujjain (M.P.)
PAN No.ABVPB7772N		
(Appellant)	..	(Respondent)

Appellant by :	Shri S. N. Agrawal, CA
Respondent by:	Shri Harshit Bari, Sr. DR

Date of Hearing	07.04.2021
Date of Pronouncement	28.06.2021

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed by the assessee is directed against the order dated 11.07.2017 passed by the Commissioner of Income Tax (Appeals), Ujjain (M.P.) arising out of the order dated 11.11.2016 passed by the ITO-1(1), Ujjain (M.P.) under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred as to 'the Act') for Assessment Year 2014-15 with the following grounds:-

"1. That the learned CIT Appeals, Ujjain (M.P.) erred in confirming the additions of Rs.12,07,770/- being Short Term Capital loss incurred on trading of shares of UNO Industries Ltd. whereas the appellant deals in shares and loss incurred on the shares of other companies have been allowed.

- 2 -

2. *That the learned CIT Appeals, Ujjain (M.P.) erred in holding that the shares of UNO Industries Ltd. were not transacted through recognized stock exchange. Actually the shares were held in the Demat Form with recognized DP and have been sold through Stock Exchange and the payments have also been made and received by A/c payee cheques.*
3. *That the learned CIT Appeals, Ujjain (M.P.) erred in not relying on direct applicable decision of Hon'ble ITAT, Hyderabad Bench "A" (SMC) in ITA No.452/HYD/2015. Wherein similar kind of transactions was held to be genuine one and accordingly the additions were deleted.*
4. *That the Appeal Order passed by the learned CIT Appeals, Ujjain (M.P.) is wrong, unjustified and against the principle of natural justice because a revised Return filed in response to notice u/s148 though belated but before Assessment proceedings cannot be regarded as invalid.*
5. *That the appellant prays leave to add, amend, alter and/ or modify all or any of the Grounds of Appeal on or before the date of final hearing."*

2. Practically the assessee has challenged the confirmation of addition of Rs. 12,07,770/- on account of short term capital loss incurred of trading of shares of UNNO Industries Ltd.

3. The assessee an individual deriving income as rental from property also engaged in the trading of real estate business and share trading filed its return of income on 30.10.2014 declaring total income at Rs. 7,23,500/- which includes income from business or profession of Rs. 6,40,624/-. The case was selected for scrutiny under CASS and loss of Rs. 12,07,771/- as incurred in share trading was disallowed by the Ld. AO on basis of the report of Investigation Wing of Kolkata and on the basis of the statement made by the Director of UNNO Industries Ltd. and finally added back to the total income of the assessee holding the claim of short term capital loss made by the appellant was not genuine, which was, in turn, confirmed by the First Appellate Authority. Hence, the instant appeal before us.

- 3 -

4. We have heard the rival submission made by the respective parties and also perused the relevant materials available on record including the orders passed by the Revenue.

5. The appellant purchased 59,000 equity shares of M/s. UNNO Industries Ltd. on 16.01.2014 at the rate of Rs. 32.95 per shares totaling to Rs. 19,44,050/- payment whereof was made on 25.03.2014 and ultimately sold those shares on 28.03.2014; such payment has been obtained through account payee cheque.

It is the case of the applicant that those shares were purchased in the normal course of share investment and detailed transaction of shares in M/s. UNNO Industries Ltd. at BSE along with the details of other shares were also submitted before the Ld. AO. In fact, the loss of other companies shares have allowed. These shares are listed on BSE and NSE and purchased and sales of these shares were affected through the recognized progress of the exchanges. Even on 29.08.2016 trading of shares of this particular company were made and trading of shares of these companies are still being permitted as the case made out by the assessee.

As it appears from the records that before the Ld. AO the copy of the invoices dated 16.01.2014 issued by the broker Signet Vinimay Pvt. Ltd. in connection with the sale of 59000 equity shares of M/s. UNNO Industries Ltd. to the appellant for Rs. 19,44,050/-, the certificate issued by the said Signet Vinimay Pvt. Ltd. certifying that the appellant had

- 4 -

purchased 59,000 shares of M/s. UNNO Industries Ltd. which was transferred to the Demat Account of the appellant, the bank statement of the appellant duly highlighted the amount as paid towards purchased of shares, the Demat Account of the appellant with Arihant Capital Markets Ltd., the copy of the account of appellant in the books of Arihant Capital Markets Ltd. for the F.Y. 2013-14, the sale note dated 26.03.2014 in respect of the sale of such 59000 shares of M/s. UNNO Industries Ltd. through Arihant Capital Markets Ltd. of Bombay Stock Exchange and finally the bank statement of the appellant duly highlighting the amount as realized from those sale of shares were duly submitted before the Ld. AO. Perusal of those documents does not suggest that the appellant is any way connected to M/s. UNNO Industries Ltd. It is further case made out by the assessee that in a similar set of facts the Hon'ble Hyderabad ITAT Benches in ITA No. 452/Hyd/2015 deleted addition made under Section 69A of the Act on account of so called shares transaction. The appellant has sold through Arihant Capital Markets Ltd. in BSE and transferred the shares to the purchaser from his Demat Account and the payment has also been obtained by means of A/c payee cheque only. It is true that the appellant has purchased and sold the shares of M/s. UNNO Industries Ltd. but is not correct that he has taken bogus entry. We find in the judgment passed by the Ld. ITAT, Kolkata Benches in ITA No. 1268/Kol/2018 in the case of Sunita Devi vs. ITO, Ward- 2(2), Siliguri wherein the rejection of the claim of long-term capital gain on purchase and sale of shares of the said M/s. UNNO Industries Ltd. stood quashed. In that case, we have carefully considered that the above judgment

passed by the Kolkata Benches where the Revenue had a general report of the Investigation Wing and modus operandi adopted generally in these cases and a general observation has been made and concluded that the assessee has claimed bogus long-term capital gain. The addition of entire sale proceeds of the shares as income and rejection of the claim under Section 10(38) of the Act on the ground of sham transaction has been ultimately quashed by the Ld. Tribunal. The relevant portion whereof is as follows:-

“2. The sole issue that arises for my adjudication is whether the Assessing Officer was right in rejecting the claim of the assessee that he had earned Long Term Capital Gains on purchase and sale of the shares of M/s. UNNO Industries Limited. The AO based on a general report and modus operandi adopted generally in these cases and on general observations has concluded that the assessee has claimed bogus long term capital gain. He made an addition of the entire sale proceeds of the shares as income and rejected the claim of exemption made u/s 10(38) of the Act. The evidence produced by the assessee in support of the genuineness of the transaction was rejected.

3. The assessee carried the matter in appeal and the ld. CIT(A), had upheld the addition. The ld. CIT(A) has in his order relied upon "circumstantial evidence" and "human probabilities" to uphold the findings of the AO. He also relied on the so called "rules of suspicious transaction". No direct material was found to controvert the evidence filed by the assessee, in support of the genuineness of the transactions. In other words, the overwhelming evidence filed by the assessee remains unchallenged and uncontroverted. The entire conclusions drawn by the revenue authorities, are based on a common report of the Director of Investigation, Kolkata, which was general in nature and not specific to any assessee. The assessee was not confronted with any statement or material alleged to be the basis of the report of the Investigation Wing of the department and which were the basis on which conclusion were drawn against the assessee. Copy of the report was also not given.

4. Under the circumstances, in a number of cases this bench of the Tribunal has consistently held that decision in all such cases should be based on evidence and not on generalisation, human probabilities, suspicion, conjectures and surmises. We have in all cases deleted such additions. Some of the cases were detailed finding which are listed below :-

<i>Sl.No.</i>	<i>ITA Nos.</i>	<i>Name of the Assessee</i>	<i>Date of order/judgment</i>
<i>1.</i>	<i>1236-1237/K/17 ITAT-Kolkata</i>	<i>Manish Kumar Baid & Other vs. ACIT</i>	<i>18.08.2017</i>
<i>2.</i>	<i>443/Kol/2017</i>	<i>Kiran Kothari (HUF) vs. ITO</i>	<i>15.11.2017</i>

3.	22 of 2009 Calcutta High Court	CIT, Kolkata-III, vs. Bhagwati Prasad Agarwal	29.04.2017
4.	456 of 2007 Bombay High Court	CIT Vvs. Shri Mukhesh Ratila Marolia	07.09.2011
5.	18 of 2017 Punjab and Haryana High Court	Pr. CIT (Central Ludhina vs. Sh.Hitesh Gandhi,	16.02.2017
6.	95 of 2017 Punjab and Haryana High Court	Pr. CITvs. Prem Pal Gandhi	18.01.2018
7.	2281/Kol/2017	Navneet Agarwal, Legal Heir of Late Kiran Agarwal vs. ITO, Ward-35(3), Calcutta	20.07.2018

5. I am bound by the proposition of law laid down in these case law. They are squarely applicable to the facts of the case. The ld. Departmental Representative, though not leaving his ground, could not controvert the claim of the ld. Counsel for the assessee that the issue in question is covered by the above cited decisions of the Hon'ble High Courts and the ITAT.

6. The ld. Departmental Representative filed detailed written submissions and relied on the judgment of the Hon'ble Supreme Court in the case of Securities and Exchange Board of India vs Rakhi Trading Private Ltd in Civil Appeal No. 1969 of 2011 with Civil Appeal Nos.3174-3177 of 2001 and Civil Appeal No.3180 of 2011. The ld. Counsel for the assessee submits that there is no surviving order of SEBI against the assessee or the company, the script of which was purchased and sold by the assessee. When there is no surviving adverse order of SEBI, against the claim of the assessee, the judgment of the Hon'ble Supreme Court cannot be applied to the facts of this case.”

6. In the case in hand also it appears from the entire records that the transactions were affected through Demat Account, the payments were also made through banking channels by cheque. Furthermore, the sale of shares were through recognized stock exchange through authorized brokers. From the record it also reveals that the appellant has also dealt in share of other companies in this normal course of shares investment. On the other hand, it is also a fact that loss arises on the shares of other companies have duly been allowed by the AO himself but the loss arising out of the sale of shares of M/s. UNNO Industries Ltd. have been disallowed on the basis of report of the investigation wing of Kolkata. However, the AO has failed to bring any evidence on record to show that

- 7 -

the statutory agencies have alleged in stock manipulation by the assessee or the brokers or the company's scrips in question at the time when the assessee made the sale. The shares were sold on the date mentioned in the contract note at the prevailing market price duly recorded in the stock exchange. On the basis of the suspicion howsoever, strong it is not possible to record any finding of fact. As a matter of fact, suspicion can never take place of proof. In the absence of any evidence on record it is difficult if not impossible to hold that the transaction of buying and selling of shares were colourable transaction or were resorted to with ulterior motive. However, we have already discussed that similar sales transactions of the same scrips done through the registered share broker being a corporate member of BSE have been allowed by the Ld. Tribunal (Kolkata Bench) in similar set of facts.

The evidence produced before the Revenue by the appellant in the instant case supports the genuinity of the transaction. No direct material was found and/or relied upon to controvert such evidence filed by the appellant in support of the genuineness of the transactions; the overwhelming evidence filed by the appellant remains and/or uncontroverted. In fact, the Revenue has failed to bring on record any evidence to suggest that the sale of shares by the assessee were not genuine. The conclusion drawn by the Revenue authorities on the basis of the common report of Director of Investigation Calcutta which is general in nature and not specific to any assessee so far as, the assessee is concerned. Furthermore, when the assessee was not confronted with any statement and/or material alleged to be the basis of the report of the

- 8 -

Investigation Wing of the Department on which the conclusion drawn by the Revenue on human probabilities surmise and conjectures is not sustainable in the eye of law and, therefore, the rejection of the claim of short term capital loss made by the assessee is liable to be quashed. With the above observation we delete the addition made by the Revenue.

7. In the result, the appeal of the assessee is allowed.

This Order pronounced in Open Court on	28 /06/2021
Sd/-	Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER
Ahmedabad; Dated 28/06/2021
TANMAY, Sr. PS

(MADHUMITA ROY)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Indore
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Indore