

आयकर अपीलिय अधिकरण , ' बी ' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, CHENNAI**

श्री धुव्वुरु आर. एल रेड्डी, न्यायिक सदस्य एवं, श्री एस जयरामन, लेखा सदस्य समक्

**BEFORE SHRI DUVVURU RL REDDY, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No: 2905/Chny/2019

निर्धारण वर्ष/Assessment Year : 2011-12

Shri. Sandeep Kumar,
No. 109, Rainbow Plaza,
Audiappa Naicken Street,
Sowcarpet,
Chennai – 600 079.

Vs. Income Tax Officer,
Non Corporate Ward -6(3),
Room No. 420,
BSNL Building, 4th Floor,
No. 16, Greams Road,
Thousand Lights, Chennai.

[PAN: BFNPS 5811Q]

आयकर अपील सं./I.T.A. No: 2906/Chny/2019

निर्धारण वर्ष/Assessment Year : 2012-13

Smt. Vadamibai Jugarjji,
No. 41, Narayana Mudali Street,
Sowcarpet,
Chennai – 600 079.

Vs. Income Tax Officer,
Non Corporate Ward -6(4),
Room No. 421,
BSNL Building, 4th Floor,
No. 16, Greams Road,
Thousand Lights, Chennai.

[PAN: AAFPJ 8558D]

आयकर अपील सं./I.T.A. No: 2907/Chny/2019

निर्धारण वर्ष/Assessment Year : 2012-13

Shri. D. Uttamchand,
No. 47, Narayana Mudali Street,
Sowcarpet,
Chennai – 600 079.

Vs. Income Tax Officer,
Non Corporate Ward -6(3),
Room No. 420,
BSNL Building, 4th Floor,
No. 16, Greams Road,
Thousand Lights, Chennai.

[PAN: AAAPU 0375Q]

आयकर अपील सं./I.T.A. No: 39/Chny/2020**निर्धारण वर्ष/Assessment Year : 2012-13**

Smt. Reena Devi Ranka,
33, Audiappa Naicken Street,
Sowcarpet,
Chennai 600 079.

Vs. Income Tax Officer,
Non Corporate Ward – 6(1),
2ND Floor, Room No. 226, BSNL
Building, 16, Greams Road,
Chennai.

[PAN: ASLPR 7233F]**(अपीलार्थी/Appellant)****(प्रत्यर्थी/Respondent)**

अपीलार्थीकीओरसे/Appellant by	:	None
प्रत्यर्थीकीओरसे/Respondent by	:	Shri. G. Johnson, Addl. CIT
सुनवाईकीतारीख/Date of Hearing	:	20.04.2021
घोषणाकीतारीख/Date of Pronouncement	:	01.07.2021

आदेश/ ORDER**PER S. JAYARAMAN, ACCOUNTANT MEMBER:**

The above assessee filed these appeals against the orders of the Commissioner of Income Tax (Appeals)-5, Chennai in ITA No. 84/CIT(A)-5/2018-19 dated 20.09.2019, ITA No. 274/CIT(A)-5/2018-19 dated 14.08.2019, ITA No. 139/CIT(A)-5/2018-19 date 30.07.2019 and in ITA No. 272/CIT(A)-5/2018-19 dated 20.11.2019 for the assessment years 2011-12 & 2012-13, respectively.

2. The above assessees purchased the shares of M/s. Bakra Pratishtan Limited and M/s. Blue Prints Securities Limited, as the case may be, by cash, offline, through brokers. Subsequently, sold them, earned a huge profit of long term capital gain and claimed it as an exempt income u/s. 10(38). The Assessing Officers on the basis of the report of the investigation wing of the Revenue in Kolkata in which it came to the knowledge, inter alia, certain brokers named the shares held by these companies as penny stocks, accommodation entries were provided for claiming bogus LTCG etc and on the basis of such information/material etc re-opened these assessments. During the re-assessments, the respective AO after considering the respective assessee's explanation material etc, on the basis of the investigation done by the Revenue of Kolkata and after analysing these transactions in detail held that these transactions are not natural, an arranged one, not genuine and that these assessees have not proved that the impugned transactions were genuine. Therefore, assessed the entire sale proceeds of the impugned shares as an unexplained credit u/s. 68 and refused the respective assessee's claim u/s. 10(38). Aggrieved, the respective assessee filed appeal before the CIT(A). The Ld. CIT(A) after considering material, submissions and relying on the decisions in the cases of [2018] 89 taxmann.com 196 (Bombay) Sanjay Bimalchand Jain vs PCIT-1, Nagpur, Udit Kalra vs ITO in ITA no. 220/2019 & CM No 10774/2019 dated 08.03.2019, Shri. Sanat Kumar vs ACIT in ITA No. 1881/Del/2018 dated 14.06.2019, Smt. Tharakumari vs ITO, Non Corporate

Circle-6, Chennai, Mrs Vidya Reddy, Chennai-18 vs The ITO Intl. Taxation Ward-1(2), Chennai, PCIT (Central)-1 vs NRA Iron & Steel Pvt. Ltd. [2019] 103 taxmann.com 48 (SC) etc held that the Assessing Office has clearly established the fact in each of the case that the impugned transaction is manipulated with the collusion of brokers to paint credit worthiness to the transaction and to claim exemption u/s. 10(38). Therefore, the case laws relied upon, by the respective assessee, are not applicable to the facts of the case and upheld the action of the respective Assessing Officer to treat the entire sale proceeds of the impugned penny stock as an unexplained credits u/s. 68. Aggrieved, the respective assessee filed the above appeal with common grounds. Therefore, as a model, grounds of appeal in ITA No. 39/Chny/2020 is extracted as under:

"1. The order of the learned Commissioner of Income Tax (Appeals) is erroneous, illegal, opposed to facts and is liable to be reversed.

2. That the learned Commissioner of Income Tax (Appeals) has erred in upholding the jurisdiction of the AO to re-open the assessment u/s. 147 of the Act insofar as there is no tangible material brought on record to show the escapement of income, so as to invoke the extended period of limitation to re-open the assessment.

3. That the learned Commissioner of Income Tax (Appeals) failed to see that there has been gross violation of principles of natural justice in so far as the statement from the broker, upon which the entire assessment is base, was never furnished to the Appellant at any stage of the assessment proceedings. This renders the entire assessment null and void.

4.1 That the learned Commissioner of Income Tax (Appeals) erred in denying exemption u/s. 10(38) and confirming the addition of Rs. 26,45,461/- as unexplained cash credits u/s. 68 of the Income Tax Act, 1961.

4.2 That the learned Commissioner of Income Tax (Appeals) failed to consider the detailed evidences that were produced to show the genuineness of purchase and sale of shares, including bills, STT certificates and that the transaction was made through the Calcutta Stock Exchange.

5. That the learned Commissioner of Income Tax (Appeals) has failed to appreciate the fact that the purchase consideration was made through banking channel.

6. That the learned Commissioner of Income Tax (Appeals) has erred in relying upon case laws that are wholly distinguishable on law and facts.

7. That the learned Commissioner of Income Tax (Appeals) has failed to notice that the learned Assessing Officer has not followed the decision of the Honourable Income Tax Appellate Tribunal to bring on record the role of the assessee in promoting the company and inflating the share price of the company.

8. The appellant craves leave for any other additional grounds that may be abused or permitted to be abused at the time of the hearing."

3. These cases were posted for hearing through video conferencing. Though the notices were served and acknowledged, which were placed in the respective record, none was present for the respective assessee. We heard the Ld. DR. The Ld. DR submitted that on the basis of information received from the Investigation Wing, Kolkata, the respective Assessing Officer re-opened each of the assessment, gave an opportunity to the respective assessee to cross-examine the brokers at Kolkata, and gave a copy of the sworn statement recorded by the investigation unit in Kolkata, which each of the assessee has declined. The Ld. DR further submitted that all these shares were penny stocks. They were claimed to have been purchased through brokers by paying cash, offline and when the Assessing Officer issued notices to the brokers, the notices either returned unserved or not responded. At the time of investigation, the brokers named these assessees as a beneficiary of the arrangements or the shares held by those companies as penny stock etc. Therefore, the Assessing Officer, after analysing the transactions in detail held that these transactions are not natural, pre-determined, not genuine and that

assesseees have not proved that the impugned transactions were genuine. Therefore, the respective Assessing Officers have correctly added the entire sale consideration as an unexplained credit. In the case of Reena Devi, the Assessing Officer has offered even an opportunity to the assessee to substantiate her claim by producing the persons through whom she has undertaken the transactions of purchase and sale of shares, sub-broker, friend and the broker through whom transactions have been undertaken. However, the assessee has failed to do so. The Ld. CIT(A) after considering all the submissions/material etc of each of these assesseees and after going through various case laws mentioned in his order has clearly recorded a finding that the AO has clearly established the fact that the impugned transaction is manipulated with the collusion of brokers to paint credit worthiness to the transaction and to claim exemption u/s. 10(38) of the Act and sustained the respective assessment. It is clear from the grounds of appeal and the material available on record that the respective assessee has not challenged the findings of the Ld. CIT(A) with relevant material. Therefore, the Ld. DR pleaded that the orders of the Ld. CIT(A) in the respective assessee's case be confirmed.

4. We heard the Ld. DR. It is clear from the orders of the Ld. CIT(A) that on due analysis and consideration of the material placed by each of the assessee, the Ld. CIT(A) held that the AO has clearly established the fact that the

impugned transaction is manipulated with the collusion of brokers to paint credit worthiness to the transaction and to claim exemption u/s. 10(38) of the Act and sustained the respective assessment. We find from the records that the respective assessee has not placed any material to dislodge the findings recorded by the Ld. CIT(A). Therefore, all the above appeals, filed by the respective assessee, are dismissed.

5. In the result, all the above appeals, filed by the respective assessee, are dismissed.

Order pronounced on 01st July, 2021 at Chennai.

Sd/-

(धुव्वुरु आर. एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/Judicial Member

Sd/-

(एस जयरामन)

(S. JAYARAMAN)

लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 01st July, 2021

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent

4. आयकरआयुक्त/CIT 5. विभागीयप्रतिनिधि/DR

3. आयकरआयुक्त) अपील(/CIT(A)

6. गार्डफाईल/GF