

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'SMC': NEW DELHI)
(THROUGH VIDEO CONFERENCING)**

**BEFORE SMT. DIVA SINGH, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 7430/Del/2018
(Assessment Year: 2014-15)**

Dinesh Gupta, New Delhi.	Vs.	ITO, Ward- 28(3), New Delhi.
APPELLANT		RESPONDENT
PAN No: AAHPG4859J		

Assessee By : Ms. Riya Mathur, Advocate
Revenue By : Shri R.K. Gupta, Sr. DR

Per Anadee Nath Misshra, AM

(A) This appeal by Assessee is filed against the order of Commissioner of Income Tax (Appeal)-10, New Delhi, dated 14.09.2018 for Assessment Year 2014-15. Grounds taken in this appeal of Assessee are as under:

"1. On the facts and circumstances of the case, the order passed by the learned CIT(A) is bad both in the eye of law and on facts.

2. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition made by the AO treating the long term capital gain of Rs. 23,53,204/- as unexplained cash credit u/s 68 of the Income tax Act.

3. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition made by AO holding the Long Term Capital gain declared by the assessee, to be not genuine.*

4. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition despite the assessee bringing on record all evidences and material to prove the genuineness of the transaction.*

5. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition despite the sale and purchase transactions having been done through proper banking channels and as per the rules and regulations of the Stock Exchange.*

6. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition by misinterpreting the financials of the companies whose shares were sold by the assessee.*

7. *On the facts and circumstances of the case the learned CIT(A) has erred both on facts and in law in confirming the addition made by AO despite the fact that no enquiry was made by the AO from the alleged company to verify the transactions.*

8. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the above addition despite the assessee declaring the total consideration on sale of shares as their income exempt under section 10(38) of the Act, the addition amounts to double taxation of the same income.*

9. *On the facts and circumstances of the case, the learned CIT(A) has grossly erred both on facts and in law in confirming the above addition by indulging in surmises without bringing on any direct evidence against the assessee, only on the basis of presumption an assumption.*

10. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the disallowance of exemption claimed by assessee u/s 10(38) of Rs. 23,53,204/-made by AO and treating the same as undisclosed income without there being any basis for the same.*

11. *On the facts and circumstances of the case, the learned CIT(A) has grossly erred both facts and in law in rejecting the contention of the assessee that the order has been pass by the AO without affording adequate opportunity of being heard to the assessee.*

12. *On the facts and circumstances of the case the learned CIT(A) has erred both on facts « in law in confirming the addition made by AO despite the same having been made on basis of material collected at the back of the assessee without giving it an opportunity' rebut the same.*

13. That the appellant craves leave to add, amend or alter any of the grounds of appeal."

(B) At the time of hearing, the learned Counsel for the Assessee informed us that the assessee has filed application for Vivad Se Vishwas Scheme, 2020 ("VSVS", for short) and that Form-3 has already been issued. She drew our attention to letter filed from assessee's side in Income Tax Appellate Tribunal ("ITAT", for short) giving intimation of the same. In view of this, the learned Counsel as well as the Learned Senior Departmental Representative ["Ld. Sr. DR, for short] submitted before us that this appeal may be considered as withdrawn and may be dismissed on account of the aforesaid VSVS. We have also perused Copy of Form -3 dated 29/12/2020 issued by the Designated Authority under VSVS; which was also filed from the assessee's side alongwith above mentioned letter. After due consideration, we are of the opinion that this appeal has become infructuous on account of aforesaid VSVS and this appeal is treated as withdrawn on account of the aforesaid VSVS. In view of the foregoing, and as both sides are in agreement to this, this appeal having become infructuous, is treated as withdrawn and is hereby dismissed.

(B.1) Before we part, we hereby clarify, by way of abundant caution, that if for some reason the disputes under this appeal before us are not settled under the aforesaid VSVS, then the assessee will be at liberty to approach ITAT for restoration of this appeal, in accordance with law.

(C) In the result, this appeal is dismissed.

This order was orally pronounced on 06th September, 2021 in Open Court, in the presence of representatives of both sides, after conclusion of the hearing. Now this order in writing is signed today on 07/09/2021.

Sd/-
(DIVA SINGH)
JUDICIAL MEMBER

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated: 07/09/2021
(Pooja)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
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	