

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "A", BANGALORE**

Before Shri George George K, JM & Shri B.R.Baskaran, AM

ITA No.1935/Bang/2018 : Asst.Year 2013-2014

Smt.Yashoda Prop : Kailash Roofing Solutions No.61, N.R.Road Bengaluru - 560 002. PAN : AAFPY4135R.	v.	The Assistant Commissioner of Income-tax, Circle 5(2)(1) Bengaluru.
(Appellant)		(Respondent)

Appellant by : Sri.Ravishankar S.V., Advocate
Respondent by : Smt.Priyadarshini Besaganni, JCIT-DR

Date of Hearing : 11.11.2021	Date of Pronouncement : 12.11.2021
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ORDER

Per George George K, JM:

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 26.03.2018. The relevant assessment year is 2013-2014.

2. The assessee has raised fifteen grounds and five additional grounds. However, during the course of hearing, the learned AR only pressed for hearing grounds No.2(a) and 2(b) of the additional ground. The additional grounds 2(a) and 2(b) do not require examination of new facts otherwise than on record and same is pure question of law. Therefore, placing reliance on the judgment of the Hon'ble apex Court in the case of *National Thermal Power Co. Ltd. v. CIT (1998) 229 ITR 383 (SC)*, the additional grounds 2(a) and 2(b) for substantial cause and justice is taken on record and we proceed to

dispose of the same on merits. The additional grounds 2(a) and 2(b) read as follows:-

“2(a) The learned Commissioner of Income-tax (Appeals) was not justified in not setting aside the assessment order as the assessing officer has not suo moto provided the sworn statements etc of the person’s relied upon in the assessment order, for rebuttal, hence vitiating the assessment proceedings on the facts and circumstances of the case.

2(b) The learned Commissioner of Income-tax (Appeals) has not appreciated the fact that the order is vitiated on account of violation of principles of natural justice in as much as the appellants was not afforded opportunity of cross-examination of the person, whose statement was relied upon to make the additions in the assessment, on the facts and circumstances of the case.”

3. The brief facts of the case are as follows:

The assessee is an individual, who is in the business of trading in all types of roofing sheets. For the assessment year 2013-2014, the return of income was filed on 11.11.2013 declaring total income of Rs.61,08,614. In the return of income, the assessee had claimed long term capital gains of Rs.50,50,997 on sale of shares (shares of M/s.Tuni Textiles) and the same was claimed as exempt u/s 10(38) of the I.T.Act. During the course of scrutiny assessment, it was noticed by the A.O. that the assessee had received Rs.52,09,450 on account of sales of shares of Tuni Textiles. The A.O. was of the view that the company, Tuni Textiles, was a penny stock company, based on the investigation conducted by the Kolkata Directorate of Investigation of department. The investigation wing of the department had recorded the statement of the brokers during the course of search proceedings u/s 132(4) of the I.T.Act, wherein the broker had

admitted that he had indulged in providing bogus billing / accommodation entries to claim bogus Long Term Capital Gains (LTCG) and also to avail bogus short term capital losses. The assessee was show caused by the A.O. vide his letter dated 19.03.2016 to explain why the receipts on sale of shares should not be brought to tax as unexplained credits in the hands of the assessee. The assessee filed objections vide letter dated 22.03.2016. However, the said objections were rejected by the A.O. The A.O. held that the script of Tuni Textiles was penny stock used to manipulate the market and provide bogus LTCG. The A.O. after considering the financials of Tuni Textiles and the outcome of the Investigation Wing of Kolkata Directorate of Investigation, in the case of different broker / entry operators held that the assessee had arranged bogus LTCG and claimed such income as exempt. Therefore, the sale consideration received by the assessee of Rs.52,09,450 on account of sale of shares of Tuni Textiles and claimed as exempt was treated by the A.O. as unexplained cash credits in the hands of the assessee and brought to tax as income from other sources.

4. Aggrieved, the assessee filed an appeal to the first appellate authority. The CIT(A) confirmed the view taken by the A.O. Further, the CIT(A) relied on the order of the Mumbai Bench of the Tribunal in the case of Sanjay Bimalchand.

5. Aggrieved by the order of the CIT(A), the assessee has filed this appeal before the Tribunal. The learned Counsel for the assessee by placing reliance on grounds 2(a) and 2(b) of the additional ground, submitted that an identical issue was

considered by various Benches of the Bangalore Tribunal and the Tribunal in those cases, had restored the matter to the A.O. to re-adjudicate the issue afresh after making available to the assessee all the documents relied on by the Revenue for making the addition. The cases relied on by the learned AR are as follows:-

- (i) Shri Tarun Kumar Rungta v. ITO [ITA No.1612/Bang/2018 – order dated 05.10.2018]
- (ii) Pukhraj Hasmukhlal [ITA No.1927/Bang/2017]

6. The learned Departmental Representative supported the orders of the Income Tax Authorities.

7. We have heard rival submissions and perused the material on record. On identical facts, the Bangalore Bench of the Tribunal in the case of Shri Tarun Kumar Rungta v. ITO (supra), had restored the case to the files of the A.O. The Tribunal directed the A.O. to make available all the documents relied on by the Revenue for making additions / disallowances and provide adequate opportunity to the assessee for rebuttal. The relevant finding of the Tribunal in case of Shri Tarun Kumar Rungta v. ITO (supra), reads as follows:-

“3.5 I have heard both parties and perused and carefully considered the material on record including the judicial decisions cited and the orders of the authorities below. Taking into consideration the facts and circumstances of the case and the judicial decisions cited, I find that the impugned issue is squarely covered by the orders of the Bengaluru ITAT in the cases of ARvind Kumar Moolchand (supra) and Pukhraj Hasmukhlal (supra). Following the aforesaid orders (supra), I set aside the orders of the AO and restore the matter of treatment of sale proceeds declared on sale of shares as unexplained credits u/s 68 of the Act to the files of the AO to

re-adjudicate the issue afresh; after making available to the assessee for his rebuttal all documents relied upon by Revenue for making the additions / disallowances and providing adequate opportunity to the assessee for cross-examination of persons whose statements are being relied upon. It is accordingly ordered.”

7.1 In the instant case, the A.O. had relied on the reports of the Kolkata Directorate of Investigation, the statements recorded u/s 132(4) of the I.T.Act from various entry operators / brokers without confronting the assessee. Therefore, we restore the issue to the files of the A.O. The A.O. is directed to re-adjudicate the issue afresh after providing all the documents relied on by the Revenue for making additions / disallowances for her rebuttal. It is ordered accordingly.

8. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on this 12th day of November, 2021.

Sd/-
(B.R.Baskaran)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 12th November, 2021.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-5, Bangalore.
4. The Pr.CIT-5, Bangalore.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore