

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA No. 763/Del/2018
(Assessment Year: 2014-15)

Amit Katyal, C-654, New Friends Colony, New Delhi	Vs.	DCIT, Central Circle-1, Gurgaon
(Appellant)		(Respondent)

Assessee by :	Shri V. K. Bindal, CA Ms. Rinki Sharma, CA
Revenue by:	Ms. Suman Malik, Sr. DR
Date of Hearing	23/11/2021
Date of pronouncement	23/11/2021

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order of the Id CIT(A)-3, Gurgaon in Assessment Year 2014-15 on 20.12.2017 wherein, the appeal filed by the assessee against the order passed by the Id AO, Central Circle-1, Gurgaon passed order u/s 143(3) of the Act on 28.12.2016 wherein, total income of the assessee is determined at Rs. 1,02,07,960/- against the returned income filed by the assessee at Rs. 52,15,960/- filed on 31.07.2015 is dismissed. The only addition of Rs. 49,92,000/- made by the Id AO u/s 68 of the Act. This is the only dispute involved in the appeal agitated by the assessee as per following grounds of appeal:-

"1. The CIT(A) has erred in law and on the facts in confirming the addition of Rs.49,92,000/- by treating the said amount of sale proceeds of the 45,000 equity shares of Emporis Projects Ltd., received from an associated company of the said company, as an unexplained cash credit u/s 68 of the Act merely on surmises by ignoring the evidences on record. The addition so made is illegal, against the provisions contained in the Act, bad in law and hence liable to be deleted.

2. *The CIT(A) erred in law and on facts in confirming the action of the assessing officer to treat the said sale proceeds of the equity shares as assessable u/s 115BBE of the Act which is against the fundamental principles of law. Thus, the said directions should be reversed."*

2. Briefly stated the facts of the case shows that the assessee is an individual deriving income from salary, house property and interest income. The assessee produced the books of account in response to notice u/s 143(3) of the Act dated 29.09.2015. The Id AO noted that the

assessee has sold shares of M/s. Emporis Projects Ltd of sum of Rs. 49,92,000/-. There is no capital gain earned on sale of shares. The assessee submitted that in FY 2010-11 he has purchased 45000 of shares of the above company at Rs. 110 per shares and on 22.11.2013 this 45000 shares were sold to M/s. Virat Vintrade Pvt. Ltd for a consideration Rs. 49.92 lakhs. After indexation the assessee suffered long term capital loss. During the course of assessment proceedings the assessee submitted the details of the purchase of the shares. With respect to the sale of shares the Id AO asked the assessee to file the details of the buyer. The assessee could not furnish the confirmation or copy of income tax return of the buyer and therefore, the Id AO held that the assessee failed to prove the identity, creditworthiness and genuineness of the buyer. The Id AO issued a letter to the buyer which was returned unserved stating with postal authority remark as “address cannot be located”. Therefore, a further notice was issued to the assessee. The assessee submitted confirmation of the party, PAN of the party and the records of the registered Master data of company from MCA website along with audited accounts of the buyer for the year ended on 31.03.2016. The assessee submitted that purchases were made by an account payee cheque and sale consideration is received through RTGS. As assessee furnished the confirmation of the assessee was not on the letter head of the company but a computer generated letter head as well as it was undated the Id AO held it to be of dubious nature. The Id AO further noticed that when the shares were sold the price of the listed at the stock exchange was only Rs. 1.02. Hence, he made an addition of Rs. 49,92,000/-. The assessee preferred an appeal before the Id CIT(A) who also confirmed the action of the Id AO because of the reason that there is a wide discrepancy between the price of the shares sold at the exchange and between the price traded by the assessee on the day such shares were sold by the assessee off market. He also confirmed that the assessee failed to show the genuineness, creditworthiness of the creditors and further out of 45000 shares only 4326 shares were traded on the date on which the shares sold of 45000 shares hence, this was off market transactions. Accordingly appeal of the assessee is dismissed.

3. The Id AR submitted that identical issue was decided in case of the brother of the assessee Mr. Rajesh Katyal ITA No. 760/Del/2018 for Assessment Year 2014-15 wherein, the coordinate bench vide order dated 22.09.2021 has allowed the appeal of the assessee. Hence, according to him the issue is squarely covers in favour of the assessee. On the merits of the case he submitted the copy of the balance sheet of the assessee as on 31.03.2011 wherein, the assessee is holding the shares of Rs. 16.13 crores which include the share of the above company of Rs. 49.92 lakhs. He further submitted the copy of the bank statement showing the sale proceedings and showing the purchase. He submitted that the assessee has received

the consideration through RTGS. On the merit he also stated that the assessee has submitted the confirmation and the Id AO has merely rejected the evidence submitted by the assessee without making further enquiry.

4. The Id DR supported the order of the lower authorities.
5. We have carefully considered the rival contentions. We find that the identical issue in case of the brother of the assessee has been decided by the coordinate bench vide order dated 22.09.2021, wherein, this issue has been decided as under:-

“6. We have heard the rival submissions and also perused the relevant material placed on record before us and also the relevant finding given in the impugned orders. Undisputedly assessee had purchased 45000 shares of ‘M/s. Emporis Projects Ltd.’ Through banking channel in the financial year 2011-12 by way of initial subscription for which assessee had paid amount of Rs. 40,50,000/- from his saving bank account with Punjab National Bank through Cheque No. 739375, a copy of which has been placed in the paper book at page 28 which was also filed before the AO vide letter dated 19.10.2016. These shares were also reflected in the balance sheet as on 31st March, 2012 which is evident from the copy of audited balance sheet appearing from pages 20 to 23 of the paper book, which reflects addition during the year and investment in M/s. Emporis Projects Ltd. Shares was shown at Rs. 49,50,000/-. The physical form of the shares certificate issued by M/s. Emporis Projects Ltd. dated 31.3.2011 which showed that assessee was shareholder of 45000 shares and same was also filed before the authorities below. Thus, this proves that assessee had purchased shares and was in possession of the share certificates which duly disclosed in the balance sheet. After two years the assessee had sold the shares vide sale bill No. 1/13-14 dated 8.11.2013 to M/s. Virat Vintrade (P) Ltd., wherein the entire 45000 equity shares of M/s. Emporis Projects Ltd. was sold. It was sold at the same price of Rs. 110 per share. The amount of sale consideration was credited in the bank account of assessee with Punjab National Bank on 19.11.2013 through RTGS. In support of copy of copy of bank statement which was filed before the authorities below, copy of which has been placed on the paper book before us at page 26. Further, confirmation has also been filed as admitted by the AO by the purchaser giving entire details of the purchases made by the said company.

7. Before us Ld. Counsel referring to all these documents submitted that this company still exists and is in the records of Registrar of companies, Kolkata and has been regularly filing its financials and complying with the statutory requirements up to 31st March, 2016. Merely because letter written to M/s. Virat Vintrade (P) Ltd. on 1.12.2016 requiring it to confirm the transaction was not served through postal, that does not mean that the company was nonexistent, when under the statutory records it was still active and complying with all the statutory records. He further submitted that here in this case it is not a case of any bogus purchase and sale of shares to through any entry provider because all the documentary evidence and purchase and sale has been shown directly from the parties through banking channels. Here in this transaction there is no benefit which has incurred to the assessee either in purchase or sale which is normally a case routed through bogus entry provider.

8. On the other hand, Ld. Dr relied upon the order of the Ld. CIT(A) and submitted that the entire transaction of sale is not only doubtful and dubious, because while the share has been sold @ Rs. 110/- per share when in the stock exchange quoted price of Rs. 1.02. This fact coupled with the inquiry by the AO that the letter sent by him returned unserved. Thus, it is a clear cut case of bogus transaction.

9. Here in this case, the shares have been purchased @ Rs. 110/- per share in the year 2011 and it has been sold after two years exactly at the same rate. Once the purchase of shares have been accepted and duly disclosed in the books of accounts in the early years which is also evident from the physical certificate of the shares; and then how the sale of very same shares at the same rate can be held to be bogus. There is no information or material on record that the purchaser who has bought the shares has denied the transaction or there was any inquiry in the case of purchaser that why he has paid the sale price of the shares at the same rate of subscription when the listed price on the date of sale was Rs. 1.02/-. The apparent transaction fully supported by documentary evidences cannot be disbelieved merely on some hypothetical premise that why someone will buy a share at such a low price. There is no gain which has accrued to the assessee nor there any big loss, except for minor cost of indexation in computation of capital gains. We agree with the contention of the Ld. Counsel that merely because the speed post sent by the AO to the purchaser company could not be served that does not mean said company is a non entity or nonexistent especially when under the statutory record and the records of Registrar of companies it was still active and was complying with all the statutory requirements under the Companies Act. The bank statement clearly reveals that the money has been received through RTGS from the bank account of the purchaser and duly confirmed by the purchaser company who has given confirmation letter filed before the AO and also placed before us. Apart from that, the sale bill and the copy of share certificates clearly show that the shares which were possessed by the assessee had duly been sold to the said party and it is not the case of the AO that these shares are still lying with the assessee. Apparently, without any adverse material or inquiry on record that purchaser is non genuine or purchaser has stated anything against the assessee or it has been found in any of the inquiry that the transaction is not genuine. Prima facie there has to be some kind of benefit to the assessee in such dubious transaction or there is some information that any unaccounted money has been converted into sale transaction and is appearing as credit in the books of assessee where such allegations are made against the assessee. If at all there is any loss then it could be in case of purchaser in this case and not the assessee. Accordingly, we do not find any justifiable reason for confirming the addition consequently the same is directed to be deleted.

10. In the result appeal of the assessee is allowed.”

6. The decision of the coordinate bench binds us, which is on identical facts and circumstances, and therefore respectfully following the same we allow the appeal of the assessee.

Order pronounced in the open court on 23/11/2021.

-Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 23/11/2021
A K Keot

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi