

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

**BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 949/Del/2019
(Assessment Year: 2015-16)**

Rajat Jain (HUF), Delhi.	Vs.	ITO, Ward – 46(2), New Delhi.
APPELLANT		RESPONDENT
PAN No: AAPHR3032N		

Assessee By : Shri S.S. Nagar, CA
Revenue By : Shri Om Parkash, Sr. DR

Per Anadee Nath Misshra, AM

(A) This appeal by Assessee is filed against the order of learned Commissioner of Income Tax (Appeal)-16, New Delhi, dated 26.12.2018 for Assessment Year 2015-16.

Grounds taken in this appeal of Assessee are as under:

"1. That on the facts and in the circumstances of the case. the Learned Commissioner of Income Tax (Appeals) [here-in-after referred to as Ld. CIT (Appeals)] was not justified and grossly erred in confirming the addition made by the Learned AO of Long Term Capital Gain on sale of listed equity share exempt u/s 10(38) of the Act.

2. That on the facts and in the circumstances of the case. the CIT (Appeals) was not justified and grossly erred in confirming the addition made by the Learned AO on the basis of assumption & presumption without bringing any concrete evidence.

3. That on the facts and in the circumstances of the case. the Ld. CIT (Appeals) was not justified and grossly erred in not considering the fact that the appellant purchased shares and made payment by account payee cheque, received

the delivery of shares. sold these shares thorough DMAT account. gave the delivery and received the payment in banking mode. Hence the genuine transaction wherein necessary evidence has been duly submitted cannot and should not be treated as ingenuine merely on arbitrary view or suspicion.

4. *That on the facts and in the circumstances of the case, the Ld. CIT (Appeals) was not justified and grossly erred in not considering the fact that no opportunity of cross examination was provided and hence the order passed u/s 143(3) is bad in law and hence need to be quashed*

5. *That on the facts and in the circumstances of the case, the Ld. CIT (Appeals) was not justified and grossly erred in confirming additions made by the Ld. AO of 5% of commission income on the basis of assumption and presumption and without bringing any concrete evidence and without providing opportunity of being heard.*

6. *That the appellant craves leave, to add, to amend, modify, rescind, supplement, or alter any of the grounds stated here-in-above, either before or at the time of hearing of this appeal."*

Additional Ground of Appeals.

"1.0 We beg to refer to the above appeal which is yet to be disposed of by your honor. In this regard, we would humbly request for inclusion of the enclosed additional ground in the above appeal which does not require any further investigation of facts. **Additional Ground -1**

2.0 **Addition made on the basis of entry appearing in bank statement does not fall u/s 68 and hence no addition can be made**

2.1 The Ld. Assessing officer made addition under section 68 of the Act by treating the amount credited in bank account of the appellant as unexplained cash credit on the basis of bank statement which is maintained by the bank.

2.2 However, bank statement which is issued by bank to its client/account holder cannot be elevated to status of books of maintained by assessee. Reliance is place on the decision of the jurisdictional ITAT in the case of **Vinesh Maheswari v. Income Tax Officer (ITA No. 7210 and 7211 of 2018)**

3.0 **Admissibility of additional ground.**

3.1 The appellant during the course of the hearing before Hon'ble ITAT can raise certain additional grounds which have not been considered during assessment proceedings and CIT (A) proceedings. Whether any claim can be raised for the first time directly before the appellate authorities has been adjudicated by different courts from time to time. Some of the judicial pronouncements on this are stated here in below:

3.2 Reliance is placed on the recent decision of jurisdictional Tribunal in the case of **Malana Power Co. Ltd.-vs.- TCIT (ITA No. 2281/Del/2013) dated 27-04-2018**, wherein it was held as under:

"The additional grounds raise a purely legal issue, the facts of which are already available on record. It is well settled that legal ground can be raised any time as per the ratio laid down by the Hon'ble Supreme Court in the case of NTPC Ltd. vs. CIT reported in 229ITR 383 (SC), therefore,

these are admitted."

3.3 From the perusal of the aforesaid decision, it could be seen that an assessee can raise altogether new ground for the first time before the Hon'ble ITAT.

4.0 Prayer

4.1 In view of the above, the appellant most respectfully prays for admission of the enclosed additional grounds in the appeal pending before your honor. The appellant also most respectfully craves leave to add, to amend, modify, rescind, or alter the additional ground either before or at the time of hearing of the appeal."

(B) At the time of hearing, the learned Authorized Representative ("Ld. AR", for short) 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. He drew our attention to letter dated 18-11-2021 filed from assessee's side in Income Tax Appellate Tribunal ("ITAT", for short) giving intimation of the same. In this letter it has been also stated that the assessee wishes to withdraw the appeal. In view of this, the learned AR as well as the Learned Commissioner of Income Tax (Departmental Representative) ["Ld. CIT(DR), for short] submitted before us that this appeal may be allowed to be withdrawn and may be dismissed on account of the aforesaid VSVS. We have also perused Copy of Form -3 dated 31/12/2020 issued by the Designated Authority under VSVS; which was also filed from the assessee's side during appellate proceedings in ITAT. After due consideration, we are of the opinion that this appeal has become infructuous on account of aforesaid VSVS, and is hereby allowed to be 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 being dismissed, having been withdrawn by the appellant assessee.

(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 24th November, 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 25/11/2021.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated: 25/11/2021

(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	