

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH
(Conducted Through Virtual Court)
Before: Shri Rajpal Yadav, Vice President
And Ms. Annapurna Gupta, Accountant Member

ITA No. 2276/Ahd/2018
Assessment Year 2009-10

Smt. Shilpiben K. Patel Kirtiraj Trading Corporation, Lotia Bhagol, Anand-388001 (Appellant)	Vs	Dy. Commissioner of Income Tax, Anand Circle, Anand PAN: AEQPP4774A (Respondent)
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Revenue by: Shri Sanjay R. Shah, C.A.
Assessee by: Shri S.S. Shukla, Sr. DR.

Date of hearing : 21-12-2021
Date of pronouncement : 23-12-2021

आदेश/ORDER

PER : ANNAPURNA GUPTA, ACCOUNTANT MEMBER:-

The present appeal has been filed by the Assessee against the order passed by the Commissioner of Income Tax (Appeals)-4, Vadodara, (in short referred to as CIT(A)), dated 20-09-2018, u/s. 250(6) of the Income Tax Act, 1961(hereinafter referred to as the "Act") pertaining to Assessment Year (A.Y) 2009-10.

2. The solitary ground raised by the Assessee before us reads as under:

1. The Learned Commissioner of Income Tax (Appeals)-4, Vadodara has erred in law and on facts of the case in confirming the addition of Rs.3,83,445/- as income from Long Term Capital Gains made by the Assessing Officer though there was no such gain earned by the Appellant.

3 During the course of hearing before us, Ld. Counsel for the assessee pointed out that the appeal relates to order passed in re-assessment proceedings u/s. 147 of the Income Tax Act which was upheld in first appeal by the Ld. CIT(A). The Ld. Counsel for the assessee contended that the addition relates to alleged bogus Long Term Capital Gain claimed by the assessee which was added as undisclosed income u/s. 69 of the Act. Ld. Counsel for the assessee contended that it had been repeatedly asserted before the Assessing Officer and also the Ld. CIT(A) that the investments stated to be relating to the assessee in the reasons recorded for reopening the case did not pertain to the assessee and that it had not claimed any long term capital gain in its return of income filed also. That without addressing this contention of the assessee, the addition had been made by the Ld. A.O. and upheld by the Ld. CIT(A).

To this effect, our attention was drawn to the reasons for reopening the case of the assessee placed at page no. 5 in paper book before us which reads as under:

REASONS FOR ISSUE OF NOTICE U/S. 148 OF THE IT ACT-1961

<i>Name and Address of the assessee:</i>	<i>Shilpi Kiritkumar Patel</i>
<i>A.Y.:</i>	<i>2009-10</i>
<i>PAN:</i>	<i>AEQPP4774A</i>

“In connection with the above subject, as per the information in possession with the department, it was noticed that the above mentioned assessee had made bogus claim of LTCC in A.Y. 2009-10. Details of the bogus claim of LTCC made by the assessee are following.

<i>Sr. No.</i>	<i>Date of Transaction</i>	<i>Value of transaction (Rs.)</i>
<i>1</i>	<i>02.05.2008</i>	<i>54460</i>

2	30.04.2008	77130
3	21.04.2008	24,931.85
4	30.04.2008	52,400
5	21.04.2008	24,433
6	08.05.2008	1,50,000

Therefore in view of the above I have reason to believe that the assessee has failed to disclose fully and truly all material facts necessary for assessment and the income of Rs. 3,83,445/- has escaped assessment for the A.Y. 2009-10."

(P.M. Karve)

*Dy. Commissioner of Income-tax
Anand Circle, Anand*

Date: 22.03.2016

To the reply filed before the A.O. denying any such investment ,as stated in the reasons, to have been made by the assessee reproduced at Para no. 4 of the assessment order as under:

4. Copy of reasons recorded for initiation of proceedings u/s. 148 of the Income Tax Act was supplied to the assessee on 17.06.2016 and notice u/s. 142(1) along with show cause was issued on 25/11/2016.

In response to the show cause, the assessee has submitted her reply which is reproduced as under:

"We emphatically bring to kind notice that none of the value is invested by us. It is evident from bank statement furnished for verification that there is no such investment."

To the written submissions filed before the Ld. CIT(A) reproduced at Para no. 3.2 of the CIT(A)'s order denying any claim of long term capital gain made by the assessee or for that matter any such investment having been made by the assessee as under:

3.2. In appeal, the Authorized Representative has made written submissions dated 20.11.2017 as under:-

"1. Your appellant filed the return of income on 16.06.2016, declaring the income of Rs.3,02,958/- treated as filed u/s 148 of the Act. Notice u/s 148 of the Act was issued on 30.03.2016.

2. The A.O. supplied reason of reopening the case on 17.06.2016. It is as under:

In connection with the above subject, as per the information in possession with the Department, it was noticed that the above mentioned assessee had made bogus claim of LTCG in A.Y. 2009-10.

Details of the bogus claim of LTCG made by the assessee are following:

Sr. No.	Date of Transaction	Value of transaction (Rs.)
1	02.05.2008	54,460/-
2	30.04.2008	77,130/-
3	21.04.2008	24,931.85/-
4	30.04.2008	52,400/-
5	21.04.2008	24,433/-
6	08.05.2008	1,50,000/-
	Total	3,83,445/-

Therefore in view of the above I have reason to believe that the assessee has failed to disclose fully and truly all material facts necessary for assessment and the income of Rs.3,83,445/- has assessment for the A.Y.2009-10.

3. In reply to it the objection to reason of reopening the case is made on 23.06.2016 on following grounds.

(a) The department received information that there is claim of LTCG of Rs.3,83,445/- is bogus claim in the income.

(b) It was stated that I do not have any company in my total income and that no claim whatever is made.

(c) There is full and true disclosure of material facts during assessment proceeding.

(d) Order U/s. 143(3) of the Act was made on 29/10/2011. As per assessment order there is no LTCG income as stated in reason of reopening the case.

4. Your appellant categorically stated and furnished explanation on 11/11/2016 that there is gross loss took place of Rs.8,95,770/- and hence nothing is claimed in return of income filed. The facts submitted as follows:

(i) Copy of account of Motilal Oswal securities Ltd, alongwith statement showing P & L A/c equivalent to Rs. 10,60,985.

(ii) Since there is net loss nothing is claimed in return of income,

(iii) The assessment order dt. 29/12/2011 is self-explanatory.

(iv) The A.O. overlooked and ignored the original assessment proceeding and order and made blind addition in total income.

5. The A.O. gone through above objection and above Setter dt. 11/11/2016 and with cursory remark disposed off the same vide per 4.1 of his order dt. 30/11/2016.

(i) As per the information available with this office and information gathered from the various agencies Viz. Motilal Oswal Securities Limited, Mumbai and Bombay Stock Exchange, Mumbai which is placed on records, it is found that the assessee has made

various transactions through his Demat account which is held with Motilal Oswal Securities Limited, Mumbai.

ii) In view of the above facts, the amount of Rs.3,83,444/- in respect of Bogus claim of LTCG is treated as undisclosed income and is added U/s. 69 of the Income Tax Act, 1961. According, the same is added to the total income of the assessee. The A.O. examined the account of Motilal Oswal Securities Ltd. However, overlooked P & L A/c and other facts produced in Para. 4 above.

6. Your appellant earnestly request to appreciate facts and records of the case proceeding U/s. 143(3) of the Act and the blind addition based on departmental instruction of Rs.3,83,444/- be deleted and oblige.

Thanking you,"

Our attention was drawn to the finding of the A.O. making the addition of the alleged bogus long term capital gain merely on the basis of information in his possession and without meeting and addressing the contention of the assessee that it had not made any such investments, at para no. 4.1 and 4.2 of the order as under:

4.1. Submission of the assessee has been considered and has not been found correct at all. As per the information available with this office and information gathered from the various agencies viz/ Motilal Oswal Securities Ltd., Mumbai and Bombay Stock Exchange, Mumbai which is placed on records, it is found that the assessee has made various transactions through his Demat account which is held with Motilal Oswal Securities Ltd., Mumbai. It has been found from the perusal of the information gathered from the above mentioned agencies that the assessee has invested Rs. 3,83,444/- from his undisclosed sources during the year under consideration which is tabulated as under:

<i>Sl. No.</i>	<i>Date of Transaction</i>	<i>Value of Transaction (Rs.)</i>
<i>01.</i>	<i>21/04/2008</i>	<i>24,931/-</i>
<i>02.</i>	<i>21/04/2008</i>	<i>24,433/-</i>
<i>03.</i>	<i>30/04/2008</i>	<i>77,130/-</i>

04.	30/04/2008	52,400/-
05.	02/05/2008	54,460/-
06.	08/05/2008	1,50,000/-
TOTAL		3,83,444/-

4.2. This amount of undisclosed investment which the assessee has invested from his undisclosed sources is clearly matching with the information received office of the Principal Director of Income Tax, (Investigation), Surat.

In view of the above facts, the amount of Rs. 3,83,444/- in respect of Bogus claim of LTCG is treated as undisclosed income and is added u/s. 69 of the Income Tax Act, 1961. Accordingly, the same is added to the total income of the assessee.

Penalty proceedings u/s. 274 r.w.s. 271(1)(c) of the Income Tax Act, 1961 for concealment of income separately.

(Addition of Rs. 3,83,444/-)

8. Our attention was also drawn to the findings of the Ld.CIT(A) upholding the addition without addressing the contentions made by the assessee before it denying out rightly any Long Term Capital Gain having been claimed or for that matter any investment, as stated in the reasons, to have been made by the assessee:

3.3. I have considered the submissions of the learned Authorized Representative and the order of the Assessing Officer. In the appellant case the assessment proceedings u/s. 143(3) for the year has been completed on 29.12.2011 after an addition of Rs.22,28,450/- u/s 69A of the I T Act. After completion of the assessment the A.O. has received information regarding bogus claim of LTCG from the office of the Pr. Director of Income Tax (Investigation) Surat for the year under consideration. The A.O. has reopened the assessment u/s 148 of the I T Act and after considering the submission of the assessee made an addition of Rs.3,83,444/- u/s 69 as undisclosed income. During the appellate proceedings the

LD. A.R of the appellant has pressed that the assessee has .made loss of Rs.8,95,770/-and therefore, nothing is claimed in return of income

In my considered view, that the additions made by the A.O. is upheld on the ground of merit as well as on the law point.

Ld. Counsel for the assessee further took us through the copy of account of the assessee in Motilal Oswal Securities Ltd. pertaining to the impugned assessment year which was placed before the Assessing Officer vide letter dated 11.11.2016 and which was placed before us paper book at page no. 21 to 34 pointing out ther from that the impugned transactions were not recorded in the said statement.

10. Ld. D.R. was unable to controvert the contention of the Ld. Counsel for the assessee.

It is evident therefore that the factual contentions of the assessee, vis-à-vis the addition made on account of alleged bogus Long Term Capital Gain pertaining to the investment made in the securities therein amounting in all to Rs. 3,83,445/- as detailed in the reasons recorded for reopening the case of the assessee as reproduced above, was never considered either by the A.O. or the Ld. CIT(A). This despite the fact that the assessee had filed all documents before them in support of its contention that it had never claimed any Long Term Capital Gain or for that matter the impugned investment did not relate to it at all.

In view of the same, we are of the view that the issue needs to be reconsidered and decided in the light of the factual contentions made by the assessee after duly verifying the same. The issue is therefore restored back to the A.O. to consider both the factual contentions of the assessee as stated above regarding no claim of any Long Term Capital Gain made by it nor any such investment ,as stated in the reasons recorded ,being made. The A.O. is directed to verify the claim of the assessee and

thereafter adjudicate the issue in accordance with law. Needless to add, the assessee be granted due opportunity of hearing.

12. The appeal of the assessee is therefore allowed for statistical purpose.

Order pronounced in the open court on 23-12-2021

Sd/-
(RAJPAL YADAV)
VICE PRESIDENT True Copy
Ahmedabad : Dated 23 /12/2021

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद