

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH : BANGALORE**

**BEFORE SHRI. CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

<b>ITA No. 3153/Bang/2018</b>
<b>Assessment Year : 2014-15</b>

Smt. Snehalatha Singhi, Flat No. 101, Pride Elite, No. 10, Museum Road, Bangalore – 560 001. PAN: AJMPS0427Q	<b>Vs.</b>	The Deputy Commissioner of Income Tax, Circle – 1 (1)(2), Bangalore.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri K.R. Pradeep & Ms. Girija, Advocates
Revenue by	:	Shri Priyadarshi Mishra, Addl. CIT (DR)

Date of Hearing	:	15-03-2022
Date of Pronouncement	:	15-03-2022

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeal has been filed by assessee against order dated 10.08.2018 passed by Ld.CIT(A)-1, Bangalore for assessment year 2014-15.

**2. Brief facts of the case are as under:**

The assessee is an individual and filed his return of income on 31/03/2015 for year under consideration declaring total income of Rs.1,31,57,680/-. Ld.AO observed that assessee has claimed exemption under section 10(38) amounting to Rs.3,10,94,952/- towards sale of equity shares. The case was selected for scrutiny

to verify the suspicions long term capital gains on shares in pursuance to the inputs from investigation wing.

**2.1.** Ld.AO observed that, during the year assessee sold shares of following companies:

<b>Particulars</b>	<b>Year of Purchase</b>	<b>No. of shares purchased</b>	<b>Average Value per share (Rs.)</b>	<b>Total consideration Paid</b>
M/s Blue Circle Services Ltd	24/10/2011	13,74,460	1.5/- per share	20,61,690/-
M/s.Parag Shilp InvestmentsLtd.	18/07/2012	36500	10/- per share	3,65,000/-
<b>Particulars</b>	<b>Year of Sale</b>	<b>No. of shares sold</b>	<b>Average Value per share (Rs.)</b>	<b>Total consideration received</b>
M/s Blue Circle Services Ltd	FY:2013-14 On various intervals	13,74,460	9.94/- per share	1,37,36,675
M/s.Parag Shilp InvestmentsLtd.	FY: 2013-14 On various intervals	36500	542/- per share	1,97,84,967/-

Before the Ld.AO the assessee submitted that these shares were in physical form when purchased and later got the same dematerialised and was sold during the year under consideration. The assessee submitted before Ld.AO that transaction of sale was done through recognised stock exchange openly, and he was unaware of the scrip being a penny stock company.

**2.2.** It has been submitted that Ld.AO concluded the assessment by holding that the transaction in the share price of alleged companies were not owing to commercial principles and market factors and that assessee resorted to a preconceived scheme to procure long term capital gains by way of price difference in share transactions. Ld.AO also held that assessee did not discharge his onus of proving the rise in share price to be natural and based on market forces, and, in view of order of SEBI finding that company these alleged companies, were involved in providing bogus long term capital gains, claim of exemption of long term capital gains earned by assessee was denied.

**3.** On appeal before Ld.CIT (A), observations and findings by Ld.AO were upheld.

**4.** Aggrieved by order of Ld. CIT (A) assessee is in appeal before us.

**4.1.** It was vehemently argued by the Ld.AR that no opportunity to cross examination was given to assessee. Placing reliance on the paperbook, he submitted that the shares were purchased, subsequently demated and sold for which necessary bills have been issued. It was submitted that the shares were sold through demat a/c and against the sale payment has been received by a/c payee cheque etc. He also submitted that shares were sold on recognized stock exchange on which STT have been paid.

**4.2.** Ld.Sr.DR on the contrary filed written submission stating that assessee's claim of genuineness is merely confined to the act that the shares were sold through recognized stock exchange and payment/receipt of consideration was through banking

channels. He submitted that these transactions are tailor made and when the circumstantial evidence point on an opposite direction the claim is proven to be illegitimate. The Ld.Sr.DR submitted that the assessing officer was made aware by the investigation wing regarding these companies are fictitious companies of shell companies. He submitted that the alleged long term capital gain was disallowed by the Ld.AO as assessee did not discharge the onus to establish the source of investment in the alleged scripts.

**4.2.1.** The Ld.Sr.DR submitted that the assessee provided various documents to establish alleged sale of shares of these companies, which was carried out through brokers registered with stock exchange and also with SEBI, contract notes, payments made through proper banking channels etc. However these alone cannot lead to establish genuineness of purchase and value ascertained for sale of shares of alleged companies, though they might have been through stock exchange and brokers registered with SEBI, NSE/BSE, as observed by various *Hon'ble High Court*.

**4.2.2.** It is submitted by the Ld.Sr.DR that the shares of alleged companies were transferred to assessee, through off market transaction, and that the assessee could not satisfactorily explain, as to how, she was informed regarding shares of these companies available for purchase. She failed to establish business connection with such company personnel. It has been alleged by Ld.AO that these companies were hardly having any profit or business activity so as to attract purchasers.

**4.2.3.** The Ld.Sr.DR submitted that the revenue has provided all details that was received from the investigation wing to establish that the alleged companies in which assessee invested huge amounts were bogus and were used for converting the unaccounted monies. He submitted that in the present facts assessee did not establish the source of monies invested in the alleged companies. He submitted that for all these reasons the decisions relied by the Ld.AR are factually distinguishable. He thus supported the order passed by the Ld.CIT(A).

We have perused submissions advanced by both sides in light of records placed before us.

**5.** On perusal of assessment order it is observed that Ld.AO carried out detailed investigation/verification in respect of scrips of alleged companies sold by assessee during the year under consideration and found them to be lacking sound financials. Various queries raised by Ld.AO has not been answered with supporting cogent and uncontrovertible documents by assessee. Enquiries carried out by Ld.AO reveal these companies to be mere paper companies, without having any activities/business. View taken by Ld.AO was upheld by Ld.CIT(A) against which assessee filed present appeal.

**5.1.** It is the submission of the Ld.AR that the LTCG earned by assessee on sale of shares in the alleged companies were through recognized stock exchange and banking channels. It is also submitted that both receipt and payments are done through account payee cheques. He thus submitted that the

statement of third parties has been relied on for making addition in the hands of assessee.

**5.2.** Whereas the Ld.Sr.DR submits that the statements and materials are only circumstantial regarding the alleged companies to be shell companies and that these companies were used in providing accommodation entries and that they were managed by the persons whose statements were recorded by the investigating wing.

**5.3.** In present facts of the case, the statements recorded of third parties only reveal that the alleged companies involved in providing bogus LTCG/STCG or LTCL/STCL and provide accommodation entries by beneficiaries. We note that the Ld.AO in para 4.13 of the assessment order raised serious doubts on capacity of assessee to purchase shares of these companies in such huge volumes, which has not been satisfactorily/reasonably established by assessee to be genuine. Assessee thus did not establish genuineness of purchase and source of investment of this company during the relevant period. Ld.AO upon verifying credentials of these companies and other attending circumstances, observed that alleged companies were included in list of penny stock companies, in enquiries conducted by SEBI/BSE, as well as in Investigation Report issued by Investigation Wing, Kolkata. The Assessee having purchased shares of this company in huge volumes, should have possessed all required documents, as a prudent investor. The Assessee thus did not establish activities/business of companies, financial statements, annual income tax returns

etc., in respect of alleged companies. For the above reasons, assessee cannot seek rescue on following decisions by the Ld.AR:

- *decision of Hon'ble Supreme Court in case of Dhakeshwari Cotton Mills., vs. CIT reported in 26 ITR 775;*
- *decision of Hon'ble Delhi High Court in case of CIT vs. SMC Share Brokers Ltd. reported in 288 ITR 345;*
- *decision of Hon'ble Delhi High Court in case of Sarthak Securities Co.Ltd., vs. ITO reported in 329 ITR 110;*
- *decision of Hon'ble Delhi High Court in case of Oracle Systems Corporation, vs. DCIT reported in (2015)94 CCH 0045;*
- *decision of Hon'ble Delhi High Court in case of ITO vs. Lakhmani Mewal Das reported in 103 ITR 437;*
- *decision of Hon'ble Bombay High Court in case of CIT vs. Shyam R Pawar, reported in 229 Taxman 256;*
- *decision of Hon'ble Madras High Court in case of CIT v M.Chinnaswamy, reported in 350 ITR 694;*
- *decision of Hon'ble Mumbai Tribunal in case of Farrah Marker vs. ITO in ITA no. 3810/Mum/2011*
- *decision of Hon'ble Mumbai Tribunal in case of Sunil Prakesh vs. ACIT in ITA no.6494/Mum/2014*

**5.4.** In the above list of decisions, relied by the Ld.AR, we note that the *Hon'ble Mumbai Tribunal* deleted the addition on the basis that the assessee therein established the sale of shares to be genuine and therefore the disallowance of LTCG is unwarranted for. However in the present facts of the case, the Ld.AO has doubted the capacity of assessee in making such huge investment in the alleged companies during the year in which they were purchased.

**5.5.** The decision of *Hon'ble Delhi, Bombay and Madras High Courts* is also on distinguishing facts. In those cases, the statements of third person recorded were direct evidence against the assessed person and cross examination was denied by the revenue. Under such circumstances, *Hon'ble Courts* held that there was violation of natural justice. Some of the decisions are

only decided by *Hon'ble Courts* on challenge of the validity of reopening.

**5.6.** Therefore in our view, none of the above decisions are of no help to assessee in the present facts of the case.

The Ld.AR relied heavily on the decision of *coordinate bench of this Tribunal* in *Shri.Laxmipat Dudheria Vs.ACIT in ITA no.2373 to 2376/Bang/2018 by order dated 09/04/2019*, wherein investment in Bule circles Services Ltd by the assessee therein and the there assessment was reopened which was struck down by this *Tribunal*. We note that in the decision by this *Tribunal* nothing is decided on merits but the entire decision was on the validity of reopening where there the assessment order was passed under section 144 of the Act. We therefore are of the opinion that the decision is of no rescue to assessee.

**5.7.** We are conscious of principle laid down by *Hon'ble Supreme Court* in case of *M/s Andaman Timber Industries vs CCE, Kolkata-II*, reported in (2015) 127 DTR 241, in support of his contention as well as decision of *Hon'ble High Courts* relied by the Ld.AR. All these decisions lay down that, without opportunity of cross-examination, statements cannot be relied upon against any assessee. However, such right, as held in various decisions by *Hon'ble Supreme Court*, is not an absolute right and depends on circumstances of the case and the statute concerned, as held in *State of J&K Vs. Bakshi Gulam Mohd. AIR 1967 (SC) 122*, and *Nath International Sales Vs. UOI* reported in *AIR 1992 Del 295*. Similar is the view taken by *Hon'ble*

*Allahabad High Court in case of In case of Prem Castings Pvt.Ltd. Vs.CIT (Supra).*

**5.8.** At this juncture we referred to decision of *T.Devasahaya Nadar V. CIT* reported in (1964) 51 ITR 20 (Mad), wherein, it has been held that;

*"We are of opinion that it cannot be said as a general proposition of law that any evidence upon which the department might rely should have been subjected to cross-examination. The procedure for assessment is indicated in section 23 (3) of the Act."*

**5.9.** Further *Hon'ble Mumbai Tribunal* in case of *GTC Industries Ltd. V. Asstt. CIT* reported in (1998) 60 TTJ 308 , held that, where statement and report of third parties are only secondary and subordinate material which were used to buttress the main matter connected with the quantum of addition, denial of opportunity to cross examine third parties did not amount to violation of natural justice.

Therefore, each case has to be decided on facts and circumstances of that case. In our considered opinion, relevant factors to be considered are surrounding circumstances, objective facts, evidence adduced, presumption of facts based on common human experience in life and reasonable conclusions.

**6.** Under such circumstances, the assessee was liable to discharge its onus regarding purchase of shares by way of cogent documentary evidences. We note that assessee has not placed anything on record regarding the source of investments and capacity to invest such huge monies during the year in which the investments were made. Be that as it may, we also note that, the assessee having invested huge monies in these alleged companies, has not been able to provide any documents to

establish sound financial of these companies and that, the fluctuation in price was market driven. Assessee is therefore directed to provide all relevant documents to establish source of investment and capacity to invest in the alleged companies in the year of investment. Ld.AO shall take all evidences into consideration and then decide the issue as per law.

In the event *de hors* statement, there are overwhelming evidences and assessee is unable to establish genuineness of sale of alleged scripts, adverse view would be taken by holding the transaction to be sham.

**7.** At the outset we also hold that the statements recorded are secondary and subordinate evidence, and therefore cross examination is not relevant. Ld.AO is directed to re-examine the case of assessee in the light of aforestated direction in accordance with law. Needless to say that proper opportunity shall be granted to assessee to represent its case as per.

**Accordingly we allow grounds on merits raised by assessee for statistical purposes.**

**In the result assessee's appeal stands allowed for statistical purposes.**

**Order pronounced in the open court on 15<sup>th</sup> March, 2022.**

Sd/-  
(CHANDRA POOJARI)  
Accountant Member

Sd/-  
(BEENA PILLAI)  
Judicial Member

Bangalore,  
Dated, the 15<sup>th</sup> March, 2022.  
/MS /

**Copy to:**

1. Appellant
2. Respondent
3. CIT

4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar,  
ITAT, Bangalore