

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “SMC” BENCH: NEW DELHI**

(THROUGH VIDEO CONFERENCING)

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No.95/Del/2019

[Assessment Year : 2015-16]

Kunal Arora, C/o-P.N.Chawla, Advocate, B-V, Vandhna, 11-Tolstoy Marg, New Delhi-110001. PAN-AIUPA5676L	vs	ITO, Ward-46(2), New Delhi.
APPELLANT		RESPONDENT
Appellant by	None	
Respondent by	Shri Sanjiv Mahajan, Sr.DR	
Date of Hearing	24.01.2022	
Date of Pronouncement	31.03.2022	

ORDER

PER KUL BHARAT, JM :

This appeal filed by the assessee for the assessment year 2015-16 is directed against the order of Ld. CIT(A)-16, New Delhi dated 18.09.2018. The assessee has raised following grounds of appeal:-

1. *“That the order passed by the learned appellate authority is bad in law.*
2. *That the learned appellate authority has grossly erred in confirming the assessment order under section 143(3) of*

the Income Tax Act, passed by the learned assessing officer.

3. *That the learned officer erred in making an addition of Rs. 6,19,741/- u/s 68 of the Income Tax Act by disallowing claim of the assess u/s 10(3) of the said Act and the learned appellate authority has grossly erred in confirming the said addition.*
 4. *That the learned assessing officer grossly commission expense of Rs. 30,987/- u/s 69C of the Income Tax Act and the learned appellate authority has grossly erred in confirming said disallowance.*
 5. *That the learned assessing authority grossly erred in charging interest u/s 234(A), 234(8) & 234(C) on the amount of tax determined by him on the assessed income and the learned appellate authority has grossly erred in confirming the said imposition of interest.*
 6. *That the learned assessing officer grossly erred in initiating penalty proceedings u/s 271(l)(c) of the Income Tax Act and the learned appellate authority has erred in confirming the said action of the assessing officer.*
 7. *The appellant assessee reserves the right to alter any ground of appeal and to add any further ground in the memorandum of appeal at later stage.”*
2. At the time of hearing, no one appeared on behalf of the assessee. It is seen from the records that for last many hearings, no one is attending the proceedings on behalf of the assessee. It is

seen from the records that the notice of hearing sent by speed post with acknowledgement due has been returned unserved with remark "*flat always locked*". The assessee has not provided any new address to the Registry. Therefore, the appeal is taken up for hearing in the absence of the assessee.

3. Ground Nos. 1, 2, 6 & 7 are stated to be general in nature, need no separate adjudication.

4. Ground No.5 is against the charging interest u/s 234(A), 234(B) & 234(C) of the Income tax Act, 1961 ("the Act"), is being consequential in nature.

5. Ground Nos. 3 & 4 raised by the assessee are against the addition of Rs.6,19,741/- and Rs.30,987/- u/s 68 and 69C of the Act respectively.

FACTS OF THE CASE

6. Facts giving rise to the present appeal are that the return of income was filed on 31.03.2016 at an income of Rs.7,96,570/-. Thereafter, the case of the assessee was selected for scrutiny under CASS and the assessment was framed u/s 143(3) of the Act thereby assessing the income at Rs.14,47,298/- against the returned income of Rs.7,96,570/- and the Assessing Officer ("AO") during the

course of assessment proceedings recorded that the assessee was involving in sale transaction of shares. The AO after giving opportunity to the assessee, treated the transaction as bogus and treated the same as unexplained cash credit u/s 68 of the Act amounting to Rs.1,19,741/- and Rs.30,987/- was also added on account of commission @ 5% received by the assessee for arranging such transaction.

7. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, dismissed the appeal of the assessee.

8. Now, the assessee is in appeal before this Tribunal.

9. Apropos to Ground Nos.3 & 4, Ld. Sr. DR supported the orders of authorities below and submitted that the assessee failed to prove the genuineness of the transaction.

10. I have heard the contention Ld. Sr. DR and material placed on record and gone through the orders of the authorities below. I find that Ld.CIT(A) has decided the issue by observing as under:-

4.22. "I find that on similar facts and circumstances, Hon'ble High Court Bombay (Nagpur Bench) while dismissing the appeal of the assessee in the case of Sanjay Bimalchand Jain vs CIT-1,

Nagpur in ITA No.18/2017 has expressed the view that the undisclosed income in the garb of LTCG has to be assessed as undisclosed credit u/s 68 by holding as under.-

"The authorities have recorded a clear finding of fact that the assessee had indulged in a dubious share transaction meant to account for the undisclosed income in the garb of long term capital gain. While so observing, the authorities held that the assessee has not tendered cogent evidence to explain as to how the shares in a unknown company worth Rs. 5/- had jumped to Rs. 485/ - in no time. The Income Tax Appellate Tribunal held that the fantastic sale price was not at all possible as there was no financial basis as how a share worth Rs.5/- of a little known company would jump from Rs.5/- to Rs.485/-. The findings recorded by the authorities are pure findings of the fact based on proper appreciation of the material on record. While recording the said findings, the authorities have followed the test laid down by the Hon'ble Supreme Court and this court in several decisions."

4.23. All these above mentioned cases are applicable to the facts and circumstances of the present case in which the various judicial authorities have decided the cases in favour of revenue after going through the entirety of the facts and circumstances. The case laws relied upon by the appellant are apparently in favour of the assessee's but probably the role of human conduct, surrounding circumstances and preponderance of probabilities were either not brought to the notice of the

Hon'ble Judicial Authorities or were not as dominant or deciding factors as these are found to be in the present case. In addition, the AO, in this case, has very clearly segregated the apparent from the real by using various evidences gathered from reliable sources of information and report.

4.24. In view of the facts and circumstances borne out of the assessment order and legal precedents as discussed above, I am of the view that documents submitted as evidences to prove the genuineness of transaction are themselves found to serve as smoke screen to cover up the true nature of the transactions in the facts and circumstances of the case as it is revealed that purchase and sale of shares are arranged transactions to create bogus profit in the garb of tax exempt LTCG by well organised network of entry providers with the sole motive to sell such entries to enable the beneficiary to account for the undisclosed income for a consideration or commission.

4.25. In view of the above discussion, I am of the considered view that share transactions leading to LTCG by the appellant are sham transaction entered into for the purpose of evading tax. Accordingly, it is held that the AO has rightly added the said amount of Rs.6,19,741/- as undisclosed income of the appellant. Since arranging such accommodation entry necessarily entails payment of commission to entry providers, the AO's action in quantifying and adding such unexplained expenditure at Rs.30,987/- based on statements of brokers/entry providers is also upheld for the reasons recorded

in the assessment order. Accordingly, additions made by the AO are confirmed and the grounds of appeal are dismissed.”

10.1. The assessee has not furnished any material to rebut the findings of the assessing authority. Moreover, despite various opportunities, no representation made on behalf of the assessee. In the absence of the credible evidences and supporting the contention of the assessee, the grounds raised by the assessee in this appeal are therefore, dismissed.

11. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open Court on 31st March, 2022.

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

Amit Kumar

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI