

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

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

**ITA No.6346/Del/2019
[Assessment Year : 2015-16]**

Sanjeev Kumar Agarwal (HUF), C/o-Kansal Kapoor & Co., Kothiwal Nagar, Station Road, Moradabad, Uttar Pradesh-244001. PAN-AAKHS2133Q	vs	ITO, Ward-2(2), Moradabad.
APPELLANT		RESPONDENT
Appellant by	None	
Respondent by	Shri Om Prakash, Sr.DR	
Date of Hearing	09.05.2022	
Date of Pronouncement	17.05.2022	

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), Moradabad dated 14.05.2019. The assessee has raised following grounds of appeal:-

1. *“That the Commissioner of Income Tax (Appeals) [‘CIT(A)’] erred on facts and in law in confirming addition made by the assessing officer in the assessment order passed under section 143(3) of the Income Tax Act, 1961 (‘the Act’).*
2. *That the CIT(A) erred on facts and in law in upholding the action of the assessing officer in denying exemption of long term capital gain (‘LTCG’) of Rs.22,76,598 on sale of equity shares of Eco Friendly Food Processing Park Limited claimed by the appellant under section 10(38) and making addition of such LTCG under section 68 of the Act alleging the same to be bogus in nature.*
3. *That the CIT(A) erred on facts and in law in upholding the action of the assessing officer in making aforesaid addition alleging that*

the appellant had obtained 'accommodation entry' in form of bogus LTCG through 'penny stock companies' solely on the basis of information received from the Investigation Wing without any independent application of mind by the assessing officer.

4. *That the CIT(A) erred on facts and in law in confirming the addition made by the assessing officer on the basis on 'preponderance of probability' in supersession to the law of evidence.*
5. *That the CIT(A) erred on facts and in law for not appreciating that aforesaid addition was made merely on the basis of presumptions, conjectures & surmises and no documentary evidence was brought on record by the assessing officer before making such addition.*
6. *That the CIT(A) further erred on facts and in law in not appreciating that the appellant was legally entitled to claim exemption under section 10(38) of the Act qua aforesaid LTCG inasmuch as period of holding of shares was long term in nature and the same were sold by the appellant through recognized stock exchange on which Securities Transaction Tax ('STT') was also paid.*
7. *That the CIT(A) erred on facts and in law in not appreciating that all details and documentary evidences qua sale of shares were furnished before the assessing officer and no document was produced by the assessing officer to controvert such information/ evidences.*
8. *Without prejudice to above, the CIT(A) erred on facts and in law in upholding the action of the assessing officer in making addition under section 68 of the Act without appreciating that addition under that section was not sustainable in law.*
9. *The appellant craves leave to add, alter, amend or vary from the aforesaid grounds of appeal at or before the time of hearing."*

2. At the time of hearing, no one appeared on behalf of the assessee. There is no request for adjournment by the Ld.AR of the assessee. It is seen from the records that no one has been attended the proceedings since 19.01.2021. The notices issued by the Registry are returned back unserved by the Postal Authority with remark "left". The assessee has not provided any current address to the Registry. Therefore, the appeal is taken up for hearing and is being decided in the absence of the assessee.

3. The only effective ground in this appeal is against the confirmation of addition made by the Assessing Officer ("AO") regarding declining the exemption for Long Term Capital Gain ("LTCG") of Rs.22,76,598/- on sale of equity shares of Eco Friendly Food Processing Park Ltd.

FACTS OF THE CASE

4. Facts giving rise to the present appeal are that in this case the assessee HUF has filed its return of income electronically on 31.08.2015 declaring total income of Rs.7,91,340/-. Subsequently, the case was selected for complete scrutiny under Computer Assisted Scrutiny Selection ("CASS"). Accordingly, notice u/s 143(2) of the Income Tax Act, 1961 ("the Act") was issued to the assessee. In response to the statutory notices, Ld.AR of the assessee attended the proceedings. It was noticed by the AO that as per computation of income submitted by the assessee, income from LTCG of Rs.22,76,598/- had been claimed out of the sale of shares of Eco Friendly Food Processing Park Ltd. The AO called upon the assessee to substantiate the claim and asked it to file various documents i.e. contract notes for each transaction, relevant copy of Demat Account statement, relevant copy of ledgers in the books of broker, relevant copy of Bank Account statement and details of

company in the scrip of which the assessee transacted. In response thereto, the assessee filed its reply and submitted the documents. Thereafter, the AO recorded the findings of Investigation Wing and after examining the details at length, he proceeded to disallow the claim of exemption and made addition of Rs.22,76,598/- u/s 68 of the Act.

5. Aggrieved against this, the assessee preferred the appeal before Ld.CIT(A), who after considering the submissions of the assessee, dismissed the appeal of the assessee and sustained the finding of Assessing Authority.

6. Aggrieved against the order of Ld.CIT(A), the assessee has filed the present appeal before the Tribunal.

7. Ld. Sr. DR vehemently argued that the AO has examined the transaction at length and also carried out certain inquiries which revealed that LTCG as claimed by the assessee was earned by the assessee from sale of shares of Eco Friendly Food Processing Park Ltd. by way of accommodation and arrangements. He strongly supported the orders of the authorities below.

8. I have heard the Ld. Sr. DR and perused the material available on record. I find that Ld.CIT(A) has given finding on facts by observing as under:-

3.10. "In the present case, the AO has carried out detailed investigation. He has not kept quiet and after having received the investigation report from Directorate of Investigation, Kolkata, he has made extensive inquiries. After investigation, he has mentioned the facts in the assessment order which are as under:

- i. *The appellant is not a regular investor in shares.*
- ii. *Nature of transaction looks suspicious from the manner in which it has been conducted i.e. the abnormal appreciation in the value of shares.*
- iii. *The shares in which the assessee has invested have been identified as penny stock by the Investigation Wing of the Income Tax Department.*

3.11. *The appellant has mentioned that the report of Investigation Wing was general and did not concern with his case. No allegation is made against him in the report. This plea of the appellant is not acceptable because the Directorate of Investigation has carried out a detailed probe into a nation wide scam. Scrips have been identified, which have been used for conversion of the black money. Therefore, even if, the specific name is not listed anywhere, the action of AO is justified based on the human conduct and preponderance of probabilities.*

3.12. *Also, it has been held by Hon'ble Apex Court in the case of Durga Prasad Mor and Sumati Dayal that the test of human probabilities has also to be applied by the authorities below. In the case of Sumati Dayal 214 ITR 801, it was held that during the year 1970-71 (pertaining to the assessment year 1971-72) between April 6, 1970, and March 20, 1971, the appellant claims to have won in horse race a total amount of Rs.3.11,831/- on 13 occasions out of which ten winnings were from jackpots and three were from treble events. Similarly in the year 1971-72, the appellant won races on two occasions and both times the winning were from a jackpot. These receipts were tested on the touch stone of human probability and it was found that apparent was not real. That it was contrary to statistical theory and experience of the frequencies and probabilities. The exceptional luck enjoyed by the appellant was held to be beyond preponderance of probability. Hence the Hon'ble Apex Court has affirmed the view that it would not be unreasonable to infer that the appellant had not really participated in any of the races except to the extent of purchasing the winning tickets after the events presumably with unaccounted funds. When the present case is examined on the*

touch stone of above case law, it is clear that these transactions of the appellant can by no stretch of imagination be considered as investment transactions. They are only make believe transaction. Hence I do not find any infirmity in the AO taxing the receipt in this regard.

3.13 In view of the above discussion, it is apparent that lots of inquiries have been made by the AO and substantial material is collected by him. The following particular facts, which have been gathered by the AO are relevant for this case.

- i. The assessee is not a regular investor. However, he has invested in the scrip i.e. M/s Eco Friendly Food Processing Ltd and hit the jackpot in the same. This is quite abnormal in view of the test of human probabilities laid down by Hon'ble Apex Court in the case of Durga Prasad Mor and Sumati Dayal.*
- ii. The investigation report of the Income Tax Department suggests that the scrip i.e. M/s Eco Friendly Food Processing Ltd was pertaining to the paper companies, which were used for manipulation of shares in the LTCSG Scam.*
- iii. Unrealistic rise in the share price of M/s Eco Friendly Food Processing Ltd as mentioned in the assessment order.*
- iv. Poor financial health of the companies as mentioned by the AO in the assessment order.*

3.14. In view of the above facts, it is clear that the claim of LTCSG of Rs. 22,76,598/- on the alleged sale of shares is basically accommodation entry from the entry operator. The appellant is involved in the scam of accommodation entry and there is no merit in his submission that the sale consideration has been received through banking channel and shares were sold in stock exchange. The shares in which he has invested belong to paper companies. Their financial position is extremely poor and they do not seem to be carrying out a regular business. The exponential rise in their share price is nothing else but a manipulation by the syndicate of operators involved in the scam. In the present case, the

appellant's explanation that the said receipt is on account of investment in shares, whereby shares of unknown company have jumped in no time has been totally rejected by the AO. The appellant has not at all been able to adduce cogent evidences in this regard. There is no economic or financial justification for the sale price of these shares. The fantastic sale price realization is not at all humanly probable, as there is no economic or financial basis that a share of little known company would jump so high. In these circumstances, I do not find any infirmity in the order of the AO. Also, the case laws upon which the assessee has relied have different set of facts, pin view of the facts discussed in earlier paras, I am of the considered view that the AO was justified to disallow the claim of long term capital gain of Rs. 22,76,598/- and to treat the same as income from undisclosed sources.”

9. The above finding is not controverted by the assessee by placing any contrary material on record and rebutting the finding of the authorities below. In the absence of such evidence, I do not see any reason to interfere in the finding of Ld.CIT(A), the same is hereby affirmed. Thus, grounds raised by the assessee are dismissed.

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

Order pronounced in the open Court on 17th May, 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